

Test Case Kosovo: A Preliminary Stocktaking of European Conflict Management

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Missions are no substitute for politics: that insight is confirmed by an interim assessment of the achievements of EULEX Kosovo – the largest mission of the Common Security and Defense Policy (CSDP). In July 2011, a customs conflict in northern Kosovo that had largely disappeared from the international crisis radar suddenly escalated. The root cause was the question whether the European Union would tolerate the creeping secession of northern Kosovo. Since then, consistent European – and especially German – diplomacy has contributed to progress. Clear political signals to Serbia and Kosovo will remain crucial for EULEX to make a credible and effective contribution to conflict transformation.

Kosovo declared unilateral independence on 17 February 2008, against the will of Serbia, without the approval of the UN Security Council, but with the support of the United States and a majority of the EU member states. Although UN Special Envoy Martti Ahtisaari had failed to produce an agreed status solution for the territory (which had been under UN administration through UNMIK since 1999), Kosovo nonetheless adopted the provisions of the Ahtisaari Plan in its new constitution. These included comprehensive minority rights and their international oversight by an International Civilian Representative (ICR), and an EU rule of law mission (EULEX). The international Kosovo Force (KFOR) remains responsible for security and stability. UNMIK was heavily downsized. In an advisory opinion requested by the UN General Assembly at Serbian initiative,

the International Court of Justice concluded in 2010 that the declaration of independence did not violate international law. In the meantime 90 of the 193 UN member states have recognized Kosovo.

Independence led to diverging developments in the majority Serbian-populated areas. Whereas the geographically integrated communities of southern Kosovo accepted the *fait accompli*, the situation escalated in the north. Here, in the region directly adjoining Serbia, violent unrest ensued. Customs posts and border crossings were burned down, courts closed, and railway lines blockaded. The resulting legal vacuum has to some extent been filled by parallel structures (see text box on p. 3) but also by local criminal activities.

¹ International Court of Justice: Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. Advisory Opinion. 22 July 2010.



EU Crisis Management

The European Union found itself facing a dilemma, as five of its 27 member states refused to recognize Kosovo (Greece, Romania, Slovakia, Spain, and Cyprus). This has implications for the EU approach to conflict transformation, which is based on the following elements:

Accession perspective | The perspective of membership for the Western Balkans announced at the 2003 Thessaloniki Summit has remained out of Kosovo's reach for lack of an EU-wide consensus. Although Kosovo recently received an EU visa liberalization roadmap, the prospects for a Stabilization and Association Agreement remain uncertain.

EULEX | EULEX is the largest CSDP mission, conceived to support the rule of law in Kosovo (courts, policing, and customs controls). But following the unilateral declaration of independence EULEX was forced to deploy on a "status neutral" basis with reference to UN Security Council Resolution 1244. This led to differences among the Mission's judges and prosecutors about whether to follow UN Security Council Resolution 1244 and UNMIK Regulations or instead to apply Kosovo's constitution and laws. EULEX quickly acquired a reputation as too large, too inefficient, and too expensive. Even political and diplomatic circles within the EU criticized its lack of success and procedural mistakes in dealing with organized crime (although

even within the EU such cases often drag on for years). Management errors and wrangling over powers and responsibilities complete the picture. The Mission was generally felt to lack coherence, which weakened its position vis-a-vis local institutions. In northern Kosovo, EULEX is unwelcome; it has little presence on the ground and is therefore ineffective.

EU Special Representative and Delegation | Initially the EU Special Representative (EUSR) was double-hatted, also serving as the International Civilian Representative (ICR). In recognition of the inherent conflict of goals between the two functions (with the ICR supposed to support independence and monitor the Ahtisaari Plan, the EUSR to remain "status-neutral") this connection was dissolved in mid-2011. Since then, the EUSR has headed the EU Delegation in Kosovo.

Dialog | Since 2010 the EU has been moderating a Dialog on "technical questions" between Pristina and Belgrade. By mid-2011 the two sides had agreed on reciprocal recognition of identity documents and vehicle registrations and the exchange of property ownership records. But the escalation in the north has put the Dialog and implementation of its results largely on ice.

Escalation in the North

In July 2011 the Kosovo government decided to impose regular customs duties on imports from Serbia. Although the two sides had agreed zero tariffs and customs duties, the arrangement had been practically worthless since independence because Serbia refused to recognize Kosovo's customs stamps. At the same time smuggling flourished in close connection with political networks, especially Serbian. On 25 July a Kosovo special police unit took over the northern border crossings at Jarinje (Gate 1) and Brnjak (Gate 31) in a surprise operation. Here customs checks had been conducted by EULEX and Kosovo Serb members of the Kosovo Police Force, who refused to implement Pristina's decision.

In response militant Serb groups quickly barricaded the main access roads and attacked the

EULEX Kosovo

Budget: € 580 million
(February 2008 – June 2012).

Personnel: approx. 1,600 international and 1,300 local staff (about 80 German police and 35 civilian experts).

Mandate: Monitoring, Mentoring, Advising (MMA) to support courts, police, and customs. Restricted executive responsibilities for public order and prosecution of organized and inter-ethnic crimes, war crimes, and corruption. (Council Joint Action 2008/124/CFSP of 4 January 2008).



border posts. A member of the special police unit was shot dead. KFOR placed the crossings under military control and closed them temporarily. In response Kosovo Serbs blockaded EULEX vehicles escorting Kosovan border police and customs officials, forcing EULEX to use helicopters instead. In November 2011 several German KFOR soldiers were shot and injured while attempting to clear Kosovo Serb barricades. Meanwhile, goods traffic continues to flow unhindered via side roads.

While the profits of smuggling are considerable, there is more at stake. Pristina fears that the EU might tolerate a creeping secession of the Serb north. The Kosovo Serbs, in turn, respond vehemently because they see the introduction of border controls and customs as the first step towards dissolving their parallel structures in Kosovo and imposing Pristina's authority.

Parallel structures in Kosovo

Institutions under Serbian law illegally maintained and expanded after 1999 in contravention of UN Security Council Resolution 1244:

1. Parallel structures of the Republic of Serbia

- Outposts of Belgrade ministries;
- Security organs (gendarmerie, interior ministry forces (MUP), intelligence services, civil protection corps);
- Customs and tax authorities;
- Postal services;
- Courts.

2. Municipal parallel structures

- Municipal administrations;
- Health and education institutions;
- Local water, sewage, electricity, and waste disposal utilities.

Serbia continues to hold the key to conflict resolution, through its great political and financial leverage over the Kosovo Serbs. Belgrade's financial transfers amount to about € 250 million annually, which is more than Serbia receives in grants from the EU. The parallel structures are by far the largest employer in northern Kosovo, where average wages are higher and electricity and public services cheaper than in rural Serbia.

Public Diplomacy

After 2008, European policy concentrated on offering Serbia a route to accept the independence of Kosovo without losing face, through the offer of future EU membership. Since December 2009 Serbian citizens have been able to enter the EU without visas. After the extradition of the last two prominent war criminals to the International Tribunal in The Hague in mid-2011, candidate status for Serbia appeared to be on the cards.

However, the Serbian government demonstratively upheld its claim to Kosovo and signaled that it was time to negotiate a partition. To Pristina's great irritation these notions were taken up by a number of European political analysts, deepening its fear that the EU might stand by and permit a gradual secession of the north and strengthening its willingness to take action on its own account.

The lack of consensus within the EU increased the importance of the diplomacy of those states that have recognized Kosovo. The foreign ministers of Germany, France, and the United Kingdom insisted that Serbia's path into the EU depended on convincing the 22 member states that had recognized Kosovo that it was ready for membership. In light of the Serb strategy and the attacks on German KFOR personnel in northern Kosovo, the German government decided at the end of 2011 not to approve candidate status until Belgrade resumed the Dialog with Kosovo agreed on key questions of good neighborly relations, began supporting EULEX in northern Kosovo, and dismantled the parallel structures.

This injected new movement into the EU-moderated Dialog, and in February 2012 agreement was reached on (i) customs stamps bearing the inscription "Kosovo Customs," (ii) joint "integrated" border management, and (iii) designation of Kosovo in regional fora as "Kosovo*"². On 1 March 2012, the EU heads of state and government granted Serbia candidate status without setting a start date for negotiations. Skepticism remains whether the results to date really represent a break-through as Serbia has yet to dismantle the parallel structures in the north and lend support to EULEX.

² The asterisk is explained in a footnote: "This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence."

Political Priorities

After the Serbian parliamentary and presidential elections in May 2012, clear political messages will be decisive in order to avoid raising false expectations in the Serbian public and political class – and in Kosovo too. The borders in the Balkans are drawn, and there will be no partition of Kosovo. Public speculation about border changes and territory swaps is counterproductive and hinders the stabilization of the whole region.

Dismantling the parallel structures requires a plan that differentiates between illegal state structures and communal ones that can largely be legalized in the scope of extensive minority rights. A sustainable solution will have to include the Kosovo Serbs, but robust measures to ensure a secure environment without blockades cannot be excluded.

The restructuring and downsizing of EULEX scheduled for mid-2012 offers opportunities for greater coherence and more effective conflict management. But many of the Mission's problems are political in nature and cannot be solved by EULEX alone. Until the EU can develop a united stance on Kosovo, diplomacy by the recognizing member states, including Germany, will be crucial in reaching the next political milestones.

The most important milestones for Belgrade are:

- *Dismantling Serbian state structures in Kosovo, including those of ministries, state security organizations, and courts;*
- *Constructive continuation of the Dialog and rapid implementation of its results;*
- *Firm control of the shared (tax and customs) border to prevent smuggling;*
- *Positive influence on the Kosovo Serbs.*

The most important milestones for Pristina are:

- *Renouncement of unilateral action and restraint in public statements;*
- *Constructive continuation of the Dialog and rapid implementation of its results;*
- *Consistent work on realistic offers to the Kosovo Serbs, modeled on functioning autonomy arrangements in the south.*

The most important milestones for EULEX are:

- *Focus on functions suited to implementing the mandate effectively and gaining credibility through concrete successes;*
- *Strong political backing from Brussels and the EU member states;*
- *Close integration in the EU family on the ground under the EUSR.*

EULEX is no exception to the rule that missions are no substitute for politics. Missions depend on a conducive policy environment in which they can pursue a coherent and assertive comprehensive approach. Twenty years after the violent disintegration of Yugoslavia began, political normality remains the most important waypoint for Serbia and Kosovo on their path to Europe.

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