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**David Cadier**

Visiting Fellow at the Centre for Transatlantic  
Relations, SAIS Johns Hopkins University

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## EU Mission in Kosovo (EULEX): Constructing Ambiguity or Constructive Disunity?

*"Kosovo could be our military euro,  
creating a political and defense identity  
for the European Union in the same way  
as the euro is the expression of  
economic and financial integration"*  
Ulrich Beck (1999)

### **Introduction**

In which skies should auspices about the future of EU foreign policy be looked for, Libya's or Kosovo's? Many commentators have been prompt in digging the grave for EU Security and Defense Policy after Member States' discordance over taking military action against the Qaddafi regime<sup>1</sup>. However, as this paper will emphasize through the case of Kosovo, unanimity is not al-

ways an indispensable prerequisite – and should not be regarded as the sole criteria – to EU action in regional security. Overly focusing on the 'speak with one voice' mantra sometimes leads to stop short of assessing actual outcomes.

Furthermore, although the Lisbon Treaty did endow the EU with the instruments to streamline its foreign policy instruments, its tasks will probably consist less often in the near future in offensive military operations than in peace-keeping, civilian crisis management and institution-building – as in Kosovo. Once the terrain for a more or less harmonious concert of International Organizations, the Kosovo dossier is increasingly becoming an EU solo effort. Brussels has taken the lead in the new round of

'technical' negotiations between Belgrade and Pristina. Similarly, the EULEX mission came to the forefront as it has been tasked to investigate the organ-trafficking allegations implicating the current Prime Minister of Kosovo<sup>2</sup>, thus getting Brussels further involved into war crimes issues (the region's very own 'frozen-conflicts')<sup>3</sup>. The outcome of EU policies in and around Kosovo will be decisive, for the region and for the EU itself.

Historically, crisis in the Balkans ignited the spark for an EU security policy and provided the laboratories for its outputs. European states' variances and related incapacity during the post-Yugoslavia conflicts goaded them into setting up a Common Foreign and Security Policy (CFSP) through the Maastricht Treaty of 1992. Similarly, the later creation of its military component (Common Security and Defense Policy, CSDP) at the Cologne Summit of June 1999 paralleled the war in Kosovo. Beyond institutional instruments, the Kosovo crisis actually ignited a will – and was perceived as an occasion – to bolster EU identity as a political and security actor<sup>4</sup>. More acutely, the occurrence of a protracted conflict in its backyard was putting Europe's integration project in jeopardy. Hence, both by necessity and desirous to consolidate its clout as a security actor, the Balkans have remained for the EU a region of utmost strategic importance, one where – as noted by the *European Security Strategy* (2003) – “the credibility of EU foreign policy” will be gauged. Accordingly, more than one fourth of CSDP missions (6 out of 24) were deployed in the Balkans<sup>5</sup>.

The EU launched in Kosovo in December 2008 its largest and most innovative mission to date: the EULEX Rule of Law mission. EULEX stands out as unique in several ways. First, EULEX is the largest deployment in terms of agents and contributing states. It is set to attain a final staff target of 3,200 (1,950 internationals, 1,250 locals), provided by 26 of the member-states plus Canada, Croatia, Norway, Switzerland, Turkey and – for the first time – the United States. Washington's involvement in EULEX – although limited in number – is of particular symbolic importance not only as it marks a further step in US recognition of EU security policy but also as Kosovo has been essentially a transatlantic project (and an increasingly successful one)<sup>6</sup>. Moreover, with the US wishing to progressively pull out from the region, EULEX achievements will be at the core of Washington's perception of the EU's capacity to fully 'take over'<sup>7</sup>. Second, as a fully integrated Rule of Law mission, EULEX has an unprecedented mandate combining three components (police, justice and customs) and

assuming executive functions. Finally, it has adopted for the first time a 'programmatic approach', i.e. an operating method based on performance indicators along which the strategy is revised every six months.

Hence, because it is deployed in a strategic region where EU credibility is at stake and because it appears as the most innovative and ambitious CSDP mission to date, EULEX constitutes an ideal case-study to assess the role of the EU as a regional security actor. In this endeavor, after having briefly conceptualized some benchmarks for analysis, the paper will explore three core aspects of the EULEX mission: *political contexts; mandate and activities; interaction with other international actors*. First, the impact of the highly politicized context of its deployment – both on the ground and among member-states – will be assessed. Then, the mandate and the activities of the mission will be scrutinized, paying particular attention to the issue of the 'executive functions' prerogative. Finally, the interactions of EULEX with both international agencies (NATO, OSCE, ICO) and European institutions (Commission, EUSR) will be analyzed. The conclusion will attempt to draw from EULEX general lessons about EU practice in regional security.

## Benchmarks for analysis

The EU's *sui generis* nature complicates the task not only of those in charge a framing a Common Foreign and Security Policy but also of those seeking to evaluate it<sup>8</sup>. How to assess the EU's record and specificity as a security actor? How to investigate the activities and achievements of its missions? What benchmark to choose? I retain here the concept of *actorness* and will seek to analyze the EU's capacity to behave actively and deliberately in relation to other international actors<sup>9</sup>.

Beyond resources, four components of actorness will be studied: *authority, autonomy, cohesion* and *recognition*<sup>10</sup>. *Authority* refers to EU legal competence in international affairs and will be analyzed in the case of EULEX by looking at its mandate as well as at the legal framework in which it operates. *Autonomy* relates to EU institution distinctiveness and independence from other actors. This aspect will be crucial in studying the case of EULEX; attention will be paid both to the mission's room for maneuver in relation to Member States – in particular those which did not recognize Kosovo – and to its capacity to germinate its own goals and directions in coordination with other EU institutions. *Cohesion* pertains to the degree of unity among the

various agencies and stakeholders of EU external relations, whether in terms of methods or activities (i.e. tactical and operational efficiency). The ‘challenge of coherence’ is particularly acute in the field of civilian crisis management as there both CSDP and community instruments are mobilized by the EU<sup>11</sup>. Finally, the last crucial component is that of *recognition*; the EU can efficiently act as a security actor only as long as it is recognized as such by other international stakeholders. Recognition accounts for the extent to which external actors accept the EU’s international competence in a policy-area (*de jure* recognition) and acknowledge its legitimacy by interacting with its agencies in that domain (*de facto* recognition). The EU’s clout as a security actor rests as much on its institutional capacity as on its external legitimacy, and the political impact of CSDP is not simply material but also largely symbolic<sup>12</sup>. In combining all these criteria constitutive of *actorness*, the putative “European way of doing crisis or post-conflict management” will be questioned through the prism of EULEX<sup>13</sup>.

### **Kosovo: the mark of the context**

In contrast to many CSDP missions, EULEX appears molded more by the peculiar Kosovo context than by Brussels’ institutional machinery. The political context sets the boundaries of EULEX’s scope of action. In this regard, the non settlement of the status question – i.e. the absence of a UN Security Council resolution endorsing Kosovo’s independence – constrains its room for maneuver on the ground. In other words, in confronting an already eminently complex and potentially unstable post-conflict situation, EULEX started off with political and institutional handicaps<sup>14</sup>. Three problematic consequences of the status deadlock can be identified as consistent challenges for EULEX: the question of acceptability and deployment in the North; the issue of the applicable law; the paradox of (unrecognized) state-building.

Kosovo remains *de facto* a divided entity, with the territory north of the Ibar river populated by a majority of Serbs<sup>15</sup>. The city of Mitrovica exemplifies this separation along ethnic lines: the language, currency and even schools’ subsidizations differ from one end of the ‘Austerlitz Bridge’ to the other. EULEX has been seeking acceptance by both Serbian and Albanian communities. But ultimately the mission has fueled some discontentment among both – which could be interpreted as a sign of partiality. The Kosovo Serbs have been the most vocal opponents to the establishment of EULEX, accusing it of trespassing

resolution 1244 and of sponsoring Kosovo’s independence by helping to build its institutions. This rejection caused several demonstrations, some of them turning into violent clashes with EULEX policemen, as in Brdžani<sup>16</sup>. Overall, EULEX presence and operability remains constrained in the North in comparison to the rest of the territory, although the situation is evolving positively. The re-opening of the Mitrovica court is an undeniable success in that regard. It is important to emphasize here that, contrary to what is often stated, EULEX difficulties in the North do not stem from Member States’ failure to find a consensus on the status question but rather from the Kosovo Serbs’ rejection of the mission’s state-building prerogatives. Stated differently, it is less due to five Member States not recognizing Kosovo than because twenty-two did<sup>17</sup>.

On their part, Kosovo Albanians have been craving for a speedy emancipation from international trusteeship towards full sovereignty. Thus, some groups such as Vetëvendosja (Self-determination) have been demanding the removal of EULEX as they see it – somehow paradoxically – as a speed bump on the road towards EU membership. Some incidents also occurred in that context. In August 2009, demonstrators protesting against a police agreement signed between Serbia and EULEX attacked several of the mission’s vehicles<sup>18</sup>. Furthermore, in March 2011 however the Kosovo government openly criticized EULEX for the first time, expressing concern over the arrest of former member of the Kosovo Liberation Army (KLA)<sup>19</sup>. In the long run, EULEX acceptance from both communities will depend on its ability to deliver in the realm of justice, i.e. both in establishing the preeminence of the rule of Law over informal networks and in handling with impartiality as well as efficiency the war crimes trials. On the former aspect, while some arrests have been made recently, EULEX remains criticized in the Kosovo media for its lack of results in its struggle against corruption and clientelism<sup>20</sup>. On the latter, the mission is playing the card of transparency by putting on its website the text of the rulings delivered by its judges<sup>21</sup>.

The problem of political fragmentation also translates into legal conundrums. In terms of mandate, EULEX officially operates under UN resolution 1244. However, this general resolution is not fit to provide legal framework for EULEX’s comprehensive range of activities (police, justice and customs). Authorities in Pristina have been pushing to apply their newly adopted Constitution to the whole territory, while Kosovo Serbs have been refusing to apply anything other than UNMIK regulations or ear-



lier Yugoslav laws. So far, EULEX judges have been able to circumvent the problem by applying the legislation prevailing at the time of the allegation.

Finally, the fact that five of its member-states – namely Cyprus, Greece, Romania, Slovakia and Spain – did not recognize Kosovo independence undeniably complicates EU action. In a way, EULEX appears as an innovative mission that is forced to downplay its realizations in the absence of a consensus at the European Council. Cyprus in particular has adopted an uncompromising posture, being the only capital not to contribute to the staffing of the mission and having abstained in the vote of its deployment. Moreover, along with Madrid and Bucarest, Nicosia sent lawyers to the International Court of Justice (ICJ) to testify against the legality of the declaration of independence, where they faced-off lawyers from eight other EU Member States<sup>22</sup>. Such a dramatic display of disunity has been (unnecessarily) detrimental to EU's image; all Member States could have abstained from sending any lawyers.

Yet, beyond symbolic, several of the 'non-recognition' consequences managed to somehow be circumvented on the ground, with the Member States demonstrating a certain 'unity of purpose'. Most of the non-recognizing states do contribute to the staffing of EULEX and some have diplomatic personnel in Kosovo (although no embassies). EULEX reporting machinery is bound to be overly carefully when it comes to the wording of official as well as internal documents. But overall the EU has been demonstrating a great deal of ingenuity in being able to deploy and run a Rule of Law mission assisting in the strengthening of institutions it doesn't officially recognize<sup>23</sup>. This 'schizophrenic posture' however might be hard to sustain over the long run; it appears difficult for EULEX to remain a 'technical mission' in an eminently political context. How far, for instance, can EULEX go in assisting to the set up of a customs system in Kosovo while avoiding the sovereignty issue? As underlined by Rupnik, in Kosovo as throughout the former Yugoslavia, the EU is confronted with problematic situations often coming down to the issue of the State in its territorial and Institutional aspects; "how to engage in state-building without deciding which State is being built"?<sup>24</sup>

### **An ambitious civilian operation**

Along the line established by the preparatory work of the European Union Planning Team (EUPT) operating in Kosovo since April 2006, the EU started the deployment of EULEX in De-

cember 2008. The mission declared its full operational capacity in April 2009. Its main legal basis is the Council Joint Action adopted on the 4<sup>th</sup> of February 2008<sup>25</sup>. Between promotion of the Rule of Law and civilian crisis management, EULEX's mandate consists in "*assisting Kosovo authorities, judicial authorities and law enforcement agencies in their progress toward sustainability and accountability*" through "*monitoring, mentoring, and advising, while retaining certain executive functions*". EULEX Rule of Law activities are subsumed under three components (police, justice and customs), whose objectives, organizational structure and expected outputs are established within the framework of an overarching *Programme Strategy*<sup>26</sup>.

The police component is the most substantial. EULEX aims at developing Kosovo Police (KP) capacities both at the administrative and operational level (i.e. forensics, Special Forces...). Beyond training and advice, EULEX agents actually monitor and sometimes assist KP officers on the ground. In that sense, EULEX is building upon the experience of previous Police Mission, addressing in particular some of the critics directed at an operation comparable in terms of context and purpose, EUPM Bosnia<sup>27</sup>. By deploying police officers in local stations and with corrective (i.e. executive) powers, EULEX take up the collocation and substitution aspects that were lacking in EUPM. More generally, other lessons-learned include a more ambitious mandate – when EUPM's narrow mandate was perceived as a way to elude taking responsibility – and the combination of police with judicial and normative elements – a functional approach to the former proved untenable in EUPM. However, some shortcomings noted in EUPM, such as police officers' inherent difficulty in grasping the peculiar nature of post-conflict situation, still resonate in EULEX. Nevertheless, while "the mixed balance sheet which hangs over EUPM did not augur well for the EU's other police missions"<sup>28</sup>, Brussels demonstrated overall its capacity in capitalizing on previous experiences and address major deficiencies<sup>29</sup>.

In the judicial realm, EULEX also both advises Kosovo's legal institution (on the structural organization of the Ministry of Justice) and retains executive functions (by taking part in prosecutions and ruling). The latter are the most visible in the justice component as EULEX judges have jurisdiction on some specific crimes. Cases involving allegations of war crimes, organized crime, money laundering and terrorism are prosecuted by mixed courts composed of a majority of EULEX judges. Similarly, the Supreme Court of Kosovo is composed of three EULEX

judges (including the Chairman) and two local judges. In terms of training judiciary personnel, EULEX justice component is to some extent comparable to previous CSDP missions such as *Themis* in Georgia and JUSTLEX in Iraq (although in the later case local judges are trained not on the ground but in EU member-states). The exercise of ruling and prosecution on the part of EULEX judges stands out however as a significant novelty.

EULEX is the first ESDP mission bearing a customs component. The aim is to train Kosovo customs officers and also to collect data on commercial traffic in an endeavor to tackle smuggling. The custom dimension should not be viewed as trivial as almost two thirds of Kosovo revenues flow from the collection of custom duties. EULEX is not directly implied in the collection of customs revenue, it simply copies and stamps documents of vehicle transporting goods. Indeed, borders irremediably evoke the question of sovereignty and, as a matter of fact, the 'gates' of the North (i.e. posts at the demarcation line with Serbia) have been the stage of recurrent demonstrations.

By its ability to combine essential elements of Rule of Law promotion, the EU demonstrates a solid know-how in terms of civilian missions. Through its three components, EULEX has the opportunity to fashion in a complete and comprehensive manner the institutions of Kosovo towards democratic benchmarks. While the integrated nature of the mission had not been sufficiently taken into account in the planning phase – and thus problems of coordination between the three pillars emerged in the early months of the deployment – months of operations have since improved their synchronization. The coordination of the mission's activities is still to be put to the test however in times of acute crisis, where the 'programmatic approach' – a methodology originally designed for development aid – might reveal its weaknesses<sup>30</sup>.

Most importantly, the issue of the executive functions remains a potential bone for contention, fueling for instance the 'Protectorate' critics<sup>31</sup>. First of all, their activation is not always clearly defined and it is often let to the agent to judge when to wield his 'corrective powers'. In that regard, the question of accountability of EULEX agents has been partly addressed: an independent advisory Human Right Review Panel (HRRP) where the local population will be able to file complaints has been set up<sup>32</sup>. The HRRP however is solely an advisory body deprived of judiciary or disciplinary competences. Second, questions linger as to what extent EULEX would be ready to use its executive pow-

ers against the highest officials of Kosovo (i.e. ministers), for instance in cases of organized crime allegations.

## **Interaction with other International Actors**

In deploying amidst a plethora of international organizations, EULEX contributes both to disclose and to shape EU identity as a security actor. EULEX must ensure an effective cooperation with other international stakeholders while at the same time demonstrating its specificity and added-value. Most importantly, it ought to combine with the several EU bodies already present in Kosovo in order to ensure the coherence and efficiency of EU external action.

NATO represents an interlocutor of cardinal importance as the KFOR remains the force ultimately in charge of stability and security in Kosovo. However, no formal cooperation agreements exist between the two missions. This is resulting from the deadlock prevailing at the NAC-ESDP council (Brussels) over the Turkey-Cyprus issue. Nonetheless, beyond institutional considerations, EULEX and KFOR have been coordinating on the field demonstrating a will to make use of their complementarity. For instance, an informal three wave response (Kosovo Police – EULEX – KFOR) arrangement prevails in situation of violent protests. As for the other CSDP missions, "bureaucratic squabbling have been confined to the corridors of power in Brussels"<sup>33</sup> – the two actors endeavor to work pragmatically side by side on the field. The deadlock at the headquarters' level preclude deeper and formalized arrangements, but the cooperation in Kosovo has been rendered efficient by the fact that the EULEX/KFOR coordination mechanisms have been arranged on the ground and in light of the context (while in Bosnia a top-down approach had been implemented). More generally, NATO – wishing to pull out from Kosovo – welcomed EULEX deployment favorably and demonstrated interest in its potential abilities in maintaining public order. In the medium term, a potential next step would be the deployment of a CSDP military mission in replacement – or rather continuation (i.e. following the Concordia mission precedent in Macedonia) – of KFOR<sup>34</sup>.

The mandates of the OSCE Mission in Kosovo (OMIK) being closer to that of EULEX, some risks of overlapping exist in the fields of judicial and police training. This is especially the case as no coordination channels have been set up between the two missions. Serbia and Russia being member states of the organization, the OSCE appears even more paralyzed by the status ques-

tion. In any case, OMIK specificity lies more with media development, minority rights and local governance. And OMIK is anyway progressively reducing its activities along the pull out of UNMIK (of which it was a pillar) and because of the non endorsement of the Athisaari plan by the UNSC.

However, EULEX's most important relational challenge actually pertains to its cooperation with the gamut of other EU bodies operating in Kosovo. The paroxysm of this institutional intertwinement materialized in Peter Feith's position, being at the same time the International Civilian Representative (ICR) – that is the head of the International Civilian Office – and EU Special representative (EUSR). Such double-hating is not new in the Balkans, but it revealed problematic after the declaration of independence. The two institutions find themselves with different legal basis: the ICR applies the Athisaari plan while the EUSR remains under 1244<sup>35</sup>. Overall, this schizophrenic double-hating complicated the relationship with EULEX. While, in theory, EULEX should seek political guidance from the EUSR, it has been wary to keep its distance in an endeavor to cultivate its image of neutrality on the status question. Difficult relations between the EUSR and the CSDP mission seems to be a recurrent problem in EU's external relations – similar tensions existed in Bosnia, in Georgia and in Afghanistan. This pattern should be addressed by the new Lisbon Treaty architecture however, where EUSR hats will be granted to heads of the Delegation of the Commission. As a matter of fact, Peter Feith's mandate as EUSR ended on April 30<sup>th</sup> 2011.

The Commission, through its liaison office (ECLO), remains the EU's main lever towards Kosovo authorities. More than a critique from the EUSR or the EULEX Head of Mission, a negative assessment in the Commission's report evaluating the progress towards EU membership remains the best incentives for reforms<sup>36</sup>. EULEX has been endeavoring to work closer with the Commission in order to capitalize on this 'conditionality lever'. For instance, in an effort to be accepted by the local authorities at its beginnings, EULEX channeled some of its early critique and demands through the ECLO. Similarly, the ECLO has been relying on EULEX's numerous agents and experts to contribute information to the aforementioned report. However the coordination between the two bodies still needs improvement, notably in crucial areas such as counseling in legal drafting. The new institutional architecture introduced by the Lisbon Treaty, where the EU High Representative for CFSP is also vice-President of the Commission,

could create the conditions for a better coordination between EULEX and the ECLO, and thus a greater coherence of EU's external action<sup>37</sup>.

## Conclusion

A closer look at the context of EULEX deployment, its activities as well as its interactions with other International Organizations revealed an important degree of adaptability and some notable assets in civilian crisis management while at the same time emphasizing underlying challenges confronting EU security policy.

First, being the premier civilian mission of this scope in terms of mandate and size, the deployment of EULEX can be regarded as an operational success for CSDP. Second, addressing in particular several of the weaknesses of EUPM Bosnia, EULEX demonstrates an ability on the part of CSDP to capitalize on previous experiences. Considering the time frame of the various police missions' deployments, the EU can be depicted as a fast-learner in this regard. Third, considering the intricate political contexts – whether Brussels' or Pristina's – in which EULEX was set up, the EU can be said to have shown a great capacity of adaptation. The fact that the mission was launched in spite of these political impediments tends to confirm that the CSDP and its operations have a dynamic of their own (i.e. some degree of *autonomy*). Beyond crisis management, CSDP missions serve the function of enhancing the international status of the EU on the world scene by demonstrating its presence on the ground. This 'demonstrative function' is particularly salient in the case of EULEX as the mission is deployed in a region where the US are progressively disengaging and where the EU ought to be credible if it is to be credible at all as a security actor.

The EU demonstrates certain *savoir faire* in Rule of Law promotion by being able to combine various aspects of institution-building (police, justice and customs). As a matter of fact, international actors appear well-disposed to interact with the EU in the realm of security and sometimes actually call for its greater involvement. US participation in the mission as well as NATO's eagerness to share the security burden with EULEX can be interpreted as an increasing *recognition* of the EU as a regional security actor and seems to mark a further step in terms of external legitimacy for CSDP. The deployment of a CSDP military mission in replacement of KFOR – NATO seeking to progressively withdraw from Kosovo – appears however for now as a step too far that neither the EU member states seem fully ready to take nor the US or the Kosovo authori-



ties would be totally comfortable with<sup>38</sup>.

Beyond its rather promising debut, EULEX faces some resilient challenges. The mission's capacity to successfully deliver on its mandate and to make a difference in Kosovo will depend ultimately on its ability to strike a balance between its proactive (i.e. mentoring and monitoring) and reactive (i.e. 'executive functions') prerogatives. Its mandate leaves open the choice between a cooperationist and an interventionist approach (i.e. on the way to wield its *authority*) when facing a situation of normative breach<sup>39</sup>. In the former, EULEX runs the risk of seeing its recommendation ignored while some of the Kosovo media are already reproaching the mission for limited results in tackling corruption. In the latter case, EULEX intervenes at the detriment of Kosovo institution ownership and thus exposes itself to the protectorate critic. In spite of these criticisms, EULEX should not relinquish any of these two approaches: while it ought to foster a self-standing democratic culture in Kosovo the developing nature of Kosovo institutions sometimes requires going beyond mere advising<sup>40</sup>. EU Membership conditionality, compelling reforms without direct intervention, stands out as a potential way out of this Gordian knot<sup>41</sup>. More generally, as emphasized by Grevi, efficiently and durably tackling the three most prominent issues on top of EULEX agenda (namely improving inter-ethnic relations, fighting organized crime and dealing with widespread corruption and clientelism) depends in great part on progress in the de-centralization process and in reinvigoration of the economy, two domains where "EULEX can provide much help but is not the core player"<sup>42</sup>. Thus, the cooperation with other EU agencies appears crucial.

The Balkans stands out as a unique region where the EU has the opportunity to back its security policy with its normative power. In such a context, the EU can bring about a considerable added-value in crisis management and peace-building if it efficiently coordinates CSDP with other instruments of EU external action (i.e. enlargement policy). The case of EULEX however made salient the issue of *coherence* in EU

external relations. In his seminal book, Brian White distinguished between three strands in European foreign policy: Member States national foreign policy; EU coordination of its political relations with the outside world; and long-standing foreign economic policy aspects (usually conducted by the Commission)<sup>43</sup>. In Kosovo, the first and second aspects are somehow divergent while the second and third are insufficiently coordinated. In a way, there is a discrepancy between the Union's foreign policy and its security policy: a CSDP mission in charge of monitoring the independence was launched in spite of a lack of consensus on the status. In addition to this uncommon political issue, some deficiencies have been noted as regard the cooperation between the various EU institutions (EULEX, EUSR, ECLO...) present in Kosovo. These were stemming in large part from the dispersion of EU actors; the Lisbon Treaty architecture will hopefully streamline EU presence by merging ECLO and EUSR mandates. More generally, the External Action Service – combining enlargement policy and CSDP instruments – has potentially the means to foster the much needed coordination identified above. It remained to be seen however whether this new institution will be backed by sufficient political will and appropriate resources. But overall the problems and challenges facing EULEX stem as much from a lack of coherence in the use of EU instruments than from a lack of cohesion among member states.

EULEX stands out as the paragon of CSDP's notorious 'constructive ambiguity'<sup>44</sup>. It stands in the schizophrenic posture of assisting in building the institutions of a state it has not officially recognized – unrecognized state-building in other words. In spite of the status conundrum and the division of Member States on the question, EULEX operational deployment was rather successful and the mission has assets in civilian crisis management and rule of law promotion, although results are unlikely to be immediately visible. Thus, in Kosovo the EU is constructing ambiguity while displaying constructive disunity.◇

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*Assertions and opinions in this paper are solely those of the author (s) and do not necessarily reflect the views of the Center for Transatlantic Relations or the Fondation pour la Recherche strategique*

#### *The Author*

David Cadier is a visiting fellow at the Centre for Transatlantic Relations, SAIS Johns Hopkins University, and a PhD candidate at Sciences Po (CERI). He is working on Central European states' foreign policies, EU-Russia relations and EU policies in Eastern Europe and the Balkans. ([david.cadier@sciences-po.org](mailto:david.cadier@sciences-po.org)). Earlier versions of this paper have been presented at the conferences *Kosovo: From one Protectorate to Another*, Center for Peace Mission Studies, University of Montreal (February 2010) and *The European Union as a Global Actor*, IRSEM & Sciences Po, Paris (June 2010).

## Notes

1. Germany has been the most vocal and most significant critic of the Franco-British initiative, notably abstaining at the UN Security Council on Resolution 1973.
2. In a much advertised move, the Parliamentary Assembly of the Council of Europe called for EULEX to be given a clear mandate in follow-up investigations on the allegations presented in the so called 'Marty report'. <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1782.htm>
3. Obradovic-Wochnik, Jelena. 2010. "Serbia's Srebrenica Declaration: a small step, but in the right direction." *ISS Opinion*. Paris: European Union Institute for Security Studies, June.
4. "Crisis in the Balkans: The Europeans; In Uniting Over Kosovo, A New Sense of Identity". *New York Times*, 28 April 1999. The quote from Ulrich Beck is extracted from this article.
5. The European Security Strategy as well as a map of past and ongoing CSDP missions is available at: <http://www.consilium.europa.eu/showPage.aspx?id=261&lang=en>. For a detailed overview and assessments of these missions see Grevi, Giovanni, Helly, Damien & Keohane, Daniel, eds. 2009. *European Security and Defense Policy : The first ten years (1999-2009)*. Paris: The European Union Institute for Security Studies.
6. See Hamilton, Daniel, ed. 2010. *Shoulder to Shoulder: Forging a Strategic U.S-EU Partnership*, Washington, DC: Johns Hopkins University Center for Transatlantic Relations. Chap. 2 (51-73), 14, 15.
7. Beyond official rhetoric, it appears US policy-makers are still to be fully convinced about EU's ability to handle the Balkans alone. The Greek-Macedonia name issue and the non-recognition of Kosovo by five Member States are usually advanced as grounds for Washington's skepticism.
8. Although EU's CSDP has been at the centre of numerous studies, few have actually adopted a policy evaluation approach. Notable exceptions are: Merlingen, Michael & Ostrauskaite, Rasa, eds. 2008. *European Security and Defense Policy: An Implementation Perspective*. London: Routledge; Grevi, Giovanni, Helly, Damien & Keohane, Daniel, eds. 2009. *European Security and Defense Policy : The first ten years (1999-2009)*; Asseburg, Muriel & Kempin, Ronja, eds. 2009. *The EU as Strategic Actor in Security and Defense?* Berlin: Stiftung Wissenschaft und Politik. Moreover, a promising and innovative attempt to offer a systemized evaluation of European foreign policy more broadly has been recently undertaken by Vaisse, Justin & Kundnani, Hans. 2011. *European Foreign Policy Scorecard 2010*. London: European Council for Foreign Relations. Although pursuing the same objective of policy evaluation, the scope of the present study is much narrower, looking solely at the EU action in Kosovo (while the ECFR report encompasses both EU and Member States policies across the globe). In terms of benchmarks, those retained here of authority, autonomy and cohesion echo their criteria of resources and unity. Limiting the study to the case of Kosovo allow us to mobilize an additional criteria, that of recognition.
9. On the concept of *actorness* see: Jupille, Joseph & Caporaso, James. 1998. "States, Agency and Rules: The European Union in Global Environmental Politics", in Rhodes, C. (ed.) *The European Union in the World Community*. Boulder, CO: Lynne Rienner. 213-29; Bretherton, Charlotte & Vogler, John. 1999. *The European Union as a Global Actor*, London: Routledge
10. The question of resources (or lack thereof) has been widely commented, see for instance Korski, Daniel & Gowan, Richard. 2009. *Can the EU Rebuild Failing States? A Review of Europe's Civilian Capacities*, London: European Council of Foreign Relations.
11. See Nowak, Agnieszka. 2006. "Civilian Crisis Management: The EU Way". *Chaillot Paper* 90. 15-37.
12. For instance, while EU JUST Themis in Georgia consisted only of 10 agents deployed on the ground it was presented as demonstrating EU's readiness to promote Rule of Law in the post soviet space. Xymena Kurowska argues that more than crisis management tools framed in response to situation on the ground, EU missions have sometimes been conceived rather as opportunities for the EU to carve out a niche of a unique (post-Westphalian) crisis manager. Kurowska, Xymena. 2008. "The Role of ESDP Operations", in Merlingen & Ostrauskaite, eds. *European Security and Defense Policy: An Implementation Perspective*. 25-42
13. Merlingen, Michael & Ostrauskaite, Rasa. 2008. "The Implementation of the ESDP: Issues and Tentative Generalizations", in Merlingen & Ostrauskaite, eds. *European Security and Defense Policy: An Implementation Perspective*. 207
14. As pointed out by Giovanni Grevi "the resolution 1244 formally remains the legal framework of a mission originally envisaged to help implement the comprehensive proposal that would succeed 1244 itself". Grevi, Giovanni "The EU rule-of-law Mission in Kosovo", in Grevi, Helly & Keohane, eds. 2009. *European Security and Defense Policy : The first ten years (1999-2009)*. 359.
15. We focus here on the Serb minority as they find themselves at the core of the status deadlock. This however should not lead to neglect the fate of other minorities (Roma, Ashkali, Balkan Egyptians, Turks...) when envisaging the political future of Kosovo.
16. <http://www.france24.com/en/20090825-violence-breaks-out-between-ethnic-albanians-serbs-kosovo-eulex>
17. This pattern is also verified for other international organizations operating in Kosovo. The OSCE, where Serbia's veto at the Permanent Council prevented any recognition, is better accepted in the North than the International Civilian Office (ICO), who is implementing the Athissari plan. Interviews in Mitrovica, June 2009.
18. "Violent protests against EU mission in Kosovo". *EUObserver* 26 August 2009. <http://euobserver.com/9/28583>. Such incidents have been marginal
19. "Kosovo concerned over EU war crime arrests". *EUbusiness*. 17 March 2011. <http://www.eubusiness.com/news-eu/kosovo-warcrimes.94y/>
20. For recent arrests see <http://www.eulex-kosovo.eu/en/pressreleases/0125.php>. On media criticism of EULEX see for instance: <http://www.balkaninsight.com/en/article/kosovo-press-review-may-%C3%A53-2%C3%A5aaaa>
21. <http://www.eulex-kosovo.eu/en/judgments/>
22. Around thirty states have participated to the ICJ public hearings, of which 11 EU Member states. Cyprus, Spain and Romania argued that the unilateral declaration of Kosovo authorities violated international law. Austria, Bulgaria, Denmark, Finland, France, Germany, the Netherlands and the United Kingdom pleaded the opposite. The statements as well as the advisory opinion of the ICJ are available at <http://www.icj-cij.org>
23. EULEX has been trying to find a way out of the status issue by presenting institutions as serving the people rather than embodying sovereignty. Richter, Solveig. 2009. "Promoting Rule of Law without State Building: Can EULEX Square the Circle in Kosovo?", in Asseburg, Muriel & Kempin, Ronja, eds. 2009. *The EU as Strategic Actor in Security and Defense?* 34
24. Rupnik, Jacques. 2007. "Les Balkans et la Pax Europea" in J. Rupnik, ed. *Les Banlieues de l'Europe*. Paris : Presses de Sciences Po.
25. COUNCIL JOINT ACTION 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in



Kosovo, EULEX KOSOVO. <http://www.consilium.europa.eu/showPage.aspx?id=1459&lang=En>

26. <http://www.eulex-kosovo.eu/?id=27>

27. For an assessment of EUPM see: Nowak, Agnieszka. 2003. "L'Union en action: la mission de police en Bosnie". *EUISS Occasional Paper 42*; Merlingen, Michael & Ostrauskaite, Rasa. 2005. "ESDP Police Missions: Meaning, Context and Operational Challenges". *European Foreign Affairs Review*, vol. 10. 215–235

28. Jolyon Howorth. 2007. *Security and Defence Policy in the European Union*. London & New York: Palgrave. p. 227

29. It should also be noted that EULEX benefited in Kosovo from the work already undertaken by the OSCE in terms of Police reforms.

30. Beyond political coherence, as of June 2009, several EULEX mission members admitted that the mission, in terms of logistics (communication in particular), would not be able to face an upheaval of the scale of the 2004 crisis. Interviews at EULEX Headquarters, Pristina, June 2009.

31. As pointed out by Džihič and Kramer, interventionist policies by the international community have narrowed the scope and autonomy of Kosovo political actors, thus undermining the development of a democratic culture. Džihič, Vedran, and Kramer, Helmut. 2009. Kosovo After Independence: Is the EULEX Mission Delivering on its promises? *Internationale Politikanalyse*. Friederich Erbert Stiftung. p. 7.

32. <http://www.hrrp.eu>

33. Merlingen, Michael & Ostrauskaite, Rasa, eds. 2008. "The Implementation of the ESDP: Issues and Tentative Generalizations". 197

34. The Kosovo authorities seem attached to KFOR presence, but mostly as a political one. Indeed, they are arguing on one hand that the security situation is stabilized but at the same time want to see NATO stay in the country.

35. While Peter Feith is originally an EU Council Secretariat official, because the Athisaari legal framework en-

dows him with a greater room for maneuver, the "ICR hat is often taking over". Interview with an EU representative, Pristina, June 2009.

36. The 2010 Progress report is available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf)

37. However, the fact that the enlargement policy remains outside of the turf of the nascent External Action Service (EAS) will make it harder to fully capitalize on this lever

38. Informal discussion with a Pentagon official, Washington, May 2011.

39. On the instrumental gap between MMA and executive powers see Richter, Solveig. 2009. "Promoting Rule of Law without State Building: Can EULEX Square the Circle in Kosovo?", in Asseburg, Muriel & Kempin, Ronja, eds. 2009. *The EU as Strategic Actor in Security and Defense?* pp. 42-43.

40. A potential exit strategy is included in EULEX 'programmatic approach': the mission will give up its executive functions when each Rule of Law areas reach a satisfying grade in EULEX Annual Program Report. See Tamminen, Tanka. "High Expectations, Limited Resources. The Bottleneck of EU Civilian Crisis Management in Kosovo". UPI Briefing Paper 70. The Finnish Institute for International Affairs. November 2010

41. In this regard however the non-recognition by five member states can reveal problematic in the future as it jeopardizes membership.

42. Grevi, Giovanni. 2009. "The EU rule-of-law Mission in Kosovo". 365.

43. White, Brian. 2001. *Understanding European Foreign Policy*. London: Palgrave. 40-41

44. The term has been first applied to CSDP by François Heisbourg. Heisbourg, François. 2000. "Europe's Strategic Ambitions: The Limits of Ambiguity". *Survival*, vol. 42(2). 5-15.

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## Presentation

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