

THE ROLE OF THE EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO EULEX IN THE SECURITY DYNAMICS IN THE REGION

Following the declaration of Kosovo's independence, The European Union Rule of Law Mission in Kosovo – EULEX – has been deployed under the European Security and Defence Policy (ESDP). EULEX mission, as one of the largest ESDP Missions, has induced considerable academic and policy debate within political science and security studies, as well.

The mission as such is characterised with highly complex political state of affairs. Consequently, this plethora of the mission's complexity has resulted first of all in a number of difficulties, initially in its deployment then it was followed by evident inconsistencies in its profile within the CSDP framework. Nonetheless, from the security point of view, the paper tends to underline the importance of the EULEX Mission as an ultimate regional stability and security factor.

Given that, not only Kosovo but all Western Balkan countries aspire European Integration, the EU perspective should not to be perceived only as a diplomatic and rhetorical discourse; from this end, a stable Kosovo would ultimately mean a stable region. Thus, taking into consideration EU's increased involvement in providing security as derives from CSDP, the paper tries to highlight the importance of the successful implementation of EULEX Mission by employing the Regional Security Complex theory. The paper tries to demonstrate the fact that the successful completion of EULEX mission will certainly have a crucial impact in the security dynamics of the region.

INTRODUCTION

I. EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO EULEX

EULEX Mission in Kosovo is characterized by a number of very specific rather complex political circumstances. This overabundance of complexity of the mission has generated difficulties, initially in its deployment, as well as discrepancies in its profile within the CSDP framework, and external coherence, but, it certainly gives enough space for analyses of its discourse from the security point of view.

It is important to underline that EU through its presence in Kosovo supports the integration process driven by the main incentive, which is the regional stability and security. As David. A. Lake and Patrick M. Morgan put it: *'European Integration was initiated to enhance security by eliminating national rivalries and creating an extreme interdependence that would cripple national capacities for modern war'*¹. They claim that membership in EU by many eastern European countries is regarded as the ultimate guarantee for security².

Therefore, Kosovo's European perspective should not to be perceived as a simple diplomatic and rhetorical discourse; first of all, Kosovo geographically belongs to Europe and as such, a stable Kosovo by default would mean a stable region which is very important for the EU if we take into consideration its increased involvement in providing security as derives from CSDP. EULEX Mission in Kosovo supports Kosovo on its path to a European integration in the rule of law area. Ultimately, the role and the successful completion of EULEX mission will certainly have a crucial impact in the security dynamics of the region. As the representatives of the Copenhagen School, Buzan and Waeber, who developed the 'Regional Security Complex' would claim, the security issues are very much linked to territory and that

¹ Regional Orders: Building Security in a New World –Regional Security and Orders p. 36

² Idem

security threats mainly created by states can spread more easily over short distances. In the case of Kosovo, given the fragile political situation, historic circumstances and ethnic composition of neighbouring countries, an eventual destabilization could inevitably have a domino effect for the entire region. Therefore, EU as a key player and a security 'donor', has a role to play.

Hence, the paper will employ the Regional Security Complex Theory (RSCT) and the corresponding concept of security introduced by Buzan and Waever as a theoretical framework for analyzing the role of EULEX on the regional security dynamics.

For the sake of better comprehension of the complexity of historic and political circumstances, I will give a brief overview of the context and main developments prior to the deployment of EULEX Mission in Kosovo.

I. 1. 1 Kosovo

In the post-WWII Yugoslavia, Kosovo was an autonomous province, the status of which gradually enhanced between the Federal Constitutions of 1946 and the one of 1974, the latter made Kosovo a constituent federal entity of Yugoslavia. Since 1974, Kosovo had the rights of veto at federal and Serbia's level while its consent was required for all decisions: legislative and judicial as well as executive. Principally, Kosovo's status as an autonomous province of Yugoslavia was practically the same as that of other constitutive republics, and it remained part of Serbia only nominally. However, in 1989, Kosovo's autonomy was abolished by Belgrade. Consequently, a repressive police and military regime was established³. Kosovo Albanians responded to the Serbian regime's oppression through a peaceful resistance. Under the leadership of Ibrahim Rugova, who reacted against this state ordered policy of repression with a non-violent resistance, parallel governmental institutions were created. However, this peaceful resistance failed to provide a political solution while repression of the regime was increasing. Consequently, this whole situation culminated in an armed conflict in 1998 with the emergence of Kosovo Liberation Army (KLA). The conflict ended through the military intervention of NATO in March of 1999. After the end of the war, in June 1999, Kosovo came under international protectorate through U.N. Security Council Resolution 1244, which administered it until early 2008⁴.

I.1.2. UNITED NATIONS MISSION IN KOSOVO (UNMIK) PERIOD

Following NATO's military campaign against the Federal Republic of Yugoslavia (FRY) on 10 June 1999, the United Nations Security Council adopted Resolution 1244, authorizing the United Nations Interim Administration Mission in Kosovo (UNMIK) to start an extensive process of peace building, democracy, stability and self-government in Kosovo.

It is important to emphasize that Resolution 1244 for many scholars presents one of the most disputable and paradoxical resolutions of the UN. Some analysts have even argued that the fact that the FRY ceased to exist has made Resolution 1244 extraneous and consequently Kosovo independent by default.

In accordance with UN Security Council Resolution 1244 (1999) and the Constitutional Framework and the original standards statement, approved by the Security Council, a policy document under the name "Standards for Kosovo" was developed. This document set out a number of standards that Kosovo had to accomplish. As Bernard Knoll indicates, "These standards reinforce Kosovo's parallel progress towards European standards in the framework of the EU's Stabilisation and Association Process, based inter alia on the Copenhagen criteria. The standards describe a multi-ethnic society where there is democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background"⁵.

³ Bertelsmann Stiftung, BTI 2012 — Kosovo Country Report. Gütersloh: Bertelsmann Stiftung, 2012

⁴ idem

⁵ Knoll, B. (2005). From Benchmarking to Final Status? Kosovo and The Problem of an International Administration's Open-Ended Mandate. *European Journal of International Law* pp. 4-12.

HADTUDOMÁNYI SZEMLE

Shkëndije GECI-SHERIFI

Budapest, 2013.
6. évfolyam 3. szám

Since summer 2002, UNMIK has submitted regular baseline reports on standards implementation to the UNSC. Knoll describes that 'since early 2003, the benchmarking process has been reinforced by the Tracking Mechanism for Kosovo, through which the European Commission tracks the development of standards and provides sector-specific recommendations for different policy areas. Under the Tracking Mechanism, Kosovo is obliged to gradually bring its legislation and institutions into line with the EU *acquis*, and receives access to the EU market in return'⁶.

The unrest of March 2004 certainly presented a drawback in the process furthermore, they damaged the reputation and the credibility of UNMIK and KFOR. The severe inter-ethnic violence of March 2004 showed a clear indicator that proved that the international community's efforts to create a harmonious multiethnic society in Kosovo had failed.

On 23 May 2005, Secretary General Kofi Annan appointed Mr. Kai Eide of Norway as a Special Envoy to undertake a comprehensive review of the situation in Kosovo in order to assess if the conditions are ready to start the political process that would determine the future status of Kosovo. Kai Eide supported the commencement of the status process. He concluded that although the standards implementation in Kosovo had been uneven, the *status quo* was unsustainable and the time had come to move to the next phase of the political process and launch negotiations on future status of Kosovo⁷.

On 1 November 2005, Kofi Annan appointed former Finnish President Martti Ahtisaari as his Special Envoy to lead the political process that would resolve the future status of Kosovo. Martti Ahtisaari's appointment signalled the commencement of the last part of the international administration of Kosovo in its present form, furthermore it signalled that the time for European Union's intense engagement in this issue had come⁸.

On 2 February, 2007 UN Secretary-General's Special Envoy Martti Ahtisaari presented the plan for the future status process of Kosovo. According to this proposal, the minority communities will be granted special protection while the municipalities will undergo a process of decentralisation in order to ensure that the rights and interests of non-Albanian communities are protected. In this light, Kosovo would govern itself under international supervision but would have the right to enter into international agreements, including membership of international bodies. The Secretary-General, Ban Ki-moon considered the proposal as fair and balanced. Additionally, the proposal entailed the deployment of an international civilian and military presence that would supervise the new arrangements and ensure peace and stability. 'A European Union (EU) Special Representative would act as an International Civilian Representative, with ultimate supervisory authority over civilian aspects of the settlement, including the power to annul laws and remove officials whose actions are determined to be inconsistent with it'.⁹

On April 3, 2007 Ahtisaari presented to the UNSC his final package of proposal recommending that Kosovo should become independent state with a period of international supervision. Kosovo accepted the proposal while Serbia rejected it. Throughout April-July, 2007, a number of draft resolutions based on Ahtisaari's plan were rejected by Russia in UNSC. Consequently, Ban Ki-moon authorized a time-limited round of negotiations between Prishtina and Belgrade led by EU/US/Russian Troika. The unsuccessful diplomatic efforts of Troika to bridge the gap between the parties on Kosovo's status eventually led to the unilateral declaration of independence but in coordination with the major powers.

⁶ idem

⁷ UN Security Council (2005). Kai Aide Report, document: S/2005/635 and SG/A/955, BIO/3714, Secretary-General, Department of Public Information, [online]. Available from: <http://www.un.org/News/Press/docs/2005/sc8533.doc.htm> [Accessed 10 December, 2012].

⁸ UN Security Council (2005). Document: SG/A/955 BIO/3714 [online]. Available from: <http://www.un.org/News/Press/docs/2005/sga955.doc.htm> [Accessed 10 December, 2012].

⁹ UNOSEK (2005) The Status Process [online]. Available from: <http://www.unosek.org/unosek/en/index.html> [Accessed 12 December, 2012]

HADTUJOMÁNYI SZEMLE

Shkëndije GECI-SHERIFI

Budapest, 2013.
6. évfolyam 3. szám

I.1.3 DECLARATION OF INDEPENDENCE

In coordination with Brussels and Washington, the Assembly of Kosovo adopted the Declaration of Independence on 17 February 2008, declaring Republic of Kosovo a sovereign and independent state. Kosovo adopted the Constitution on 15 June, 2008 that fully enshrined the provisions of Ahtisaari's proposal. Consequently, the Assembly invited the European Union to deploy its rule of law mission EULEX and the establishment of the International Civilian Office (ICO) to supervise the implementation of Ahtisaari's plan, the latter formally ended the supervision on September 10, 2012 that is considered a successful and historic milestone for Kosovo.

To date, Kosovo is formally recognized by 96 UN member states, including United States of America, 22 EU states, Japan and Canada. With exception of Serbia, Kosovo is recognised by its immediate neighbours, Albania, Macedonia and Montenegro. Most importantly, the International Court of Justice with a compelling vote of ten to four, on 22 July 2010, advised "that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law"¹⁰.

II. EULEX AS A CSDP MISSION: VERTICAL VS. HORIZONTAL CONSISTENCY

Following the Western Balkans conflicts in June 1999, the Cologne European Council established the European Security and Defence Policy (ESDP)¹¹ as a part of the Common Foreign and Security Policy (CFSP). The core purpose of establishing ESDP was to give EU a more significant role in promoting international peace and security thereby becoming a 'more capable and credible global actor'¹². This was stated in the Ministerial Declaration ESDP Ten Years – Challenges and Opportunities, the declaration further emphasized that EU decisions be built "around our common values of liberty, democracy, respect for human rights and fundamental freedoms, and rule of law, in conformity with the principles of the UN Charter and international law." The key aim was to 'enhance our own security, as well as the security of our neighbours and the wider world.'¹³.

In April 2009, EULEX became fully operational. The EU Joint Action of February 2008 and Council Decision of June 2010 and June 2012 provide the legal basis for the Mission. EULEX works within the framework of UN Security Council Resolution 1244¹⁴. EULEX is the largest civilian CSDP mission ever launched with the largest number of international and local staff members and an extensive mandate to monitor, mentor and advise the authorities of Kosovo in the field of police, justice and customs while retaining a number of executive powers.

The EU's paradigmatic conceptual relation with Kosovo is that of post-conflict agenda, which is sought to have the development of a sustainable democracy as the result. According to Laidi, democracy building agenda in the Balkans gives the EU great leverage and accountability on nation state building¹⁵. In regards to EULEX as a CSDP Mission, Spornbauer argues that it operates under the somewhat misleading EU label of 'civilian crisis management mission', a term which is not used by the Treaties themselves while its mandate and scope indicate that it is more accurately qualified as a Security Sector Reform and peace-building mission¹⁶.

¹⁰ *Opinion*, para. 123 (3).

¹¹ ESDP (now CSDP) was created in the wake of the 1998 Franco-British meeting in St. Malo

¹² Alexandra George, 2009, Ten Years of ESDP Missions: The European Way for Attaining Global Peace and Security

¹³ See: Ministerial Declaration: ESDP Ten Years – Challenges and Opportunities 2974th EXTERNAL RELATIONS Council meeting Brussels, 17 November 2009 available at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/111253.pdf

¹⁴ EULEX Kosovo, European Rule of Law Mission available at:

<http://www.eulex-kosovo.eu/en/info/whatisEulex.php>

¹⁵ Laidi 2008. Eu Foreign Policy in a Globalized World: Normative Power and Social Preferences

¹⁶ Martina Spornbauer, EULEX Kosovo – Mandate, Structure and Implementation: Essential Clarifications for an Unprecedented EU Mission, CLEER WORKING PAPERS 2010/5

The literature on CFSP suggests that the EU is still struggling with problems of consistency and it remains sceptical about the capability of the EU to be a coherent actor. Sjursen and Nuttall note that the EU as a global actor suffers from coherence problems both vertically and horizontally. Problems of vertical coherence may occur when the foreign and security policies of individual Member States do not fit together with policies decided at EU level. On the other hand, problems of horizontal consistency are linked to the EU being involved in various external activities that are part of different pillars¹⁷. When discussing about inconsistency in activities, we refer to differences between EU's discourse on the one hand and EU's action on the other.

The basis of CSDP as stated in CSDP Handbook¹⁸, is that Europe must speak with one voice, have a clear articulated political aspirations, if European Union is to emerge as a powerful political force at world level, it must think and act as a Union with respect to security and defence. However, in the case of EULEX, EU has failed to reach a common stance on the international status of Kosovo which poses evident inconsistencies and ambiguity especially from the legal point of view. While EULEX operates under the UN umbrella, namely UNSC Resolution 1244 and maintains a 'status neutral' position, Kosovo has its constitution that has been adopted on 15 June, 2008 enshrining provisions of Ahtisaari's proposal. UNSC Resolution 1244 therefore for Kosovo authorities is null and void. While EULEX promotes Kosovo's path towards European integration, yet, there are 5¹⁹ members within EU that oppose Kosovo's independence which throughout the way can hinder the integration process in one way or the other.

Another drawback is the northern part of Kosovo where EULEX, contrary to its mandate, has not managed to exercise its functionality. Nevertheless, EULEX has an important role to play in terms of security not only in the territory of Kosovo but region wise. The success of EULEX can therefore make EU a more credible regional security actor.

II.1. THE ROLE EULEX IN SECURITY DYNAMICS IN THE REGION

Over the recent years, EU has noted an increased involvement in providing security in its 'near abroad'. Here, I will try to employ a rather novel approach in analyses on how EULEX as an EU mechanism within a state can affect or have a role in the security dynamics within a security region, using Regional Security Complex Theory (RSCT) of Buzan and Waever with the conviction that RSCT has the ability to expand and incorporate 'non-traditional' discourse into the structural debate.

RSCT is a theory that deals with regional security in an inclusive approach that involves a number of international relations theories such as constructivism, neorealism. Buzan employs constructivism in a sense that certain security situation is not taken for granted but each and every factor is analyzed comprehensively for the accurate findings while maintaining rather neorealist approach in its anarchic views. RSCT maintains that 'most threats travel more easily over short distances than over long ones', therefore security interdependence is normally patterned into regionally based clusters²⁰.

According to Buzan and Wæver, penetration occurs when a state outside a RSC associates with a state inside the RSC, in this RSC's are linked together, but remain exclusive. In our analyses EULEX will represent an external actor penetrating within a state (Kosovo) thus dictating or rather contributing to the security dynamics of the region. Buzan and Waever argue that for Balkan developments external actors were crucial. They claim that "power differentials in combination with geography allow external actors to shape the developments in the area. This defines the Balkans as potentially a part of the EU-Europe RSC".

¹⁷ Helene Sjursen: The EU as a 'normative' power: how can this be? *Journal of European Public Policy* 13:2 March 2006: 235–251

¹⁸ Handbook on CSDP the Common Security and Defence Policy of the European union p. 68

¹⁹ Out of 27 EU member states, 22 have recognized independent Kosovo. Cyprus, Greece, Rumania, Slovakia and Spain do not recognize Kosovo.

²⁰ Buzan and Waever 2003

HADTUJOMÁNYI SZEMLE

Shkëndije GECI-SHERIFI

Budapest, 2013.
6. évfolyam 3. szám

As indicated in the paper, in the northern part of Kosovo, so far, EULEX has not been successful, as a result of its ambivalent mandate and incoherence of CFSP. The failure could be as well attributed to the inherited situation from the UNMIK protectorate. Nevertheless, the situation in northern Kosovo is still cause for security concern unless the existing parallel structures are dismantled, and rule of law institutions start to function under the mentoring and support of EULEX, as in other parts of Kosovo.

The role of EULEX therefore is crucial in the Northern part of Kosovo in order to eliminate the organized crime, political and legal vacuum and establish a functioning rule of law institutions. Any other scenario such as partition of this part of Kosovo which as a consequence would provoke redefinition of borders given the ethnic composition of neighbouring states would have tremendous causes in the security dynamics of the region.

According to RSC theory, the security interdependence is more intense among the states inside a certain RSC than with states outside of it. As Buzan²¹ claims security is a 'relational phenomenon', in order to understand national security properly, the surrounding pattern of security interdependence should be understood first. Two important factors are the enmity and amity among units. These include established relationships between states over time and relating to certain issues, ranging from resolving border disputes, to political ideology, and the establishment of long-term historical bonds²², (in this contextual political and historic realm we could analyze relations between Kosovo vs Serbia, Kosovo vs Albania, Kosovo vs Macedonia).

From this end, the European perspective offers both a strategic objective and an incentive for transformation and is motivated by EU considerations of regional and international stabilization.

III. CONCLUSION

As described in this paper, EULEX Mission in Kosovo has a significant role whose effect in terms of the security dynamics of the region, certainly goes beyond the formal margins of its mandate that includes the territory of Kosovo. The role of EULEX has undoubtedly become a test for a successful CSFP. Even though the mission as such has met a vast criticism since its deployment phase from various political analysts including those from the EU itself, the presence of EULEX mission in Kosovo has considerably influenced the increase of security and stability in Kosovo.

Kosovo, being a young state and in transition continues to face challenges that could put security at stake therefore the cooperation and coordination of EULEX with local relevant Kosovo authorities have marked evident accomplishments but we have to stress that these accomplishments are still on the halfway. EULEX has contributed in the enforcement of freedom of movement, increase of administrative and institutional transparency, enforcement of rule of law thus making the local population expect that negative streams that affect their security will be fought and diminished with the support of this mission.

As indicated in the previous chapter, Kosovo and neighbouring countries are characterized with rather delicate historical, political and ethnic circumstances that for a long period of time have endured the Western Balkans a "hot spot". The mosaic of different communities with different cultural, religious, linguistic and ethnic background, make the Western Balkans rather prone security wise, while Albanian population is present in almost every state of this region. Apart from Kosovo and Albania where Albanians make the majority, a consistent Albanian minority lives in Macedonia, Serbia and Montenegro. Therefore, thriving implementation of EULEX mandate can positively affect neighbouring countries, as well. It is worth noting that so far, EULEX has successfully guaranteed territorial security within Kosovo

²¹ Buzan (1991: 187)

²² idem

HADTUJOMÁNYI SZEMLE

Shkëndije GECI-SHERIFI

Budapest, 2013.
6. évfolyam 3. szám

while in a rather professional manner has managed to deal with isolated episodes of ethnic tensions, halting thus escalation and negative impact they could have in the region.

Despite the discrepancies deriving from the legal implications of its mandate there is a number of opportunities deriving from the EULEX mission that should be given credits.

First and foremost, it supports Kosovo on its path to a greater European integration in the rule of law area, it supports visa liberalization process, it supports Prishtina-Belgrade dialogue facilitated by Brussels, it continues to concentrate on the fight against corruption and works closely with local counterparts to achieve sustainability and EU best practices in Kosovo. EULEX prioritizes the establishment of the rule of law in the north²³.

Hence, we can conclude that the successful implementation of the mandate of EULEX as a key mechanism of EU, can affect positive changes in security dynamics of the region.

LIST OF ABBREVIATIONS

CSDP	Common Security and Defence Policy
ESDP	European Security and Defence Policy
EU	European Union
EULEX	European Union Rule of Law Mission
ICO	International Civilian Office
ICR	International Civilian Representative
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
RSCT	Regional Security Complex Theory
SRSG	Special Representative of the Secretary General
SSR	Security Sector Reform
UN	United Nations
UNOSEK	United Nations Office of the Special Envoy for Kosovo
UNMiK	United Nations Mission in Kosovo
UNSC	United Nations Security Council

²³ What is EULEX? <http://www.eulex-kosovo.eu/en/info/whatisEulex.php>