

The EU as a Peacebuilder in Kosovo

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Civil Society Dialogue Network

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1. Introduction

The proposal for supervised independence for Kosovo presented by United Nations Special Envoy Martti Ahtisaari at the Kosovo status process negotiations foresaw a large role for the European Union (EU). The assumption was that the prospect of enlargement would act as an incentive to the fledgling state of Kosovo and the Republic of Serbia to normalise relations, while putting the EU in a position to exert pressure to achieve this. However, Serbia and the United Nations Security Council did not (unanimously) approve the 'Ahtisaari Plan'. In the end, Kosovo declared independence unilaterally under the auspices of the plan and its international supporters. This led to division among EU Member States, with 22 Member States recognising and 5 not recognising the new Republic of Kosovo.¹

Kosovo presents a major challenge to the EU and its enlargement and foreign policy. However, the biggest challenges are those within Kosovo itself. Kosovo's transition is not progressing, despite large investments by the international community and the EU.

This policy analysis looks into the role of the EU in peacebuilding in Kosovo. To assess the EU's role, one has to start with the context.² Only after identifying the main obstacles to sustainable peace, can we assess whether EU instruments are capable of addressing these issues effectively. The next section identifies the four main obstacles to sustainable peace in Kosovo. These obstacles are strongly connected and mutually reinforcing. This is followed by a discussion of EU instruments in Kosovo and how these instruments contribute to solving Kosovo's problems. Finally, some conclusions are drawn on the suitability and effectiveness of the different EU instruments and roles, and some recommendations made as to how the EU can strengthen its peacebuilding capacity in Kosovo.

This paper is based largely on informal meetings with different civil society and international actors in Kosovo³, backed by available literature on peacebuilding in Kosovo.

2. Challenges to Peacebuilding in Kosovo

The economic situation in Kosovo is bad.⁴ Combined with the youngest population in Europe, this is a major destabilising factor. Peace needs development. It is not surprising that unemployment and poverty ranked highest as problems faced by Kosovo in a recent public opinion poll.⁵ However, these are the symptoms, not the cause; there are some underlying problems that undermine the potential for economic development in Kosovo. Without

¹ Cyprus, Greece, Romania, Slovakia and Spain have not recognised Kosovo as an independent state.

² OECD Guideline 1: 'Take context as a starting point', see: Organisation for Economic Co-operation and Development (OECD), *Principles for good international engagement in fragile states & situations*, April 2007, [online], accessed 30 May 2011, available at http://www.oecd.org/site/0,3407,en_21571361_42277499_1_1_1_1_1_1,00.html

³ The information and opinions gathered during meetings was not intended specifically for this paper, hence, no citations will be made of these personal communications.

⁴ Forty-five per cent of the population in Kosovo live below the poverty line. For more information on Kosovo's economy, see: World Bank, *Kosovo: Unlocking Growth Potential: Strategies, Policies, Actions*, A Country Economic Memorandum, 29 April 2010, World Bank Report No. 53185-XK, (Washington, DC: World Bank, 2010), accessed 7 June 2011, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2010/05/27/000333038_20100527043201/Rend ered/PDF/531850ESW0P112101Official0Use0Only1.pdf

⁵ United Nations Development Programme, *UNDP Public Pulse Report No. 1*, (Pristina: UNDP and USAID, 2011), [online], accessed 25 May 2011, available at <http://www.ks.undp.org/repository/docs/public-puls-english.pdf>

addressing these problems, economic growth will only benefit part of the population, thus not leading to sustainable peace. Without wanting to disregard the urgent need for economic growth, from a peacebuilding perspective, four challenges stand out: (i) the gap between the state and its citizens, (ii) lack of rule of law, (iii) interethnic mistrust and segregation, most specifically between Serbs and Albanians, and (iv) the relationship between Kosovo and Serbia. Without significant progress in these four areas, Kosovo will not succeed in coming closer to EU accession.

Gap between State and Citizens

The Kosovo Government is not accountable to the people, nor is it working in the service of the people. While Kosovar legislation is pronouncing democratic procedures, many aspects of the political system do not work democratically. Albanian political parties, mostly tracing their origins to the resistance movements of the nineties, function as a clientalistic network: jobs, tenders and opportunities are provided based on loyalties.⁶ The same mechanisms of clientalism are present in Serbian political parties and those of other communities. A high position in government often means access to money and jobs that can be distributed to others. Links between politics and organised crime persist, although the focus seems to have moved from activities like the drug trade and human trafficking to white-collar crimes like embezzling government funds.⁷ In view of this, it is not surprising that trends related to trust in the government are negative. Satisfaction with the current government is very low and dissatisfaction with the political direction of the country is very high. The willingness to protest for economic or political reasons has increased.⁸

Specific mention needs to be made of the Serb minority in Kosovo, and a distinction needs to be made between the Serbs south of the river Ibar and those north of the river. Overall, Serb trust in the Kosovo Government is lower than that of Albanian citizens.⁹ South of the river Ibar, where the Kosovo Government has effective control, Serbs are slowly becoming more open to Kosovo state institutions. Some have actually started to participate in the Kosovo state through the decentralisation process. But new Serb majority municipalities may easily become miniature images of the central state, with their own accountability problems and clientalistic relations. The situation in North Kosovo is completely different. In North Kosovo, sovereignty of the Kosovo state is lacking. Belgrade, Pristina, local leaders, the United Nations Interim

⁶ Factors contributing to the gap between the state and its citizens are partly historical. Kosovo has a long history of the coexistence of formal and informal rule, dating back to the Ottoman Empire and the Yugoslav period. Traditional informal rule was based on the so-called *kanuns* and was part of clan-based relations. Socialist Yugoslav's closed system only strengthened the tradition of not being accountable to citizens and of not trusting the formal government. The war fortified certain clans and increased loyalties, with the Kosovo Liberation Army (KLA) becoming almost untouchable. Not only is a culture of democratic governance missing, but citizens are also not in the habit of expecting or demanding accountability. Kosovo in 1999 was not a very favourable environment for an external intervention aiming to build a functioning democratic society. For more information see: Ivan Briscoe and Megan Price, *Kosovo's New Map of Power: Governance and Crime in the Wake of Independence*, (The Hague: Clingendael, 2011), accessed 7 June 2011, available at http://www.clingendael.nl/publications/2011/20110503_cru_publication_ibriscoe.pdf

⁷ Briscoe and Price, *Kosovo's New Map of Power: Governance and Crime in the Wake of Independence*.

⁸ A recent public opinion poll measured satisfaction with the government at 25 per cent, the lowest point since the declaration of independence, and satisfaction with the political direction of the country at 15 per cent (United Nations Development Programme, *UNDP Public Pulse Report No. 1*).

⁹ See: United Nations Development Programme, *UNDP Public Pulse Report No. 1*. Serbs in Kosovo have all of the same reasons that the other inhabitants have for not trusting the state, but they also have additional reasons: their wartime experience, which is different from their Albanian neighbours, the fact that the Kosovo Liberation Army leaders are ruling the country, and the experience of suddenly being a minority.

Administration Mission in Kosovo (UNMIK) and European Union Rule of Law Mission (EULEX) all have, or claim, a certain level of authority. For citizens, this means that no single authority is accountable.

There is also tension between external intervention and democracy strengthening. Over the past 12 years, authorities in Kosovo have been primarily accountable to the international community, instead of their own community. Up until today, international actors have had a mandate to overrule decisions of the Kosovo Government, or at least to influence them substantially, often from behind the scenes. Financial revenue from international assistance is core to Kosovo's budget. The prospect of EU accession strengthens this: the Kosovo Government is more meticulously reporting to the European Union about its policy intentions than to its own population. The EU uses the preconditions for accession as a policy tool to push for certain reforms, even if they are not popular with the broader community (for example, reforms related to minority rights), reinforcing the lack of trust between citizens and the state.¹⁰

The gap between state and citizens is a major obstacle to the formation of a functioning democratic state and one of the key factors in state fragility. In other words, this gap is a risk to stability in Kosovo. Improving relations and accountability between the state and its citizens based on democratic values of citizenship and meritocracy is a precondition for sustainable peace and EU integration. A major prerequisite for this is a functioning system of rule of law.

Rule of Law

Rule of law is not guaranteed in Kosovo. Despite claims by the Kosovo Government that the fight against corruption is a priority, rule of law has limited effect and hardly touches those who are powerful and are within the government. The judiciary is subject to political interference, but also lacks the capacity and staff to function well. The backlog of court cases is enormous.¹¹ The Kosovo Police force functions relatively well, but Kosovo Serbs have a low level of trust in the Kosovo Police.¹²

The North has specific problems regarding rule of law: lack of clarity about the system on all sides makes it basically a lawless entity, or at least a place where more than one system of law operates. Local leaders, who are commonly believed to have criminal ties, are free to do as they like. This has resulted in a climate of repression of Serbs engaging in dialogue with Kosovo Albanians or cooperating with Kosovo institutions.¹³ Members of the Serbian Kosovo Police working in North Kosovo report to Pristina (through EULEX), and supposedly to Belgrade as well. Judges appointed by the Kosovo Government are not welcome. EULEX

¹⁰ See: Briscoe and Price, *Kosovo's New Map of Power: Governance and Crime in the Wake of Independence*; and Lucia Montanero, *Kosovo's State Building Conundrum: Addressing Fragility in a Contested State*, (Madrid: FRIDE, 2009), accessed 7 June 2011, available at: <http://www.fride.org/publication/694/the-kosovo-statebuilding-conundrum:-addressing-fragility-in-a-contested-state>

¹¹ For more information about rule of law see: International Crisis Group, *Rule of Law in Independent Kosovo*, Europe Report No.204, (Pristina: International Crisis Group, 2010), accessed 7 June 2011, available at <http://www.crisisgroup.org/~/media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx>

¹² United Nations Development Programme, *UNDP Public Pulse Report No. 1*.

¹³ In 2010, there were assaults on several Serb dissenters, including a prominent civil society activist and a local politician working in the Kosovo system. See: United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 12 June 2008 (S/2008/354), [online], accessed 30 May 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/377/90/PDF/N0837790.pdf?OpenElement>

judges are the only formal court authority in North Kosovo, and there are insufficient judges to make serious progress in addressing the backlog of cases. Serbian judges also hold trials in private apartments, but Serbian court decisions cannot be enforced. Among Kosovo Albanians, frustration is high with the existence of a parallel system, the lack of progress in establishing Kosovar structures and the failure to arrest criminals in the North.¹⁴

EU accession is conditional upon having a functioning rule of law system. Problems with rule of law are undermining trust in the Kosovo Government, which, as stated above, is at an all time low. Because of the specific mandate of EULEX regarding rule of law, the EU is also losing credibility. To turn the tide, both in rule of law and public trust in rule of law, the state and the EU need to take urgent steps to address high-level white-collar crime and organised crime in North Kosovo.

Interethnic Relations

Interethnic relations and respect for minority rights continues to be of major concern. Although large-scale violence has not occurred since 2004, interethnic incidents and minority rights violations continue to take place, mostly along the Ibar river.¹⁵ Many displaced persons have not returned to their place of origin.¹⁶ Serbs and Albanians live mostly segregated, and the majority of Albanians and Serbs do not want to live in the same street as the other ethnic group.¹⁷ Decentralisation has been an important step forward in the political participation of Serbs. South of the Ibar river there are Serbs participating in Kosovo institutions, including the Government.¹⁸ However, horizontal relations between Serbs and Albanians are still practically non-existent, and among Kosovo Albanians the perception exists that decentralisation has only benefitted the Serb community. Around the Ibar river, the potential for engagement between ethnic groups is limited: the continued political pressure is keeping tensions high. Serbs in North Kosovo do not 'need' to engage with Kosovo institutions, and Serbs that do interact with Albanians are under threat.¹⁹

Despite positive trends in terms of Serb participation in the south, many issues still affect relations between the Albanian majority government and Serbs. Language usage, education, telecommunications and the issuing of number plates are just some of the issues. Solving these issues is complicated by the presence of Serbia-supported parallel municipalities, which provide healthcare and education.²⁰ To sustainably improve Kosovo Government-Serb minority relations, the Government needs to meaningfully engage with citizens, which is a fundamental weakness of the Government. Both in the relationship between the Government

¹⁴ International Crisis Group, *Rule of Law in Independent Kosovo*.

¹⁵ United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*.

¹⁶ According to the UNHCR almost 230.000 persons. See UNHCR, [online] accessed 30 June 2011, available at <http://www.unhcr.org/pages/49e45b906.html>,

¹⁷ United Nations Development Programme, *UNDP Public Pulse Report No. 1*.

¹⁸ The Serbian Liberal Party is part of the current coalition government and parliament. Another Serbian party, the United Serbian List, also participates in the parliament.

¹⁹ United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*.

²⁰ International Crisis Group, *Serb Integration in Kosovo: Taking the Plunge*, Europe Report No.200, (Pristina: International Crisis Group, 2009), accessed 7 June 2011, available at http://www.crisisgroup.org/~media/Files/europe/200_serb_integration_in_kosovo_taking_the_plunge.ashx

and the Serb minority, and between Kosovo Serbs and Albanians, the legacy of the war is a major obstacle. Problems such as unaddressed war crimes, missing persons and conflict related property disputes affect the relations between Serbs and Albanians in Kosovo.²¹ Kosovo is lagging far behind other Western Balkan countries when it comes to dealing with the past.

Kosovo-Serbia Relations

The fraught Belgrade-Pristina relationship affects all of the issues described above. Serbia has not recognised Kosovo and exerts diplomatic pressure to convince other states not to recognise Kosovo. The persistent external threat to Kosovo's sovereignty affects the effectiveness of the international community (including the European Union), as well as the strength of civil society to demand more accountability from its Government. The disagreement over status is shaping both Serbian and Kosovar policies regarding the Serb minority in Kosovo. Instead of jointly working to improve living conditions and the rule of law in North Kosovo, both governments focus on maintaining or obtaining influence. In this context, initiating dealing with the past is complicated, because the past is still the present.

The European Union has successfully managed to convince authorities in Kosovo and Serbia to engage in a dialogue, which started in March 2011. This dialogue is intended to focus only on technical issues, the solution of which would improve the lives of people. However, in public discourse, Pristina and Belgrade question the relevance of the dialogue and focus on the differences in their positions on status. Thus, only a few months after the start of the dialogue, certain Serb officials are suggesting the partition of Kosovo, while Albanian politicians underline the territorial integrity of Kosovo or, as a sidestep, mention the option of a land swap, which would make the south Serbian Preshevo valley part of Kosovo. The focus on people's lives has, at least in public statements, mostly disappeared. Despite this, according to the media, a first agreement is near regarding freedom of movement.²²

The sustainable improvement of Pristina-Belgrade relations will take a long time and demand a lot of goodwill and effort on all sides. The EU enlargement process and international pressure, also from the Americans, is the only reason why Pristina and Belgrade started talking, and will continue to be necessary to yield results.

3. The EU in Kosovo

The European Union has different roles and tasks in Kosovo. Kosovo is a potential candidate country for EU accession and, thus, part of the enlargement process. The European Union External Action Service is facilitating a dialogue between Kosovo and Serbia. The EU Rule of Law Mission (EULEX) is the largest Common Security and Defence Policy mission so far with an extensive mandate including executive tasks. The European Union Special Representative (EUSR), who was until recently the same person as the International Civilian Representative,

²¹ Illustrated by the Kosovo Legislative Assembly Session (19 May 2011) on voting for an investigation into the mass murder at Dubrava prison. Serb MPs left this parliament session, see: Newsvine.com, *Kosovo Remembers Dubrava Prison Massacre* (24 May 2011), [online], accessed 30 May 2011, available at <http://kosova.newsvine.com/news/2011/05/24/6706603-kosovo-remembers-dubrava-prison-massacre>

²² See Kosovo and Serbia media in early 2011, among others: Blic Online, *Serbian Authorities Change Tactic: Partition of Kosovo not Forbidden Topic*, 26 May 2011, [online], accessed 30 May 2011, available at <http://english.blic.rs/News/7683/Partition-of-Kosovo-not-forbidden-topic>

has been monitoring, advising and, behind the scenes, pressuring the Kosovo Government in political processes.

Although five EU Member States have not recognised Kosovo, the European Union in its different capacities is very active in Kosovo. In this section, the different EU interventions are described with special attention to the effectiveness of the EU in overcoming the challenges identified in the previous section. The EU's performance in Kosovo is mixed. Much attention has been paid to the rule of law and the relationship between Serbia and Kosovo. Minority rights, specifically of the Serb community, are well supported. The EU does not seem to be focused on reconciliation and building relations between Serbs and Albanians in Kosovo, strengthening citizen-state interactions, or interacting itself with Kosovo citizens. This is visible in EULEX and in the EU mediated dialogue. It is argued in this section that the lack of a unified position on the status of Kosovo among EU Member States is damaging EU effectiveness. The enlargement process cannot be officially started until the EU reaches consensus on Kosovo's status. Moreover, each decision on, and implementation of, EU foreign policy regarding Kosovo is hampered because Kosovo's status is always in the background. This is undermining the credibility of the EU in Kosovo.

Enlargement

Stabilisation and Association Process

The European Commission, on its website, describes enlargement as the most powerful policy tool the EU has: 'Enlargement is a carefully managed process which helps the transformation of the countries involved, extending peace, stability, prosperity, democracy, human rights and the rule of law across Europe'.²³ A Stabilisation and Association Process (SAP) has been developed specifically for the Western Balkans. The Stabilisation and Association Process has three aims: (i) to stabilise the countries involved and assist a swift transition to a market economy, (ii) promote regional cooperation, and (iii) confirm the prospect of EU accession. It is mixture of trade concessions, economic and financial assistance, and agreements. The annual progress report monitors progress towards EU accession. Since October 2009, the European Union and the Government of Kosovo have been participating in the SAP dialogue meetings, despite the fact that Kosovo cannot become an official candidate country until EU unanimity is reached regarding its status. European Commission representatives and representatives of the Government of Kosovo meet to monitor and discuss reforms and the EU integration process, based on the priorities identified in the European Partnership. Among the ten priorities identified are the following, which overlap with the challenges defined in the previous section:²⁴

- Constructive cooperation on matters relating to Serbia
- Full respect for rule of law, human rights and protection of minorities and a policy of zero tolerance against corruption, organised crime and financial crime

²³ European Commission Liaison Office to Kosovo, *Understanding Enlargement*, [online], accessed 7 June 2011, available at <http://www.delprn.ec.europa.eu/?cid=2.24>

²⁴ European Council, *Council Decision of 18 February 2008 on the Principles, Priorities and Conditions Contained in the European Partnership with Serbia including Kosovo as Defined by United Nations Security Council Resolution 1244 of 10 June 1999 and Repealing Decision 2006/56/EC, 2008/213/EC*, [online], accessed 30 May 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0046:01:en:HTML>

- The creation of a climate for reconciliation, inter-ethnic tolerance and sustainable multi-ethnicity that is conducive to the return of displaced persons
- Democratic governance and the delivery of public services to all of the people of Kosovo, and the establishment of a professional, accountable, accessible and representative public administration free from undue political interference.

The SAP dialogue addresses an impressive number of issues, resulting in a large list of actions to be taken by the Government of Kosovo. Most actions involve laws to be approved, strategies and institutional changes to be made.²⁵ The 2010 EU progress report on Kosovo referred to many challenges as having 'no or limited progress'.²⁶ The Kosovo Government also makes its own action plan based on the priorities defined by the Council, the challenges identified in the progress report, and its own priorities.²⁷

In the SAP dialogue process, much attention is paid to rule of law. But reports of the SAP meetings do have a strange ring: the Thaçi Government stresses how much it is doing to fight corruption, while the EU emphasises that more should be done. The fact that the Thaçi Government itself is supposed to be implicated in corruption is not mentioned. In addition, a lot of attention is paid to the position of minorities, and specifically the Serb minority, but this attention focuses on the protection of the rights of the Serb minority, not on reconciliation or interaction between Serb and Albanian citizens in Kosovo.²⁸ Although accountable and democratic governance is a key priority, this is translated mostly into institutional measures, and not into actual interaction with citizens. The troubled relationship with Serbia is hardly mentioned, but resonates strongly in other aspects of EU-Kosovo relations.

Assistance

Kosovo is receiving different forms of assistance. Most relevant to mention here is the Instrument for Pre-accession Assistance (IPA). Through the IPA, the European Commission supports progress on political criteria, economic criteria, European Standards (all three under transition assistance and institution building) and cross-border co-operation. Priorities under political criteria are performance of public administration, reform of local self-government, rule of law, human rights, the protection of Serb and other minorities, and the role of civil society. The IPA priorities specifically mention the need for dialogue with citizens, both under local self-government and civil society. Civil society is also mentioned as a crosscutting issue to be reflected in all activities.²⁹ However, an overview of IPA supported projects in 2010 shows only

²⁵ European Commission Liaison Office for Kosovo, *SAP Dialogue Conclusions: 1st SAPD Plenary Meeting*, 6 July 2010, [online], accessed 30 May 2011, available at <http://www.delprn.ec.europa.eu/index.php?cid=2,169>

²⁶ European Commission, *Kosovo 2010 Progress Report*, COM(2010)660, Brussels, accessed 7 June 2011, available at http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf

²⁷ See: Republic of Kosovo, *Action Plan 2011 for the Implementation of the European Partnership for Kosovo*, [online], accessed 30 May 2011, available at <http://mei-ks.net/?page=2,119>

²⁸ See: Republic of Kosovo, *Action Plan 2011 for the Implementation of the European Partnership for Kosovo*; and European Commission Liaison Office for Kosovo, *SAP Dialogue Conclusions: 1st SAPD Plenary Meeting*, 6 July 2010, [online], accessed 30 May 2011, available at <http://www.delprn.ec.europa.eu/index.php?cid=2,169>. The progress report does pay specific attention to this: 'There has been little progress towards deeper reconciliation between communities. The status of minority communities remains protected and guaranteed by law. In general, inter-ethnic incidents have been decreasing and limited to sensitive areas. [...] Integrating communities requires more focus and more political commitment.' European Commission, *Kosovo 2010 Progress Report*.

²⁹ IPA priorities, see: European Commission, *Commission Decision of 2009 on a Multi-annual Indicative Planning Document (MIPD) 2009-2011 for Kosovo (under UNSCR 1244/99)*, [online], accessed 29 May 2011, available at http://ec.europa.eu/enlargement/pdf/mipd_kosovo_2009_2011_en.pdf

limited civil society involvement. The IPA focuses mainly on institutions; it does not, for example, require consultations with citizens on the implementation of particular projects.³⁰

The European Instrument for Democracy and Human Rights (EIDHR) Country-based Support Scheme strengthens the role of civil society in promoting democracy and human rights. Projects supported in Kosovo vary from support for the human rights of specific groups, to Kosovo-wide media programmes. The programme does not seem to have a strong focus.³¹

Visa Liberalisation

The European Commission has repeatedly stressed the accessibility of visa liberalisation for Kosovo.³² Visa liberalisation is discussed in the SAP dialogue meetings, which has identified many measures to be taken by the Kosovo Government.³³ However, no visa roadmap has been developed. This has led Kosovo politicians to speculate that the EU is applying double standards, even assuming that, technically, Kosovo is ready.³⁴ This point of view is supported by the majority of the public in Kosovo, who believe the five non-recognising countries are the reason why Kosovo does not have a visa liberalisation process.³⁵ To strengthen state-public interaction and accountability on this issue, the EU should develop and initiate a publicly accessible visa roadmap for Kosovo. This will provide citizens with the opportunity to push for progress, thus strengthening the accountability of the state on a topic that is actually tangible to its citizens. Instead, the tone between the Commission and the Kosovo Government seems to have hardened, with Kosovo Government representatives blaming the EU for not having a visa liberalisation process and the EU more strongly stating that Kosovo needs to do its homework.

European Union Special Representative

The mandate of the European Union Special Representation (EUSR) is to offer advice and support in relation to Kosovo's political process and human rights situation, and provide political leadership and coordination regarding the EU's activities in Kosovo.³⁶

³⁰ IPA projects 2010, see: European Commission Liaison Office for Kosovo, *IPA Projects 2010*, [online], accessed 23 May 2011, available at <http://www.delpn.ec.europa.eu/index.php?cid=2,94>

³¹ European Commission Liaison Office for Kosovo, *European Instrument for Democracy and Human Rights*, [online], accessed 25 May 2011, available at <http://www.delpn.ec.europa.eu/?cid=2,102>

³² For latest statement on this, see: European Commission, *Statement by President Barroso Following his Meeting with Hashim Thaçi, Prime Minister of Kosovo, Pristina*, Press Release, 20 May 2011, [online], accessed 7 June 2011, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/360>; also, for example, see: Balkan Insight, *Kosovo Ready for Visa-Free Regime* (29 November 2010), [online], accessed 29 May 2011, available at <http://www.balkaninsight.com/en/article/kosovo-government-criteria-s-for-visa-liberalisation-are-met>

³³ European Commission, *Stabilisation-Association Process Dialogue, Justice, Freedom and Security (JFS) Subcommittee Meeting 8–10 February 2011 Conclusions*, [online], available at http://www.delpn.ec.europa.eu/repository/docs/110413_sapd_jls_subcommittee_conclusions.pdf

³⁴ SE Times.com, *Citaku Accuses EC of Applying Double Standards against Kosovo* (24 May 2011), [online], accessed 30 May 2011, available at http://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2011/05/24/nb-10

³⁵ United Nations Development Programme, *UNDP Public Pulse Report No. 1*; the perceptions of the public are strengthened by the political concerns of some EU Member States such as Belgium and the Netherlands regarding immigration from the region and overt opposition to the start of a visa liberalisation process.

³⁶ Mandate of the EUSR, see: European Council, *Council Decision 2011/270/CFSP of 5 May 2011, Appointing the European Union Special Representative in Kosovo*, Official Journal of the European Union, L 119/12, [online], accessed 30 May 2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:119:0012:0014:EN:PDF>. 'In order to achieve the policy objectives, the mandate of the EUSR shall be to: (a) offer the Union's advice and support in the political process;

When the first EUSR, Mr Pieter Feith, was appointed, he was also International Civilian Representative (ICR) with a mandate to oversee the implementation of the Ahtisaari Plan. This double mandate has led to some strange scenes of Mr Feith switching roles in the middle of a conversation, as the EUSR is status neutral and the ICR status positive. Mr Feith's double role also had advantages, as it gave Mr Feith extra leverage with the Kosovo authorities. However, coordination with the other EU institutions was not always easy. Recently, the EU Council decided not to extend the mandate of Mr Feith. A temporary EUSR has been appointed to prepare the ground for the new structure of EU foreign policy.³⁷ The process of first appointing a temporary EUSR was supposedly the result of disagreement on changes to the mandate of the EUSR.³⁸

As most of the previous EUSR's work took place behind the scenes, it is difficult to assess his effectiveness. Mr Feith was mostly discrete and diplomatic in his open statements, which supported the impression that the EU is more supportive of Kosovo's current leaders than democratic processes. A future EUSR could, by being more openly critical, but without abandoning silent diplomacy, change this impression.³⁹

The de facto separation of roles between the EUSR and ICR since the beginning of May 2011 has again undermined the credibility and power of the EU in Kosovo. A new attempt will be made by the EU Council to agree on the mandate of the EUSR. In summary, the disagreement within the EU on the status of Kosovo, combined with the complicated decision-making procedures in the EU, affect both the effectiveness of the EU's efforts and its legitimacy among the citizens of Kosovo.

EULEX

EULEX is the largest EU Common Security and Defence Policy mission to date,⁴⁰ with a mandate to monitor, mentor and advise the Kosovo Government on customs, police and justice. EULEX is also mandated to perform certain executive tasks.⁴¹ The EULEX justice

(b) promote overall Union political coordination in Kosovo; c) provide local political guidance to the Head of the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO), including on the political aspects of issues relating to executive responsibilities; (d) ensure consistency and coherence of Union action towards the public. The EUSR spokesperson shall be the main Union point of contact for Kosovo media on Common Foreign and Security Policy/Common Security and Defence Policy (CFSP/CSDP) issues. All press and public information activities shall be conducted in close and continued coordination with the HR spokesperson/Council Secretariat Press Office; (e) contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo, including with regard to women and children, in accordance with Union human rights policy and Union Guidelines on Human Rights.'

³⁷ This is according to the Lisbon Treaty. The temporary EUSR appointed is Mr Gentilini.

³⁸ Some Member States, most notably the United Kingdom, wanted to adjust the mandate to make it less status neutral, but the non-recognising countries, most strongly Cyprus and Romania, opposed this. No agreement was reached, thus postponing the definitive appointment. The result of this is a temporary and less powerful EUSR.

³⁹ This conclusion is based on different discussions, both with diplomats and civil society, in May 2010.

⁴⁰ '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 recognised standards and European best practices. EULEX KOSOVO, in full cooperation with the European Commission Assistance Programmes, shall fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.' Council of the European Union, *Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, OJ 2008 L 42, Article 2, available at http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf.

⁴¹ Relevant tasks as described in the Joint Action: 'b) 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

component is most active in executive tasks. Trials that are sensitive in the area of organised crimes, corruption or war crimes are tried by a panel of EULEX judges, or a mixed (local-international) team of judges. The main EULEX prosecutor, Johannes van Vreeswijk, has the authority to independently launch investigations. In spring 2010, when several premises of high-level politicians were searched and, among others, Minister Fatmir Limaj was accused of corruption, van Vreeswijk was one of the most popular people in Kosovo.⁴² However, one year later, this investigation has still not led to a trial. Since then, the popularity of EULEX has decreased.⁴³ People feel that nothing is being done against corruption and against criminals in North Kosovo. After the arrest of some former Kosovo Liberation Army members for alleged war crimes, public opinion turned strongly against EULEX.

In North Kosovo, EULEX is working under a slightly different mandate. The UN Secretary General, Ban Ki Moon's, six-point plan foresees EULEX working under the umbrella of the UN Secretary General Special Representative in Kosovo in six fields related to Serb majority area's: police, courts, customs, transportation and infrastructure, boundaries, and cultural heritage.⁴⁴ In North Kosovo EULEX is status neutral, thus, reinforcing the division of North Kosovo, giving rise to resentment among Kosovo Albanians.⁴⁵

Not wanting to discredit the success of the separate EULEX actions, on the whole, there is little to be positive about. The overall rule of law situation has not improved and, in some ways, has even deteriorated.⁴⁶ EULEX does not enjoy the trust of the majority of the population and is increasingly discredited by Kosovo officials as well.⁴⁷ The main priorities should be to launch investigations against high-level politicians in the Kosovo Government and to arrests criminals in the North. Even people within EULEX, in informal discussions, have expressed their frustration and lack of understanding as to why no action is being taken in these areas. This shows an interesting aspect of this Rule of Law Mission: EULEX is supposed to 'assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability', but is in itself neither transparent nor accountable, at least not to the population of Kosovo. EULEX itself states that social accountability takes place through media and civil society, which receive information on

in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities; and (d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently'. Council of the European Union, *Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*.

⁴² Monsters and Critics, *Report: EULEX Pushes Removal of Ministers Suspected of Corruption*, 4 June 2010, [online], accessed 30 May 2011, available at http://www.monstersandcritics.com/news/europe/news/article_1560764.php/Report-Eulex-pushes-removal-of-ministers-suspected-of-corruption

⁴³ "EULEX is almost as unpopular as UNMIK just before the declaration of independence", personal communication with civil society activist, May 2011.

⁴⁴ United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*.

⁴⁵ Steven Blockmans, 'EU Enlargement as a Peacebuilding Tool', in Blockmans et al. (eds) *The European Union and Peacebuilding, Policy and Legal Aspects*, (The Hague: TMC Asser Press, 2010).

⁴⁶ International Crisis Group, *Rule of Law in Independent Kosovo*.

⁴⁷ Kosovo Online, *Kosovo Minister: God Save Us from EULEX*, (28 April 2011), [online], accessed 30 May 2011, available at <http://kosnews.wordpress.com/2011/04/28/kosovo-minister-god-save-us-from-eulex/>

EULEX actions.⁴⁸ However, this is not a two-way street. EULEX does not need to answer questions from Kosovars regarding its performance. The perception right now, not only from the outside, but also within EULEX, is that EULEX is subject to political interference, which undermines the EU rule of law and, thus, all that EULEX should stand for.⁴⁹

Dialogue

After the International Court of Justice Advisory Opinion on the declaration of independence of Kosovo,⁵⁰ and the subsequent resolution adopted at the United Nations General Assembly⁵¹, the European Union has adopted another role in Kosovo: that of mediator between Serbia and Kosovo.⁵² Talks were launched on the resolution of technical issues that could improve the lives of citizens. Due to a political crisis in Kosovo that lasted several months, these talks did not start soon after adoption of the resolution, and in the passing months the perception of these talks changed in Kosovo. At first, public opinion in Kosovo was triumphant about the fact that Serbia had to concede to EU pressure⁵³, but when the dialogue finally started in March 2011, it was perceived as a useless process that could only benefit Serbia.⁵⁴ This is not completely unfounded. Especially since the arrest of Ratko Mladic, it is not unlikely for Serbia to get EU candidate status this autumn. Several rounds of negotiations have taken place since the start of the dialogue on issues like freedom of movement, aviation, cadastre and telecommunications, but the attitude in the Kosovo media has not changed. Since the beginning, the Kosovo media and the movement-turned-party 'Vetëvendosje' have been advocating against the dialogue. That Kosovo itself has a lot to gain by having better relations with Serbia, and that, in the end, universal recognition will be dependent on its relations with Serbia, does not resonate among the public. Even Kosovo Albanian politicians, including the head of the Kosovo delegation, present the dialogue as something that needs to be done because of the European Union.⁵⁵ In the meantime, no information is available regarding the content of the discussions between the negotiations teams and the EU facilitator, Mr Robert Cooper. Mr Cooper is keeping silent. Popular support is absent and distrust, both of the capabilities of the Kosovo Government and of the motives of the European Union, overshadows the dialogue.

⁴⁸ EULEX, *EULEX Accountability*, [online], accessed 29 May 2011, available at <http://www.eulex-kosovo.eu/docs/Accountability/EULEX-Accountability-05.01.2010.pdf>

⁴⁹ Steven Blockmans, 'EU Enlargement as a Peacebuilding Tool'.

⁵⁰ International Court of Justice, *Accordance With International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *General List No. 141* (22 July 2010), [online], accessed 30 May 2011, available at <http://www.icj-cij.org/docket/files/141/15987.pdf>

⁵¹ United Nations General Assembly, *United Nations General Assembly Resolution A/RES/64/298*, 13 October 2010, [online], accessed 7 June 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/71/PDF/N0947971.pdf?OpenElement>

⁵² 'The EU is, therefore, ready to facilitate a process of dialogue between Pristina and Belgrade. This dialogue would be to promote cooperation, achieve progress on the path to Europe and improve the lives of the people. The process of dialogue in itself would be a factor for peace, security and stability in the region'. High Representative for Foreign Affairs and Security Policy, *Declaration by High Representative for Foreign Affairs and Security Policy Catherine Ashton on behalf of the European Union on the International Court of Justice Advisory Opinion on Kosovo*, 22 July 2010, Brussels, [online], available at http://www.europa-eu-un.org/articles/en/article_9973_en.htm

⁵³ Ian Bancroft, 'Kosovo and Serbia – What Sort of Talks? Kosovo will have to Curtail its Rhetoric on the Issue of Status and Recognition in Order for Talks with Serbia to Succeed', *Guardian.co.uk*, (26 September 2010), [online], accessed 7 June 2011, available at <http://www.guardian.co.uk/commentisfree/2010/sep/26/kosovo-serbia-talks>

⁵⁴ The Economist, *Kosovo's problems: Triple Whammy*, 21 March 2011, [online], accessed 30 May 2011, available at http://www.economist.com/blogs/easternapproaches/2011/03/kosovos_problems

⁵⁵ The Economist, *Kosovo's problems: Triple Whammy*.

4. Conclusions

Kosovo is facing four major peacebuilding challenges: the gap between the state and its citizens, the lack of rule of law, dire interethnic relations and the fraught relationship between Serbia and Kosovo. The European Union is active in all of these challenges. The biggest focus is on rule of law, but the relationship between Serbia-Kosovo is also receiving a lot of attention, at least since the beginning of the official dialogue. Minority rights are one of the key priorities in the EU Stabilisation and Association Process, and the EU is paying considerable attention to minority rights. However, support for reconciliation and building Serb-Albanian relations is limited.

Although not solely, the EU focuses on the state and its institutions in its diplomatic efforts and in its reform support. The strengthening of interaction between citizens and states does not receive sufficient support. Even though outside interventions have their limits, especially when it comes to legitimising a state in the eyes of its citizens, the EU could pay more attention to this. The different EU actors could also interact more with Kosovo citizens. Especially in the case of EULEX, but also in the dialogue, some form of accountability to Kosovo citizens is crucial.

EU efforts are hampered by disagreement about Kosovo's status. In some instances Kosovo policy has been exemplary in reaching a consensus when it seemed impossible (e.g., at the start of the EULEX mission, the UN resolution re the dialogue), but decision making within the EU has been complicated by lack of agreement (for example, the recent appointment of a temporary EUSR, the lack of action in the North and the lack of a visa liberalisation process). This is ironic in light of the EU facilitated dialogue. Serbia and Kosovo are supposed to be able to solve technical issues despite their disagreement over status, but the EU is not able to perform optimally and find solutions because of that same status issue.

In addition, EU instruments are undermining the strength of the state that it is helping to build in the following ways: (i) the Kosovo Government engages in solid dialogue with the EU, but less within its own parliament (good EU action plans, less policy discussions with parliament); (ii) EULEX's executive mandate allows the Kosovo Government to discard certain responsibilities; (iii) by not using the executive mandate when needed (e.g., in high-level corruption cases and with crime in the North), trust in state building in Kosovo has decreased; and (iv) by not being accountable to the people in Kosovo, EULEX is promoting double standards.

Through recent EUSR statements and EULEX's performance, the EU is signalling that it is more interested in propping up current leaders and stability than in promoting sustainable change in Kosovo. Again, this is not only prolonging the problem, it is exacerbating it – as the legitimacy of the state and of EU values decreases, the risk of destabilisation increases. In the context of the conflict, this could have repercussions for minorities.

For enlargement to have the intended effect, the EU needs to offer the prospect of an accountable and responsive state, or other benefits to citizens. A first step could be the formulation of a visa liberalisation roadmap, as well as stronger action against high-level corruption by EULEX.

The dialogue between Kosovo and Serbia is a major opportunity. Currently, however, the process is at risk of failure. Statements from both sides are increasingly nationalistic. Popular support is minimal, but is an essential precondition for success in negotiations. The EU needs

to continue to emphasise the intrinsic value of the dialogue: It does not offer a fast track to the EU, but is an important step towards sustainable development and peace in Kosovo and Serbia.

Within all described challenges, North Kosovo is the biggest challenge. So far, the EU has been reluctant to increase its role in the North. One might infer that, despite statements to the opposite, many in the international community are expecting the de facto division to stay and, thus, no longer see a need to invest energy in supporting potential steps forward. However, ignoring the needs and problems of the population in the North is not an option. Thus, a functioning system of rule of law in the North needs to be a priority of the EU, and specifically EULEX.

5. Recommendations

General recommendations

To the EU Member States:

- Agree on one EU policy towards Kosovo. Do not allow status disagreements to affect the peacebuilding effectiveness of the EU in Kosovo.
- Prioritise strengthening the effectiveness of EULEX in North Kosovo, the appointment of a new European Union Special Representative with political leverage, and agreement on an EU accession trajectory for Kosovo.

To the EU Member States and European Commission:

- Agree on a roadmap for visa liberalisation for Kosovo, which could include the steps that the EU and Kosovo have already agreed upon.

EU accountability and transparency

To the European Commission:

- Discuss the key priorities at each Stabilisation and Association Process dialogue session and start the EU annual progress report on Kosovo with these key priorities.

To EULEX:

- Hold a yearly hearing on the performance of EULEX in the Kosovo Parliament.

To all EU institutions:

- Be transparent towards the citizens of Kosovo; do not only exert quiet diplomatic pressure, be open when criticism is in order.

Strengthening the relationship between institutions and citizens

To the European Commission:

- Make some form of accountability or interaction with citizens a precondition for each IPA project.

- Support local (outside Pristina) non-governmental organisations in applying for European Commission grants.
- In the Stabilisation and Association Process, take into account (jointly with Kosovo authorities) accountability, public support and transparency when preparing policy measures.

To the European Commission and EULEX:

- Specifically support municipal level and participatory decision-making procedures. Pay special attention to minority participation, including in the newly formed municipalities.

Rule of law

To the EU Member States:

- Increase the operational capacity of EULEX by making funds and staff available for more judges and for the witness protection unit.

To EULEX:

- Prosecute criminals in North Kosovo. Start with those that do not have a very strong political affiliation. This will increase popular support for EULEX and create space for other arrests.
- Prioritise the prosecution of high-level corruption cases involving politicians.

Interethnic relations

To all EU institutions:

- Pay more attention to interethnic relations, not just minority rights. Increase financial and political support for dealing with the past.
- Be pragmatic and open in engagement with citizens in North Kosovo. Do not start with conditions and then engaged; first engage with citizens and later formulate conditions. The Dutch Embassy has a positive track record in northern Mitrovica, which could serve as a model for engaging with citizens.

To the EU Special Representative:

- Use diplomatic pressure to prevent the Kosovo Government from making quick fixes regarding the Serb minority (telecommunications, licence plates). Stimulate the Kosovo Government to engage with representatives from the Serb community on the local level before and during drafting and implementing policy measures related to them.

To the European Commission:

- Stimulate engagement between Serbs and Albanians and other minorities. Reward joint projects by making extra funding available.

- Stimulate a consortia of civil society to develop joint proposals for improving relations between Serbs and Albanians (similar to funding provided for the peace processes in the Nagorno-Karabakh region).

To EULEX:

- Ensure that the EULEX police take a community approach in the North that enables them to engage with people and politicians, independent of status.

Relations with Serbia

To the European External Action Service (EEAS):

- Continue to facilitate and promote dialogue between Kosovo and Serbia and engage in discussions about this dialogue. Emphasise that better relations between Serbia and Kosovo are good for Serbia and Kosovo, not primarily for the EU. Make it clear that good relations with neighbouring countries is a European value and a precondition for accession.
- Stimulate the negotiators in Serbia and Kosovo to engage with citizens and to consult those that directly need to benefit from the technical solutions discussed.
- Continue to exert political pressure on Serbia for a constructive attitude regarding the Serb minority in Kosovo, rule of law in North Kosovo and participation in regional cooperation forums.
- Continue to exert political pressure for a pragmatic attitude towards rule of law in North Kosovo and for tangible results in the dialogue before the end of 2011.

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