



LINKAGES BETWEEN THE EUROPEAN UNION'S COMMON FOREIGN AND SECURITY POLICY & JUSTICE AND HOME AFFAIRS: THE CASE OF THE EULEX MISSION IN KOSOVO

Niuton MULLETI, PhD

**Acting Head of the Department of Law & Lecturer at the Department of Political Science
and International Relations**

EPOKA University, Tirana, Albania

Salerno, March 06, 2020



Outline

1. Research question
2. Theoretical framework
3. EULEX between contested statehood and Brusselisation
4. EULEX and the Europeanisation of Kosovo
5. EULEX and the development of CSDP
6. Overall assessment of EULEX MMA actions and activities
7. Overall assessment of EULEX executive functions
8. Main findings

Research question

What is the impact of EULEX in the maintenance and ensuring of security and stability as well as in the Europeanisation of the national political system in Kosovo?

Given the lack of universal recognition of Kosovo by the international community and even by all EU members as well as the resistance of the majority of Serbs in Kosovo to accept the independence of this state, how has EULEX managed to carry out its mission in Kosovo amidst these challenges?

Theoretical framework

- Main difficulty: Explaining the real nature of the EU.
EU: more than an international organisation, less than a (federal) state that holds the ultimate monopoly of law-making and law-enforcement.
This hinders the emergence of the EU as a fully-fledged global foreign and security actor.
- Despite increasing supranationalist features, the EU still retains more elements akin to an international organisation.

Theoretical framework

- Theories of European integration
- Classical debate: Neofunctionalism vs Intergovernmentalism (both of them based on rational actor model)
- Liberal intergovernmentalism
- Constructivist and sociological approaches remain the main rivals of this rationalist model by challenging its very ontology.

Theoretical framework

- Theories of European integration
- Classical debate: Neofunctionalism vs Intergovernmentalism (both of them based on rational actor model)
- Liberal intergovernmentalism
- Constructivist and sociological approaches remain the main rivals of this rationalist model by challenging its very ontology.

Theoretical framework

- Bickerton: Old intergovernmentalism-neofunctionalism dichotomy fails to capture the true nature of the CSDP
CSDP: a case of the intensification of cooperation between actors but in the absence of new supranational structures
‘supranationality without supranational institutions’.
- Supranationalism is as much about the subjective inclination of national political elites towards consensus and compromise as it is on the establishment of new supranational institutions.
- Increased ‘bureaucratisation’ of the nation-state at the expense of democratic institutions.

Theoretical framework

- Howorth: *Supranational intergovernmentalism*
- Formally positioned in the strictly intergovernmental Pillar Two of the EU, almost all CSDP bodies have gone through a process of socialisation among national representatives albeit at different levels.
- emergence of an institutional culture directed towards consensus-seeking (*Brusselisation*).
- In the greatest majority of cases, decision-making at CSDP supersedes the lowest common denominator.

Theoretical framework

- Supranational intergovernmentalism + concepts and propositions provided by sociological institutionalism used to analyse the decision-making process concerning the planning, deployment and operation of EULEX.

Theoretical framework

- **Europeanisation as:**

Processes of construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies. (Radaelli)

- For potential candidate countries: ***top-down approach***

EULEX Kosovo

- Deployed in the framework of the Common Security and Defense Policy (CSDP) civilian crisis management component.
- CSDP is part of the EU's Common Foreign and Security Policy (CFSP).
- Largest and most expensive civilian CSDP mission to date.

EULEX Kosovo

- Besides Monitoring-Mentoring-Advising (MMA) functions, it also held limited executive powers in the areas of judiciary, police and customs.
- EULEX as a clear example of the **nexus** between **EU's internal (JHA)** and **external security (CFSP)**.

EULEX between contested statehood and Brusselisation

The lack of consensus among EU member states on the recognition of Kosovo's independence brings about important obstacles for a successful conduct of the EULEX mission.

Nonetheless, the problem-solving institutional culture prevailing in Brussels-based CSDP bodies mitigates to a great extent the negative effects of this lack of consensus on the day-to-day operations of EULEX.

EULEX between contested statehood and Brusselisation

- Non-universal recognition of Kosovo's independence by all UN P5 and all EU Member States.
- EULEX acting within the “*supervised independence*” framework (proposed by the Ahtisaari Plan)

VS

EULEX as a *status-neutral* mission (Ban Ki-Moon's Six Point Plan adopted by the UN Security Council).

- EULEX became operational only in December 2008, following the reconfiguration of UNMIK in the framework of UNSC Resolution 1244.

EULEX between contested statehood and Brusselisation

- Non-recognising EU member states took part in the adoption of the Joint Action deploying EULEX and committed staff to the mission (except Cyprus).
- Problematic double-hatting of Pieter Feith
EU Special Representative (*status neutral*) vs
International Civilian Representative (*supervised independence*).
- In 2011, EUSR decoupled from ICR, EUSR also acting as the Head of the EU Office in Kosovo.

EULEX between contested statehood and Brusselisation

- Rather successful performance of EULEX in the areas of police and customs, relatively unsatisfactory results in the area of judiciary.
- Kosovo Serb parallel structures in the North
- Active mediation by the EU between Kosovo and Serbia
 - Talks on technical matters (March 2011-February 2012)
 - Talks on the normalisation of bilateral relations (October 2012-April 2013)

EULEX between contested statehood and Brusselisation

- April 2013 Agreement: Disbanding of parallel structures in the North.
- EU conditionality crucial in the reaching of the agreement.
- Effectiveness of the EULEX mission in Kosovo and the advancement of Kosovo in the process of EU integration to be directly affected by the pace of the accession process of Serbia into the EU.

EULEX between contested statehood and Brusselisation

- Despite its ‘status neutral’ label, EULEX had to increasingly engage in activities that *de facto* reinforced Kosovo’s independence.
- Problem-solving institutional culture that prevails at Brussels-based CSDP bodies among member state representatives mitigated the effects of disagreements among member states on Kosovo.
- Nevertheless, the energy and time devoted to reaching compromise and consensus among member states resulted in a decreased effectiveness and pro-activeness of the mission to deliver its objectives.

EULEX and the Europeanisation of Kosovo

EULEX has had a positive effect not only on stability and security in Kosovo, but also on the acceleration of the Europeanisation of the national political system in this country.

ed. Niuton MULLETI, Copyright2020 - All rights reserved

EULEX and the Europeanisation of Kosovo

- Kosovo as a potential EU candidate country, part of the Stabilisation and Association Process (SAP).
- Signing of the Stabilisation and Association Agreement (SAA) between Kosovo and the EU.
- Kosovo included in the visa liberalisation process.
- Through EULEX, the EU has an incredible leverage over the Kosovo authorities, incomparable with the situation in other EU candidate or potential candidate countries.
- Complex structure of EU presence in Kosovo: EUSR, EULEX and the EU Office in Kosovo.

EULEX and the Europeanisation of Kosovo

- EULEX has had a direct impact on the maintenance of security and stability in Kosovo, through its contribution to the consolidation of the rule of law in Kosovo, especially the judiciary.
- EULEX has intensified struggle against organised crime and corruption.
- EULEX also has a direct effect on forwarding the chances of Kosovo's EU membership → fulfilment of the Copenhagen political criterion on EU accession.

EULEX and the Europeanisation of Kosovo

- Enlargement process of EU: Conditionality-driven.
- Effectiveness of conditionality: Credibility of the EU ‘anchor’ + commitment of the national political class to conduct the necessary reforms.
- In the case of Kosovo, the EU possesses an additional conditionality mechanism: EULEX.
- Credibility of EU conditionality
 - Agreement among EU member states on Kosovo’s status.
 - Effective cooperation and coordination on the ground between EULEX, EUSR and EUO.

EULEX and the development of CSDP

If EULEX's work is deemed as successful, it will lead to the further development and deepening of CSDP in the coming years.

EULEX and the development of CSDP

- Gradual development of CFSP and CSDP.
- Lisbon Treaty: overcoming the dysfunctional separation between different pillars (CFSP method characterized by the *intergovernmentalist* approach of decision-making and the *supranational* Community method) in the area of external relations.
- Unanimity rule maintained but double-hatting of the High Representative assisted by the European External Action Service (EEAS).

EULEX and the development of CSDP

- The performance of EULEX to provide an important impetus for the EU member states to deal with the institutional aspects as well as the human, financial and material resources for more effective and readily deployable civilian EU crisis management operations.
- The relations and interactions of EULEX with the other international actors present in the country – chiefly NATO, but also the UN and the OSCE – to serve as an important lesson on how to further expand collaboration in the future.

Overall assessment of EULEX MMA actions and activities

- Overall positive effect in the consolidation and further institutional development of rule of law institutions in Kosovo.
- The Kosovo Customs is already very capable and the Kosovo Police is an increasingly professional force that enjoys high level of public support.
- Having started from a lower institutional development base, the area of justice still suffers from fundamental weaknesses despite positive developments during the last years.

Overall assessment of EULEX MMA actions and activities

- Some challenges have been observed in ensuring a common MMA approach by EULEX staff as a result of different institutional cultures and professional working methods of the deployed staff which came from various countries.
- This was more evident among the judges and prosecutors due to their insistence on independence.
- Police and customs contingents also had staff coming from different backgrounds; however, the hierarchical nature of police forces as well as the small size of the customs contingent ensured an easier harmonisation of approaches and modes of operation in these areas.

Overall assessment of EULEX MMA actions and activities

- Cooperation on the ground between the EULEX and Kosovar staff has been deemed as very good. In particular, Kosovar judges and prosecutors in general have expressed respect and appreciation for their EULEX counterparts.
- Due to the heavy international presence since 1999 and their crucial role in setting up Kosovo's nascent institutions, the Kosovar staff has become accustomed to working together with foreign staff and has remained open towards receiving professional advice and support from them.
- This has in turn facilitated the transfer of best practices as well as learning processes by working in mixed groups.

Overall assessment of EULEX MMA actions and activities

- In critical areas such as the ***fight against organised crime and corruption***, the cooperation of technical staff is not sufficient and the full and sincere commitment of political authorities remains essential for achieving concrete results in this area.
- Kosovo has been considered to be at an early stage of fighting organised crime and corruption.
- Poor political commitment, weak institutions, non-transparent administration and a deficient judiciary, as well as weak civil society, the economic crisis and high unemployment are listed as factors that give rise to a high level of corruption.

Overall assessment of EULEX MMA actions and activities

- Measurable indicators as well as qualitative assessments demonstrate that despite the EULEX presence since the declaration of independence, the situation in Kosovo with regard to the rule of law as well as the fight against corruption and organised crime can be at best defined as **stagnant**.
- **Limited leverage of EULEX in an environment where clear and full political commitment to fight these phenomena is absent.**
- Direct correlation between the quality of the rule of law and the progress of the respective countries with regard to EU accession.

Overall assessment of EULEX MMA actions and activities

- Strong relationship exists in Kosovo between organised crime, corruption and the political class, particularly those originating from the Kosovo Liberation Army (KLA).
- Until very recently, political parties stemming from the KLA enjoy 50 percent of the support of the Kosovo Albanians.
- The international community has opted to cooperate with these political leaders in order not to upset political stability in Kosovo and beyond. ***'Stability paradigm'*** by EU.
- Neglect by the EU of the need of increasing the welfare of local population.
- Over-emphasis of EULEX on police matters.

Overall assessment of EULEX executive functions

- EULEX has been instrumental in investigating, prosecuting and adjudicating serious and sensitive cases, and contributed to fighting the culture of impunity in Kosovo.
- The executive functions of EULEX raised high expectations in Kosovar society who was expecting swift and concrete results in the fight against corruption and organised crime.
- EULEX staff also played an important role in protecting their Kosovar colleagues from undue political interference.

Overall assessment of EULEX executive functions

- EULEX was also passive and fearful of taking on Kosovo's political class, particularly with regard to high-level corruption.
- The rule of law objectives were subdued to the 'security paradigm'
- A technical mission like EULEX could not be insulated from the overarching political and diplomatic aims of the EU.

Overall assessment of EULEX executive functions

- EULEX unable to establish until recently a robust presence in the North that would ensure the rule of law in the area.
- Importance of strong political support at the top level of the EU for the undertaking of sensitive operations by such missions in semi-permissive environments like Northern Kosovo.
- Strong EU conditionality on Serbia rendered possible an effective presence of EULEX in the North.
- Importance of linking EULEX to other EU processes.

Main findings

- The deployment of EULEX in Kosovo was planned by the EU in order to meet its three main strategic interests:
 1. protect the security of the EU;
 2. prevent the repetition of EU failure as in Bosnia;
 3. increase the relevance of the CSDP.
- The deployment of EULEX complied with EU's self-image as a 'civilian' and 'normative' power.
- It is only in the Western Balkans that the EU has employed a **typical structural foreign policy** by devoting a large amount of resources to the transformation of the political, economic and social conditions in the region.

Main findings

- EULEX has performed better in its '*assisting*' role through the MMA actions rather than through its '*enabling*' role through its executive powers.
- Main shortcomings of EULEX have been noted in its limited results in prosecuting and trying high-profile political figures with regard to corruption and organised crime.
- This has not lead to substantial and sustained improvements in the fight of Kosovar rule of law institutions against organised crime and corruption.

Main findings

- Effective rule of law cannot be established by an international mission, but only by local institutions under strict EU conditionality.
- ‘Crisis management operation’ label of EULEX is no longer well suited to effectively deal with the challenges faced by local rule of law institutions in Kosovo.
- Only gradually increasing EU conditionality will force the Kosovar political class to carry out the necessary reforms in the rule of law area so as to meet the Copenhagen political criteria for EU accession.

Main findings

- Kosovo and the other Western Balkan countries need to be placed under a strict and close monitoring by EU experts who can be located in local rule of law institutions to evaluate their performance, and particularly the judiciary, before these countries are able to join the EU.
- Experience from EULEX MMA activities to serve as an example to this.
- Lessons learnt from EULEX can contribute to a better implementation of the new rule of law flagship initiative unveiled by the EU in its 2018 enlargement strategy for the Western Balkans.

Main findings

Capability development

- The pool of experts available for civilian crisis management should be increased and their expertise should be improved, especially in the critical areas of justice and rule of law.
- Harmonisation of training curricula as well as the standardisation of quality criteria and joint activities among member states.
- Training of judges and prosecutors to be engaged in civilian CSDP missions should be carried out at the EU level.

Main findings

Matching the mandate of civilian missions with the context on the ground.

- The need to define a clear and realistic mandate for CSDP missions.
- Clear exit strategy should be present and linked to the achievement of clear and measurable benchmarks.
- Civilian CSDP missions in the future should include prosecutors and judges who can investigate, prosecute and adjudicate on local cases only if the local judicial system is non-existent or nascent.

Main findings

Improving the political and institutional dimension of civilian CSDP

- The EU needs to ensure the full implementation of its comprehensive approach to crisis management with EEAS playing a crucial role in this regard.
- Lack of proper oversight and accountability of the Heads of Mission beyond their Civilian Operations Commander remains a problematic feature of civilian CSDP missions.
- The EU needs to ensure that stronger oversight is carried out by the Political and Security Committee (PSC) over the said missions.

Main findings

- The Head of Mission should report to the Head of the EU Delegation in the respective country who as in the case of Kosovo, could be double-hatted as EUSR in order to provide a high-profile EU presence on the ground.
- CSDP will continue to consolidate and develop further through a gradual and incremental process.
- This will ensure that the EU increasingly emerges as a coherent foreign and security actor in global affairs, with its 'normative' and 'civilian' power being complemented and supported by a credible military and civilian security dimension.

Thank you for your kind
attention!