

# The western balkans and the southern caucasus law international essay

Law



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<b>Abstract.....</b>	<b>3</b>
<b>Methodology.....</b>	<b>3</b>
<b>Introduction.....</b>	<b>3</b>
<b>The mission statement and its deployed structure.....</b>	<b>4</b>
<b>Concrete aspects of mission’s modus operandi, applied policies on the ground and steps towards achieving the mission’s mandate.....</b>	<b>6</b>
<b>The implemented policies and the suitability of the used set of tools in terms of effectiveness.....</b>	<b>9</b>
<b>Local ownership.....</b>	<b>9</b>
<b>The Best European Practices.....</b>	<b>11</b>
<b>The MMA Action Proposals.....</b>	<b>12</b>
<b>Recommendations in approaching the civilian rule of law missions in order to increase efficiency .....</b>	<b>13</b>

**Bibliography.....**  
**.....14**

## **Table of Pictures**

**Figure 1 - The breakdown of the EULEX Police  
Component..... 6**

**Figure 2 - View of these five steps process of implementing  
the action  
proposals.....**  
**..... 8**

## **1. Abstract**

The strong EU commitment to launch the European Union Rule of Law Mission in Kosovo (EULEX Kosovo) as the largest civilian mission ever under the Common Security and Defense Policy (CSDP) reveals the EU desire to emerge as an important security actor, at least at the level of civilian stabilization missions. The pledge on launching EULEX was set forth in the Brussels European Council of 14 December 2007, which underlined the readiness of the EU to play a leading role in strengthening stability in the Western Balkans, in line with its European perspective of cooperative security. The document stated the EU's readiness to assist Kosovo on the path towards sustainable stability. The United Nations Secretary-General noted the readiness of the EU to play an enhanced role in Kosovo, as stated in the conclusions of the Brussels European Council on 14 December.

## **2. Methodology**

The research methods used for the completion of the essay were the content analysis, historical and comparative analysis. These methods will include

thorough investigation of the international experience in this field through the suggested materials and through the materials from the Internet. The situation is in particular known by the essay author, who served in Kosovo with the international bodies for four years, two out of which were with EULEX Kosovo.

### **3. Introduction**

The history of the European Union's own experience and internal model, are the basic foundation of the EU's identity in the international arena and the fundamental components of its soft power, along with its founding values and principles set forth in the Treaty on European Union[1]- the same values and principles that the EU foreign policy seeks to advance in the wider world: the promotion of democracy, peace, sustainable human development and a multilateral world order, regulated by well-functioning and fair institutions. After 3 years of EU engagement in Kosovo under EULEX, one may look back at what has been completed and speculate as to what are the EULEX chances of succeeding in implementing its mandate. Is the EU Mission in Kosovo able of achieving its goals? The recent international engagements - Afghanistan for example- have revealed that in order to succeed in bringing significant changes in the operating theaters, the missions have to aim at achievable goals, adapted comprehensive approaches and means, integrated and tailored for the operating unique environments. This paper explores the EULEX approach and its effectiveness in Kosovo and tries to bring up its successes and failures, especially within the Police Component, where the author served for two years, from the very mission's beginning, 01. 12. 2008 until 01. 12. 2010. Chapter 1 of this paper will provide the

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background for discussions by exploring the mission statement and its deployed structure, as an integrated approach to EU interests in the area. Chapter 2 will bring in examples of concrete aspects of mission's modus operandi, as applied policies on the ground and steps towards achieving the mission's mandate. Chapter 3 will argue on the implemented policies and the suitability of the used set of tools in terms of effectiveness. Chapter 4 will conclude by suggesting specific changes in approaching this kind of missions in order to increase efficiency and achieve an improved, integrated response to this unique environment.

#### **4. The mission statement and its deployed structure.**

EULEX works under the general framework of United Nations Security Council Resolution 1244/1999 and has a unified chain of command to Brussels.

EULEX Kosovo shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices. EULEX Kosovo, in full cooperation with the European Commission Assistance Programmes, shall fulfill its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities[2].

EULEX is not only the largest EU civilian mission, it is also the first integrated mission, with staff from police, justice and customs. EULEX is also the first EU mission with executive power - that is, the power to intervene directly in Kosovo's affairs[3]. EU officials on the ground, however, prefer to emphasize

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the mission's technical nature and that the mission that(just remove) is not in Kosovo to govern or rule, but to monitor, mentor and advise whilst retaining a number of limited executive powers[4]. Based on the legal mandate, the goals of the EULEX Mission are expressed in a number of targets and strategic objectives. EULEX's Mission Statement refers to six principal aims: namely, that EULEX will assist Kosovo authorities - judicial authorities and law enforcement agencies - in their progress toward[5]:

**sustainability,**

**accountability,**

**multi-ethnicity,**

**freedom from political interference,**

**and compliance with internationally recognized standards and European best practices.**

These important aims set out an agenda for Kosovo's European perspective and define a shared vision of the future of Kosovo's rule of law institutions, a common vision of the local authorities and the European Union, that EULEX would help to achieve. The financial reference amount intended to cover the expenditure of EULEX Kosovo until 14 October 2010 was EUR 265 000 000.

[6]Funding is for operations and for contracted personnel. However, it is estimated that by 2009, the EU had spent, including through other mechanisms, over 2 billion Euro on Kosovo's stabilization and reconstruction (Pond, 2008).[7]The Mission has a final staff target of around 3, 200 (1, 950 international, 1, 250 local), the majority from contributing EU member states, as well as contributions from Norway, Switzerland, Turkey, Croatia, Canada

and the US. EULEX faced a significant challenge in staffing the positions, so that the actual figure of personnel averaged around 2500 in total. The majority of staff is seconded by their national civil service. The police component is the largest of EULEX's three components, with approximately 1400 police officers[8]. It consisted of three departments. First, a police strengthening department carries out mentoring, monitoring, and advisory work at the national and regional level. Second, a police executive department deals mainly with sensitive crimes, including war crimes, organized crime, corruption and financial crimes. Third, a special police department acts as a gendarmerie force, deployable in the event of civil disorder and available for other missions where needed, as for example the close protection responsibility. Figure 1. The breakdown of the EULEX Police Component, in departments[9]. Source: Chivvis, 2010.

## **5. Concrete aspects of mission's modus operandi, applied policies on the ground and steps towards achieving the mission's mandate.**

Out of the mission mandate and its tasks, evolves a process of reform, intended to move Kosovo's police, justice and customs from their " current state" to a more " desirable state", set forth by the 6 missions' aims. Consequently EULEX has designed, for the first time in dealing with this type of missions, a programmatic approach. As in any plan, was considered essential for the EULEX mission establish a current base line with specific goals for improvement. In order to assess the actual rule of law status in Kosovo, between December 2008 and June 2009, EULEX conducted Phase I of the programmatic approach[10]. In other words, EULEX tried to answer

the question about the " current state" of the police, customs and justice in Kosovo, and to identify possible civil society partners –NGOs - for its Monitoring Mentoring Advising activities and the Programmatic Approach. The findings of the assessment were described in the EULEX Programme Report of July 2009[11], consequent to those findings a large number of recommendations were set forth for future change and development of the Kosovo's rule of law institutions. Each recommendation (of the initial EULEX Programme Report) has been converted into a " Monitoring Mentoring and Advising Action Fiche", which is in fact a project with an appropriate objective, which are the Phase I recommendations. Since August 2009 EULEX has been striving, along with its counterparts in Kosovo's Rule of Law, to implement the MMA Action Fiche[12]. This work has proved difficult and challenging for all concerned, and it will be described in more detailed in the following chapter of this paper. The implementation process for the programmatic approach consists of a five step process converting the basic idea behind each recommendation into a reality on the ground, and works in a close partnership and cooperation between the EULEX staff and their local counterparts – in judiciary, police and customs, coordinated by the EULEX Programme Office (PO). The steps foreseen for the EULEX MMA Programmatic Approach are the following: the assessment of Kosovo's rule of law institutions; drafting proposals based on the weaknesses identified; agreeing on the specific activities to be performed in order to implement proposals; implement the proposals/action fiches; reporting on the concrete results achieved after implementation. Figure 2 provides a view of these five steps process of implementing the proposals. Source: <http://www.eulex->



kosovo. eu/en/tracking/For an accurate picture of the EULEX engagement in Kosovo it is necessary to mention that the activity does not consist only in implementing the Programmatic Approach, but to conduct basic MMA activities through its Strengthening Department, to perform executive police work through its Police Executive Department and to offer an operational capability in cases of public unrest and other executive tasks, accomplished by the Special Police Department. A good picture of the EULEX engagement is given by the goals established at the Police Component level on August 2009. The goals are not randomly listed, but according to the level of priority: Establish a unified Kosovo Police Chain of Command and an effective control on the ground- with direct reference to the Kosovo Police units from the North Mitrovica. Support Kosovo Police and the Ministry of Internal Affairs through MMA Programmatic Approach - activity which refers to the Action Fiche implementation process. Devote resources for the criminal cases under responsibility of EULEX Executive Police Department in order to complete investigations and progressed them to prosecution. Develop International Police Cooperation focusing on the multilateral cooperation: INTERPOL, FRONTEX, SECI[13], zonal bilateral cooperation being encouraged also. Develop and refocus EULEX Special Police Department capability as an operational responder, after the primacy of the Kosovo Police. Transition the Witness Security Unit to Kosovo Police. Implement for Police Executive Department the Lawful Interception Abilities.

## **6. The implemented policies and the suitability of the used set of tools in terms of effectiveness.**

### **6.1 Local ownership.**

The EULEX strategy is based on the principle of 'local ownership'. In respect for the principle of local ownership EULEX police officers mainly act in a supportive role[14]. In simple words, the Kosovo Police, not EULEX, is in the lead - in the driving seat, as it is often stated by the EULEX officials. This principle is very actual. The United Nations has outlined 10 guiding principles for reforming a security sector, four of which relate to local ownership[15].

The principal of local ownership derives from the self-sustainability goal, and for the Kosovo case it is set forth in the mission statement. At the international level, in regard to the policies applied in the Security Sector Reform (SSR), there is a growing policy consensus that sustainability is a critical component of success for SSR programs, and that early local ownership is a critical component of sustainability. Consequently, the EULEX has set this principle as a "golden rule", at least at the declarative level, because the "Local Ownership" is abundant in policy but nearly absent in practice. The first argument is the structure of the Police Component in itself, which reveals the existence of a EULEX Police Executive Department (PED), with a number of around 180 police officers in charge with sensitive criminal investigations, including war crimes, organized crime, corruption, and financial crimes. It is of a major significance to be mentioned that, in the same time, the Kosovo Police has units responsible for the same areas of criminality, and the EULEX Strengthening Department has international police officers, mirroring the structure of the above mentioned Kosovo Police

(KP) units, who perform monitoring, mentoring and advising activities on these KP units, towards improving their capacities. On the other hand, the cross-cutting responsibilities between Kosovo Police and the EULEX PED creates significant lack of motivation and confidence for the local police in approaching these very delicate criminal areas, mistrust for the EULEX investigators in cooperating with the local police (the cooperation is most of the time just declarative and at surface) and leaves the international investigators in a position to tackle a very domestic issue, most of the time, lacked by very important investigative tools - such as: knowledge on population, on territory, informants, etc. These are the circumstances in which almost 10% of the EULEX Police Component resources are spent, and obviously not towards building " local ownership". The second argument I want to bring forth on the lack of a substantial local ownership is the fact that the EULEX Kosovo retains executive power, which is the power to intervene directly in Kosovo's affairs, as already mentioned above. EULEX Kosovo, in order to ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities. [16]There are other obstacles in achieving " local ownership", probably even more substantial. Despite the apparent consensus on the importance of the local ownership, the definition of local ownership is still debated. In order to define the concept, the international actors must ask some important questions, as for example, what are we trying to achieve?[17]

## **6. 2 The Best European Practices.**

In Kosovo case, according to the EULEX Mission Statement[18], one of the goals is to ensure that the institutions are free from political interference and adhering to internationally recognized standards and European best practices. But this can be an extremely difficult goal to achieve in practice, because managing this indicator in police work - Best European Practice - became a considerable and a constant challenge. There are no accurate definitions of what, specifically means policing by the best European Practice, or modern, professional policing in a democratic society. There is wide agreement that civilian oversight, accountability mechanisms, demilitarization, a more client-oriented approach are terms of a democratic police system and targets for reforming a nonperforming one. Nevertheless, there are no expressly and clearly defined standards as to what level of reform the threshold of these goals can be considered reached. As the EULEX mission seeks to implement the " European Best Practices", one would expect the European Union to have set these benchmarks. This is not the case. Undoubtedly, all the EU member states must fulfill standards, particularly Human Rights standards and all the conditions set out in the " aquis communautaire" and other international human rights instruments. Some standards concerning crime fighting are also enclosed as international conventions and mechanisms for cooperation[19]. However, for issues relating to the daily police operations, the daily work that defines their relationship to the public and within democratic norms, there are no harmonized standards for the law enforcement agencies, inclusive (of the) police organizations, within the EU. Furthermore, certain accepted norms,

like civil check and balances systems, do not have singular institutional solutions, and consequently an evaluation of their efficiency is more complex than a set of specific indicators. Other imperatives, such as specific operational guidelines and protocols that limit, the discretion of particular officers in performing their duties, are a matter of commonly accepted practices, rather than formalized standards. The basic work of the EULEX Police Strengthening Department, consisting in monitoring, mentoring and advising the Kosovo Police officers, proves to be laid on an design which doesn't exist in practice, " the European Best Practices" and ultimately the MMA is rather performed, hopefully, according to the highest professional knowledge and standards possessed by those police officers designated as monitors.

### **6. 3 The MMA Action Proposals.**

As indicated above, the EULEX conducted an initial assessment and identified institutional areas which should be improved, according to the mission's goal of building sustainability for the Kosovo's Rule of Law institutions. Even if it is not clearly defined so in the mission statement, this assumed process meets the defining terms of a Security Sector Reform process, which is a highly complex course of action, with political implications. The EULEX MMA Action Proposals are, as a matter of fact, projects which seek the Security Sector Reform, meaning transformation in structures, in strategies, in policies, in the management style of organizations. The risks in such complex reform programs may be, for example, that the projects could be inappropriate for local contexts, or are corrupted by the lack of professional assistance or necessary resources. In

order to avoid such unintended consequences, Security Sector Reform programs must begin by incorporating local priorities and local ownership from the planning stage and insuring local participation in the implementation of programs throughout[20]. This was not necessarily the case with EULEX. Each EULEX MMA Action Proposal was proposed by the EULEX Programme Office, developed from the professional perspective by the officers performing MMA activities within the EULEX relevant components, and only reviewed and agreed by the relevant Kosovo institutions, prior to moving to the next stage of the process. But setting up such projects, implementing them, evaluating management style, preparing detailed and informative reports indicating progress in achieving the outputs under each MMA Action Proposal, extend far beyond policing experience (as an example) and require specific education with project management, project implementation and organizational and management studies and skills. These job requirements were not set forth prior selecting personnel for EULEX and consequently the quality and the accuracy of the MMA Action Proposals could be strongly skewed, by the fact that the Police Component recruits police officers for the Strengthening Department, only on the secondment basis, the vast majority of them not being qualified for the project implementation work and all the activities related to this process, explained above. On the other hand, the fact that the local institutions were not engaged in drafting the Action Proposal from the very beginning had already caused problems and delays, as it was the case with the Intelligence Led Policing Action Plan, where the Kosovo Police had developed a distinct project, almost completely parallel to the EULEX plan. The afterwards

discussion between the EULEX proposal and the Kosovo Police Action Plan on Intelligence led Policing took months and resulted in delays of several months, if not years, as the project is still to be implemented according to the Eulex Programme Report 2011[21]. There are other problems originating from the mismanagement and misconception of the " local ownership" principle, during the implementation of the EULEX MMA Action Proposals. In many situations the local counterparts resisted or exhibited little enthusiasm in implementing the provisions of the Action Proposals. According to the above mentioned principle, the Kosovo's Rule of Law institutions are considered to be in the leading position - driving seat, and there are neither consequences nor disincentives to such attitudes, but continuous delays registered in implementing the projects.

## **7. Recommendations in approaching the civilian rule of law missions in order to increase efficiency.**

The Rule of Law missions should focus more on building local capacity rather than developing structures which parallel the local ones. The strengthening of the local institutions would both increase the local capacity and lower the mission resources spending. Local and international actors should move beyond a " foreign" versus " local" ownership mindset and acknowledge that a hybrid approach is necessary. Realistic planning and implementation will be facilitated with the acknowledgment that the process is difficult, context-specific and requires genuine cooperation between local and external actors[22]. To add value, eliminate arbitrary and establish clear standards, the European Union should develop a set of European Best Practice Guidelines for law enforcement agencies to be further implemented in such

civilian Rule of Law missions. The Programmatic Approach developed and applied in Kosovo is a very good instrument in reforming and developing institutional capacity. The European Union must recognize that the consultative process and dialogue are just as important as the outcome. Neither international actors nor local institutions alone have the combination of political will, financial resources, technical skills, local knowledge, and sustainable presence required to achieve success. Once dedicated to such an endeavor, the European Union should commit the necessary resources, inclusive specific qualified personnel and should engage strong incentives for the local institutions to commit the local institutions to these reforms.