

THE EU AND CRISIS RESPONSE

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Securitisation of the EU approach to the Western Balkans: from conflict transformation to crisis management

Kari M. Osland and Mateja Peter

Introduction

While much of the EU peacebuilding capacities and mechanisms are relatively new, the EU has acted as a crisis response actor in the Western Balkans since the mid-1990s.¹ This region, now part of the enlargement area, has long been an incubator and a test ground for the EU peacebuilding toolkit. The Western Balkans is the region where the EU has not only financially invested the most, but where the Union enjoys the greatest clout. Unlike in other regions addressed in this book, the Union is one of the most, if not the most, influential external actors in the Western Balkans. The proximity of the region also means that the Western Balkans problems have spill-over effects on the Union. For normative and/or self-interested reasons, the EU has heavily supported programmes and mechanisms with conflict transformation ambitions. These structural reforms with longer timelines have been particularly targeted at the rule of law sector in the region.

In this chapter, we look at the implementation and perception of the EU's largest investment into the rule of law sector in the Western Balkans: EULEX.² Established in 2008, this CSDP mission took over justice functions from UNMIK. While its operation has been extended multiple times, the mission has entered a drawdown stage, focusing on mentoring and advising local institutions. But for the first ten years of its existence, EULEX was the only EU mission with an executive mandate. EU judges, prosecutors, investigators and customs officials were embedded into Kosovo's rule of law institutions, directly dispensing justice in the most sensitive criminal

proceedings. While consultations with local counterparts were increasing over time as part of local ownership policies (Ejdus, 2017), for much of its existence, EULEX had full authority to transfer any case to its own docket, thus at least in theory not just supervising but also governing the local rule of law system.

We argue that while the design of EULEX suffers from problems typically associated with liberal peacebuilding operations – lack of local ownership, technocratic approaches, and lack of accountability – the mission mandate embodied ambitions for conflict transformation. However, as the EU increased its presence and commitment to Kosovo and the region in the late 2000s, it became increasingly difficult to reconcile its own conflicting priorities for the region, a problem we have previously described as the first proximity paradox in peacebuilding (Osland and Peter, 2019). EULEX implementation therefore got compromised and the mission became the casualty of the Union’s increasingly securitised crisis management approach to the Western Balkans (cf. Ioannides and Collantes-Celador, 2011; Kmezić and Bieber, 2017). In this, the EU is mirroring broader trends in contemporary international operations, which have all but abandoned any conflict transformation ambitions and are now primarily deployed to manage and contain conflicts to their regions (Peter, 2019: 40). We see this as particularly problematic for an actor whose self-image as a ‘normative power’ (Manners, 2002), is underpinned by an assumption that its influence in the world is gained through ‘the power of ideas’ (Galtung, 1973: 33).

We build our argument by drawing on experiences of those most directly responsible for the execution of the EULEX mandate and those directly affected by its outcomes. Our data was collected as part of the EU Horizon 2020-funded EUNPACK project and comes from twenty-five in-depth interviews with practitioners familiar with the day-to-day work of the mission and its reception on the ground. These interviews were conducted in Mitrovica and Pristina in October 2017. In selecting interviewees, we paid special attention to implementers of the executive mandate, such as EULEX judges and prosecutors, and others intimately familiar with the relationship between the executive and the capacity-building work in the rule of law sector in Kosovo. These selections were done to avoid building our understanding of EU practices solely on the basis of meetings with EU gatekeepers in the field (Ejdus and

Juncos, 2018). To gauge how the mission is perceived by local actors, we spoke with local judges and civil society actors, representing NGOs, research institutes and media, all with deep familiarity with the rule of law in Kosovo and the EU assistance to the sector. These were selected according to a snowball selection procedure, where we wanted to find people with a representative view from different ethnic parts of society, based on a context- and gender-sensitive understanding of the local dynamics in Kosovo. Local perceptions were gathered from Kosovo-Albanian (majority) and Kosovo-Serb (minority) representatives. In all our interviews, we were interested in challenges as identified by our interlocutors, seeking to understand how practitioners are assessing the situation and what meaning they are ascribing to their actions and to the actions of the EU.

The chapter is organised into five sections. After this introduction, the second section provides the framework for the argument, focusing on the different modes of conflict response highlighting a recent shift from conflict transformation to conflict management in international interventions. The third section draws on critical peacebuilding literature outlining how the mandate and the design of the mission were undermining its conflict transformation objectives. In the fourth section, we show how these transformation ambitions of the mission were fundamentally eroded in practice through de-prioritisation of the rule of law in EU policy towards the region. While designed as a conflict transformation mission, in practice, EULEX became a conflict management one, with the EU responding to crises of immediate concern at the expense of longer term priorities. We conclude with some broader observations on EU-specific challenges in mounting what was an executive statebuilding mission in its immediate neighbourhood.

From conflict management to conflict transformation – and back

International responses to conflicts have changed dramatically since the beginning of the 1990s, with both conflict theory and best practice developing in parallel. As the nature of conflict dynamics changes, international responses needed to adapt. In the typology

elaborated in Chapter 2, a distinction is made between different types or generations of conflict response, stretched on a continuum from the more conservative to the more progressive responses: conflict management–conflict resolution–conflict transformation–critical conflict transformation. While there are considerable overlaps between these categories, each ideal type is commonly associated not just with a certain type of international presence but also with a specific era of international responses.

Conflict management has the most contained ambitions and is commonly equated with political realism. This approach relies to a large degree on the intervening third parties and is characterised by a limited state-centric discourse with local elites. Such an approach is most commonly associated with the Cold War era international responses to conflicts and is epitomised in the development of UN peacekeeping principles: consent, limited use of force, and non-interference in internal affairs (UN, 2008). International responses are not supposed to resolve the underlying conflict, but are instead designed to prevent them from escalating into a broader conflict, thus containing them to the region of origin. *Conflict resolution* is framed as a second generation of responses partly arising as a critique of conflict management. This approach is more structural in that it focuses on understanding the root causes of conflict, including underdevelopment. It highlights the need for full representation of all voices and issues in conflicts, in contrast to the state-centric approach adopted in conflict management. Stress is put on individual agency; human needs are seen as universal and there is an embedded view that contact with the ‘other’ leads to deconstruction rather than a reification of conflict. The primary local in such an approach is not the state or its elites, but civil actors and ‘normal’ people.

Conflict transformation is a type of response developed in the post-Cold War era and sought to merge the top-down approach of conflict management with the bottom-up approach of conflict resolution. Bolstered by the broader consensus in the international community, the idea was to not just manage and contain conflicts, but to transform societies emerging from conflicts. The liberal peacebuilding project became central to such conflict responses, with international agencies assisting in building states. Such an approach was underpinned by a broad understanding among key

international actors who saw the continued stability of a (post) war state closely linked to adequate standards in other areas, including the rule of law, policing, and developmental and social issues. Peacebuilding became intertwined with statebuilding (Paris and Sisk, 2009: 1–2).

This shift corresponds with a trend in UN peacekeeping where UN interventions changed from keeping peace to helping societies recovering from conflict in creating new government institutions and strengthening existing ones (Paris, 2004). By building functional and legitimate institutions, peace would follow. Engagement of civil society is emphasised in these programmes with the idea that non-state actors would hold state institutions accountable. However, given the strong emphasis on reforms of the state and its institutions, the bottom-up dimension was deprioritised in practice, becoming an add-on to peacebuilding operations. Even more, external donors and actors continued to be in the driver's seat of the reforms, obstructing any real chance of local ownership of these processes. Similar blueprints were applied from one country to another, with international peacebuilding efforts implemented through bureaucratic, technical solutions, where thematic expertise is prioritised over local/country knowledge (Autesserre, 2014: 68–69). To complicate the impact of these responses further, such efforts have largely been perceived as unaccountable, with their staff acting with impunity (Caplan, 2005; Visoka, 2012).

While this third type of conflict response has been ambitious in its aims and scope, such interventions have created a range of unexpected consequences and a large expectation gap on the side of the people living in the affected countries. As noted by Richmond (2010: 30–31), 'the very ontology and related epistemology of the liberal peace are being disputed by local communities, not necessarily on an ideological basis, but quite often because of its failures to provide sufficient resources to support the everyday lives of such communities'. Critical scholars have therefore argued for a fourth generation of conflict response – *critical conflict transformation* (Richmond *et al.*, 2016). The key here is a hybridised form of peacebuilding that connects the local and the international, focusing on a beneficial impact on the everyday lives of the people in question.

But while scholars have pointed to the need to properly engage the bottom-up aspects of conflict transformation, in practice,

international responses to recent conflicts have gone in the opposite direction. This return from conflict transformation to conflict management has been most extensively explored in UN peace operations (Peter, 2015; Gelot, 2017; Hunt, 2017; Tull, 2018; de Coning and Peter, 2019; Laurence, 2019), but the EU responses to conflicts have also increasingly come under scrutiny. Youngs (2004: 415) contends that ‘instrumentalist security-oriented dynamics persist within the parameters set by norms defining the EU’s identity’, something that is carried over into its conflict responses. Raineri and Strazzari (2019: 544) show on the examples of Mali and Libya that ‘EU investments in sector-specific capacity building are geared to the enhancement of sovereign prerogatives in neighbouring states’, thus returning EU policies back to a conflict management/containment era. This problem has been noted also in the literature on the Western Balkans, with Ioannides and Collantes-Celador (2011) maintaining that CSDP missions in the region are increasingly guided by the ‘internal–external security nexus’. Similar argument has been made in the literature on ‘stabilitocracy’ (Kmezić and Bieber, 2017), which concludes that the EU has become content in supporting autocratically minded leaders, who guarantee stability of the region. In this chapter, we explore how this shift to conflict management has impacted a mission designed to transform the conflict.

EULEX as a liberal peacebuilding mission: a problematic conflict transformation project

EULEX, while in many ways an idiosyncratic peacebuilding endeavour for the EU, is in other ways an archetypical example of a statebuilding mission associated with the liberal peacebuilding era of international interventions. As a first step, the mission therefore needs to be understood and critiqued as a liberal peacebuilding project. In this section, we show that EULEX objectives embody conflict transformation ambitions, but that its design suffers from structural flaws endemic to a liberal peacebuilding project. Critiques raised by rule of law experts we interviewed concerned a missing bottom-up dimension, a technocratic approach to a political problem, and unaccountability of the mission.

A major component of liberal peacebuilding is ‘directed at constructing or reconstructing institutions of governance’ (Chesterman, 2004: 5), with rule of law being one of the most prominent aspects (Osland, 2019). Since the early 1990s, international actors have assisted local police and judiciary in building up their independence, while simultaneously attempting to democratise these institutions by instilling accountability and human rights standards in their work. Rule of law institutions are supposed to chiefly embody equality before the law, which in societies emerging from ethnic conflicts translates into supporting a multi-ethnic police and judicial system. The assumption is that a functioning legal system would provide alternative conflict resolution mechanisms and that its multi-ethnic nature would ensure that these mechanisms are unbiased in their treatment of previously fighting groups.

Such an approach is reflected in the core objective of EULEX, which is supposed to

[a]ssist Kosovo, 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 custom service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. (European External Action Service (EEAS), 2018)

Both EULEX and its predecessor mission UNMIK were underpinned by the idea that building accountable institutions would aid in post-conflict reconciliation. Independence and adherence to international standards were and remain major problems in the Kosovo judiciary with the mission’s core objective responding to the problem identified not just by international actors, but also local ones. Public perception studies consistently raise rule of law as a major concern. One such study, conducted by a network of civil society organisations in 2016, showed that 62 per cent of respondents expressed no trust in Kosovo judiciary, with 60 per cent claiming they did not trust prosecutors. Asking about the level of corruption, prosecutors topped the list (jointly with the parliament), with 63 per cent of respondents deeming that corruption was widespread among them. The Kosovo judiciary was close third with 61 per cent seeing it as widely corrupt (Emini, 2016). This lack of

independence of local judiciary was continuously brought up in our interviews as well, with one Kosovo-Albanian interlocutor saying that the main challenge to the rule of law in Kosovo is that judges and prosecutors are politically appointed, sending a message to the citizens that the justice system is not independent.³ When EULEX was launched, locals had high expectations that the EU would tackle this endemic problem. One Kosovo-Albanian we interviewed, intimated, ‘we had high expectations and it proved to be a big disappointment’.⁴

Although independence of the local rule of law institutions was and remains a major concern, the perceived bias against minority groups in the Kosovo judicial system is what influenced the design of EULEX and its predecessor mission even more. Unlike most international missions, which focus on capacity-building through training and advice, EULEX and UNMIK were missions with executive mandates, meaning that they directly exercised judicial and police functions. The UN Security Council resolution 1244, which established a UN transitional administration over Kosovo, allowed for a possibility of an executive mandate in all aspects of civilian administration (UN, 1999). While international police officers were deployed immediately after the ceasefire, the UN initially relied on local judges and prosecutors to dispense justice across Kosovo. A Joint Advisory Council, composed of international and Kosovo representatives, selected these and as no Kosovo-Serb jurist applied, the composition of the Kosovo judicial system became entirely ethnically Albanian (Skendaj, 2014: 89). Such a system was widely seen as biased against Kosovo minorities (O’Neill, 2001) and it was this bias that led to a change in the international policy and the eventual deployment of international judges and prosecutors. Bias against minorities represents a concern to this day and as our interviews with EULEX officials on the ground highlighted, integration of Kosovo-Serb judges from the so-called parallel institutions is seen by them to be a chief priority for the EU. Supporting the normalisation process between Pristina and Belgrade, entailing also the integration of Kosovo-Serb judiciary, is one of four areas EULEX is supposed to focus on.⁵

However, by trying to address the problem of bias in the local judiciary and thus creating UNMIK/EULEX as executive statebuilding missions, the international community/EU created other

problems for its conflict transformation ambitions. Critiques raised in our interviews correspond well with what authors writing in the critical peacebuilding tradition have uncovered elsewhere. EULEX had an almost non-existent bottom-up dimension, it adopted a highly technocratic approach, and experienced problems with accountability. All these problems were magnified due to the executive nature of the operation.

One of the main critiques in the critical peacebuilding literature is that liberal peacebuilding exercises lack a strong bottom-up component, which undermines their conflict transformation potential. To respond to these critiques, international actors promote the idea of local ownership (von Billerbeck, 2015; Ejodus, 2017). While such policies are designed to create stronger consultation mechanisms with beneficiaries of international efforts (including non-state actors), in practice, they fail to deliver. Scholars point to a gap between the discourse and practice, as international actors often perceive the devolution of agency to local actors as endangering the achievement of their overall goals (von Billerbeck, 2015; Lemay-Hébert and Kappler, 2016). The lack of a bottom-up component is amplified in missions with executive mandates, such as EULEX, as these missions are put in place to temporarily substitute problematic local institutions. An executive rule-of-law mission therefore by definition needs to insulate its activities from local actors if it wants to maintain that it is acting as an independent judiciary. Nonetheless, these missions still design programmes purporting to pursue local ownership.

Our interviews confirmed these findings. Both EULEX and local experts agreed that local ownership is an in-built problem for executive missions, concluding that even with the best intentions, the design of the mission was never going to allow for implementation of what was written on paper. Several civil society interlocutors maintained that proper discussion happened only with elites, which was ironic as that was the layer the EU and EULEX were supposed to hold accountable. One Kosovo-Albanian concluded, ‘there is a structured platform for dialogue with civil society ... but there is no room for criticising the EU’.⁶ This lack of consultation was a particularly serious concern for minority representatives, who saw the mission and the EU focusing on high-level conflict management at the expense of peacebuilding on the ground, something we return

to in the next section. According to one Kosovo-Serb: 'The local institutions are reporting to EULEX but communication only goes in one direction. The local community and institutions do not have anything to say for designing the mission and this is very problematic as for local ownership.... They don't understand the need of the local community – they don't ask them – and in some cases, they know what is going on but they are not interested.'⁷

Others were more sympathetic arguing that things could have been worse. One Kosovo-Albanian civil society representative contended: 'We see the EU here on the ground as very active.... We are asked to give general views on different themes and topics and are invited to those where we have expertise.'⁸ Local judges similarly intimated having a good working relationship with their EULEX counterparts, seeing variation more as a matter of personalities: 'some really listen to local interpretations, others are more dismissive'.⁹ Another argued that what helped was that most EU judges came from legal systems that had similarities with Kosovo's.¹⁰ EULEX judges and prosecutors broadly shared these opinions, simultaneously arguing for a need to be insulated from interference in their own work and stronger consultation mechanisms with the civil society at the policy level.¹¹ Several criticised the mission for starkly separating its executive and capacity-building work in its 2012 review, which meant that the EU staff, who were directly exposed to local judges and prosecutors, could neither mentor them nor receive their feedback on the work of the mission.¹² One EULEX prosecutor concluded that given the little interaction between the strengthening and the executive side of EULEX, even informal feedback from local counterparts, does not reach people who oversee local ownership policies.¹³

Another critique found in much of the peacebuilding literature is that such missions are overly technocratic thus prioritising thematic knowledge over local expertise (Autesserre, 2014: 68–69). Peacebuilding is implemented as a one-size-fits-all approach, 'peace from IKEA' (Mac Ginty, 2008: 145). The conclusion in these studies point to a limited conflict transformation potential of statebuilding missions by arguing that '[a]lthough peacebuilding is committed to positive peace, its discourses and practices tend to depoliticise peace' (Goetschel and Hagmann, 2009: 66). Both local and EULEX experts were highly critical of the technocratic policies the EU and

the management of the mission adopted, with nuanced reading of differences in their accounts revealing how EULEX staff internalised a technocratic approach themselves.

Furthermore, both local and EULEX experts agreed that in planning of the mission, the EU was focused on what worked best for the EU, not what was most needed or appropriate for Kosovo. As a result, the mission had a major problem due to the high turnover of its staff. Staffing for EULEX follows a similar logic to staffing for other CSDP missions: officials are either seconded by member states or contracted by the mission itself. This system was widely seen as inappropriate for the type of mission EULEX was, with one interlocutor arguing that when you take over executive functions, you take over state functions, meaning that the turnover rate is incompatible with the tasks you are asked to take on: 'in legal proceedings, you cannot change an investigator every year'.¹⁴ This turnover particularly impacted seconded staff, where the decision on the length and the possible extension of their mandate rests with the sending state. At the time of interviews, roughly three quarters of staff working in the Executive Division were seconded.¹⁵ On the other hand, contracted staff are hired on short, but renewable, contracts and were therefore seen to be under a bigger pressure to perform to the wishes of the management. A local judge argued that this system influenced the quality of EULEX judges wanting to come to Kosovo and also the perception of their rulings. These were not deemed to be of the highest standard.¹⁶ Another interlocutor maintained that since the mission preferred seconded staff (as these are paid by the sending states), it repeatedly appointed to managerial posts people that lacked the required legal training and experience.¹⁷ Overall, the impression was that the specificities of staffing an executive mission were not thought through in advance nor have been properly understood by Brussels since.

But there was also a clear sense among our local interlocutors that EULEX staff themselves internalised the bureaucratic nature of their job, not seeing their work as political. Speaking to EULEX executive staff on their expectations and what they would consider a successful mission, they spoke of 'working on difficult cases',¹⁸ 'providing independent justice',¹⁹ and 'leading by example'.²⁰ They were not naïve, but EULEX staff clearly prioritised processes and standards.²¹ They were there to implement a technical mandate and

did not have high expectations of their contributions to fighting corruption. In contrast, a local judge grumbled about the length of time it took EULEX judges to resolve a case, saying an EU judge handles less than two cases, while he needs to finish six or so in a year.²² This slow handling of justice was particularly palpable during the handover period and one EULEX official shared that the core of his work represented handing over more than five thousand cases they had been working on to local authorities. Around twelve hundred cases were inherited from UNMIK and many were still on EULEX's docket ten years later.²³ This broad sense of EULEX's technocratic approach was shared also by civil society representatives. One Kosovo-Albanian explained that they expected EULEX to go after the big fish and that this expectation had not been met. He argued that the challenge for EULEX was that they were asked for results early on to show that the EU was effective and therefore the more 'low hanging fruits' were picked, such as the drug cases, which would not be hard to go after for the locals either.²⁴ A minority representative confirmed this narrative, arguing that 'when you see the cost of the EULEX mission, you would expect more results'.²⁵

A further problem plaguing peacebuilding missions is their perceived unaccountability. Both media reports and academic studies are rife with examples of international staff breaking or skirting legal and ethical rules. In the UN context, reports of sexual abuse have haunted several major peace operations, as have stories of embezzlement and corruption (Simic, 2009; Grady, 2010; Kanetake, 2010; Jennings and Bøås, 2015). While international organisations have put policies in place to address these (e.g., UN, 2003; UN, 2017), such policies are most often poorly implemented. What further complicates the relationship with locals is that most accountability processes happen through international channels, far removed from where the violation took place. For rule of law missions, and especially executive rule of law missions, the perception that they might be corrupt is even worse than other violations, given that they are supposed to support and serve as an example of an independent judiciary or a police force. And this was a major problem for EULEX.

While every single interviewee with direct experience with EULEX, including internationals not employed by the mission and

local judges and staff, categorically rejected any knowledge of endemic corruption within the mission, our civil society interviewees were of a different opinion, perceiving EULEX as corrupt and thus enabling corrupt local elites. Perception studies mentioned above reflect this sense. According to one Kosovo-Albanian, the general perception is that EULEX is not doing anything about the main problem in Kosovo: ‘there is a lot of political interference and no MPs in prison’. She linked this lack of action on local corruption with corruption within EULEX: ‘78 per cent think that rule of law institutions – locals and EULEX – are influenced by politicians according to a recent poll. We are losing faith in the EU.’²⁶ Another majority representative was even more explicit, stating ‘they [EULEX] cannot fight corruption because they are so involved in corruption themselves.’²⁷ Several interviewees pointed to the blame game happening between employees in Kosovo justice institutions and EULEX, with neither willing to clean up its own ranks.²⁸ As one Kosovo-Albanian phrased it: ‘The reason why they [local institutions and EULEX] don’t fight corruption is that they have interest there themselves.’²⁹ Others saw corruption within EULEX being just one aspect of the problem, arguing that the mere presence of EULEX allowed for political interference in local judiciary to persist. One interviewee argued that EULEX, even if not directly corrupt itself, merely represents an additional layer of governance, resulting in more ways for their own politicians to avoid being held accountable.³⁰ As the blame game continued, the local judiciary could hide behind the mistakes of the international mission.

While a preliminary investigation by the EULEX mission itself found no evidence of corruption among EULEX staff and the independent *Jacqué Report* (EU, 2015) echoed this, rumours and allegations of corruption had been flourishing for a long time before EU took any action (cf. Capussela, 2015). People’s negative perceptions are difficult to change, but it seems that the EU also did little to address Kosovar’s concerns. Jean-Paul *Jacqué* criticised the EU for not opening an investigation into the allegations immediately as ‘[t]his would have prevented the issues that later arose in connection with the use of secret and special procedures, which fuelled suspicions of a cover-up’ (EU, 2015: 8). And while EULEX staff similarly rejected the idea of broad corruption, they agreed that action was needed. If EU findings and EULEX narratives were

correct and this truly was a misperception, responding to suspicions of political interference and corruption would have been crucial for any international mission, even more so for one with an executive mandate to fight corruption itself.

The above section highlighted ways that EULEX design was undermining conflict transformation ambitions the EU had set for its operation. In the next section, we further show that not only was the design and the bureaucratic top-down nature of the mission a problem, but that the EU fundamentally undermined its status also in practice, by de-prioritising the core objective of the mission: the rule of law.

EULEX as a casualty of EU's competing priorities: from conflict transformation to conflict management

Over the last decade, as the EU has been increasing its role in Kosovo, the contradictions in its approach have become more apparent. In this section, we show how EULEX became the casualty of the EU's competing priorities for the region. We outline the increasing EU presence in and engagement on Kosovo before laying out four overarching political objectives of the EU. We then show how EULEX's core objective – the rule of law – was sacrificed as part of an increasingly securitised approach to the region. While EULEX was pursuing longer term conflict transformation objectives, the EU began focusing on immediate crisis management.

By the mid 2000s, the EU wanted to increase the stakes by highlighting its own special relationship with the region, one that other states – especially Russia and the United States – and other international organisations did not share. In 2005, the EC published a Communication highlighting its contribution to making Kosovo's European perspective a reality, thus linking Kosovo's future to its own (European Commission, 2005). In its 2008 Enlargement Strategy, the Commission announced its intention to present a feasibility study on Kosovo (European Commission, 2008). One of the main priorities in ensuring this European perspective is the rule of law. Almost simultaneously as Kosovo proclaimed its independence, in February 2008, the Council of the European Union in one Joint Action established both the EUSR and EULEX Kosovo (Council of

the European Union, 2008a). These two missions are still the main EU bodies on the ground, with EUSR now also double-hatted as the Head of the EU Office (not Delegation, due to Kosovo's contested status).

In addition to its substantial ground presence, the EU is involved in broader diplomatic, humanitarian, development and economic relations with Kosovo and the region. The EU's engagement has increased in this area as well. The most notable of these is the EU-facilitated dialogue for the normalisation of relations between Belgrade and Pristina, which started in 2011 and is from 2014 facilitated by the High Representative for Foreign Affairs and Security Policy/Vice-President of the Commission (Bátora *et al.*, 2017).³¹

With such a heavy footprint of EU institutions and the concurrent presence of EU member states on the ground, it is unsurprising that the EU has multiple objectives for what it wants to achieve with its presence on the ground. While objectives specific to individual actors – such as economic interests of a member state – contribute to shaping EU policies and priorities, we identify four overarching political objectives that the EU is pursuing in Kosovo:

1. *Conflict management*: normalisation of relations between Kosovo and Serbia, and Kosovo-Serbs and Kosovo-Albanians;
2. *Conflict transformation*: supporting an independent judiciary free from political interference; strengthening democracy and rule of law;
3. *European security*: minimising security threats to Europe emanating from Kosovo, due to high levels of organised crime and its links to European criminal networks;
4. *EU as an international actor*: through its presence in Kosovo the EU is building its own nascent foreign policy capacities and maintaining the status as a global player.

These objectives can be identified in multiple EU documents (European Commission, 2005, 2008; Council of the European Union, 2008a, 2008b; European Union HR/VP, 2016; EU, 2019) and were mentioned also in our interviews. The EU stresses that they are pursued simultaneously and in parallel to each other. However, there are underlying tensions between them and in implementing the mandate of the mission, it matters which of these objectives is prioritised. The last two objectives in many ways have more to do

with the EU than Kosovo. More importantly for our discussion, to achieve these objectives, the EU needs to work with different local constituencies. Objectives (1) and (3) require an elite buy-in; they are top-down approaches. Elite consent is needed for the normalisation of relations between Serbia and Kosovo and for continued cooperation of local authorities on transnational organised crime and terrorism. Objective (2), on the other hand, at its heart, requires insulating justice institutions from these same local elites. It hinges on bottom-up engagement and support, as elite accountability cannot be achieved from the outside. A manifest tension between EULEX priorities is reflected already in the mandate, where the mission is supposed to both '[be] fighting political interference ... and [act in] support [of] the EU-facilitated dialogue between Belgrade and Pristina ... in the sphere of rule of law'.³²

While the EU was seen by our interlocutors as uniquely positioned to address Kosovo's rule of law problems, its *sui generis* character and competing objectives in and for the region presented EU-specific challenges resulting in de-prioritisation of the mission's main objective: the rule of law. The proximity of the region to the Union means that EU's objectives for Kosovo are broader and more intertwined with EU's internal concerns, impacting how the executive rule of law mission was implemented (Osland and Peter, 2019). Other objectives – conflict management, internal security and EU actorness – were deemed to be more important to the EU and the EU was seen as often abandoning its longer term rule of law reforms for immediate crisis management. As more immediate concerns required an elite buy-in, accountability of these same elites was seen to be lost along the way. One EULEX official commented that Brussels spends an immense amount of energy on the normalisation process, often at the expense of 'the real problems' with the Kosovo judiciary.³³

Throughout our interviews, several used the phrase 'stabilocracy' or 'stabilitocracy', referring to a weak democracy with autocratically minded leaders, who enjoy external legitimacy by claiming to provide pro-Western stability in the region (Kmezić and Bieber, 2017). In its essence, it is an exchange of stability for lenience on matters of democracy and rule of law. A majority representative encapsulated this thinking: 'The EU came to strengthen the rule of law here but did the opposite. The purpose was to make the local

judges competent enough for EULEX to leave – but today it is worse than it was in 2008. [The] EU is more interested in stability with Serbia than with what is going on within the country.³⁴ Another saw the main challenge to the sector being in ‘a political class which has been installed for the sake of stability.... But these political leaders have embedded the structures of corruption and organised crime – the underground is becoming part of the mainstream politics’.³⁵ The EU was seen to be needing these leaders for greater purposes with no interest in holding them accountable.

This sentiment resonated with what EULEX staff told us about how they sensed that the EU maintained a balance between various strong groups needed for broader political agendas. Many listed subtle forms of pressure: EU prosecutors were let known informally that a certain person should or should not be indicted; EULEX Head of Judges reassigned a sensitive case from a certain judge; interim court measures were not implemented by EULEX police; the content of press statements was changed somewhere above; issues raised about the handling of a case never received a reply, etc.³⁶ These examples illustrate the atmosphere among staff and one EULEX employee argued that she constantly feels like there are other things at work. She continued that when things are a bit out of the ordinary, staff are never told why they happen the way they do and that this is not how an independent judiciary is supposed to function. She spoke of a constant consideration of other EU objectives by the management, resulting in the mandate of the mission not being implemented properly.

Other examples related to cases EULEX was seen as prioritising. While the European Court of Auditors (2012: 10) concluded that given the international nature of organised crime, EU security objectives had not been adequately integrated into the mission, our interlocutors offered different opinions. One of them argued that the biggest impact coming out of EULEX deployment was the international police cooperation. He continued that through the EU presence on the ground, EULEX investigators were helping build cases in their home countries and that more had been done on this than on the organised crime in Kosovo itself.³⁷

Broader political considerations not related to the primary objective of the mission were a source of constant frustration to EULEX staff and some openly stated that despite its heavy footprint, the EU

was not serious about the rule of law in Kosovo. This lack of normative commitment was recognised as the core problem for the mission also by our local interlocutors. According to our experts, the EU's broader political objectives and its prioritisation of the dialogue process between Pristina and Belgrade may have come at the expense of contributing to building transparency and democracy. The conflict of interest became obvious as some of the individuals, who were deemed by the general public as prime candidates for EULEX investigations, were the very same individuals that the EU relies on as partners for the dialogue process. Locals and internationals alike agreed that the stability argument (conflict management) not only trumped the good governance argument (conflict transformation) but actively undermined its implementation. The bottom-up dimension, an essential component of conflict transformation, was seen as absent from the EU's approach.

Conclusions

This chapter analysed the EU's crisis response in the Western Balkans through the lens of EULEX. By exploring how those immediately responsible for mandate execution and those directly affected by its outcomes perceive EULEX, we discover gaps that highlight the pitfalls of direct and ingrained political interference in the mission's work. While EULEX has been seen as an important watchdog for preventing further human rights abuses, the EU's approach to Kosovo and the region continues to be characterised by competing priorities: the EU's broader political objectives impact the mission's legal work and hamper the EU in achieving a coherent and impactful rule of law policy. In turn, this decreases the local populations' trust and approval of EULEX and ultimately undermines the EU's overall goals of promoting good governance and a European perspective for Kosovo. This tension highlights the incompatibility of the EU's short-term focus on crisis management and the more long-term focus on crisis transformation.

While we know that conflicts do not develop in a linear fashion, we still tend to think of conflict *responses* as broadly linear processes where learning accumulates and transmutes to a more ambitious endeavour. In Kosovo, the international community first

engaged in conflict management trying to stabilise the crisis with military and police presence, but soon expanded its ambitions to conflict transformation. UN and EU assistance to the rule of law sector, including the two executive missions, have been the best examples of the international community's conflict transformation plans. As a priority, these missions focused on accountability and good governance. However, our findings suggest that due to the emphasis put on the normalisation process between Belgrade and Pristina, which to a large degree is an elite-driven process, the bottom-up accountability and good governance ended up compromised. It is pertinent to ask, whether this is due to the conflict response adapting to the changing terrain or whether the EU abandoned its normative commitments to the region. Our interviews suggest the answer is the latter.

Notes

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- 2 Parts of this book chapter draw on material published as Osland and Peter (2019).
- 3 Interview Osland with local actor 5, 24 October 2017.
- 4 Interview Osland with local actor 6, 28 October 2017.
- 5 Interviews Peter with EULEX staff 1, 3 and 6, 23 and 24 October 2017.
- 6 Interview Osland with local actor 1, 23 October 2017.
- 7 Interview Osland and Peter with local actor 11, 26 October 2017.
- 8 Interview Osland with local actor 5, 24 October 2017.
- 9 Interview Peter with local judge 1, 25 October 2017.
- 10 Interview Peter with local judge 2, 25 October 2017.
- 11 Interviews Peter with EULEX staff 4 and 8, 24 and 27 October 2017.
- 12 Interview Peter with EULEX staff 7, 27 October 2017.
- 13 Interview Peter with EULEX staff 6, 24 October 2017.
- 14 Interview Peter with EULEX staff 10, 27 October 2017.
- 15 Interview Peter with EULEX staff 1, 23 October 2017.
- 16 Interview Peter with local judge 2, 25 October 2017.
- 17 Interview Peter with EULEX staff 6, 24 October 2017.
- 18 Interview Peter with EULEX staff 4, 24 October 2017.

- 19 Interview Peter with EULEX staff 9, 27 October 2017.
- 20 Interview Peter with EULEX staff 6, 24 October 2017.
- 21 Interview Peter with EULEX staff 4 and 6, 24 October 2017.
- 22 Interview Peter with local judge 2, 25 October 2017.
- 23 Interview Peter with EULEX staff 1, 23 October 2017.
- 24 Interview Osland with local actor 7, 25 October 2017.
- 25 Interview Osland and Peter with local actor 9, 26 October 2017.
- 26 Interview Osland with local actor 5, 24 October 2017.
- 27 Interview Osland with local actor 6, 28 October 2017.
- 28 Interview Osland with local actor 5, 24 October 2017 and with local actor 6, 28 October 2017.
- 29 Interview Osland with local actor 7, 25 October 2017.
- 30 Interview Osland with local actor 1, 23 October 2017.
- 31 For an overview of links on the EU's relations with the Western Balkans, see https://eeas.europa.eu/regions/western-balkans/7859/western-balkans_en (accessed 13 January 2018).
- 32 EULEX Kosovo, mandate of the Strengthening Division, see www.eulex-kosovo.eu/?page=2,3 (accessed 13 January 2018).
- 33 Interview Peter with EULEX staff 6, 24 October 2017.
- 34 Interview Osland with local actor 8, 25 October 2017.
- 35 Interview Osland with local actor 1, 23 October 2017
- 36 To completely protect the anonymity of interviewees on this sensitive issue, no reference to specific interviews is made in this paragraph. This is something that was promised to the interlocutors (Peter).
- 37 Interview Peter with EULEX staff 2, 23 October 2017.

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