Maastricht University

The planning and implementation of the rule of law mission of the European Union in Kosovo

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The Planning and Implementation of the Rule of Law Mission of the European Union in Kosovo

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Hylke Dijkstra

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Abstract. This article evaluates the planning process and initial implementation of the Rule of Law Mission of the European Union in Kosovo (EULEX). It shows that the original intention was to have a smaller presence than the predecessor United Nations Mission in Kosovo (UNMIK). Yet as a result of a lack of settlement on the international status of Kosovo, the European Union ended up with a robust mandate and it was unable to make a fresh start in order to distinguish itself from the United Nations. EULEX has, nonetheless, successfully established itself, but it remains too early for a final judgment.

Keywords. European Union, Kosovo, Rule of Law, EULEX, United Nations, planning

INTRODUCTION

Ever since the civil war at the close of the twentieth century (1998–1999), the international status of Kosovo has divided the international community. The five permanent members of the United Nations Security Council (UNSC) were split three to two on whether Kosovo could unilaterally part from Serbia. This stalemate in New York continuously resulted in postponement of a political dialogue on status, until large scale riots broke out throughout Kosovo in March 2004. Following a comprehensive review, United Nations Secretary-General Kofi Annan concluded that the situation was no longer tenable and he appointed the former Finnish President Martti Ahtisaari as his Special Envoy to facilitate final negotiations between Belgrade and Pristina on status. Despite the tremendous international pressure on both parties, no settlement was reached in the talks and the package proposed by President Ahtisaari was rejected by the Serbian government. After all mediation attempts had been exhausted, the Kosovo Assembly unilaterally declared its independence (17 February 2008). It was recognized by most Western states, but not by Serbia, Russia and some other 120+ states.[1]

One of the reasons why the riots in March 2004 got out of hand was that the local politicians had no confidence in the United Nations and its Mission in Kosovo (UNMIK), which had been responsible for the rule of law and civil administration following Security Council Resolution 1244 of June 1999. It was therefore decided that, in the context of the negotiations on the future status of Kosovo, the United Nations should hand over its tasks to the local authorities and to the European Union, which started planning this new mission from early 2006 onwards. While the EU was ready to take responsibility for the situation in Kosovo, it made abundantly clear that its future presence would not be a mere continuation of UNMIK. In other words, it would not be 'EUMIK' (Solana and Rehn 2005a, 2005b). The engagement of the European Union would be light and would support local authorities rather than replace them. Ownership was the key concept, so that the local population

1 For the status negotiations see Weller (2008, 2009), Ker-Lindsay (2009a, 2009b), Perritt (2009) and Yannis (2009).

would put pressure on their leaders rather than on international organizations. Eventually, however, the Rule of Law Mission of the European Union (EULEX) was given a robust mandate and it could not make a fresh start due to the lack of agreement on status and divisiveness among the member states.

This article evaluates the EULEX planning process and the initial implementation until the judgment of the International Court of Justice (July 2010). It shows that Javier Solana, the EU's High Representative for the Common Foreign and Security Policy at the time, and the officials in the Council Secretariat and the Planning Team played a critical role not only in successfully navigating through the political minefield, but also through clearing day-to-day issues with the United Nations.[2] They were at the heart of the machinery and the member states, being divided themselves, were glad that at least someone took care of business. It proved, however, an impossible responsibility, as the technical rule of law mission could not overcome the political problems surrounding the status of Kosovo. The absence of settlement undermined the planning process and affected the launching of the operation after the unilateral declaration of independence. Yet despite all these drawbacks, which were largely beyond the European Union, EULEX has been able to successfully establish itself. It is, however, too early for a final judgment.

This article will discuss the planning and initial implementation of EULEX chronologically following the various steps of the policy process. It starts with the agenda-setting phase, which set important parameters for the mission, including the need for a light footprint. Subsequently, it shows how during the decision-making phase, the member states gradually increased the total authorized strength and the scope of the mandate. During the launching of the mission, the European Union was faced with the fact that UNMIK did not want to leave for political and practical reasons. This resulted in many months of delay with the effect that EULEX was unable to make a fresh start. Finally, the article shows that during the implementation of the mission, the European Union had to deal on a daily basis with the lack of settlement and that EULEX had to act as a ‘status-neutral’ organization, which made its job rather complicated.

AGENDA-SETTING

The Kosovo war formally came to an end with the adoption of UNSC Resolution 1244, which mandated an international security presence and an international civilian presence. The 60,000-strong Kosovo Force (KFOR) of the North Atlantic Treaty Organization (NATO) was put in charge of the security aspects, while the United Nations led the civilian presence through its Mission in Kosovo. Under its auspices, a number of tasks were further delegated to the United Nations High Commissioner for Refugees (UNHCR), the Organisation for Security and Cooperation in Europe (OSCE) and the European Union. The United Nations itself remained in charge of the rule of law and civil administration. It was led by the Special Representative of the Secretary-General of the United Nations (SRSG), the first office holder being Bernard Kouchner. He was also in charge of facilitating the political process on the future status of Kosovo—a not insignificant detail, on which Resolution 1244 remained inconclusive (Yannis 2004, Weller 2009).

During the first years of UNMIK's presence, various tasks were handed over to the local institutions. On status, however, SRSG Michael Steiner noted in front of the Security Council that ‘Kosovo society and institutions will have to show that they are ready for this process … we must make clear what is expected of them’ (quoted in Weller 2008, p. 18). Thus, the United Nations established a whole series of benchmarks for Kosovo before the status talks could commence. This ‘standards-before-status’ policy conveniently bypassed the fact that there was disagreement in the Security Council. In March 2004, it became clear that this way of doing business was no longer

2 The Council Secretariat is formally called the General Secretariat of the Council of the European Union, see Dijkstra (2008, 2010).

tenable when large-scale riots broke out that led to the death of 19 (United Nations 2004, King and Mason 2006, Perritt 2009). Secretary-General Kofi Annan ordered a comprehensive review, on which basis he appointed President Ahtisaari as his Special Envoy in charge of the future status process for Kosovo (November 2005).

The European Union had always been a key actor with regard to Kosovo. Through various channels, it had spent some €2 billion in different projects on the ground (Pond 2008, Koeth 2010). The United Kingdom, Germany, France and Italy were furthermore part of the Contact Group for the Western Balkans, which also included the United States and Russia. The EU institutions were associated with the work of the Contact Group as well. It is thus little surprise that the European Union followed the events in Kosovo closely and that the Council strongly condemned the riots in March 2004 by stating that 'Kosovo's leaders and the [Provisional Institutions of Self-Government] must be aware that what is at stake is their credibility, the future of Kosovo and its European perspective. They must act accordingly' (Council of the European Union 2004, p. 5). The member states expressed their full support for the efforts of the United Nations, but decided to send Javier Solana to the region nonetheless. He went there two days later, on 24 March 2004.

Local politicians did not unambiguously denounce the riots. Moreover, NATO and UNMIK were blamed for letting things run out of control (King and Mason 2006, Ker-Lindsay 2009b, Perritt 2010). One of the victims of the riots was SRSG Harri Holkeri, who resigned in May 2004. With the position vacant, Solana lobbied for Søren Jessen-Petersen, his EU Special Representative to Macedonia, to be appointed. He took his seconded EU officials with him to lead UNMIK (June 2004). The impression of Petersen and his team was that 'there was a complete lack of confidence among the national elite about the United Nations' (interview with UN official). The riots took place, because the status process was not moving. In this context, Petersen launched a series of informal discussions at the end of 2004 on the future arrangements of Kosovo with the United Nations, the European Union, NATO and OSCE. There was a clear agreement amongst these actors that 'the UN had to reduce its presence, that the NATO and OSCE were staying and that the European Union should raise its profile' (ibid.). UNMIK would hand over most tasks in the area of rule of law to the local authorities and the European Union would take over some of the residual tasks in this field. These discussions were useful, because 'it became over time conventional wisdom that the European Union would go in' (ibid.).

As part of this review process, Petersen naturally visited Brussels for an exchange of views with the member states (21 February 2005). The ministers noted that since the Thessaloniki European Council (June 2003) had reaffirmed the 'European perspective' of the Western Balkans, including Kosovo, the European Union would have to play a major role in any discussions concerning status. They thus 'invited the [High Representative] and the Commission … to examine with the United Nations and other relevant players what might be the future contribution of the European Union to the efforts of the international community in Kosovo … and to report back to it on this' (Council of the European Union 2005: 12). Javier Solana and Enlargement Commissioner, Olli Rehn, drafted a joint report on the *Future EU Role and Contribution in Kosovo* (13 June 2005).[3] The main strength of this report was in the process: the Commission and the Council Secretariat had a common vision on the future course of Kosovo. This created a precedent for future cooperation, although one Commission interviewee noted that 'Rehn co-signed the papers … the political drive was from the Council Secretariat'.

The content of this report was also noteworthy in several respects. Firstly, it stated that 'the future international civilian presence could take the form of an international office with an important EU component but cannot be EUMIK'. The role of UNMIK in Kosovo had been compromised by the

3 This report and subsequent reports by Solana and Rehn are not publicly available, but a summary, from which this article quotes, can be found online at http://www.consilium.europa.eu/solana [Accessed 14 July 2010].

events in March 2004 and the European Union wanted to make a fresh start. It was also not willing to take over the all-encompassing mandate of UNMIK, but preferred to focus on a few specific tasks. Thus the report argued, secondly, that 'core areas will be the protection of minorities and the rule of law (police and justice)'. This was completely in line with the earlier informal discussions under Petersen, but it was the first time that Solana formally stated that he thought of it as a rule of law mission.

The political process regarding the future status of Kosovo formally commenced after the UNSC endorsed the appointment of President Ahtisaari as Special Envoy (24 October 2005). The work of Ahtisaari was not concluded until March 2007, but the big member states, the Council Secretariat and the Commission would stay involved in the whole process (Weller 2009, Perritt 2010). On 6 December 2005, for example, Solana and Rehn published a second joint report on the future EU role and contribution in Kosovo. This report reiterated that, regardless of its future status, Kosovo was in need of some international presence and that the EU would play a leading role. Yet again it stated clearly that the future international civilian presence would not be EUMIK. In line with the previous report, police and rule of law was highlighted as a priority area, which would require the support of Community instruments as well as European Security and Defence Policy (ESDP) measures. Therefore, 'contingency planning for a possible ESDP mission on police and rule of law should start' (Solana and Rehn 2005b, p. 2).

The member states agreed with this conclusion and mandated a joint Commission–Council Secretariat fact-finding mission, which took place from 19 to 27 February 2006. The main conclusion of this fact-finding mission was that the EU engagement in Kosovo would be an important endeavour in a difficult political environment, which needed to be carefully planned and executed. Thus, it advised the member states to set up a permanent European Union Planning Team in Kosovo to 'ensure that EU decision-making could be based on a solid and well analysed basis that is in step with the future status process' (Council of the European Union 2006, preambular para. 10). The Planning Team saw the light of day with the adoption of a Council Joint Action (10 April 2006). About a month later, it was established on the ground. Its legal basis carefully noted that the EU Planning Team would not prejudge any subsequent decision by the Union to launch an ESDP operation, but the mission was already clearly beginning to take shape.

DECISION-MAKING

The future status of Kosovo was very divisiveness amongst EU member states. The idea that the European Union should step up its efforts on the ground less so. On the planning and the content of the rule of law mission, there was not too much disagreement between the member states. Firstly, because Kosovo was such a divisive dossier, the member states preferred not to talk about it in their committees, particularly not in the Political and Security Committee at ambassador level. Instead, they let the officials of the Council Secretariat and the Planning Team figure out the details (interviews with national and Council Secretariat officials). This became very obvious when they tried to quickly adopt all the planning documents in the days before the unilateral declaration of independence (17 February 2008). It would no longer be possible to agree on the EULEX mission after the changed circumstances on the ground. Secondly, it was quite simply in everyone's interest, regardless of status, to have a rule of law mission supporting local authorities in their fight against organized crime and corruption. To avoid endless discussions over status among the member states, EULEX became a technical, status neutral, mission. The main question during the decision-making phase was how to agree to the deployment of EULEX without an agreement on status.

The status discussions, however, did have an impact on the planning of the EULEX mission. The main assumption from the beginning was that the Serbian and Kosovo authorities would reach a settlement in the political dialogue led by President Ahtisaari (interviews with various Council

Secretariat and EULEX officials). Such agreement, it was then assumed, would lead to a new resolution by the UNSC replacing Resolution 1244. Whether this was a realistic assumption or not, it was for political reasons not relevant. The European Union could simply not adopt documents in their committees on the basis of a political disagreement. Therefore, it did not have a Plan B for a very long time, describing what the European Union would do in case of a lack of a new Security Council Resolution. The fact that it did not have such contingency plans created tremendous problems during the launching of the mission (see below).

On the assumption that there would be a settlement, the European Union Planning Team, consisting initially of 12 staff members, deployed to Pristina in May 2006. At that point in time, the Planning Team expected the Ahtisaari negotiations to conclude late 2006/early 2007 (Grevi 2009). This meant that the European Union would deploy its mission in the summer of 2007. The Planning Team was initially engaged in a lot of 'mind-clearing' about what it was going to do. The state of the art of the local police, justice and the customs services was unclear and the mission had to establish benchmarks on what it wanted to achieve. Over the summer of 2006, specialists in the fields of police, justice and customs—the future three components of the mission—arrived bringing the total number of staff members up to 35. They started the planning process. In Brussels, the bureaucratic structures remained small. In the Council Secretariat, for example, one policy official and two police officers worked on the technical planning of the mission.

Apart from the assumption of settlement, many of the parameters had already been spelled out for the European Union Planning Team. President Ahtisaari's deputy, Albert Rohan, for example, had noted that the future civilian international presence in Kosovo should be 'as light as possible and as robust as necessary' (UNOSEK 2006). This was in line with the Solana/Rehn reports. The Planning Team was thus looking at options with a very light footprint. In an options paper of 26 September 2006, for example, it made clear that the Union should take over only a number of specific tasks from UNMIK in the field of rule of law. Many other tasks in the area of rule of law could be delegated to the local authorities. Moreover, the Planning Team stated that the European Union should not take over tasks in the field of civil administration, because it does not have the right tools for such a purpose. The customs services were, however, included as levies made up 60–70 per cent of the Kosovo government budget. Without these revenues, police services and the judiciary could no longer be paid. Thus it was seen as an area of vital importance to future stability. On this basis, the Planning Team presented three options (light, medium, robust) (interviews with EULEX and UN officials, Grevi 2009).

The light option was the preferred option. The European Union would deploy 800–850 international staff members and engage mainly in monitoring, mentoring and advising the local authorities. The total number would break down to 100–150 officials at the headquarters, 300–350 police officers engaged in non-executive functions, about 60–80 executive police officers working on a limited number of tasks, 200–225 police officers as part of the integrated police units dealing with riot control and civil disturbance, some 30 judges and prosecutors in total and only 15 customs officers (interview EULEX official). An interviewee noted with regard to the light footprint that the 'initial idea was to change the UNMIK vehicle into a Smart. UNMIK had been omnipresent; there was a need for discretion' (UN official). It needs to be stressed though that this light option was only possible given the assumption of settlement with full consent of the Serbian minorities and Kosovo Albanians. The proposed number of customs officers, for example, was clearly not enough in case of disagreement over the border between Serbia and Kosovo.

When it became obvious over time that there would not be an agreement on status, this light option was no longer credible and the member states started to strengthen the mission (interviews with various national, Council Secretariat, EULEX and UN officials). The medium option was discussed, which foresaw that EULEX would take over from UNMIK the Polish and Romanian integrated

police units in addition to the French and Italian ones (bringing the total up to 450). This option also included a competence for EULEX to deal with property-related law suits, which meant the need for more civil judges, more prosecutors and more legal officers. Finally, however, the member states accepted the robust option, which included a much stronger customs presence at the borders (up to 60 staff members), an increase in the number of executive police tasks, and a much higher number of judges, prosecutors and legal officers (total 300). This brought the total authorized strength of the EULEX mission to more than 1,800 international staff members. For the member states an increase in numbers seemed the best way to guarantee stability. A number of observers, however, argued that EULEX is doing too much and that it is effectively a continuation of UNMIK in the area of rule of law. For instance, the police component of UNMIK had a strength of approximately 2,000 (United Nations 2007), which is not significantly larger than the 1,400 of EULEX.

It is important to note that these increases were accepted over time, as the political process continued. Already at an early stage, the Planning Team sent a Crisis Management Concept to Brussels, which is the first formal planning document. It was adopted by the member states on 11 December 2006. On this basis the Council Secretariat and the Planning Team issued the Concept of Operations on 24 January 2007 with the first discussions taking place in the Committee for Civilian Aspects of Crisis Management. In the partially declassified minutes, it is stated that during the meeting 'it was stressed that a final [Concept of Operations] cannot be adopted until after the UNSC Resolution, but that it was important to proceed as far as possible at this time' (Council of the European Union 2007). These discussions over the Concept of Operations continued during February and March and the final staff numbers were left open-ended, so that they could be adjusted at a later stage. With regard to the formal planning process, it is also important to note that the member states were thus already working on the Concept of Operations long before they adopted the formal legal basis, Joint Action, in February 2008. The Joint Action was the most contested document (see also below) and the EU had to prepare all planning documents in time for the final declaration of independence.

Another novelty was that the member states designated Yves de Kermabon as the future Head of Mission on 4 May 2007, which is normally also done through the Joint Action. His salary was paid for through a so-called preparatory measure, which was the first of its kind as well. The appointment of de Kermabon was, of course, part of the political process, yet it was noteworthy that he was a retired French Lieutenant General, who had previously been a KFOR Commander (2004–2005). He thus brought with him lots of experience on how to deal with executive missions and chain of command issues, which was new territory for civilian ESDP. He was furthermore familiar with the local politicians, with whom he held some authority as a former NATO officer. De Kermabon remained in Brussels until the official launch of EULEX in the summer of 2008. He was thus not part of the Planning Team. In Brussels, he started working on the Operational Plan. At this point, there were already 17 people in the Council Secretariat planning the Kosovo mission.

One of the main points about the planning process was that lower-level civil servants in the Council Secretariat and the Planning Team partially had to invent civilian crisis management along the way. They received precious little support from the member states and control was limited (interviews with national, Council Secretariat and EULEX officials). This was mainly because member states did not want to deal with this specific dossier and because the junior diplomats in committee did not have the adequate expertise to plan such a major and innovative operation. A Council Secretariat official recalls that 'most of the time [the member states] did not want to hear it. They did not want to have Kosovo on the agenda, because they knew they would be divided … you tend to prefer to talk about subjects where you agree and not about subjects you disagree'. On many topics, the civil servants in the Council Secretariat and the Planning Team had to make their own decisions. With regard to the total authorized strength of the operation, however, the member states played a significant role through strengthening the integrated police units and increasing the number of the

executive tasks. The mission thus eventually did not become the light type of operation that Javier Solana had wanted.

President Ahtisaari finally concluded his work on the international status of Kosovo on 26 March 2007. He proposed 'supervised independence' given the exceptional historical circumstances, which allowed Kosovo to part from Serbia. The international community would remain involved through a Civilian Representative (ICR) with strong 'corrective powers', an international military presence of NATO, the OSCE mission, and the ESDP operation of the European Union. The International Civilian Representative would be distinct from the ESDP operation and would be supported by the International Civilian Office.[4] It was also proposed that, following the Bosnian model, the International Civilian Representative would be the same person as the EU Special Representative to Kosovo in a double-hatting agreement (Weller 2009, Perritt 2010). Not surprisingly, Serbia rejected the 'Ahtisaari package'. After Russia blocked a number of new Security Council resolutions (July 2007), Solana proposed to continue negotiations in the context of the Contact Group. These negotiations became known as the Troika talks and consisted of the two parties and representatives from the United States, the European Union and Russia.

With Russia blocking the process in the UNSC, it became increasingly clear that there would not be a new resolution. As a result, the EULEX Planning Team started working internally on contingency planning from the summer of 2007 onwards. It circulated a timeline in mid-September, which gave an overview of the subsequent steps to be taken in case of no new resolution. Following this timeline, the European Union would prepare the EULEX mission before the unilateral declaration of independence. After the declaration, the United Nations Secretary-General would decide to withdraw UNMIK 'due to exceptional circumstances', thus making the path ready for EULEX deployment. This timeline was discussed with the United Nations Department of Peacekeeping Operations, but it was, of course, not shared with the members of the Security Council as part of the political negotiations. With hindsight, it went almost exactly as planned, although with much more delay than anticipated.

The Troika talks in the end only bought the international community (particularly the European Union) time to plan its subsequent steps. Its work was concluded without result on 10 December. The European Council of Heads of State and Government noted four days later 'that the negotiating process facilitated by the Troika between the parties on Kosovo's future status has been exhausted' (European Council 2007, para. 66). This opened the way for the final unilateral declaration of independence and gave the EU institutions the green light for planning to move ahead as soon as possible. At the end of January 2008, the Council Secretariat issued the Joint Action, which became the legal basis of the mission, and the Concept of Operations. Both were adopted by the member states on 4 February. In parallel, the member states appointed Pieter Feith as the EU Special Representative to Kosovo and he would thus also become the International Civilian Representative. Four days later, the Secretariat also issued the Operational Plan, which was adopted by silence procedure on 16 February 2008. Now that the European Union had agreed on the EULEX mission, the local authorities were free to declare their independence, which the Kosovo Assembly did the next day.

While none of the member states had problems with a technical rule of law mission in principle, the adoption of the Joint Action was nonetheless problematic. As the only public legally binding document of the European Union, a number of member states—in particular Cyprus, Romania and Spain—took great care in ensuring that the Joint Action would not amount to a *de facto* recognition of Kosovo. These matters were only resolved in the days before the adoption of the Joint Action (interview Council Secretariat official). At the last moment, however, Cyprus decided that while it would not block the EULEX mission, it would make use of the constructive abstention provisions

4 For the complicated relations between EU actors on the ground, see Koeth (2010).

in the EU Treaties in order to avoid any possible linkage between the Joint Action and status. Yet it is important to reiterate that this abstention had nothing to do with the mandate and the content of the mission. Cyprus had, after all, accepted the European Council Presidency Conclusions in December 2007, which referred to the EULEX mission (para. 70). It had also stated that it might make officials available for EULEX. Finally, Cyprus did not have major problems with the other non-public planning documents (interview Council Secretariat official).

The key point was thus that the member states finished the political agreement on the EULEX operation and the complete planning process before the unilateral declaration of independence. It was felt that the member states would not be able to agree on a number of status-related details after the declaration of independence. This proved exactly right. While the United States and the four European members of the Contract Group (United Kingdom, France, Germany and Italy) directly recognized Kosovo in a concerted action, a notable number of member states did not, and some even opposed the declaration of independence. Yet the EULEX mission was status-neutral and it was in the end supported by all the member states. A last detail of the problems surrounding status was that the European Union could not sign a Status of Mission Agreement with the local authorities. Instead, the Kosovo authorities and UNMIK (being the legitimate authority under Resolution 1244) unilaterally stated that all the personnel of EULEX would receive diplomatic immunity.

LAUNCHING OF THE MISSION

The member states decided already in December 2006 that the EU Planning Team would become the core of the future operation. Joint Action 2006/918/CFSP authorized the Planning Team to start recruiting personnel 'in view of [EULEX's] rapid deployment', for which purpose it was asked to issue a deployment plan (article 2(5)). Until mid-2008, the Planning Team remained the core around which the mission was built. Many of the officials from the Planning Team eventually joined the mission, often as deputies to the newly recruited heads of departments/components. Roy Reeve, the Head of the Planning Team since December 2007, for example, became Deputy Head of Mission under General de Kermabon. As such, much of the expertise, which the Planning Team had accumulated over more than two years, remained in the mission. The Planning Team grew over these years from the initial 12 staff members to over 120 officials at the unilateral declaration of independence (February 2008).

Gradually building up the mission through increasing the number of personnel was one thing, the political conundrum around the status question quite another. As mentioned above, the Planning Team had worked out a scenario and timeline, in case there was no new resolution on the future of Kosovo, which stated that UNMIK would withdraw 'due to exceptional circumstances'. This had been cleared with the United Nations and it was the expectation in the European Union that it was supported by the leadership in New York as well as on the ground. Yet it turned out that the United Nations (1) could not leave Kosovo and (2) that the staff on the ground did not want to leave Kosovo. The first point was very political. Following the declaration of independence and the entry into force of the new Kosovo Constitution that no longer referred to UNMIK, Secretary-General Ban Ki-Moon wrote—according to plan—to members of the Security Council that 'the United Nations is confronting a new reality in Kosovo, with operational implications for UNMIK that it must take into account' (United Nations 2008a, para. 10) (12 June 2008). He also noted that 'Serbia and the Kosovo Serbs have indicated that they would find an enhanced operational role for the European Union in the area of the rule of law acceptable, provided that such activities would be undertaken under the overall status-neutral authority of the United Nations' (para. 12).

Yet this was precisely the problem. The Kosovo Albanians no longer recognized UNMIK and the European Union was not going to report to the UNSC. In the months that followed, there was

intensive consultation with the Secretary-General Ban Ki-Moon and the relevant parties. Both the United Nations Department for Peacekeeping Operations and the Legal Service informed the European Union that the Secretary-General was in a position to reconfigure UNMIK without approval by the Security Council (interview Council Secretariat official). The Secretary-General, however, followed his own timetable, despite various diplomatic demarches by the EU member states. Meanwhile, on the ground the SRSG mediated between the authorities in Belgrade and Pristina. Serbia came up with six specific demands. These 'six points' were rejected by Kosovo, yet included in the report of the Secretary-General to the Security Council of 24 November 2008 (United Nations 2008b, Sabovic 2009). Kosovo eventually gave in. UNMIK would keep a significant presence in Kosovo, although focusing on more political tasks. The European Union would be in charge of rule of law via EULEX and it would send a short quarterly report to the United Nations Secretary-General, which would then be included as an annex of his report to the Security Council. These negotiations in New York and on the ground, needless to say, created problems with the deployment of EULEX. In the summer of 2008 there were sincere doubts whether EULEX would indeed continue and the recruitment of new personnel was temporarily put on hold (interview with various EULEX officials).

The second problem was that many of the staff members of UNMIK did not want to leave, because it would mean the end of their contracts. One interviewee of the United Nations noted that 'people were trying to hold on to their unit. We asked all units which tasks they could hand over to the local authorities in terms of the transition. A number of the units came with good overviews, but many units simply refused to hand over any tasks'. An official from the Council Secretariat similarly recalls that 'we had the feeling … that because the [United Nations] had told us that they wanted to withdraw … we took it for granted that they wanted to go. We discovered that … the people on the ground in Kosovo, they really did not want to go away'. One national official was even more outspoken: 'the problem with UNMIK is that it is still full of Russians, who are systematically sabotaging the whole project … they are doing difficult on the instruction of Moscow'.

The political problem regarding the withdrawal of UNMIK combined with the local issue of UNMIK staff not wanting to give up their jobs created tremendous logistical difficulties for the deployment of EULEX. In order to save costs for both UNMIK and EULEX, it had been agreed in advance that the European Union would take over many vehicles and buildings from the United Nations. Yet now that UNMIK would continue to have a substantial presence in Kosovo, it could no longer hand over all the vehicles and buildings that it had promised. As a result, the European Union had to start lengthy procurement procedures for cars and find new buildings, which were in short supply in Pristina. One very senior EULEX official noted that he became 'Kosovo's leading expert on how to get hold of second hand cars and four-wheel drives'. A Council Secretariat official recalled spending one week per month in New York during the summer of 2008 negotiating with UN officials over lists of cars and then finding out that the UNMIK people on the ground had different preferences. 'That was nightmarish.'

These logistical issues also had financial consequences. After all, the European Union had budgeted on the basis that EULEX would buy used cars, which was cheaper than when it had to buy new cars. Yet the mission was already under financial constraints and the member states could not go back to the European Parliament and ask for more money. EULEX thus not only ran into problems with UNMIK, but also with the European Commission, which administers the budget. These financial issues were finally resolved as a result of the delay in the deployment of the mission: the *per diems* to staff members were eventually significantly lower than budgeted. This made up for the gap (interview with Commission official). This was not an easy period for EULEX, which was trying to get its mission off the ground.

Finally, the recruitment of personnel created problems for EULEX. As there were long delays in the

deployment, many of the identified staff members had already moved on to new jobs (including in parallel missions in Afghanistan and Georgia) and were no longer available. Their posts thus had to be filled again. This issue was particularly urgent with the judiciary. While it has become common practice to send policemen on international missions, it does not fit into the career paths of judges and prosecutors to go abroad. EULEX also had to recruit rather senior staff members, because the cases are generally complicated and politically sensitive. Because of the high security restrictions life as a judge in Kosovo is not particularly pleasant. As a result, there continues to be a shortage of judges and prosecutors among EULEX staff. The last major difficulty was with the recruitment of the 1,000 local staff members, which have to be screened intensively. Therefore EULEX had to establish a human resources department with around 50 staff members in Pristina.

Agreement was finally reached in the Security Council on 26 November 2008 on the reconfiguration of UNMIK, after the Serbian foreign minister gave the green light stating that EULEX could deploy all over Kosovo (interview with UN official). Only three weeks later, after a short period of intense preparations, UNMIK handed over control of Kosovo to EULEX. EULEX declared Initial Operating Capability on 9 December 2008 and immediately started its operations, including in Northern Kosovo, through deploying police agents to all local police stations (Sabovic 2009). During the 120-day transition period, EULEX overcame many of the logistical challenges, which resulted from the fact that UNMIK did not fully withdraw. Due to all the good efforts of its staff members, it was capable of declaring full operating capability on time (6 April 2009).

INITIAL IMPLEMENTATION

At the time of writing (July 2010), EULEX Kosovo had been fully operational for more than a year. In its first year it has established itself and made some progress through its pragmatic incremental approach. The mandate of EULEX includes non-executive tasks, executive tasks and riot control through its integrated police units (Council of the European Union 2008, article 3). Non-executive tasks concern the monitoring, mentoring and advising of the local police, judiciary and customs services. Executive tasks include functions carried out by EULEX staff themselves, such as the fight against (high-level) organized crime or court rulings by EULEX judges. This section of the article discusses the progress of EULEX in the fields of police, justice and customs separately. Particularly in the area of police, it has contributed towards professionalizing the local police services, based on precedents set by UNMIK, and it has already handed over a number of executive responsibilities to local authorities. While real progress in the judiciary and customs services still has to be achieved, EULEX has also made important first steps in these fields. In its everyday work, however, it time and again experiences the political difficulties resulting from the conundrum still surrounding the international status of Kosovo and the fact that the EU member states remain divided on the issue. A final political settlement will eventually remain a requirement to establish a well-functioning rule of law sector in Kosovo. EULEX, as a technical mission, can only do so much.

With regard to its non-executive tasks, EULEX has been most successful in the field of the police, partially because it could build on progress already achieved by UNMIK and the OSCE. Through co-location, it has policemen at every police station, which allows EULEX to intensively monitor, mentor and advise local police. An early highlight was when almost all police agents with a Serbian background returned to work in June 2009 after having refused to perform their duties for 16 months following the unilateral declaration of independence (Reuters 2009). They understood that the local Serbian minorities benefited from their presence. Their return was the result of negotiations between the European Union and the Serbian government. An important indicator of the professionalism of the local police is how they dealt with the elections in November 2009. One national interviewee recalled that ‘they handled the local elections very well, which they did on their own. They were not very visible, but they were there. It was very professional’. This has

increased confidence in the local police services, which is partly to the credit of EULEX.

In the field of police, EULEX also made its one and only big mistake. For effective policing, it is essential to exchange information with the neighbouring states. Organized crime, after all, typically does not respect borders. Serbia and Kosovo jointly have a stake in tackling this problem. Yet because the countries cannot do business with one another due to the recognition issues, EULEX had to negotiate the practical details with Serbia in the context of a police protocol. These negotiations were badly communicated to the local population, and even discouraged by Pieter Feith as the EU Special Representative (interview with Council Secretariat official), which led to nationalist upheaval by the local Kosovo politicians, who were claiming that the territorial integrity of Kosovo was not respected. The end of the story was that EULEX lost a lot of credit with the local population since it does not wholeheartedly support their cause because it is status neutral, and that it had to postpone similar protocols on justice and customs. Within the European Union it also led to confusion and great concern about the operation.

On the executive policing front, the developments have been more positive. Firstly, the integrated police units have performed their de-escalation functions well. Following protocol, local Kosovo police provide the first response to riots and civil disturbance. If they are unable to handle the situation, EULEX police can provide the second response. When, however, the civil disturbance gets out of hand and turns into para-military violence NATO stands ready as a third responder. So far, there have been two cases in which the integrated police units, backed up by NATO forces, had to intervene. The first concerned a conflict over property in Northern Kosovo and the Kosovo Serb police did not want to engage (August 2009). The second case was over the local Serbian municipality elections in Northern Kosovo (May 2010). The joint EULEX–NATO interventions were effective. Apart from civil disturbance, EULEX police also has a role in other executive tasks, such as the fight against organized crime, witness protection and war crimes. Over time, it wants to hand over these tasks to the local police services, which it has already done in the area of counterterrorism. Kosovo police are willing to take over more tasks, which they see as a sign of confidence, yet EULEX has been reluctant so far when it comes to organized crime and high-level corruption.

While the executive tasks in the area of the police are rather specific and clearly separate from the monitoring, mentoring and advising tasks, in the judiciary they are broader in scope and closely intertwined with the non-executive tasks. In cases of organized crime, high-level political corruption and war crimes, EULEX judges are on mixed panels with local judges. Also in civil trails that have to do with property-related disputes, EULEX judges are involved, because of their sensitive nature. One of the major problems that EULEX encountered in the judiciary was the enormous backlog of 1,800 open cases left by UNMIK many going back to 1999/2000 (interview with EULEX official). EULEX immediately decided to close 400 cases due to a lack of evidence and little change on future positive developments. Of the remaining cases, which were ready for trial, EULEX managed to conclude most of them within the first year of operations. This was a major achievement. EULEX has also made incremental progress by putting its own judges on the Mitrovica District Court in Northern Kosovo after it had been ransacked by local gangs. EULEX eventually managed to persuade the support staff of this courthouse to return to work. Negotiations on the return of local judges are still ongoing. Finally, EULEX has got involved in high-level corruption cases at the Ministry of Transport and the Central Bank. While investigations have not yet been concluded, such activism was praised by the local population.

Within the area of customs, progress has been as incremental as in the judiciary. As customs have to do with borders, this was always the most politically sensitive area. This was emphasized by the fact that Serbian minorities burned down the two gatehouses between Serbia and Kosovo directly following the declaration of independence. EULEX did deploy its customs officers to these gates

shortly after declaring its Initial Operating Capability, yet initially they did nothing. In the summer of 2009, EULEX started copying the commercial documents of truck drivers. This led to some protest, but EULEX shared these documents with the Serbian and Kosovo authorities. Despite the fact that it was only copying documents, customs revenues at these two gates went up by 80 per cent. What is more, the Serbian government decided to fire some 70 of its own customs officers on the basis of smuggling (interview with EULEX official). It thus became obvious that these activities of EULEX were beneficial for both parties.

CONCLUSION

This article has given an overview of the mission planning process and the initial implementation of EULEX Kosovo. It has shown that the absence of a settlement on the international status of Kosovo had significant effects on what is regarded as a technical, status-neutral, operation. While the judgment of the International Court of Justice has removed another obstacle on the road to statehood, it did not have an immediate effect on the daily operation of EULEX. What comes to the fore is a clear disconnect between the main planning assumptions and the political realities of the status talks. For a very long time, the civil servants in the Council Secretariat and the Planning Team prepared options on the basis that both parties would come to an agreement, that there would be a new Security Council Resolution, and that the UNMIK would voluntarily leave Kosovo. All of these assumptions eventually proved wrong. As a result, the European Union deployed a mission with a much more robust mandate than it had initially envisaged, it could not take over assets and personnel of the United Nations, and it could not make the fresh start to sufficiently distinguish itself from the predecessor mission.

What is interesting about the mission is also the strong personal involvement of Javier Solana, the officials in the Council Secretariat and the Planning Team. They were at the heart of the EU Foreign Policy machinery and they were taking the lead as regards the planning. This had partially to do with Solana's personal background. As a former NATO Secretary-General, he had been in charge of the air campaign in 1999 and he had paid attention ever since. His first formal trip as High Representative was to Kosovo. Yet perhaps at least as relevant was the disagreement amongst the member states. They left the leadership roles to Solana, the Council Secretariat and the Planning Team. This way, they could also more easily treat the EULEX mission as separate from the status talks. Throughout the planning process, however, it sometimes seemed that the member states hoped that agreement on the mission would help them to overcome the disagreement in terms of status. This was wishful thinking: the technical mission could not solve the political problems.

Despite all the setbacks in terms of planning and the launching of the missions, this article has shown that EULEX has relatively successfully established itself. Its pro-active approach to solve problems distinguishes it from UNMIK, which saw itself more as a replacement of the local institutions and thus had little incentive to build a state. In the field of police, in particular, EULEX has improved the quality of the local authorities, as evidenced by the local elections in November 2009. The results achieved by EULEX are, however, not enough. Particularly in the field of customs and the judiciary, it still had to take on various serious challenges, most of which relate to status questions. Furthermore, given the overall ‘Balkan fatigue’ in the European Union, EULEX needs continuous progress—the *status quo* is not sufficient. In the next few years, it needs to hand over more tasks to the local authorities to foster a sense of ownership and it will have to gradually reduce its own footprint.

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