

EU peacebuilding in Kosovo

An analysis of dealing with peacebuilding paradoxes and
engagement with civil society



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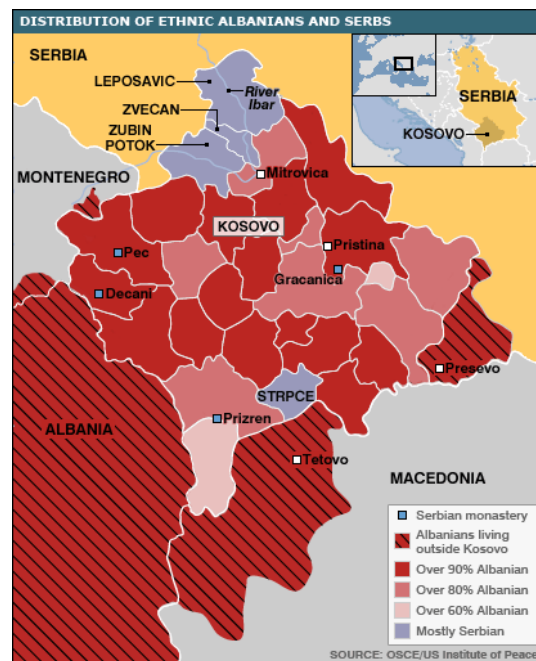
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Introduction

The Kosovo War was the finale of the violent disintegration of the former Socialist Federal Republic of Yugoslavia. Kosovo was one of the first areas in the Federation where violence erupted, but full-fledged warfare was held at bay in the early 1990s. As the underlying tensions were not addressed and firm oppression of the Kosovo Albanian majority in Kosovo continued, the area plunged into a period of violent conflict at the end of the decade. Once again, ethnic disputes and resurgent nationalisms had led to a deteriorating spiral of repression and violence in the former Yugoslavia. From early 1998 to 1999 the war was fought between the army of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Kosovo Liberation Army (KLA), a Kosovo Albanian guerrilla organization aiming at independence for Kosovo.

Following international concern over the deteriorating situation, a bombing campaign by the North Atlantic Treaty Organization (NATO) was launched against the repressive and militaristic regime in Belgrade on March 24, 1999. This intervention was not mandated by a resolution of the United Nations (UN) Security Council, as Russia and China considered the campaign a violation of Serbia's sovereignty. Nevertheless, the NATO countries decided to intervene against what was considered as another campaign of ethnic cleansing commanded by Belgrade, which included severe human rights violations and caused a huge refugee crisis. The bombing of Yugoslavia remains a controversial issue, and has led to international debates on the tense relationship between national sovereignty and respect for individual human rights.¹

The bombing campaign stopped after a negotiated agreement that requested the UN to take over the administration of Kosovo. Subsequently, the UN Security Council passed Resolution 1244, which mandated the UN Interim Administration Mission in Kosovo (UNMIK). UNMIK has remained active since this time, trying to rebuild Kosovo's society and economy. This operation was backed by a NATO peacekeeping force responsible for providing a secure environment in Kosovo. There were hardly any changes to this status quo for almost a decade, until UN Special Envoy Martti Ahtisaari was charged to come up with recommendations on settling Kosovo's status. This included "supervised independence", in which UNMIK's executive powers would be transferred to the International Steering Group (ISG) – a group of stakeholder states overseeing the implementation of the plan.² While Belgrade had accepted UN control over Kosovo while it was being bombed, it had no intention to allow the secession of its province that easily.



¹ One of many examples: Eysink, S., 'Een omstreden interventie: de casus van Kosovo' [A controversial intervention: the case of Kosovo] in: Hellema, D. en Reiding, H. ed., *Humanitaire interventie en soevereiniteit. De geschiedenis van een tegenstelling* (Amsterdam 2004) 222-223.

² ICO-EUSR Preparation team – EUPT Kosovo, *Background. Preparing for the future international and EU presence in Kosovo* (March 2007).

Talks on a new Security Council Resolution supporting the Ahtisaari Plan broke down in 2007 due to ongoing disagreements among the permanent members, and Kosovo unilaterally decided to declare independence on February 17, 2008. The government in Pristina was immediately supported by most of the European Union (EU) Member States and the United States, and by the end of the year, 53 countries had recognised Kosovo.³ Until the declaration of independence of Kosovo, the dissolution of former communist federations had happened along the borders of the constituent republics. Kosovo was the first sub-republican unit to be recognized as a new independent state, which raises the question whether this has implications for separatists elsewhere. At Serbia's request, the unilateral declaration of independence was referred to the International Court of Justice (ICJ) in The Hague. In July 2010 the Court delivered an advisory opinion on the unilateral secession that was ambiguous, but still said that Kosovo's declaration of independence from Serbia did not violate international law.⁴ However, this did not end the dispute and Kosovo remains one of the most controversial states in the world. UN Resolution 1244 is still in force, as no further agreement on Kosovo could be reached in the Security Council. The Special Representative of the Secretary-General for Kosovo, who leads UNMIK, is therefore still ultimately responsible for the administration of Kosovo. While this legal stalemate on the status of Kosovo continues, things "on the ground" have changed a lot after 2008. Kosovo's declaration explicitly accepted all the provisions of the Ahtisaari Plan, which was later reconfirmed in the constitution. NATO troops remain in the country to provide security for the large governance and development programmes, but the EU and the office of the International Steering Group largely replaced UNMIK during 2008.

The status quo on the so-called "status issue" is often seen as the major challenge of the Kosovo conflict, and many reports and articles have called on Belgrade, Pristina and international stakeholders to work on a solution that is acceptable to all parties. This is especially true for the "interstate" dimension of the Kosovo conflict: the troubled relationship between Belgrade and Pristina that continues to raise controversy and has a destabilizing influence on the wider region. Resolving the status ultimately remains necessary for both countries to leave the conflict behind and move forward with economical development, regional cooperation and European integration. However, regardless of the outcome of possible negotiations or settlements in the future, a lot of work can already be done on the "intrastate" dimension of the conflict; the persisting problems within Kosovo between the communities of ethnic Serbs and Albanians. These communities are each other's neighbours in Kosovo regardless whether Belgrade or Pristina has ultimate jurisdiction over them, although any other solution but independence has become extremely unlikely by now. Even in the case of border adjustments, some Serb minorities will continue to live in Kosovo, and voluntary mass-migration to Serbia is unlikely, as people have already remained living in Kosovo for the past decade after the conflict. Clearly, it doesn't make sense to wait for a solution on the status issue before starting to deal with the significant challenges to peacebuilding that face Kosovo. While this thesis supports the notion that solving the status issue is an ultimate requirement for peace and stability in Kosovo, Serbia and the wider region, the primary focus will be on policies and programmes that have been put into action within Kosovo. A wide range of peacebuilding activities has already been implemented, from supporting economical development, good governance and the rule of law, to promoting democratisation and respect for human rights.

³ Five EU Member States have still not recognized Kosovo. These are: Cyprus, Greece, Romania, Slovakia and Spain.

⁴ "Court says Kosovo independence 'not illegal'", *Euractiv* (23 July 2010).

EU peacebuilding in Kosovo

The European Union has become the most important international actor in Kosovo in the period after the declaration of independence. The EU has taken over many of the responsibilities of the UN and NATO in the fields of peacekeeping and policing, state building and administrative reform after Kosovo committed itself to the implementation of the Ahtisaari Plan. The British journalist and Balkans-expert Tim Judah has vividly described why the EU wants to play a lead role in Kosovo: 'look at the map. Kosovo and the rest of the Western Balkans are countries that are now surrounded [...] by the European Union and NATO. So Kosovo and its neighbourhood are not some place out there in Europe's backyard, but rather they constitute the inner courtyard. Nobody wants trouble here. They want peace and quiet, and good and reliable neighbours, not noisy, destitute troublemakers.'⁵ Regardless of the current disagreements within the EU on the status of Kosovo, it is a general accepted view that the future of the area making up the former Yugoslavia lies within Europe. The Union cannot afford this area to become a black hole or a free trade zone for organized crime and terrorism, not to mention the possibility of a relapse in violent conflict. This would not only seriously threaten the economical interests and security of the EU; it would also be a defeat and an embarrassment for all the efforts that have been put into strengthening the common political and military capacities of the Union.

From the early 1990s onwards, the European Union has expanded both its borders by integrating former communist countries, and its common foreign policies through increased internal integration. These two developments have made the EU an increasingly important actor in international relations, with a commitment to promote peace, security and economical development not only within its territory, but also in the wider region and the world. The violent disintegration of Yugoslavia during the 1990s is often seen as a catalyst for the development of the common security and defence policies of the European Union. The EU was confronted with a series of violent conflicts in what was then already commonly perceived as its "backyard", and it had little capacities to respond to the crisis. Both the wars in Bosnia and Herzegovina and in Kosovo were ended after international interventions by NATO, which were led by the United States. After the humiliating experience of not being able to respond to problems in its neighbouring countries, the EU started strengthening its Common Foreign and Security Policy (CFSP). Several treaties, including those of Maastricht (1992), Amsterdam (1997) and Lisbon (2009), have provided the EU with a number of CFSP tools that can be used for conflict prevention and conflict resolution, in addition to the Union's capacities as a strong economical power. The European Union now has the ability to deploy a wide range of policy instruments, including (but not limited to) economic cooperation and trade policies, social and environmental policies, humanitarian aid, diplomatic instruments such as political dialogue and mediation, and the options provided in the framework of the Common Security and Defence Policy (CSDP), which enables the Union to undertake conflict resolution and peacekeeping measures using military crisis-management instruments, and to enforce them if necessary. While some big steps have been made, it should be kept in mind that crisis management and peacebuilding are relatively new practices for the EU. The Union is still feeling its way and working on further development and improvement of its strategies in these fields.⁶

Not only the internal integration of the European Union is still developing, also its external borders are still subject to change. At the Feira European Council in June 2000,

⁵ T. Judah, *Kosovo. What everyone needs to know* (New York, 2008).

⁶ S. Duke, A. Courtier, 'EU Peacebuilding: concepts, players and instruments', Working Paper no. 33 (2009, Leuven Centre for Global Governance Studies) 17-18.

the European Union has recognised that all the countries of the Western Balkans are potential candidates for membership of the EU. By now, the term “Western Balkans” is used to refer to Albania and all the countries making up the former Yugoslavia, except Slovenia, which has already become a EU Member State. While the accession of these countries is a long-term prospect, the Union has also often expressed its ambition to assist neighbouring states in their efforts to become stable democracies and economical partners. The same enlargement methodology is applied to these countries as has been followed for those that have recently joined the Union. This includes fulfilment of the political, economic and institutional criteria that were adopted at the Copenhagen European Council in June 1993 in order to respond to the European aspirations of the former communist countries of Eastern Europe. The Stabilisation and Association Process is the overall framework for EU assistance to the efforts of potential Member States to meet the Copenhagen criteria. The “Thessaloniki Agenda” of June 2003 has identified ways to strengthen and adapt this Process to the particular circumstances of the countries of the Western Balkans. One of the innovations is the European Partnership, which provides a coherent structure and timetable for reforms, as well as a financial framework to support these efforts. Partnerships have been established with Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia, including Kosovo. Interesting about the integration of these countries into Europe is the fact that most of them have recently emerged out of conflict, and are still in the middle of state-, nation-, and peacebuilding processes. Until these countries join the EU, which is a long-term prospect, the policies for European Enlargement coexist with the CFSP in this region. European Enlargement policies that focus on promoting EU standards in the rule of law, government accountability, democracy and economical development are not peacebuilding actions per se, but they can be considered as such in the post-conflict context of the Western Balkans. In addition, CSDP operations in support of stability, democratisation and the rule of law have been deployed in Macedonia, Bosnia and Herzegovina, and Kosovo. The European Union Rule of Law operation in Kosovo (EULEX) is the largest CSDP operation so far, and the EU has also allocated more pre-accession assistance resources to Kosovo on a per capita basis than to any other place in the world. For the period from 2007 to 2012 around €550 million was earmarked for improvement of Kosovo’s institutions and promotion of socio-economic development and regional integration.⁷ If any case study is able to tell something about the EU as an actor in peacebuilding and the relation between CFSP and European Enlargement, it is Kosovo.

European Enlargement and Common Foreign and Security Policies are interwoven in the EU’s presence in Kosovo, which consists of three parts. The European Commission Liaison Office (ECLO) deploys Enlargement tools under the Stabilization and Association Process to strengthen Kosovo’s institutions, develop the economy and realize “European Standards” in the rule of law, democratization and legislation. The European Union Rule of Law Mission in Kosovo (EULEX) is a large Security Sector Reform operation under the CSDP that works to develop and strengthen an independent and multiethnic rule of law system in Kosovo. It monitors, mentors and advises Kosovo’s authorities on police, justice, correctional services and customs. The operation also has some limited executive powers regarding the prosecution of war crimes and the fight against corruption and organized crime. The EU Special Representative (EUSR) in Kosovo officially supports the work of the High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton. The Dutch diplomat Pieter Feith is the current EUSR. He provides a single voice and face for the EU, offers the Union’s advice and support in the political

⁷ Website of the ECLO, ‘Role of the Liaison Office’ (<http://delprn.ec.europa.eu/?cid=2,110> 20/09/2010).

process, and provides political guidance to EULEX and overall coordination of the EU presences in Kosovo. The EU Special Representative is “double hatted” as the International Civilian Representative, who oversees the implementation of the Ahtisaari Plan on behalf of the International Steering Group and has extensive executive powers. This role is similar to that of the High Representative for Bosnia and Herzegovina. The three EU presences, and the double appointment of Pieter Feith, reflect the commitment of the EU to play a leading role in strengthening stability in the region. Although not all EU Member States have recognized Kosovo, the whole Council of the European Union has unanimously decided it wants to contribute to a ‘stable, viable, peaceful democratic and multi-ethnic Kosovo [...] that is committed to the rule of law and to the protection of minorities.’⁸ Meanwhile, many other actors continue to operate in Kosovo as well. These include NATO/KFOR, UNMIK, the OSCE, the International Steering Group and various Non-Governmental Organizations (NGOs). Most of these are largely working towards the same goals: a peaceful and prosperous multi-ethnic Kosovo. Cooperation with these other international organisations and local actors is very important, as the EU cannot act as a sole actor with an all-encompassing strategy.

Peacebuilding challenges in Kosovo

Peacebuilding is a concept that is often ill defined, and it will be extensively discussed in Chapter 1 of this thesis. It can be considered as a long-term process that occurs after violence has halted, and encompasses a wide range of activities that work to strengthen and solidify peace in order to avoid relapse into conflict. This includes activities such as capacity building in the rule of law and governmental institutions, human rights monitoring, reconciliation and socio-economic transformations. The challenges to peacebuilding that have to be faced by the EU and other actors in Kosovo are multiple and substantial. The public administration and rule of law have to be strengthened in order to ensure political stability and to create a political culture of inclusiveness and accountability that respects the multi-ethnic composure of Kosovo. Democratisation and multi-ethnic cooperation is necessary for a peaceful future, but the deep ethnic divisions are a serious challenge to good governance. Inter-ethnic tensions between Kosovo Serbs, Kosovo Albanians and smaller ethnic groups (including Bosniaks and Roma) are entrenched by a history of violent conflict and ethnic cleansing, the displacement of thousands of refugees and internally displaced persons (IDP’s), and the destruction of property and cultural heritage. A decade after the war ended, it are especially the Serbs and Albanians that continue to live in parallel societies, segregated by language, religion, territory and mutual distrust. The Kosovo Albanians constitute about 90% of the population and dominate Kosovo’s politics. The government in Pristina is therefore not recognized by a large part of the Kosovo Serb population, who want Kosovo to remain part of Serbia. Especially those communities that live in the Serb-dominated north of Kosovo continue to rely on parallel institutions that are run within Kosovo by Belgrade. Peacebuilding and reconciliation between former opposing groups in society is extremely difficult in such a climate, but it is necessary for the peace process, state- and institution building, and societal progress in general.

These peacebuilding processes are further complicated by the serious socio-economic problems that Kosovo faces. Kosovo has always been the poorest part of the former Yugoslavia. It has a very young population combined with an unemployment rate of more than 60%, which entrenches poverty and offers an incentive for young men to

⁸ ‘Council decision 2010/446/DFSP of 11 August 2010 extending the mandate of the European Union Special Representative in Kosovo’, *Official journal of the European Union* C 211 (2010) 36-38.

utilize violence and criminal activities as a way to earn a living. Consequently, Kosovo has a sizeable grey economy, which ranges from multimedia piracy to human trafficking. Corruption, organised crime and money laundering are also serious problems in the country. There is great need for investment in Kosovo, as there is hardly any production going on, and imports exceed exports by more than 20 times.⁹ The scale and complexity of these political and socio-economical challenges means that they cannot be tackled overnight but require profound and long-term efforts. Although large steps have been made in establishing local institutions and improving basic security and stability, a lot of work remains to be done. Peacebuilding is still in its early stages in Kosovo, and it is too soon to speak of substantial reconciliation or inter-ethnic rapprochement. However, the EU has been implementing a variety of policies and programmes for several years by now. To what extent these have been effective will be discussed in this thesis, with a specific focus on how the Union works to promote broad societal engagement for the peace process through its activities.

External parties such as the EU can assist in promoting political reform, socio-economical development and the strengthening of institutions and the rule of law. They can also facilitate mediation and promote political and societal rapprochement, but ultimately the sincere involvement of former opponents is necessary to successfully address all these challenges that face the peacebuilding process. While the EU is indeed the most important international actor, it cannot achieve lasting success without the involvement of Kosovo's population. Two well-known concepts that relate to this issue are the importance of "local ownership" and the role of "civil society". Local ownership refers to the importance of local support for, and involvement in peacebuilding and transition policies, and the need for policies and programmes that respect traditions and the local cultural setting. The concept is at the core of many dilemmas and paradoxes in the peacebuilding process, which are addressed to greater extent in Chapter 1. The term "ownership" has nothing to do with rights of possession, but instead it refers to the capacity, power or influence of political, social and community actors in a particular country 'to set and take responsibility for an agenda and to muster and sustain support for that.'¹⁰ In our case this implies that implementation of peacebuilding programmes needs to be rooted in the recipient country and represent the interest of ordinary citizens. "Civil society" is another popular academic concept that does not (yet) have a universally accepted definition. A basic description of the field is presented in the definition by the Centre for Civil Society of the London School of Economics and Political Science: 'Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated.'¹¹ Civil society consists of a wide variety of actors, including e.g. development NGOs, women's organisations, faith-based organisations, business associations, social groups and trade unions. Many of these have a lot of potential to support peacebuilding and contribute to societal progress. They can act both independently and in relation to peacebuilding initiatives led by governments or international actors. However, civil society organisations should not be equalled to peacebuilding actors, as some also use their potential for societal impact to oppose the

⁹ Website of Insight on Conflict, 'Conflict profile Kosovo', (<http://www.insightonconflict.org/conflicts/kosovo/conflict-profile/> 20/09/2010).

¹⁰ B. Pouligny, 'Supporting local ownership in humanitarian action', *GPPi Policy Paper 4* (2009) 6-9.

¹¹ Website of the London School of Economics and Political Science, 'What is civil society?' (http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm 20/09/2010).

peace process.¹² A common problem with post-conflict peacebuilding and local ownership is the lack of organized civil society actors that can engage with the international presence(s) and represent local opinions. For actors such as the EU it is difficult to engage with non-organized individuals, and it is therefore that promoting the development of civil society has become a part of post-conflict peacebuilding, with all the risks of creating dependency and donor-driven activities, instead of locally embedded initiatives. Conversely, the EU depends on local civil society organisations to promote local ownership. The Union consults various local organisations on the implementation of its policies, and asks their input for evaluations of programmes and the progress of peacebuilding in general.

Research Question

The central goal of this thesis will be to make a critical assessment of the role of the European Union as an international actor that supports the peacebuilding process in Kosovo, both through its CFSP and European Enlargement policies. A specific focus will be on how engagement with civil society is mainstreamed in EU policies and practices, as successful peacebuilding policies require cooperation with civil society actors in order to promote local ownership and popular support for the peacebuilding and reconciliation processes. The goal is to find policy gaps and/or possibilities for improvements in the practical implementation of policies and coordination with local civil society actors. The focus will be on the period after Kosovo's declaration of independence, as it is in these past two years that the EU has unmistakably taken a lead role in Kosovo. This leads to the following research question:

To what extent is the European Union successfully promoting local ownership and engaging with civil society actors in its peacebuilding policies and programmes in Kosovo?

While providing an extensive overview and analysis of all EU activities in Kosovo is not a goal in and of itself, a whole range of policies, concrete projects and evaluation mechanisms will be discussed in this thesis in order to answer this question. A series of answers need to be provided on problems already lined out briefly in the previous pages. This thesis includes chapters on the theoretical background and methodological framework that will provide answers to some of these questions, while others will be part of the actual analysis. Sub-questions are:

- What is the conceptual understanding of peacebuilding in the context of this thesis (EU peacebuilding in Kosovo)?
- What are civil society actors and why are they so important for peacebuilding?
- Through which institutions and policies does the EU act as a peacebuilding actor in Kosovo?
- What evaluation mechanisms are used in order to determine success?
- How does the EU promote the development of civil society in Kosovo?
- In what ways is civil society involved in the implementation and evaluation of EU peacebuilding policies?

¹² World Bank (Social Development Department), *Civil society and peacebuilding. Potential, limitations and critical factors* (2006).

Purpose and relevance of this thesis

Kosovo is one of the most frequently discussed conflicts of the last decade, but initially most of the attention went to the controversial NATO intervention. In the past two years this issue was replaced by the controversial declaration of independence and the diplomatic rows that followed between Belgrade and Pristina and within the EU and UN. The peacebuilding attempts within Kosovo have been discussed as well, but never as intense as the headline-grabbing stories on the airstrikes and unilateral secession. In addition, there have been a lot of changes in the international involvement in Kosovo in the past few years. Therefore it seems time for an early assessment of EU peacebuilding operations, now that it has been more than two years after the declaration of independence and the replacement of UNMIK by EULEX and the EU Special Representative/International Civilian Representative. The initial basis for this thesis was laid during my internship at the Institute for Historical Justice and Reconciliation in The Hague. This NGO mainly works as a facilitator to local scholars on both sides of a conflict in the creation of shared (historical) narratives. The Institute has been working in the former Yugoslavia for several years, and has already finished various projects. One of my tasks as an intern was to make an assessment of the possibilities to start a new project in Kosovo, and to make an overview of how the methodology of shared narratives could offer a new dimension to peacebuilding and reconciliation efforts in the country. Here I found that some parts of civil society are actively and frequently engaged in peacebuilding activities and cooperation with the international presences, while other parts seemed to be either neglected or forgotten. I decided to use this basic impression for my thesis and analyze how and to what extent the EU, the most important international actor, engages with civil society in its peacebuilding policies in Kosovo.

The social relevance of this thesis relates to the importance of Kosovo to the European Union, as well as to the internal challenges to promoting peacebuilding and inter-ethnic reconciliation. The importance of Kosovo to the EU has already been discussed above, as well as how the Union has become the most important international actor in Kosovo during the past two years. The EU cannot afford Kosovo to relapse into conflict, which has made this a test case for the capacities of the Union in crisis management and peacebuilding. In Kosovo the EU wields both its instruments for European Enlargement and its CSDP capacities. While CSDP and Enlargement are not peacebuilding policies in and of themselves, many aspects of these policies can be considered as such in the post-conflict context of Kosovo and other parts of former Yugoslavia. However, the challenges that these instruments have to face in Kosovo are significant. Apart from the uncertainty about the status, the country faces severe ethnic segregation and socio-economic problems, and suffers from weak institutions. These issues cannot be properly dealt with without involvement of civil society actors that represent the public opinion of various community groups. This thesis aims to come up with recommendations to improve peacebuilding policies and programmes in general, as well as in their capacity to promote civil society engagement and public support. By doing so, the findings might contribute to solving societal problems in Kosovo. Such a critical assessment of the major peacebuilding activities in Kosovo will not only be useful to the EU, but to all organizations working on related issues in Kosovo.

Peacebuilding, the Kosovo conflict, and European foreign policies have all been discussed to great extent in existing literature. This thesis brings these topics together and provides a new perspective through case study research on EU peacebuilding in Kosovo. As a result, the findings and recommendations of this thesis are primarily related to this specific case. The thesis is based on deductive case study research and does not primarily aim to come up with new or enhanced theories. However, some findings might be useful

to understand and respond to other post-conflict contexts. The focus on engagement of civil society in combination with the wide definition of peacebuilding (which includes e.g. socio-economic reform, institution-building) might lead to new insights on the nexus between CSDP and European Enlargement, the relation between the European Union and civil society actors in peacebuilding, and on the effectiveness of particular initiatives to promote inter-ethnic rapprochement. Every conflict has its particularities, but no other case study is able to tell more about the capacities of the EU as an actor in peacebuilding, as the financial and operational commitment of the Union's assistance to Kosovo is unrivalled.

Organization of the thesis

After this introduction, the thesis will start with a chapter that provides a theoretical background. In this chapter the root causes of conflict will be discussed, which will show the importance of peacebuilding. Subsequently, the concept peacebuilding will be defined and explained in academic terms, before analyzing its conceptual understanding within the EU. The chapter ends with an overview of common paradoxes and dilemmas of peacebuilding, such as the tension between local ownership and external (international) assistance.

Chapter 2 discusses the methodological framework that will be used for the analysis of EU peacebuilding policies and programmes. The chapter starts with a description of the development of theories on the importance of civil society actors in peacebuilding. Various categorizations of civil society actors have been developed over the past years, and there is no definite terminology that can be applied in every case. The chapter goes on by explaining why an analytical framework based on aspects of Multi-track Diplomacy (MTD) is the best approach for this thesis. This concept divides non-governmental actors in eight different "tracks", which enables a systematic analysis of the involvement of civil society actors. The chapter ends with an explanation of how MTD will be utilized in combination with a qualitative, hermeneutical approach that avoids "cherry-picking".

Chapter 3 gives an expanded background of recent political developments in the peace process in Kosovo, and it discusses EU top-level diplomatic engagement in the interstate dimension of the conflict. Because of this focus on the governmental level of international relations there is little attention for civil society in this chapter. However, it is necessary to understand what is happening at the intergovernmental level, as this can have an impact on the relations between the Albanian and Serb communities within Kosovo.

Chapter 4 to 6 are the actual analysis of EU peacebuilding in Kosovo. The analysis is structured in line with the three different EU presences in Kosovo: the EU Special Representative, EULEX and the European Commission Liaison Office. This means that that the three will be assessed independently in separate chapters, as they all have their own tasks and goals. However, they all have a final paragraph in which the consistency in dealing with civil society actors will be discussed, in addition to assessing how the Union deals with the dilemmas of peacebuilding as discussed in Chapter 1. Final conclusions and recommendations based on this analysis will follow in Chapter 7.

1. Theoretical background: peacebuilding

1.1 Root causes of conflict

Peacebuilding is essentially different from the traditional conflict resolution strategies of peacemaking and peacekeeping. Peacemaking aims to end violent conflict through diplomatic efforts intended to promote non-violent dialogue, and ultimately a peace agreement. Conventional forms of peacekeeping usually involve (military) intervention by a third party, aimed at separating fighting parties and facilitating non-military initiatives. Peacebuilding goes beyond such forms of problem solving, mediation and conflict management, and addresses the core problems that underlie conflict, often called the “root causes”. Peacebuilding presumes that in order to go from an unstable peace to a durable peace it is necessary to change the way society operates, and the patterns of interaction of the involved parties.¹³ If relations between societal groups have led to warfare, it seems fairly naïve to presume that mutual confidence will automatically restore as soon as the crisis is nearing its end and violence has ended. It is far more likely that the end of hostilities finds the adversaries and the society more divided than before violent conflict.¹⁴ ‘On top of the core issues, the armed conflict [...] keep[s] generating contentious conflict over responsibility for killings, violence and security, refugees, relief operations, failed peace efforts, and the safety and welfare of civilians.’¹⁵ It is for these reasons that the chances of a conflict breaking out are always highest in countries that have experienced conflict in the recent past. Various estimates suggest that the risk of recurrence within the first five years after a conflict has ended is between 20 and 50 per cent.¹⁶ Long-term peacebuilding efforts aim to move parties away from confrontation and violence, and towards political and economic participation and peaceful relationships.¹⁷

The underlying, or root causes are what make many conflicts intractable. Often these causes are deeply entrenched in society and closely interwoven into the everyday life of the adversaries. Each conflict is unique, and the root causes are different for every conflict situation, but there is one common denominator to intractable conflicts: they are based on long-lasting and deep structural divisions in society.¹⁸ It is therefore not surprising that the most intractable conflicts often are national, ethnic or identity-based conflicts, in which one group has historically possessed most of the socio-economical assets and political power at the expense of the other(s). These causes are embedded in history, and the resentments they spawn can come from events that occurred decades or even centuries ago. For example, the conflict in Northern Ireland can be traced back at least to the Battle of the Boyne in 1690, which affirmed Protestant domination over the island. The tensions between Albanians and Serbians in Kosovo date back at least to the nineteenth century, when modern nationalism became an important political force in the Balkans, but in the national epic of the Serbs for example, the problems start as early as 1389 with the Battle of Kosovo.¹⁹ These events themselves may not even matter all that

¹³ Maiese, Michelle. ‘Peacebuilding’, *Beyond Intractability* (http://www.beyondintractability.org/essay/peacebuilding_20/09/2010).

¹⁴ A. Oberschall, *Conflict and peacebuilding in divided societies. Responses to ethnic violence* (New York, 2007) 185 - 187.

¹⁵ Ibidem, 185.

¹⁶ V. Chetail, ed., *Post-conflict peacebuilding: a lexicon* (Oxford 2009) 7.

¹⁷ Maiese, ‘Peacebuilding’.

¹⁸ C. Hauss, ‘Addressing Underlying Causes of Conflict’, *Beyond Intractability* (http://www.beyondintractability.org/essay/addressing_underlying_causes/20/09/2010).

¹⁹ F. Bieber, ‘Nationalist mobilization and stories of Serb suffering: The Kosovo myth from the 600th anniversary to the present’, in: *Rethinking History* Vol. 6 (1) 95-110.

much, but their politicized historical narratives are kept alive by people who want to keep the conflict itself alive. In the case of Kosovo, the two identity groups do not only have a troubled past, they also have different religions. Religious differences are often portrayed as causes for conflict and violence between groups. Religion itself does not cause conflicts to start, but it cannot be denied that religions have a tension to exclusivity, with devout individuals claiming that other convictions are wrong and evil. On the other hand, most religions support peace and compassion, which is reflected in the impressive number of faith-based peacebuilding NGOs. Religion is a powerful “tool” that can be used to promote either conflict or peacebuilding, as for many people it is an important part of their identity that determines membership of a larger community. “National” histories and religion have a lot in common in this respect, as both do not necessarily lead to conflict, but can become extremely inflammable in the wrong hands. This was definitely the case with Slobodan Milošević and his nationalistic companions, who deliberately played to long-standing fears and resentments among their constituents, thereby increasing their own power and legitimacy. During the 1980s and 1990s Milošević consciously fomented tensions between Serbs and other minorities in the former Yugoslavia, in an attempt to mobilize Serbians for warfare – the goal of the conflict obviously being the expansion of Serbian control over the rest of Yugoslavia, or at least where there was a Serbian majority. Laura Silber and Allen Little have fittingly described the situation: ‘Yugoslavia did not die a natural death. Rather, it was deliberately and systematically killed off by men who had nothing to gain and everything to lose from a peaceful transition from state socialism and one-party rule to free-market diplomacy.’²⁰

Many conflict scholars have demonstrated that individual motivation for participation in conflict and violence usually stems from economic motives (“greed”) and/or personal “grievances” over past (perceived) injustices. This thesis does not aim to provide a definite solution for the “greed versus grievances debate”, but it seems that a combination of the two is the best explanation for individual participation in violence. A major problem with intractable conflicts is that they often have root causes offering incentives for both. Grievances clearly relate to injustices in the past, but greed as a cause for conflict also desires an explanation by structural problems in society. Greed-based theories are most common nowadays, emphasizing that the process of radicalization and criminalization in violent conflicts is not very different from “normal” criminal gang behaviour.²¹ In both cases individuals are driven by greed and a desire for a sense of belonging, but it clearly requires more than “regular greed” to achieve the scale and level of societal disruption that is extant in many intractable conflicts. Especially the rigid divisions between different ethno-national groups in conflict-ridden societies cannot be understood without structural causes, such as socio-economic inequality and deprivation. Conflict resolution strategies that fail to address the complexity of underlying structural causes and the impact of war-related hostilities on inter-group relations, as well as the individual (economic) incentives for conflict that derive from both, are likely to be ineffective.

1.2 Defining peacebuilding

The term peacebuilding is often attributed to Johan Galtung, who coined the term in his ‘Three approaches to peace: peacekeeping, peacemaking, and peacebuilding’ (1975).²² Galtung argued that in addition to peacekeeping and peacemaking, ‘structures must be

²⁰ Laura Silber and Allen Little, *Yugoslavia: Death of a Nation*. (London: Penguin Books 1997), 1266.

²¹ P. Collier, A. Hoeffler, ‘Greed and grievance in civil war’, *Oxford Economic Papers*, Vol. 56 (4) 563-595.

²² J. Galtung, ‘Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding’, in: J. Galtung ed., *Peace, War and Defense: Essays in Peace Research*, Vol. II (Copenhagen 1976) 282-304.

found that remove causes of wars and offer alternatives to war in situations where wars might occur.²³ This can be seen as the basis of today's notion of peacebuilding as an endeavour to create a condition of stable (or sometimes called durable) peace – which was originally defined by Kenneth Boulding in 1978 as 'a situation in which the probability of war is so small that it does not really enter into the calculations of any of the people involved.'²⁴ Peacebuilding aims to transform society into stable peace by addressing root causes of conflict and promoting indigenous capacities to deal with societal problems in peaceful ways. While the concept was around in scholarly debates for over a decade, it only came into widespread use after the publication of the *Agenda for Peace* (1992) by Boutros Boutros-Ghali, then Secretary-General of the United Nations.²⁵ This report came up with policy recommendations on ways to strengthen and increase the efficiency of the UN as an actor in preventive diplomacy, peacemaking, peacekeeping and post-conflict peacebuilding. The UN has always had primacy in these fields according to the UN Charter, and in the post-Cold War context the Security Council wanted to increase the international capacity to end violent conflicts both between and within states, and to promote international peace and security. From the early 1990s onwards many scholars, governmental and non-governmental practitioners have broadly used the term peacebuilding, but what it meant was often ill defined.²⁶

There are many definitions and descriptions of peacebuilding, and even within organizations as the UN and EU the conceptual understanding often differs. Nevertheless, in broad terms we can distinguish two strands of thought on understanding peacebuilding among scholars and practitioners. In line with the *Agenda for Peace*, peacebuilding can be seen as a wide range of activities such as capacity building, reconciliation, and societal transformation, that tend to strengthen and solidify peace in order to avoid relapse into conflict.²⁷ This makes it a long-term process that occurs when violent conflict has decreased or come to a halt altogether. In this narrow interpretation, peacebuilding is practiced in post-conflict support of peace accords and the rebuilding of war-torn societies. This puts peacebuilding in the phase of the peace process that follows after peacemaking and peacekeeping.²⁸ The second interpretation of peacebuilding not only refers to transformative efforts after a peace agreement, but it functions as some sort of umbrella concept for the entire peace process, including peacemaking and peacekeeping activities, such as violence prevention, civilian and military peacekeeping, military intervention, humanitarian assistance, peace agreements and so forth.²⁹ These activities and functions of peacebuilding can both precede and follow formal peace accords, because peace itself is seen as a dynamic social construct, instead of a legal condition. There is a lot to say for this understanding of the concept of "peace", but this wider definition of peacebuilding as a whole is not very suitable for the analysis of policies and activities by the EU. (Inter)governmental actors are largely bound to the legal dimensions of conflict resolution, as defined in international agreements and above all in the UN Charter. Besides, the actors involved, and the decision-making processes for (inter)governmental third-party intervention, are quite different for the various types of action. This makes it complicated to consider peacemaking, peace enforcement, and for example peacekeeping all as part of a single, large peacebuilding policy. In this sense it is not strange that the

²³ Ibidem.

²⁴ K.E. Boulding, *Stable Peace* (Austin 1987) 13.

²⁵ *An agenda for peace. Preventive diplomacy, peacemaking and peace-keeping*. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council (New York 1992).

²⁶ Maiese, 'Peacebuilding'.

²⁷ *An agenda for peace*.

²⁸ Maiese, 'Peacebuilding'.

²⁹ Ibidem.

wider definition is not generally used in the governmental framework, where the term “peace process” is often applied as the umbrella term to encompass all these different phases and approaches.³⁰ To NGOs the wider definition is more useful, because for them peacebuilding activities are less confined to a distinct phase of the conflict or legal definitions that bind governmental actors. In this thesis we will use the narrow understanding of peacebuilding as described above as our working definition. A more precisely phrased definition might seem attractive, but does not do right to the conceptual variance both in academia and within the EU.

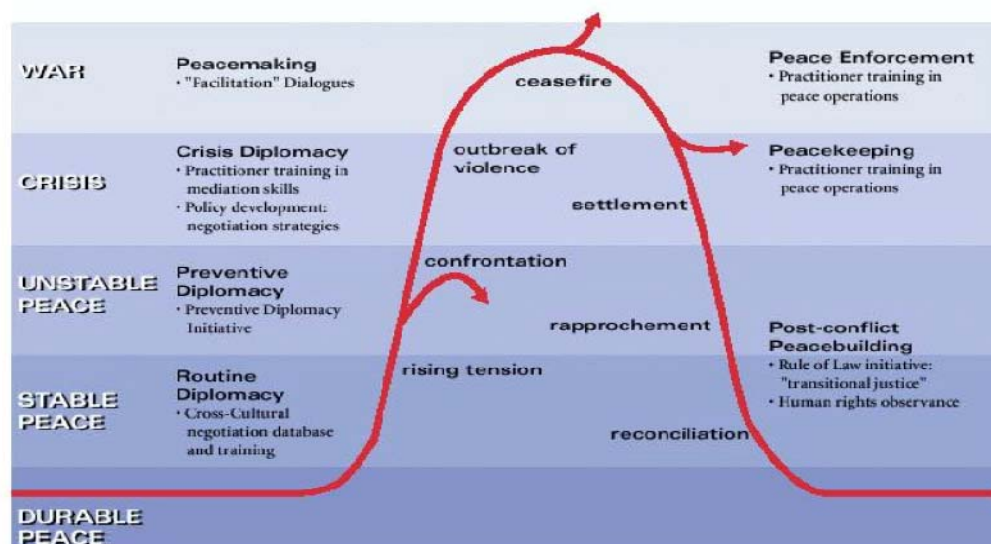


Figure 1. From: M.S. Lund, *Preventing violent conflicts: a strategy for preventive diplomacy* (USIP Press, 1996).

Peacebuilding activities can be organized in every phase of the peace process according to the “wider definition”, but in reality peacebuilding usually does correspond with the last phases of the peace process. Essentially, it is a process that aims to prevent recurrence of violence and facilitates the transition from the conflict phases of “crisis” or “unstable peace” into “stable peace” and ultimately “durable peace”. These phases should of course be considered as nothing more than indications of the situation, while the transition from war to peace in fact happens in a continuum. This is represented in the conflict curve shown in figure 1. In reality the development of conflicts is not so smooth and often looks more like a bumpy road. Conflicts are dynamic and always changing, and adversaries constantly act and react to these changing circumstances. For these reasons, the curve has arrows that indicate the possibility of development in different directions. This can be illustrated by the case of Kosovo. Kosovo was one of the first areas of the former Yugoslavia where violence erupted, but it didn’t come to full-fledged warfare here in the early 1990s. Unfortunately, conflict prevention didn’t work for long and the area was plunged into a period of violence at the end of the decade. Nowadays war is over and the situation seems to be hovering between crisis and unstable peace. The demand for peacekeeping activities in Kosovo has decreased in the past decade, and the number of violent incidents has dropped enormously, but clashes between Kosovo Serbs and Kosovo Albanians are still occurring once in a while.³¹ It is difficult to determine the phase of a conflict, and it seems possible that some phases are overlapping in different layers of society, or in different geographical areas within a conflict region or country. In the case of Kosovo it seems that peacekeeping activities will overlap with post-conflict peacebuilding for some time to come.

³⁰ Ibidem.

³¹ ‘Ethnic Albanians and Serbs clash in divided Kosovo town’, *The Guardian* (30 May 2010).

Regardless of the yielded definition, a distinction is usually drawn between two aspects of peacebuilding: post-conflict peacebuilding and long-term peacebuilding. Post-conflict peacebuilding operations consist of activities aimed at immediate needs after the end of conflict, such as demobilization, reintegration programmes and quick reconstruction of vital infrastructure. These activities are often perpetrated simultaneously with military peacekeeping operations.³² Civil-military cooperation and mutual support are common, but the actual post-conflict peacebuilding activities should still be considered as civil action. Military operations can definitely be deployed in support of the peace process, and the distinction between military and civil peacebuilding is quite common in literature that uses a wider definition of peacebuilding, but in the narrow definition of peacebuilding that is yielded in this thesis it does not make much sense to define military operations as part of peacebuilding as such. For example policing or training operations may often be seen as “military peacebuilding”, but these can also be considered as civil activities perpetrated by military personnel.³³ The long-term component of peacebuilding focuses on societal transformation with activities aimed at reconciliation, capacity building through education, training and socio-economic reforms, and all sorts of other activities aimed at self-sufficiency and building positive inter-group relationships.³⁴ The distinction is often used to easily differentiate between project- and process-based peacebuilding activities, but in reality it is often not so easy to define which activities are short- or long-term. The transition from international activities aimed at immediate relief to those supporting long-term stabilization ideally happens in a continuum. Therefore the distinction has no active role in this thesis, as both ultimately have the same goal and the European Union acts in both.

1.3 The European Union as a peacebuilding actor

In the paragraphs above we discussed the underlying ideas that show the relevance of peacebuilding, and we have defined a working definition of the concept. Because this thesis focuses on a specific actor – the European Union – we also need to examine the conceptual understanding of peacebuilding in the EU, as well as the institutional infrastructure that is involved in the implementation of EU peacebuilding operations. It is necessary to have a basic understanding of the conceptual and policy-making frameworks in order to analyze EU peacebuilding activities in Kosovo. This does however not mean that we can only analyze the EU in its own terms. It will for instance become clear below that the EU does not have a single definition of peacebuilding, and therefore the narrow definition described in paragraph 2.1 will be used as a working definition in this thesis, while realistically acknowledging the conceptual variance. In addition, we need to keep in mind that this thesis primarily aims to assess to what extent the EU as a peacebuilding actor succeeds in reaching and engaging all the important dimensions of society that can contribute to the transition to durable peace. To answer this question many concrete activities will be examined and discussed as a means to get a good idea of the engagement of the EU with various aspects of civil society, but coming up with an extensive or even comprehensive overview of activities is not a goal in itself. Of course this paragraph is somewhat of an exception, as a general impression of EU foreign policy mechanisms in relation to crisis management and conflict resolution will be given.

Because of its unique history, the EU has a certain authority with regards to peacebuilding. The process of European integration that created the European Community and later on the EU itself can be considered as a peacebuilding project for Western

³² Ibidem.

³³ A. Rigby, ‘Is there a role for the military in peacebuilding? *CCTS Review* 32 (October 2006).

³⁴ Ibidem.

Europe, dealing with the heritage of two World Wars and the rivalry between the Great Powers. From the early 1990s onwards, the European Union expanded both its borders by integrating former communist countries, and its common foreign policies through increased internal integration. Again, these policies can be seen as peacebuilding enterprises, promoting peace and stability in the region through economic cooperation and integration between countries. Unfortunately this governmental type of peacebuilding projects is not suited for many contemporary conflicts, such as Kosovo. Repeating the integration process is not a viable solution to the problem here. Clearly there are tensions between the governments of Kosovo and Serbia, which doesn't recognize the secession, but the major problem with Kosovo is the internal conflict between the identity-groups of Kosovo Albanians and Kosovo Serbs. Peacebuilding therefore has to focus on improving the relationship between these groups. The EU is trying to do so in several ways, but there is no single peacebuilding policy or strategy in the Union, which makes it difficult to define the concept in the EU context. Some authors have even argued that when referring to the European Union, it almost seems simpler to ask what is not indirectly or directly peacebuilding.³⁵ This argument is in line with a statement made by Catherine Ashton – the High Representative of the Union for Foreign Affairs and Security Policy (HR) – while addressing the European Parliament, that peacebuilding is 'central to everything the EU does externally.'³⁶ This is not a very practical notion however, and a more precise examination of the conceptual understanding of peacebuilding and its practical implementation through the seemingly dispersed policy framework seem in order. This is especially the case when looking at the EU's involvement in for example Kosovo.

As we have discussed above, there are several possible interpretations of peacebuilding, and it is sometimes hard to spot the difference with aspects of conflict prevention, crisis management and post-conflict stabilization. Much of the current understanding and practice of peacebuilding in the EU is consciously modelled in line with international norms, notably those of the United Nations.³⁷ This resemblance is not strange, as the EU has many direct links to the UN. Two EU-Member States have a permanent seat in the Security Council, both the Council and Commission keep offices in Geneva and New York to smoothen cooperation, and more often than not a UN mandate is sought to underpin the legality of EU crisis management operations. The Lisbon Treaty even explicitly stresses that the Union and its Member States are bound by the provisions of the Charter of the UN, and in particular the primary responsibility of the UN Security Council for the maintenance of international peace and security.³⁸ Also it is good to remember that ever since the EU became active abroad under the Common Security and Defence Policy³⁹, several of its major operations were in support of larger UN operations, or even replaced UN missions.⁴⁰ In order to understand peacebuilding in the EU context it therefore makes sense to start with a better look at the usage of the term in the UN.

The term "peacebuilding" has been used in many UN reports and mandates after the introduction of the term in the *Agenda for Peace* in 1992. Although the central goal of addressing root causes and promoting sustainable peace is always clear, a precise definition of the concept in the UN remains elusive. Instead of clarifying or defining this

³⁵ S. Duke, A. Courtier, 'EU Peacebuilding: concepts, players and instruments', 38.

³⁶ Policy Department of the directorate-general for external policies of the union, *Towards an EU peacebuilding strategy? EU civilian coordination in peacebuilding and the effects of the Lisbon treaty* (April 2010) 1.

³⁷ S. Duke, A. Courtier, 'EU Peacebuilding: concepts, players and instruments', 38.

³⁸ 'Consolidated versions of the Treaty on the European Union and the Treaty on the functioning of the European Union', *Official journal of the European Union*, 115 (2008/C 115/01), 343.

³⁹ Website of the Council of the European Union, 'Common Security and Defence Policy' (<http://www.consilium.europa.eu/showPage.aspx?id=268&lang=en> 20/09/2010).

⁴⁰ Ibidem.

concept, various documents and policies often use the term peacebuilding in a slightly different manner.⁴¹ Given the variance in the concept (also in academia, as seen in paragraph 2.2) it might even be unrealistic to expect the UN (or the EU for that sake) to have a precise definition of the term that serves for all its policies. From UN documents on the institutional framework and guidelines for peacebuilding activities we can at least derive that the UN increasingly sees peacebuilding as post-conflict peacebuilding aimed at preventing the reoccurrence of conflict and creating the conditions necessary for durable peace.⁴² In this sense, four critical areas are defined in which progress has to be made. These are: 'restoring the state's ability to provide security and maintain public order; strengthening the rule of law and respect for human rights; supporting the emergence of legitimate political institutions and participatory processes; and promoting social and economic recovery and development, including safe return or resettlement of internally displaced persons and refugees uprooted by conflict.'⁴³ The concrete activities that are mentioned in UN documents as part of peacebuilding operations are often multi-faceted and are all based on the underlying idea that societies need to change and root causes need to be dealt with to create durable peace. Activities that are regularly mentioned include: 'disarmament, demobilization and reintegration of combatants; anti-mine actions; security sector reform and other rule of law-related activities; the protection and promotion of human rights; and electoral assistance and support to the restoration and extension of (legitimate) state authority.'⁴⁴

The fields of action and concrete activities mentioned above in the UN context are largely reverberated in the context of the EU, as are the goals of preventing the (re)occurrence of the outbreak of violent conflict, and supporting the conditions necessary for durable peace. As in the UN, the term peacebuilding is increasingly present in the European Union, and again it is an imprecise notion as the term is often used in a slightly different manner. The term is used frequently in several departments and policies of the Union, but there is no single peacebuilding definition or strategy.⁴⁵ This is not so strange as the responsibilities and competences of the external relations of the European Union, and therefore its capacities to respond to conflict, have been split between the first (European Community) and second (CFSP/ESDP) pillar of the Union. In the first pillar the European Commission (EC) did most of the decision-making, while in the second (intergovernmental) pillar the Council of the European Union could only make decisions unanimously. With the Lisbon Treaty the pillars have formally merged, and established the European Union as one legal person, enhancing the ability to sign treaties on behalf of all the Member States. The Treaty also created the post of High Representative of the Union for Foreign Affairs and Security Policy (HR), to centralize coordination of EU foreign policy. The HR conducts the Common Foreign and Security Policy (CFSP), chairs the Foreign Affairs Council (composed of the foreign ministers of all the EU countries), and is vice-president of the EC. In the near future the post will be backed up by the European External Action Service, a foreign ministry and diplomatic corps for the EU, although at the time of writing the department is still being formed.⁴⁶ The main reason for appointing the HR was to improve coordination between the Commission and Council on external and security policies, but the division of responsibilities as such remained largely the same with the Lisbon Treaty.

⁴¹ S. Duke, A. Courtier, 'EU Peacebuilding: concepts, players and instruments'.

⁴² UN Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (18 March 2008).

⁴³ *Ibidem*, 25.

⁴⁴ S. Duke, A. Courtier, 'EU Peacebuilding: concepts, players and instruments', 7-8.

⁴⁵ *Ibidem*.

⁴⁶ H. Mahony, 'Details emerge on final set-up of EU diplomatic corps', *EUobserver.com* (22 June 2010).

The Commission has the primary responsibility for external policies related to the common market, for example international trade and development. This gives the Commission the option to act in conflict prevention and peacebuilding through a variety of ways. It has external assistance policies with a specific regional focus, such as the financial instruments for European Enlargement or the Neighbourhood Policy, which work on promoting EU standards in the rule of law, government accountability and democracy. When used in the post-conflict context of the former Yugoslavia these activities can be seen as peacebuilding actions. The Commission also has the European Instrument for Democracy and Human Rights (EIDHR) at its disposal, which grants financial aid to both intergovernmental and nongovernmental organizations promoting democratization and respect for human rights. Through this instrument the European Commission promotes the development of civil society in non-EU countries, and is able to support particular initiatives it deems necessary but is not able or willing to carry out itself. The Council of the European Union has the responsibility over the CFSP, including the Common Security and Defence Policy (CSDP),⁴⁷ which includes everything else related to the prevention, management and resolution of conflicts.⁴⁸ In this capacity the Council has put a growing emphasis on acquiring and strengthening the EU's crisis management capabilities, both military and civilian, in order to deal with the so-called "Petersberg tasks". Including the additions of the Headline Goal 2010,⁴⁹ these tasks are: '[J]oint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization.'⁵⁰ The military operations that are part of these tasks usually grab the headlines, but they represent only a minority of the operations conducted until now in the framework of the CSDP. The rule of law operation EULEX in Kosovo is the largest CSDP mission so far, and it focuses primarily on policing and support to the judiciary.⁵¹

Ideally, the division of responsibilities and competences should not be apparent in peacekeeping and peacebuilding operations "on the ground". Similarly, the immediate short-term actions taken in post-conflict peacebuilding should form a continuum with long-term peacebuilding efforts, putting emphasis on the importance of both early response, as well as on having the correct follow-up programmes in place. In the division of competences between Council and Commission it may seem that the Council/CFSP is more oriented towards short-term stabilization efforts, while the Commission's policies and programmes are more focused on longer-term activities such as transition assistance and institution building.⁵² This is an important observation to keep in mind while assessing EU peacebuilding, but it can definitely not be considered as a rule. There are some important exceptions that force Commission and Council to cooperate and coordinate action. It should be noted for example that several CSDP operations, including Kosovo, are assuming a more long-term character as initial peacekeeping operations (in this case by NATO) give way to police and civilian operations. Peacekeeping and peacebuilding are distinct approaches, but they often exist next to each other to provide security during the transition from peacekeeping to both short-term and longer-term peacebuilding actions. Similarly, but the other way around, the Commission has a number of valuable short-term or emergency funding instruments, most notably the "Instrument for Stability" discussed in Chapter 6. In addition, it seems that many activities fall into the

⁴⁷ Until the Lisbon Treaty known as European Security and Defense Policy, abbreviation ESDP is still often used.

⁴⁸ Website of the European Peacebuilding Liaison Office, 'About Us': <http://www.eplo.org/index.php?id=91>

⁴⁹ Council of the European Union, *Headline Goal 2010* (Endorsed by the European Council of 17 & 18 June 2004)

⁵⁰ *Peacebuilding and the Lisbon Treaty*, European Peacebuilding Liaison Office (2009).

⁵¹ S. Duke, A. Courtier, 'EU Peacebuilding: concepts, players and instruments', 15.

⁵² *Ibidem*, 13-17.

grey areas of competences. The distribution of tasks within the EU is not always very understandable and the institutional disconnection of Council and Commission sometimes makes operating in an integrated manner a serious challenge. Although critics like to see this as a structural problem of the Union and a sign of European weakness, it should be kept in mind that crisis management and peacebuilding are relatively new practices for the EU, which is still working on further development and improvement of its policies and competences.⁵³

1.4 Confronting the paradoxes and dilemmas of peacebuilding

Now that we have finished discussing the conceptual understanding of peacebuilding and the policy framework of the EU, it is time to address some paradoxes and dilemmas that need to be dealt with in the practical implementation of peacebuilding. Throughout the 1990s and onwards, numerous international peacekeeping and peacebuilding operations have been conducted in states torn by civil warfare. The experiences with peacebuilding attempts have been mixed, and quite a few scholars have made assessments of their impact. The importance of peacebuilding is seldom questioned, but several universal contradictions and dilemmas have been encountered. In this section a brief evaluation of these will be given, because these issues will be important for the analysis of the peacebuilding process in Kosovo. The categorization of five major paradoxes is largely based the work of Roland Paris and Timothy Sisk in this field, especially their recent publication *Dilemma's of statebuilding: confronting the contradictions of post-war peace operations*.⁵⁴ The focus of this publication is primarily on state building, but in a lecture in 2009 Roland Paris has mentioned exactly the same five paradoxes and dilemmas in relation to peacebuilding operations, in which they might be even more problematic.⁵⁵ These dilemmas can include practical matters for practitioners in the field or policymakers at headquarters, but also ethical elements and questions about what is the right thing to do. The dilemmas will never go away, but they can be managed with varying degrees of success. To increase success, the first step seems to be promoting a deepened understanding of the dilemmas of peacebuilding, their underlying causes, interactions and implications. These universal paradoxes and dilemmas will be used in the analysis of EU peacebuilding in Kosovo and in processing the findings into concrete policy recommendations.

The first paradox is that intervention by outsiders is used to support self-government. This contradiction flows from the fact that peacebuilding missions are generally aimed at promoting national autonomy and self-government. No matter how well intentioned international interventions may be, the power they exercise is inevitably intrusive, even if the goal is to assist national authorities. Peacebuilding is necessarily a long-term process, in which international involvement seems required in the beginning. At a certain point however, “ownership” will have to be transferred to local authorities, because support for external intermingling is likely to decline over time.⁵⁶ The major practical dilemmas that derive from this paradox seem to be determining the right form, size and duration of external involvement. Some aspects of peacebuilding might benefit from a prolonged and dominant international presence, such as maintenance of security,

⁵³ S. Duke, A. Courtier, ‘EU Peacebuilding: concepts, players and instruments’, 17-18.

⁵⁴ R. Paris, T. Sisk, eds., *The dilemma's of statebuilding. Confronting the contradictions of postwar peace operations* (London 2009).

⁵⁵ R. Paris, lecture: ‘ethical dilemmas and the contradictions of peacebuilding’, presentation at the launch of the forum for peacebuilding ethics New York, 19 February 2009.

⁵⁶ R. Paris, T. Sisk, eds., *The dilemma's of statebuilding*, 304-315.

while other aspects prefer a lighter “footprint”, and internal initiatives could even be harmed by a large and long-term international presence.

The second and related paradox is that foreign actors are effectively involved in identifying and supporting legitimate local leaders. The need for local ownership and support of a peace process goes without saying, but international assistance is often required to implement this local ownership. Foreign peacebuilding actors deliberately try to identify, and transfer power and influence (or “ownership”) to local actors that seem to be in favour of peace and reconciliation. This seems the logical thing to do, but in turn this infringement in local politics and power relations can call into question the legitimacy and sustainability of the political institutions that are created. It is difficult to find a balance between cooperation with former fighters, while drawing in other moderate voices into the political process. One of the two might turn against the peace process if this balance is wrong. Another risk is that the external support leads to dependency among local elites and even the general population. Some dependency may be inevitable as peacebuilding requires international control and long-term institution-construction, but prolonged intervention also weakens internal leadership and might create popular resistance.⁵⁷

The third troublesome paradox is that universal values are often promoted as a remedy for civil conflict and other problems. Although many recent conflicts have international dimensions, they are also local phenomena that are fought and experienced in a particular socio-cultural setting. Many of the problems of peacebuilding arise from tensions and incompatibilities between the universal and often “liberal” values of the external actors on the one hand, and the particular social, political and cultural traditions and practices of the host society on the other. For example, there is the possibility that the external intervener will (maybe even non-intentionally) impose culturally distinctive ideas that might not count on support in the “host” country. This paradox creates practical problems for challenges such as the design of transitional governance structures, the provision of security and public services, questions of transitional justice. The (sometimes impossible) challenge with this paradox is to define effective policies that are appropriate both in the eyes of the local population, and those of the external interveners.⁵⁸

The fourth paradox that has been frequently described by Roland Paris and other authors is the inescapable tension between continuity and change in societies undergoing transition from conflict to peace. Both a clear break with the past and a reaffirmation of history are required for societal change and progress. To create the conditions for a sustainable peace after a conflict it is inevitable that some elements of change are included, because it seems that even the pre-war society included root causes for conflict. The conflict itself will also have influenced traditional society, so even if international peace builders wanted to, they couldn’t remake war-torn societies in the way they were before. Nevertheless, patterns of political and economic life are deeply embedded in society and resistant to change. The result of peacebuilding will always be a blend of old and new practices – sometimes productive and sometimes destructive, but always difficult to predict. The challenge is to create positive change without undermining the conditions of legitimacy that are attached to traditional practices, which is a difficult line to walk.⁵⁹ However, this issue is not so much of a paradox in Kosovo, as it is part of the problematic relationship between Kosovo Serbs and Kosovo Albanians. Although the status is Kosovo remains controversial, it cannot be reversed. The minority of Kosovo Serbs did not want this change, but continuity was not an option to the majority of Kosovo Albanians, which also received support from most of the other minorities in the country. Gaining the support

⁵⁷ Ibidem.

⁵⁸ Ibidem.

⁵⁹ Ibidem.

from the Kosovo Serbs for the government in Pristina and its institutions will be a very difficult task. Some forms of decentralisation and local self-governance in strong municipalities are already being implemented, but a different blend of old and new practices seems out of the question. It is therefore that the paradoxical tension between continuity and change as such will not be treated extensively in this thesis.

The fifth and last universal paradox of peacebuilding is that short-term peacebuilding imperatives often conflict with the longer-term requirements for sustainability. In the early stages of an operation, described in paragraph 2.2 as “post-conflict peacebuilding”, there typically is a strong pressure to address short-term needs. This might involve deals and bargains with individuals or groups whose hands are not entirely clean, for example to guarantee short-term stability. Actors that played morally questionable roles during conflict hereby get some form of legitimacy. This is problematic for longer-term requirements of sustainable peace, which probably demands a gradual shift of power and political influence from old elites to other groups and the broader society. The same issue returns in discussions on amnesties, transitional justice and reconciliation. Some form of justice seems necessary for long-term sustainable peace, but the prosecution of criminals of war often has a short-term destabilizing influence on inter-group relations and reconciliation processes. A problem is that donor actors sometimes fail to follow the liberal values upon which they base their legitimacy by focussing on compromised short-term solutions, because their willingness or ability to finance and engage in long-term peacebuilding efforts is not in line with the articulated ambitions. How and when to combine and shift between short-term and longer-term goals and strategies are practical and ethical questions without clear-cut and simple solutions.⁶⁰ This paradox has seriously harmed UNMIK, which had to deal with the powerful Albanian elites in establishing the provisional institutions of self-government in Kosovo. Overall, this approach has made Kosovo into a frozen conflict and UN protectorate for almost a decade. The declaration of independence has brought the dynamics back in the game, although this has also increased the tensions between Pristina and Belgrade, and between Kosovo Serbs and Kosovo Albanians. Nevertheless, it is safe to say that short-term stabilization has already been achieved. The number of foreign security forces in the country has significantly decreased and most of the institutional infrastructure has been established. The European Union has taken over from UNMIK, and it is free to focus on the longer-term requirements for stability and peace. Discussing this fifth paradox extensively is therefore not necessary for most of the EU’s actions. Yet, we will still encounter this paradox several times in this thesis, as the Union is responsible for improving the accountability and transparency of the institutions that were established by UNMIK.

The contradictions described above have shown that there are competing imperatives in peacebuilding, and that in many cases there is no simple solution to reconcile the contending goals. It depends on the particular case what exactly impedes successful peacebuilding, but most universal lessons are related to the underlying principle of liberalism, upon which external actors base their efforts to transform war-shattered states into democratic, free market economies. There is a tension between respect for indigenous institutions and historical and cultural particularities on the one hand, and liberal ideas and the need for societal change after conflict on the other.

One of the fundamental flaws of “international liberalism” seems to lie with the paradoxical nature of democracy and capitalism. Both are inherently based on (non-violent) conflict and societal competition as a means of achieving political stability and

⁶⁰ Ibidem.

economic prosperity.⁶¹ While this system has indeed provided peace and prosperity to highly developed western countries, the track record of international liberalism as a peacebuilding strategy is quite poor.⁶² Case-particularities are usually determinant for successful peacebuilding, but it seems clear that the process of democratization itself is extremely prone to conflict (most famously described by Mansfield and Snyder).⁶³ The expectation that peaceful societies would develop as soon as a democratic polity was implemented was both arrogant and ignorant. Some critics have even proposed to break with international liberalism altogether, and switch focus to working with local political and societal institutions, instead of implementing a cultural distinctive western model.⁶⁴ Yet, the alternative of facilitating the development of complete indigenous forms of justice, government and economy seems much romanticized as well. As can be seen from the paradoxes above, it seems problematic to leave indigenous state institutions unchanged in countries coming out of violent internal conflict. The process of war leads to the creation of states and institutions, as has been famously described by Tilly⁶⁵ in regard to the European nation-states. War acts as a catalyst for the “invention of traditions,”⁶⁶ but these indigenous ideas are not necessary acceptable to all opposing ethnic groups in a country. We must acknowledge that different combatant groups are likely to have their own ideas about extant institutions and native forms of justice and organization.

Recommendations for improvement of the practice of peacebuilding usually focus on the importance of long-term commitment and follow-up to short-term activities. In line with the paradoxes described above and the general critique on international liberalism we could add the importance of careful and respectful implementation of liberal reforms with attention for the historical and cultural particularities.⁶⁷ Local historical and cultural particularities should have an important role in peacebuilding, but an indigenous solution is not a better guarantee of a successful peace process than democratization is. Local elite (mis)behaviour might lead to all sorts of authoritarian and repressive regimes that create some stability, but don't solve civil conflict in the long run.⁶⁸ This is especially a concern, as many civil wars are internally perceived as clashes of ethnicities or other identity groups. Some new common ground has to develop before former adversaries can peacefully coexist within a single state. Therefore it seems that a dynamic hybrid between liberal-democratic reform and indigenous values and institutions, that offers space for peaceful long-term development of the political system, might be better solution for many of the problems. The question to what extent the EU is successful in dealing with the paradoxes of peacebuilding will be integrated in the analysis of our findings and into the conclusions and recommendations.

⁶¹ Roland Paris (1997), 'Peacebuilding and the limits of liberal internationalism', *International Security*, Vol. 22, No. 2, pp. 57.

⁶² Béatrice Pouligny (2005), 'Civil society and post-conflict peace-building: ambiguities of international programmes aimed at building 'new' societies', *Security dialogue*, Vol. 36, No. 4, 504-509.

⁶³ E.D. Mansfield, J. Snyder, 'Democratization and the danger of war', in: *International Security* Vol.20, nr. 1 (1995) 5-38.

⁶⁴ For example: Béatrice Pouligny (2005), 'Civil society and post-conflict peace-building: ambiguities of international programmes aimed at building 'new' societies', *Security dialogue*, Vol. 36, No. 4, pp. 504-509. An article on hybridisation between liberalism and indigenous institutions: David Roberts (2009), 'Hybrid polities and indigenous pluralities: advanced lessons in statebuilding from Cambodia', in: David Chandler ed., *Statebuilding and intervention: policies, practices and paradigms* (London-New York) 182-186.

⁶⁵ C. Tilly, *Coercion, Capital, and European States, AD 990-1992* (New York 1990).

⁶⁶ E. Hobsbawm, T. Ranger, *Invention of tradition* (Cambridge 1992).

⁶⁷ Roland Paris (1997), 'Peacebuilding and the limits of liberal internationalism', 54-89.

⁶⁸ Roland Paris (1997), 'Peacebuilding and the limits of liberal internationalism', 79-85.

2. Methodological framework: Multi-track Diplomacy

2.1 The development of models on “unofficial” diplomacy

In 1982 Joseph Montville made the original distinction between “Track 1” and “Track 2” diplomacy. Montville, then a U.S. State Department employee, coined these terms in an article in *Foreign Policy* titled: ‘Foreign Policy According to Freud’.⁶⁹ “Track 1” diplomacy was the work of diplomats conducting formal negotiations as official representatives of their nations. In contrast, “Track 2” referred to diplomatic efforts by non-state actors, such as NGOs and universities. Joseph Montville argued that the chances of successful diplomacy (in terms of achieving the desired societal transformation) would rise with combined efforts in both levels. The rise of such new ideas on diplomacy reflects two simultaneous developments: a growth in the number and variety of international actors, and an expansion of the activities of (inter)governmental actors into several new fields

Montville’s distinction between the two “tracks” can be seen as an acknowledgement of the growing importance and impact of non-governmental actors in international relations, and more important for this thesis, in the business of conflict resolution. These non-governmental actors, sometimes fashionably lumped together as “civil society”, can include e.g. local and international NGOs, scholars, research institutes, individual opinion leaders and activists.⁷⁰ The number of international NGOs alone has grown from less than 200 in 1909 to approximately 700 at the end of the Second World War, and more than 7.000 today.⁷¹ This is of course an abstract number that includes organizations as different as the Catholic Church and Amnesty International, but it still gives an indication of the growth of international activities by non-profit, non-governmental organizations. The growth of non-governmental activities clearly reflects the expansion of the state system itself after 1945, and NGOs and individual actors still operate “below” the level of the nation-state in international relations. Nevertheless, it is clear that non-governmental actors have become important in a world that is increasingly characterized by global interdependence, and that they ‘inevitably and consistently affect the menu for choice of constraints and possibilities facing states.’⁷²

The second development reflected in theories on “unofficial diplomacy” is the expansion of governmental activities. Regarding conflict resolution this expansion of activities is especially pointed out by the rise of so-called second-generation peacekeeping operations, aimed at achieving multiple political and social objectives. Unlike traditional peacekeeping operations, such as monitoring the buffer zone in Cyprus, second generation operations do not only include soldiers guarding the peace, but also civilian experts and relief specialists. The broad use of the term peacekeeping is a bit confusing in this sense, because these second generation operations include aspects that are in fact (military) peace-enforcement or (mostly civilian) peacebuilding activities, such as the protection of safe areas, escorting aid convoys, disarming militias, reforming governmental institutions, promoting free media and fair judicial systems, and a whole lot more. This shows that (inter)governmental actors no longer tend to confine their involvement to diplomatic peacemaking at governmental level, and that they have expanded their activities into the

⁶⁹ Montville, J. V., & Davidson, W. D. (1981). ‘Foreign Policy According to Freud’, *Foreign Policy*, No 45 (winter 1981-1982) 145-157.

⁷⁰ P. van Seters, ‘NGO’s winnen door globaliseren aan invloed’ [NGOs are winning influence], *De Volkskrant* (29 augustus 2002).

⁷¹ B. Russett, H Starr and D. Kinsella, *World politics, the menu for choice* (Boston 2010) 68-71.

⁷² *Ibidem*, 73.

conflict-ridden societies.⁷³ Kosovo is one of the most extended examples, as the UN even took over the complete administration of the area with the assistance of NATO and later the EU.

Altogether these developments have shown the need for analytical frameworks for peace and state building that can deal with a wide variety of activities in many layers of society. A focus on traditional diplomacy between governments and diplomats is no longer sufficient to assess contemporary peace processes. Joseph Montville was one of the first scholars to publicize on this, promoting the distinction between “Track 1” and “Track 2”. This was an important step, but lumping all non-governmental forms of diplomacy under the label of “Track 2” ultimately fails to capture the complexity and breadth of unofficial diplomacy. This critique has led to the development of several concepts that try to frame the diversification of actors in conflict resolution, as well as the cooperation between official and unofficial diplomacy. Ambassador John W. McDonald and Louise Diamond, co-founders of the Washington, DC based Institute for Multi-track Diplomacy, came up with the concept of “Multi-track Diplomacy” (MTD), which basically spreads out “Track 2” into eight different aspects of non-governmental activities.⁷⁴ Susan Allen Nan coined the term “Track one and a half diplomacy” to describe conflict resolution activities facilitated by nongovernmental actors and directly involving official representatives/negotiators of the conflict parties.⁷⁵ Another invention is “Track 3 Diplomacy” as a way to distinguish grassroots interactions from unofficial diplomacy with influential nongovernmental actors.⁷⁶ Several scholars and practitioners have also argued for a model that does not include “tracks”, such as Harold Saunders, who uses the concept of a “multi-level peace process” to analyze governmental/nongovernmental cooperation.⁷⁷ The field is still developing, and it is therefore not impossible that future theorists will come up with more “tracks”, levels, or even completely different models. Although there is no definite consensus on the terminology, we can at least conclude that the effectiveness of the working relationship between governmental and civil society actors is generally accepted as an important component of successful conflict resolution and peacebuilding. This is way more important than the exact language that is being used to describe the increased number of actors in the field of peacebuilding, and their cooperation and integration with governmental activities.

2.2 The advantages of the MTD framework

In 1991 McDonald and Louise Diamond coined the term “Multi-track Diplomacy” after basically spreading out Montville’s “Track 2” into eight interdependent civil society “tracks”. They felt that lumping all the various kinds of civil society actors together under one label did not do justice to the complexity of the field. The nine “tracks” they have recognized are Government (Track One), Professional Conflict Resolution (Two), Business (Three), Private Citizens (Four), Research, Training and Education (Five), Activism (Six), Religion (Seven), Funding (Eight) and Public Opinion/Media (Nine). McDonald and Diamond argued that these nine all have their own ‘resources, values and approaches’⁷⁸ and that no single one of them is able to build a peace process that will last,

⁷³ A.J. Bellamy, P. Williams and S. Griffin, *Understanding peacekeeping* (Oxford 2004) 92-133.

⁷⁴ L. Diamond, J. McDonald, *Multi-track Diplomacy: A Systems Approach to Peace* (West Hartford 1996).

⁷⁵ S.A. Nan, *Complementarity and Coordination of Conflict Resolution Efforts in the Conflicts over Abkhazia, South Ossetia, and Transdniestria* (Washington 1999).

⁷⁶ D. Chigas, ‘Track II (Citizen) Diplomacy’, *Beyond Intractability* (http://www.beyondintractability.org/essay/track2_diplomacy 20/09/2010).

⁷⁷ H. Saunders, ‘Prenegotiation and Circumnegotiation: Arenas of the Peace Process’, in: Crocker et al, eds. *Turbulent Peace: The Challenges of Managing International Conflict* (Washington, 2001).

⁷⁸ Ibidem.

while the holistic combination of several “tracks” can produce synergy in conflict resolution. This makes MTD a systems-based approach to conflict resolution, with at its core the conviction that ‘the transformation of deep-rooted conflicts cannot be left solely to governmental entities.’⁷⁹ McDonald and Diamond argue that this cross-fertilization between governmental and non-governmental societal actors allows change to happen in society.⁸⁰ This position has become increasingly common. For example, in this thesis we will see that the EU provides grants to civil society organisations, and also actively works to involve them in monitoring and evaluating various policies. However, the question remains to what extent such cooperation is successful and coherent.

In order to make a better analysis of peacebuilding in general, and specifically of the relationship between governmental and non-governmental actors, it is useful to have a model that systematically differentiates between various types of civil society actors. This helps to find if there are certain fields of civil society that could use more impetus. The major advantage of the MTD framework in comparison to this general distinction, or one of the other alternatives mentioned above, is exactly its systematic classification that distinguishes nine clear levels where action is required. The main idea behind the model is that a systematic approach encompassing many (if not all) of these levels of society is necessary to achieve societal change through diplomatic efforts.⁸¹ This makes MTD a useful model for assessment of policies and activities in the field of peacebuilding, and consequently as a framework to come up with policy recommendations. In cases where more flexibility is desired, for example in policy making, scholars and practitioners might still prefer a less defined model of “Track 2” or “citizens diplomacy”, but the MTD-model seems preferable for any assessment of case studies or peacebuilding policies. Not surprisingly, the Institute for Multi-track Diplomacy has used the MTD model many times for their activities in conflict transformation and peacebuilding. In addition, several scholars have used the model for analyzing particular peacebuilding processes. Some examples will follow below to illustrate the applicability of the MTD model. Of course it is possible that these authors would have come to basically the same conclusions if they had used a general distinction between “Track 1” and “Track 2”. Yet, by using MTD they were able to present a very clear and systematic analysis, that gives detailed insight in the various aspects of civil society, and has many opportunities for concrete policy recommendations.

Anna Matveeva (of the Crisis States Research Centre at the London School of Economics) has used the MTD model in her article ‘Nagorno Karabach: A straightforward territorial conflict’.⁸² Several governmental and nongovernmental actors (both international and local) have attempted to mediate the conflict, but until now it remains a stalemate. Using the MTD model as an analytical framework, Matveeva is able to pinpoint several shortcomings in the peacebuilding process. These included the role of the Armenian Diaspora in funding the Karabakh struggle and opposing the Azerbaijani oil lobby, the authoritarian control by the Azerbaijani state over most local NGOs, and the radically different perspective that Armenians and Azerbaijani’s have on the peace process.⁸³ Matveeva acknowledges that there is no simple and quick solution to the

⁷⁹ L. Diamond, J. McDonald, *Multi-track Diplomacy*, 11-26.

⁸⁰ Ibidem.

⁸¹ Ibidem.

⁸² A. Matveeva, ‘Nagorno Karabach: A Straightforward Territorial Conflict’, in: P. Van Tongeren, H. Van de Veen, J. Verhoeven eds., *Searching for peace in Europe and Eurasia. An overview of conflict prevention and peacebuilding activities*. (London/Boulder 2002) 445-469.

⁸³ As far as Karabakh Armenians are concerned, the issue has been resolved and peace is a reality. They can travel on Armenian passports and appeal for money to the Armenian leadership and Diaspora organizations and for these reasons they are not particularly interested in peacebuilding efforts. The only issues that seem to attract popular attention are the exchange of prisoners of war and the search for missing persons (from Matveeva).

protracted conflict, but based on this “diagnosis” of spoilers and policy gaps in the peace process, she was able to formulate concrete policy recommendations aimed at conflict transformation.

Valerie Perry has applied a similar approach on Bosnia and Herzegovina in her article ‘A survey of reconciliation processes in Bosnia and Herzegovina: the gap between people and politics’.⁸⁴ Mrs. Perry is deputy director of the Education Department of the OSCE Mission to Bosnia and Herzegovina. She describes the situation in Bosnia and Herzegovina as a “cold peace” that is being prolonged by the political deadlock. All parties have defined politics as a zero-sum game in which compromise is viewed as loss, and long-term possibilities are subordinate to short-term gains. Large parts of the population ‘don’t trust politicians, nor do they trust or believe in their ability to change the political system, and this has resulted in a state-wide political malaise.’⁸⁵ One would think that non-governmental initiatives could be very successful in such a climate, but there have been problems. Where cooperation between “Track 1” and the “tracks” 2 through 9 is usually seen as an important condition for societal change, the opposite seems to have happened in Bosnia and Herzegovina. Using the MTD model, Perry found that non-governmental reconciliation initiatives are not necessarily always non-governmental as politics have pervaded religion and the media, and are influencing many other parts of society. Political cleavages have seeped into what should have been non-governmental initiatives. Nevertheless, Perry sees some space for optimism. Political violence is nearly non-existent and people genuinely desire change and peace. Opposition against corruption, political brinkmanship and declining living standards is growing, and it might eventually convince citizens that they have the ability to change the political system.

A last example to illustrate the applicability of MTD is a publication by Manjrika Sewak,⁸⁶ a Fulbright scholar who currently works as Senior Programme Officer at Woman in Security, Conflict Management and Peace (WISCOMP).⁸⁷ Sewak applied MTD as a conceptual framework for sustainable peace and security between India and Pakistan, and she stressed the importance of civil society groups in resolving and transforming protracted conflicts. Sewak particularly focused on the challenges that confront those working in the field of Multi-track Diplomacy, making recommendations that could strengthen the role and impact of civil society peacebuilding initiatives. In the case of India and Pakistan it is difficult for non-official actors to prove their influence and “success”, attract funding for their activities, and to establish good working relationships with the governments. Sewak argues that government workers often consider (especially local) non-governmental actors as naive amateurs with little credibility and legitimacy. The specific challenges in this peace process seem to lie with more information sharing between governments and civil society, and better coordination and cooperation. Sewak fails to come up with concrete recommendations on how to deal with this situation, but definitely succeeds in showing the importance of non-official strategies to foster peace. She especially argues that Multi-track Diplomacy is able to change the mutual prejudices among the public on both sides, thereby laying the groundwork for conflict transformation and eventually resolution.

⁸⁴ V. Perry, ‘A survey of reconciliation processes in Bosnia and Herzegovina: the gap between people and politics’, in: J.R. Quinn, ed., *Reconciliation(s) Transitional justice in postconflict societies* (Montreal 2009) 207-231.

⁸⁵ V. Perry, ‘A survey of reconciliation processes in Bosnia and Herzegovina’, 227.

⁸⁶ M. Sewak, *Multi-track Diplomacy between India and Pakistan: A Conceptual Framework for Sustainable Security* (New Delhi, Manohar and Colombo, 2005).

⁸⁷ This is a peacebuilding initiative of the Foundation for Universal Responsibility of the Dalai Lama, located in New Delhi.

2.3 Using the nine “tracks” of MTC as analytical framework for EU peacebuilding in Kosovo

The EU is a governmental (“Track 1”) actor itself, but it is also through its various governmental policies and its three concrete presences within Kosovo that the EU tries to support and promote peacebuilding initiatives in the civil society “tracks” Two through Nine. In order to understand how the EU engages with these aspects of society, it is necessary to understand the context of what is happening at the governmental level. It is therefore that “Track 1” will be explained somewhat extensively, while simple definitions will be wielded for the other “tracks”. “Track 1” is the world of official governmental diplomacy, policymaking, and peacebuilding as expressed through formal aspects of the governmental process. Diplomacy can be defined as a peaceful political process between (originally) nation-states that seeks to secure a nation’s interests by structuring and managing a system of international relationships. Countries can utilize their diplomats for many objectives, ranging from economic or intellectual enrichment to the promotion of human rights or arms control. Diplomacy in the EU framework is not very different, as the focus lies primarily on common economical interests and promoting peace and stability in the wider region. Diplomacy can be both a peacebuilding and a peacemaking activity, because it works at governmental level to enhance mutual trust, confidence, and understanding among nations. In addition, countries can also use governmental diplomacy to offer negotiation and mediation between adversaries, humanitarian crisis response, emergency reconstruction aid and conflict resolution. When focusing on peacebuilding, typical governmental activities can include support for Security Sector Reform, establishing the rule of law, and all sorts of political and financial reforms in economical and social policies. Such operations can be considered part of “Track 1”, as only states have the power to engage in such actions, and only states can receive legal support for such actions from the UN Security Council. The strong formal position of governmental actors in international relations, and the ability to finance whatever policies are chosen, present governments with large positive potential for peacebuilding activities. The governmental level has somewhat of a command function in the MTD-system. It does not have authority over the other “tracks”, but it has some leadership because it is the only official channel for international agreements and treaties with other nations, and it is where ultimate decisions are made about war, peace, and the commitment of national resources. Governmental actors usually set the agenda, and civil society actors usually react to support, challenge, question, oppose, or seek to influence it.⁸⁸ For governments cooperation with the non-governmental actors in the “tracks” Two through Nine can be very useful, as various civil society actors can work to prepare an environment that will welcome positive change carried out by “Track 1”, while at the same time they can make sure those governments decisions are properly implemented and evaluated. However, governmental actors also have problems. In recent decades cooperation with civilian actors such as NGOs has grown, but there is still a gap between government and politics on the one hand, and non-governmental actors in the field on the other.⁸⁹ In the case of the EU things are often even more complicated. The Union is still in a process of expanding its CFSP and CSDP, in which responsibilities are split between Commission and Council, and within the Commission between several Directorates-General.⁹⁰ The definitions that will be used in this thesis for the “tracks” Two to Nine are derived from Diamond and McDonald, but slightly adapted to the case of EU peacebuilding in Kosovo:

⁸⁸ L. Diamond, J. McDonald, *Multi-track Diplomacy*, 26-33.

⁸⁹ Ibidem.

⁹⁰ For more information, see Chapter 1.

- Track 2: Non-government/Professional, or Peacemaking through Conflict Resolution. This is the realm of professional non-governmental action attempting to analyze, prevent, resolve, and manage international conflicts by non-state actors that target the governmental level.
- Track 3: Business, or Peacemaking through Commerce. This is the field of business and its actual and potential effects on peacebuilding through the provision of economic development.
- Track 4: Private Citizen, or Peacemaking through Personal Involvement. This includes the various ways that individual citizens become involved in peace and development activities through citizen diplomacy, exchange programmes, private voluntary organizations, non-governmental organizations, and special-interest groups.
- Track 5: Research, Training, and Education, or peacemaking through Learning. This “track” includes three related aspects: research, as it is connected to university programmes, think tanks, and special-interest research centers; training programmes that promote the development of practitioner skills such as negotiation, mediation, conflict resolution, and third-party facilitation, and the education system, which assists economical development through improvements of human capital, and has potential to contribute to inter-group contact and respect.
- Track 6: Activism, or Peacemaking through Advocacy. This “track” covers the field of activism on such issues as disarmament, human rights, social and economic justice, and advocacy of special interest groups regarding specific governmental policies.
- Track 7: Religion, or Peacemaking through Faith in action. This examines the beliefs and peace-oriented actions of spiritual and religious communities.
- Track 8: Funding, or Peacemaking through Providing Resources. This refers to various organisations and individual philanthropists that provide financial support for many of the activities undertaken by the other “tracks”.
- Track 9: Communications and the Media, or Peacemaking through Information. This is the realm of the voice of the people: how public opinion gets shaped and expressed by the media-print, film, video, radio, electronic systems, the arts.⁹¹

In the previous pages we have seen that Multi-track Diplomacy is a systems-based approach to conflict resolution, encompassing many (if not all) levels that can contribute to societal change and conflict transformation. Starting from the basic acknowledgment of the importance and interdependence of the nine “tracks” defined above, the MTD framework has been further developed by the Institute for Multi-Track Diplomacy into an entire methodology for conflict resolution and transformation. While Diamond and McDonald have always argued that one model cannot be applied to every conflict situation, they have come up with twelve “standard procedures” for the application of MTD. These include that involvement should always be preceded by an invitation from at least one party to the conflict, an emphasis on local responsibility and empowerment, and for example a readiness for long-term commitment.⁹² Such a recommendation of practical procedures is very useful for organizations that wish to apply Multi-track Diplomacy in their projects, but is not very relevant for this thesis. We do not need methodological

⁹¹ L. Diamond, J. McDonald, *Multi-track Diplomacy*, 11-26.

⁹² A complete overview can be found in the article ‘Multi-track Diplomacy’ by John W. McDonald on Beyond Intractability: http://www.beyondintractability.org/essay/multi-track_diplomacy/.

guidelines for practitioners in the scholarly application of MTD as a model on peacebuilding, but only the basic framework that can be applied as an analytical tool. The various “tracks” will be used as levels of analysis for mapping various kinds of peacebuilding activities in different fields. This approach is very similar to what Anna Matveeva and Valery Perry have done in their research mentioned above. The systematic nature of this analysis ensures that activities in all relevant societal levels are covered, creating a wide-ranging view on EU engagement with civil society. Any such approach is of course selective and highlighting examples representative of broader ongoing efforts and challenges in the peacebuilding process. Yet, different from the survey-like articles by Matveeva and Perry, this thesis has a very concrete goal: assessing the role of the European Union as a peacebuilding actor in Kosovo, and analysing especially to what extent the Union engages with civil society actors through its policies. It is therefore that this thesis deviates from the framework of Multi-track Diplomacy on two points. The term “Track 1” is rarely used in this thesis to distinguish more clearly between governmental action and non-governmental action in the various “tracks”. “Track 8” has not been discussed extensively, as that would lead to a lot of repetition. The involvement of the EU in the field of funding is directly related to support given to other “tracks”.

The layout of this thesis is based on an extensive treatment of the three EU presences in Kosovo. It is still necessary to make a selection, but a cherry-picked image will be avoided by assessing the concrete policies, activities, evaluation mechanisms and the civil society involvement in the three EU presences in Kosovo. Each presence (EU Special Representative, EULEX, European Commission Liaison Office) will be discussed in a separate chapter. These chapters are structured in a way that is useful to assess their particular structure and activities, but each one has a final paragraph in which the consistency in dealing with civil society actors will be discussed, in addition to assessing how the Union deals with the dilemmas of peacebuilding as discussed in Chapter 1. To create a clear picture of the activities in each of the three actors in the various societal “tracks”, this thesis uses the method of systematic, hermeneutical research – a qualitative-interpretative approach based on the second-order analysis of existing data and texts. The combination of the MTD framework with the hermeneutic-interpretative approach makes it possible to analyze a wide variety of sources, providing us with a clear picture of the achievements and problems regarding EU peacebuilding policies, the practical implementation of assistance programmes and coordination with other actors. This systematic, yet qualitative-interpretative approach makes it possible to critically assess the role of the European Union as an actor in peacebuilding in all various “tracks” and to come up with credible policy recommendations in this thesis.

The prescribed timeframe, scope and size of the research for this thesis leave no space to gather all the information in the field myself, let alone to conduct a large qualitative assessment of a wide variety of projects in all “tracks”. A commonly noted disadvantage of such an approach is that the researcher has no direct contact to the object of his analysis, and that information is being used that was initially gathered for other purposes.⁹³ This is partly true, and of course it is important to critically scrutinize the documents that are being used. It seems however that the use of existing materials will not be much of a problem in this thesis, as the central idea behind the methodology discussed above is that specific information on particular policies and projects is used for the second-order analysis in the wider framework provided by Multi-track Diplomacy. The use of existing information seems more of a problem the other way around, if sources with general information were used to describe specific details. Also it is important to keep in

⁹³ P. Verschuren, H. Doorewaard, *Het ontwerpen van een onderzoek* [Designing a research project] (Den Haag 2007) 159-209.

mind that this thesis seeks to assess to what extent the EU succeeds in reaching and engaging all the “tracks” of society that can contribute to the peace process. Many EU activities in Kosovo will be discussed to do so, but providing an extensive or even comprehensive overview of activities is not a target in and of itself. The goal of this approach is to generate insight in Kosovo’s peacebuilding process as a whole and the role of the EU herein. Because of this explorative nature of the thesis, the process of data collection and analysis was guided by the study’s research questions and methodology. This does not mean that this thesis stands apart from the theoretical framework of peacebuilding, which is used to discuss and interpret the findings, and to come up with policy recommendations.

There is a growing pressure on peacebuilding actors to demonstrate their impact and show what works, what doesn’t work and why. Several authors have proposed new approaches to conceptualizing the meaning of success in reconciliation initiatives and other peacebuilding efforts, but still many scholars and practitioners remain sceptical about the merits and usability of programme and project evaluation tools.⁹⁴ It is extremely difficult to determine the exact impact and effectiveness of particular peacebuilding activities, but by using the MTD-model we can at least deal with the evaluation problem on a macro level. Of course the effectiveness and impact of individual projects and initiatives is very important for the peacebuilding process, but the primary goal of this thesis is to assess the role of the European Union in the peacebuilding process in Kosovo as a whole. Therefore this thesis emphatically sticks to one of the core principles of peacebuilding and Multi-track Diplomacy in particular, i.e. that positive change can only be made if society itself changes.⁹⁵ Effective conflict transformation therefore requires activities in multiple (or ideally all) dimensions of society. The systematic analysis of the nine “tracks” provides us with a clear picture of peacebuilding activities of the European Union throughout the nine interdependent levels of the MTD framework that are important for positive societal transformation. This overview of the EU’s activities enables us to trace over- or under-representation of activities in certain levels, and potentially even complete policy gaps. In order to do so, we must rely on existing sources for information on the effectiveness of individual projects. The sources that will be used for this MTD-based assessment of the peacebuilding process as a whole include, but are not limited to: policy documents, reports, public enquiries and occasional papers by the EU and other intergovernmental actors and influential international and local NGOs working in Kosovo. These include conflict-monitoring organizations, human rights advocacy groups, local “grassroots” organisations, but also the OSCE, NATO, Council of Europe, and the governments of Serbia and Kosovo.

⁹⁴ E. Çuhadar Gürkaynak, B. Dayton, T. Paffenholz, ‘Evaluation in conflict resolution and peacebuilding’, in: D.J.D. Sandhole, S. Byrne, I. Sandole-Staroste, J. Seheni eds., *Handbook of conflict analysis and resolution* (New York 2009) 286-301.

⁹⁵ A more detailed explanation of conflict resolution and peacebuilding is offered in Chapter 1.

3. Recent political and diplomatic developments

Formal governmental diplomacy regarding Kosovo has operated in legal insecurity ever since June 1999, when the UN was tasked to govern Kosovo through its Interim Administration Mission in Kosovo (UNMIK) following a 78 day-long NATO campaign against the Serbian government. UNMIK was charged with a mandate to provide Kosovo with a transitional administration and to establish and oversee the development of democratic self-governing institutions over time. The responsibility for the mission was shared between the UN, OSCE and the EU. In support of this civilian operation a NATO-led peacekeeping force named Kosovo Force (KFOR) was launched, with the responsibility for maintaining a secure environment in Kosovo. In the first years of its existence UNMIK re-established and intensively controlled all areas of domestic sovereignty in Kosovo, and it was not until after the March 2004 riots that it gradually started to transfer power to the provisional institutions for self-governance in Pristina.⁹⁶ All of this happened while Serbia still considered Kosovo as a province. This placed “Track 1” in somewhat of a tricky position, and the international community moved beyond the traditional Westphalian state system that first of all things respected sovereignty. Essentially, it is therefore that governmental involvement in the case of Kosovo is composed of more aspects than the “traditional” government-to-government diplomacy. There have been various (sometimes tense) diplomatic contacts between Serbia, countries in the region, UNMIK and countries participating in the international operations. However, government-to-government diplomacy was not the only or primary task of the international governmental involvement in peacebuilding in Kosovo. UNMIK has also dealt with non-governmental actors, from the wartime political representatives of the Kosovo Albanians to international NGOs, and above all it was engaged in post-conflict peacebuilding and the establishment of provisional governmental institutions for Kosovo.

According to Security Council Resolution 1244, which established UNMIK, these provisional institutions were intended for ‘substantial autonomy and meaningful self-administration’.⁹⁷ The resolution also explicitly reaffirmed the commitment of all the members of the Security Council to the territorial integrity of the Federal Republic of Yugoslavia and other countries in the region, but by 2007 there was no progress whatsoever in finding an agreement on autonomy. By then the provisional institutions for self-government were established by UNMIK, and the international involvement gradually moved from an executive role to one of monitoring and supporting local institutions.⁹⁸ An example is the EU involvement in UNMIK; the EU was responsible for the reconstruction and economic development of Kosovo, but these tasks were handed over to the Kosovo authorities by 2008. To respond to this new situation, UN Special Envoy Martti Ahtisaari came up with recommendations on settling Kosovo’s status. This included “supervised independence”, in which some executive powers from UNMIK would be transferred to a new International Civilian Representative, who would simultaneously act as EU Special Representative.⁹⁹ However, talks on a new Security Council Resolution supporting the Ahtisaari Plan broke down in 2007.

⁹⁶ Narten, J., ‘Assessing Kosovo’s postwar democratization. Between external implementation and local self-government’, in: *Taiwan Journal of Democracy* Vol. 5 No. 1, 132-134.

⁹⁷ Security Council, *Resolution 1244 S/RES/1244* (1999).

⁹⁸ *Fact Sheet July 2008*, United Nations Interim Administration Mission in Kosovo (Pristina 2008).

⁹⁹ ICO-EUSR Preparation team – EUPT Kosovo, *Background. Preparing for the future international and EU presence in Kosovo* (March 2007).

On 17 February 2008 the Assembly of Kosovo unilaterally adopted a declaration of independence, and within months many countries recognized Kosovo as an independent state. However, UN Security Council Resolution 1244 is still in force, as the Council failed to reach any further agreements on Kosovo. The Special Representative of the Secretary-General for Kosovo, who leads UNMIK, is therefore still ultimately responsible for the administration of Kosovo. Despite this legal stalemate, the situation in Kosovo has changed a lot after the declaration of independence. Although the Ahtisaari Plan nor Kosovo's independence is supported by the UN Security Council, the declaration of independence itself explicitly accepted all the provisions of the Ahtisaari Plan,¹⁰⁰ which includes the establishment of an International Steering Group of stakeholder states that oversee the implementation of the plan.¹⁰¹ The ISG is represented in Kosovo through their International Civilian Representative (ICR), who is the same person as the EU Special Representative. In the weeks leading up to Kosovo's declaration, the Council of the European Union has made use of the 'small window of opportunity between the re-election of the moderate and EU-minded Boris Tadić as President of Serbia on 3 February and the declaration of independence [...] on 17 February 2008'¹⁰² to adopt Joint Actions on the appointment of Pieter Feith as EU Special Representative, and the creation of the European Union Rule of Law Mission in Kosovo (EULEX). Because of the timing, the adoption of these agreements was not spoiled by disagreement on Kosovo's status, and the prospects for rapid implementation seemed good. As said before, the focus of this thesis is on the past two years after the declaration of independence, in which the EU has definitely become the most important foreign governmental actor in Kosovo through its three presences.

In addition to the triple EU presence within Kosovo, the Union has the ability to engage in diplomacy between top-level officials. Generally, the EUSR is the top-level diplomat that engages with Kosovo's authorities. However, his "boss" the Special Representative Catherine Ashton has also occasionally been involved in the relationship between the EU and Kosovo, and the President of the European Council, Herman van Rompuy, has also visited the country and made some occasional statements. The Commissioner for Enlargement and European Neighbourhood Policy has made frequent visits to Kosovo, and has been involved in high profile meetings on the activities of the ECLO. As the EU Member States remain divided on the status of Kosovo, these top-level officials have to deal with the same problems as the three EU presences in Kosovo. The usual role of these top officials has therefore been a rather symbolic one. Statements have included condemnations of violent incidents on behalf of the EU and calls for increased efforts for example in the fight against corruption, but mostly they have reconfirmed the EU's commitment to Kosovo's European future, and showed appreciation for the efforts and achievements of Kosovo's authorities and the EU bodies in Kosovo.¹⁰³ The European Parliament has passed similar statements in a few resolutions on Kosovo, although these can only have an impact through the Council and Commission. Symbolic statements may have some small impact on the peace process, but overall the public involvement of EU top officials has been relatively limited and is therefore not extensively discussed in this thesis. However, important parts of governmental diplomatic activities remain "invisible",

¹⁰⁰ 'Full text: Kosovo declaration', *BBC News* (17 February 2008).

¹⁰¹ *Comprehensive proposal for the Kosovo Status Settlement*, Report of the Special Envoy of the Secretary-General on Kosovo's future status S/2007/168 (2007).

¹⁰² S.Blockmans and R.A. Wessel, 'The European Union and crisis management: will the Lisbon Treaty make the EU more effective?', in: *Journal of Conflict and Security Law* Volume 14, no.2 (2009) 276-279.

¹⁰³ 'Van Rompuy Pushes Fight Against Corruption In Kosovo', *BalkanInsight* (7 July 2010).

Statement by the spokesperson of High Representative Catherine Ashton on the incident in Kosovo, European Union A/10 (Brussels 2 July 2010).

as premature news reports could have a negative impact on the negotiating process. For example, there are all sorts of rumours on the EU's involvement in discussions with Serbian authorities on possible solutions on Kosovo's status. Although the EU has frequently stated it sees Serbian accession to the Union and the unresolved status of Kosovo as two separate issues, it has often been rumoured that recognition of Kosovo is an unofficial precondition for Serbian EU membership.¹⁰⁴ This is somewhat unlikely as five EU Member States do not recognize Kosovo, but it is logical to expect that the EU is involved in trying to prepare a final solution on the status issue. Definite clarity on the status seems a precondition for reconciliation between the Albanian and Serb communities, and solving the issue is necessary for either Serbia or Kosovo can ever become a Member State.¹⁰⁵

At the moment of writing, all eyes were on the UN General Assembly meeting in September 2010, where both Kosovo (although not a UN member) and Serbia expected to gain support in their position on the status issue. International relations regarding the Kosovo status issue have stumbled from crisis to crisis, and despite its apparent current relevance, the General Assembly meeting is just the next episode that will not end the problems nor dramatically change the positions of the stakeholders. Nevertheless, the political process gives an impression of EU involvement in diplomacy behind the scenes; either practiced by the EUSR, European Commissioners, or in cooperation with embassies or diplomats of individual Member States. Serbia had been asking countries that haven't recognized Kosovo to wait at least until the outcome of this meeting with making a decision, hoping to gain support for a draft resolution rejecting the ICJ-ruling.¹⁰⁶ The resolution stated that 'unilateral secession is not an acceptable means to solve territorial disputes and calls for dialogue on "all open issues" in the interest of "peace, safety and co-operation" in the region.'¹⁰⁷ Both the EU and Serbia want a dialogue between Belgrade and Pristina, but 'officials in Brussels have insisted that the call for dialogue concerns only matters of mutual concern for citizens of Kosovo and Serbia, and does not include a call for new status talks, which Belgrade has insisted upon.'¹⁰⁸ It is therefore that several hours before the resolution was adopted in Serbia, the EU offered to mediate negotiations between Belgrade and Pristina. Catharine Ashton stated that: 'What I've offered to Pristina and Belgrade, and I've spoken with both President Tadić and Prime Minister Thaci, is that the future of both lies in the EU, and [that] there is a dialogue to be had between them to look at how we move forward into the future [...] That offer is on the table. I hope they will want to move forward and start discussions.'¹⁰⁹ It is clear that direct negotiations are increasingly seen as inevitable; as for example also the UN has recently called for direct negotiations between Belgrade and Pristina.¹¹⁰

Rumours of intense consultations between EU countries and with Belgrade have frequently appeared in the media during August and September 2010, but the specifics have remained largely hidden. Nevertheless, from recent news coverage we can get a basic idea of what has been going on behind the scenes. At first it seemed that Serbian officials were hoping the resolution would give them an advantage in eventual negotiations. However, it didn't take long before the Serbian Foreign Minister announced that it is 'almost impossible Serbia will be able to convince enough governments to support the

¹⁰⁴ B. Barlovac, 'Vejvoda: EU is Key to Kosovo Solution', *Balkan Insight* (6 August 2010).

¹⁰⁵ 'Kosovaren verwachten snel beter leven' [Kosovars expect quick improvements in their lives], *NRC Handelsblad* (18 February 2008).

¹⁰⁶ B. Barlovac, 'Vejvoda: EU is Key to Kosovo Solution', *Balkan Insight* (6 August 2010).

¹⁰⁷ 'Serbia 'Won't change Kosovo Resolution'', *Balkan Insight* (24 August 2010).

¹⁰⁸ 'EU FM's Discuss Kosovo in Wake of ICJ Opinion', *Balkan Insight* (26 July 2010).

¹⁰⁹ 'Serbian parliament passes Kosovo resolution', *Southeast European Times* (27 July 2010).

¹¹⁰ 'UN Calls for dialogue between Belgrade and Pristina', *Balkan Insight* (4 August 2010).

resolution,¹¹¹ which was seen by Serbian analysts and opposition parties as a preparation for future withdrawal or change of the resolution, or the fact that it is not likely to pass.¹¹² The Serbian Deputy Prime Minister, stating that ‘an agreement with the EU would be the best outcome for Serbia, but we cannot accept changes which would lead to a different meaning of the document’, later denied this.¹¹³ This clearly shows that the EU has been talking to Belgrade hoping to find a solution to the current problems with the draft resolution. The only prosperous future for Serbia lies with cooperation and integration into its region and the EU, and despite the current political crisis, there is no visible change in Serbia’s EU oriented policies until now.¹¹⁴ It is therefore doubtful if Serbia would actually have benefited from getting a resolution passed with the support of unaligned and third world countries opposing the EU and US. We will never know the answer to this question, because the HR Catherine Ashton has held a meeting with the EU-oriented Serbian President Boris Tadić just days before the resolution would be discussed in the General Assembly, hoping to find an agreement on amending the text of the resolution.

After two days of intensive negotiations between Tadić and Ashton, and just a day before the final submission to the UN General Assembly, Serbia’s controversial draft resolution was dropped. *Balkan Insight* reported that ‘President Boris Tadić announced that an amended resolution agreed by Brussels and Belgrade, which does not condemn Kosovo’s 2008 declaration of independence or call for negotiations on status, would be submitted.’¹¹⁵ The text of this compromised resolution also had to satisfy Serbia and EU Members that do not recognise Kosovo, and therefore did not include recognition of Kosovo’s independence in any way. It also left out that future negotiations between Pristina and Belgrade could only be held on “technical issues”. While talks that include the status would be a setback for Pristina and the International Steering Group (including most EU states), the EU offered its “good services” for *any* future dialogue.¹¹⁶ Nevertheless, opposition parties in Serbia quickly labelled the decision as ‘a defeat for the Serbian people’, and an ‘act of capitulation under the ultimatums of the West.’¹¹⁷ Conversely, the new resolution has been welcomed by Kosovo’s government, which called it ‘in line with the reality created in Kosovo and in the region.’¹¹⁸ This diplomatic success shows how the EU has the ability to find solutions that are acceptable to all parties, as long as it acts united and makes use of its the so-called “sticks and carrots”. However, the success was only possible by taking a rather neutral stance on sensitive topics (such as recognition of independence and how to move on with Mitrovica/Mitrovicë and other Serb enclaves) but ultimately these have to be resolved as well.

The destiny of Serbia and Kosovo remains connected as long as both hold on to their European aspirations. However, accession of Serbia and Kosovo to the EU is not a matter of months or a few years, as both countries still have a long way to go. Although it is not a formal demand, it is clear that Serbia will need to recognise Kosovo’s independence before either Kosovo or Serbia can become a EU Member State in the future. After the debacle with the accession of Cyprus it is extremely unlikely that a different solution is at all possible. The future will tell whether ditching the original draft resolution really marked the end of Belgrade’s diplomatic battle over Kosovo, but the

¹¹¹ ‘Belgrade denies u-turn on Kosovo Resolution’, *Balkan Insight* (12 August 2010)

¹¹² Ibidem.

¹¹³ ‘Serbia ‘Won’t change Kosovo Resolution’’, *Balkan Insight* (24 August 2010)

¹¹⁴ B. Barlovac, ‘Vejvoda: EU is Key to Kosovo Solution’, *Balkan Insight* (6 August 2010).

¹¹⁵ ‘Belgrade scraps UN Resolution on Kosovo’, *Balkan Insight* (9 September 2010).

¹¹⁶ ‘UN GA to discuss new Serbia Resolution on Kosovo’, *Balkan Insight* (9 September 2010).

¹¹⁷ ‘Belgrade scraps UN Resolution on Kosovo’, *Balkan Insight* (9 September 2010).

¹¹⁸ ‘UN GA to discuss new Serbia Resolution on Kosovo’, *Balkan Insight* (9 September 2010).

adoption of the amended resolution and Serbia's acceptance of EU mediation have definitely helped to avoid a crisis in the relation between Brussels and Belgrade, which would have seriously hampered Serbia's progress towards EU membership. During the talks between Tadić and Ashton an interesting public statement was made by the British Ambassador to Serbia, Stephen Wordsworth. He told *Balkan Insight* reporters that the Foreign Affairs Council was 'ready to discuss Serbia's EU candidacy application by the end of the year, if Belgrade makes progress over Kosovo.'¹¹⁹ Although the EU officially sees these things as two separate issues, this statement shows that the Member States supporting Kosovo's independence are not completely paralyzed by those that don't, as opening up Serbia's accession negotiations for EU Membership requires backing by all Member States. Nevertheless, finding a solution to the status issue will remain difficult. While Tadić's move indicates that Belgrade de facto accepts that Kosovo is going its own way, this does not mean that formal recognition of Kosovo is at hand. The session of the UN General Assembly where the amended resolution was discussed was delayed after the Serbian Foreign Minister Jeremic complained about the presence of Kosovo officials at the assembly, pointing out that Kosovo is not a UN member state. The session was quickly continued after the assembly chairman said that the officials were attending solely as guests, but the affair once again revealed the continuing tensions and sensitivities.¹²⁰

The EU has to show strong persuasive diplomacy in its efforts to mediate between Belgrade and Pristina on the status issue. A solution will be difficult to achieve as long as there is no unified position on Kosovo within the EU. It seems that internal divisiveness on Kosovo in the EU has even slowed down this process. Martti Ahtisaari has co-written an article originally published on the website of *Project Syndicate* in 2009, in which he stated that the five EU Member States that withhold recognition 'should be aware that their stance encourages those who refuse to offer the EU mission any cooperation and, therefore, are impeding its work. It also makes it infinitely more difficult for moderate forces in Serbia to adjust to the new situation in Kosovo.'¹²¹ Ultimately a resolution to the status remains necessary for both countries to leave the conflict behind, but this remains quite a challenge to achieve. A unified position in the EU might have more success in changing the attitudes in Belgrade, but for the time being this is not a likely scenario. Especially Spain and Cyprus have continued their opposition to Kosovo's independence after the ICJ ruling.¹²² In the meanwhile, however, a lot can be achieved within Kosovo. The whole Council of the European Union has unanimously committed itself to a leading role in strengthening stability in the region, with the aim of a 'stable, viable, peaceful democratic and multi-ethnic Kosovo [...] that is committed to the rule of law and to the protection of minorities.'¹²³ In the reality, the three EU presences within Kosovo are of course also affected by the disagreement in the Union. However, for the foreseeable future they seem to be able to achieve much more in terms of peacebuilding than traditional diplomatic attempts to negotiate a settlement that is acceptable to all the parties involved.

¹¹⁹ 'Ashton, Tadic to discuss Kosovo resolution', *Balkan Insight* (7 September 2010).

¹²⁰ 'UN GA adopts resolution on Kosovo, Serbia talks' *Balkan Insight* (13 September 2010).

¹²¹ M. Ahtisaari, W. Ischinger, A. Rohan, 'Kosovo is Europe's responsibility', *Project Syndicate* (11 February 2009).

¹²² Ibidem.

¹²³ 'Council decision 2010/446/DFSP of 11 August 2010 extending the mandate of the European Union Special Representative in Kosovo', *Official journal of the European Union*, 211 (2010/C 211), 36-38.

4. European Union Special Representative

4.1. Double appointment and mandate

The European Union Special Representatives (EUSRs) support the work of the HR, Catherine Ashton. They provide a single “voice and face” for the EU in key regions and countries. The EUSRs promote EU policies and interests and play a role in European efforts to consolidate and promote peace, stability and the rule of law. All of this is also intended to support the development of an effective CSDP, and help the EU to become an active, coherent and capable actor on the world stage.¹²⁴ The exact mandate of Special Representatives depends on the situation in the country or region where they are deployed. The EUSR in Kosovo, Mr Pieter Feith, was appointed on 4 February 2008, and has had a total budget of around €1,5 million per mandate period of six months.¹²⁵ He is “doubled-hatted”, as he is also appointed as the International Civilian Representative, representing the International Steering Group. This group comprises states that recognise Kosovo’s independence and support the full implementation of the Ahtisaari Plan on Kosovo’s status settlement.¹²⁶ The double appointment has been considered as positive for coordination in the past, but at the time of writing there was some disagreement in the Foreign Affairs Council of the European Union. All the EUSR mandates were valid until the end of August 2010; this was the date at which it once was expected that the EU’s diplomatic services – the European External Action Service (EEAS) – would be launched. The current EUSRs have been appointed before the Lisbon Treaty came into effect and their number is set to decrease as new EEAS headquarters will take over their responsibilities and tasks in countries of key interest to the EU. At the meeting of the Foreign Affairs Council in July 2010 the positions in Macedonia, Moldova, the Middle East and the South Caucasus were abolished from the end of February 2011, and the mandates for the other EUSRs were extended at least to that date. Only the EUSR posts in crucial areas will be continued, and it is likely that Kosovo will be one of them, although no agreement could be found on the mandate of the EUSR to Kosovo. Some Member States that do not recognize Kosovo wanted to separate the double appointment, as they feel that the International Steering Group is too strongly supporting Kosovo’s independence. As no agreement could be found, the matter was postponed to the next meeting, which was held in August 2010 just weeks before the earlier mandate ended.¹²⁷ Ultimately the Council agreed upon an extension for six months and has maintained the “double-hatted” appointment. Still, it is important to keep the ongoing discussions in the Foreign Affairs Council in mind, as the same problem might return when the mandate needs another extension. However, these debates do not really matter for the analysis of the period after Kosovo’s declaration until now, in which the existence of the “double-hatted” EUSR was a clear fact. Pieter Feith himself has said that this arrangement ‘has



¹²⁴ *EU Special Representatives (EUSRs) Representing the EU around the world in key policy areas*, EU Council Secretariat Factsheet EUSR/8 (December 2009).

¹²⁵ ‘Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo’, *Official journal of the European Union*, 42 (2008/L 42), 88-91.

¹²⁶ ‘New states join Kosovo’s supervisory body’, *Balkan Insight* (21 May 2008).

¹²⁷ ‘Ministers agree to scrap four EUSR posts’, *EuropeanVoice.com* (29 July 2010).

served me well and enabled me to work closely with the Kosovo authorities and with the ensemble of international presences on the ground that is led by the European Union.¹²⁸

The analysis of the role of the EUSR is somewhat difficult, as the EUSR and the ICR are vested in one person, but both appointments are based on different mandates. The mandate of the ICR is based on Annex IX of the Ahtisaari Plan, which is incorporated into Kosovo's constitution. The ICR has the overall responsibility for the supervision, and is the final authority in Kosovo regarding the implementation of the plan. He has extensive executive powers, including the power to annul any legislation deemed inconsistent with the Ahtisaari plan, fire corrupt officials and cancel government decisions.¹²⁹ In an interview with the Dutch newspaper *NRC Handelsblad* following his appointment as ICR/EUSR, Pieter Feith stated that Kosovo shouldn't become some sort of Bosnia-Herzegovina, where the international community still makes many important decisions for the country. Feith even argued that some of the problems in Kosovo have been reinforced by the long-term UN control over Kosovo, such as the lack of political and economical initiatives, and subsequently the high unemployment.¹³⁰ In his mission statement as EUSR, Pieter Feith stressed that: 'my team and I will be there to assist and support but we will not be doing the job of the government. It is for all the people of Kosovo and their elected leaders to assume leadership and push through the necessary reforms.'¹³¹ It is therefore that the Representative has sparsely used his powers to intervene in the government's policies, and has preferred good cooperation with Kosovo's authorities. However, the ICR is the final authority on the implementation of the plan and, among other specific tasks, has to appoint various key officials and provide overall supervision.¹³² For example, in 2009 the ICR supervised the implementation of the administrative decentralization that was foreseen in the Ahtisaari Plan. Freedom House concluded that this was the greatest achievement in Kosovo in 2009, as the creation of new municipalities was 'legitimized by sizeable Kosovo Serb participation in local elections in November and December, despite the strong objections of Belgrade.'¹³³

The idea behind the double appointment was to keep non-EU countries involved in Kosovo's transition process,¹³⁴ while acknowledging that the real power of the international community to influence Kosovo and support peacebuilding is not only based on legal agreements, but on the European perspective that is offered to Kosovo.¹³⁵ In his appointment as ICO, Pieter Feith provides 'international support for a European future for Kosovo,'¹³⁶ and in his appointment as EUSR he works as the "voice and face" of the Union and personifies the Union's commitment to Kosovo. The double appointment also served to show the EU's willingness to have leadership over the international involvement in Kosovo, as most of its members are also part of the ISG. It was clearly envisaged that the ICR/EUSR would not only be the same person, but also that this person would

¹²⁸ *Remarks at the Institute for Historical Justice and Reconciliation*, ICR/EUSR Pieter Feith (Den Haag, 26 May 2009) ([http://www.ico-kos.org/d/090526%20Remarks%20IHJR\(1\).pdf](http://www.ico-kos.org/d/090526%20Remarks%20IHJR(1).pdf) 20/09/2010).

¹²⁹ *Comprehensive proposal for the Kosovo Status Settlement*, Report of the Special Envoy of the Secretary-General on Kosovo's future status S/2007/168 (2007).

¹³⁰ 'Kosovaren verwachten snel beter leven' [Kosovars expect quick improvements in their lives], *NRC Handelsblad* (18 February 2008).

¹³¹ Website of the Council of the European Union, 'Pieter Feith, EU Special Representative in Kosovo' (<http://www.consilium.europa.eu/showPage.aspx?id=1445> 20/09/2010).

¹³² *Comprehensive proposal for the Kosovo Status Settlement*, Report of the Special Envoy of the Secretary-General on Kosovo's future status S/2007/168 (2007).

¹³³ I. Deda, 'Kosovo', in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010) 273-287.

¹³⁴ Non-EU states in the International Steering Group are: Norway, Switzerland, Turkey, USA.

¹³⁵ 'Kosovaren verwachten snel beter leven' [Kosovars expect quick improvements in their lives], *NRC Handelsblad* (18 February 2008).

¹³⁶ Website of the International Civilian Office Kosovo, 'About Us' (<http://www.ico-kos.org/?id=2> 20/09/2010).

simultaneously act in both capacities. In reality, the EUSR also represents EU Member States that oppose Kosovo's independence and the Ahtisaari Plan, which has somewhat complicated and weakened his credibility to act. If the double appointment would be ended in the future because of disagreement in the Foreign Affairs Council, that would be yet another sign of European weakness, internal division and inability to speak with one voice on foreign policies. It is therefore likely that the status quo will be continued in the near future. In a shared press release after the ICJ ruling on Kosovo's unilateral declaration of independence, it clearly shows that the Union is aware it needs to act as one on Kosovo and Serbia, difficult as it may be. It reemphasized that the future of both Serbia and Kosovo lies in Europe, and indicated that the accession paths of both countries are linked and that the EU wants to help them forward.¹³⁷ Even the Member States that do not recognize Kosovo have agreed on integrating Kosovo in the Stabilization and Association Process, which is discussed in Chapter 6.

As the EUSR represents European Foreign Policy, he regularly has to provide oral and written reports to the HR and the Political and Security Committee (PSC), which operates under the Foreign Affairs Council and monitors the implementation of the Council's decisions. The PSC also provides 'strategic guidance and political direction'¹³⁸ on the fulfilment of the EUSR's mandate. The actual mandate consists of five "tasks". The EUSR has to 'offer the Union's advice and support in the political process', 'promote overall coordination of EU presences in Kosovo', 'ensure consistency and coherence of EU action towards the public', 'provide local political guidance to the Head of the European Union Rule of Law Mission EULEX in Kosovo', and to 'contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo'.¹³⁹ This mandate is based on the policy objectives of the European Union in Kosovo in the widest sense. This is defined as: 'playing a leading role in strengthening stability in the region and in implementing a settlement defining Kosovo's future status, with the aim of a stable, viable, peaceful, democratic and multi-ethnic Kosovo, contributing to regional cooperation and stability, on the basis of good neighbourly relations; a Kosovo that is committed to the rule of law and to the protection of minorities and of cultural and religious heritage.'¹⁴⁰ A possible interpretation of this phrase would be that the EUSR is implementing the Ahtisaari Plan, which also mentions all these goals. The original idea was indeed that the ICO/EUSR would simultaneously act in both capacities while implementing the Ahtisaari plan, but that was before the plan failed to gain support in the Security Council and the subsequent declaration of independence. It seems that therefore the Member States that oppose Kosovo's independence have accepted that the EU proceeds with the Ahtisaari Plan, but do not want an explicit reference to it in the EUSR's mandate, which would be a form of accepting the unilateral secession.

4.2 EUSR Activities

The mandate shows that the EUSR contributes to coordination and communication between ECLO and EULEX activities, and provides political guidance and diplomatic support, but also that his office itself doesn't have many "projects" that could be seen as peacebuilding. Whereas the International Civilian Office has had a small fund for special projects that strengthened and promoted reconciliation, Pieter Feith did not have such a

¹³⁷ 'Europe seeks to end division on Kosovo', *EUbusiness.com* (26 July 2010).

¹³⁸ *Ibidem*.

¹³⁹ Website of the EUSR in Kosovo, 'About the European Union Special Representative in Kosovo' (<http://www.eusrinkosovo.eu/?id=2> 20/09/2010).

¹⁴⁰ 'Council decision 2010/446/DFSP of 11 August 2010 extending the mandate of the European Union Special Representative in Kosovo', *Official journal of the European Union*, 211 (2010/C 211), 36-38.

financial instrument in his capacity as EUSR. Because of the double appointment it is good to point out that he was involved in the fund as ICR, which supported several NGOs, multi-ethnic events, and the preservation of cultural heritage.¹⁴¹ However, when focussing strictly on the EUSR, the contribution in terms of peacebuilding is composed of three aspects. First, he is a diplomatic heavyweight for the EU who provides advice and support to Kosovo's authorities on issues related to the EU's policy objectives, which are of themselves in favour of peacebuilding. Second, he deploys some activities aimed at spreading information and engaging the wider populace in discussions on human rights, European integration and the peace process in general. These first two ways in which the EUSR contributes to the peacebuilding process in Kosovo will be further discussed below. The third aspect is his coordinating role, which assists the other (EU) presences in achieving their goals. An example can be found in a speech by the EUSR addressing the Foreign Affairs Committee of the European Parliament.¹⁴² Here he stated that the European Commission had recently followed his suggestion to enhance its role in the field of religious and cultural heritage by appointing the Greek Ambassador as the Facilitator for Religious and Cultural Heritage for the Serbian Orthodox Church in Kosovo. The Facilitator is supported by the office of the EUSR, and works to improve the protection of and respect for the religious and cultural heritage of the Serbian Orthodox Church in Kosovo. He operates as special advisor to the EU on these issues, and facilitates dialogue between the Orthodox Church and local authorities in order to develop coherent policies in this field. Ultimately this should also lead to more successful support policies by the European Community, which before had experienced difficulties in engaging successfully with the Serbian community in Kosovo. Even the Serbian Minister of Foreign Affairs Jeremic has stated that he was encouraged by the signs of the Facilitators accomplishments.¹⁴³ This shows that the EUSR is in contact with representatives of various communities in Kosovo, the various governmental institutions and international presences. Through his various contacts he became aware of problems in this specific field, after which he assisted in finding a solution acceptable to all stakeholders. By suggesting the (Orthodox Christian) Ambassador of Greece, a EU Member State that does not recognise Kosovo but supports EULEX and the inclusion of Kosovo into European Commission programmes, it seems that the EUSR has succeeded.

As some sort of EU Ambassador "avant la lettre", the EUSR has to provide regular briefings to missions of EU Member States and the Union's delegations visiting Kosovo, remain in close contact with Kosovo's Prime Minister and several other governmental and judicial top officials, other relevant local bodies and other international actors in Kosovo, and enhance information sharing between the different EU actors in Kosovo and in Brussels.¹⁴⁴ The added value of this information exchange for EU activities has already been indicated in the example at the end of the last paragraph. The EUSR's role as interlocutor with Kosovo's institutions is somewhat less visible, as his contacts with officials in Kosovo are often informal, and contents usually remain private. However, his role as representative of the EU as a whole is also visible in his press releases. These show that the EUSR often gives reminders of the goals and demands connected to EU support. Although these are widely known in Kosovo institutions, sometimes a reminder by a top official helps to refresh the government's dedication to working towards these objectives. For example, in a press release following a visit to a women's business association in

¹⁴¹ Website of the International Civilian Office, 'ICO Special Projects Fund' (<http://www.ico-kos.org/d/100602SPF%20on%20ICO%20websiteEng.pdf> 20/09/2010).

¹⁴² Website of the EUSR in Kosovo, 'The EUSR in Kosovo addresses the Foreign Affairs Committee of the European Parliament 22 June 2010' (http://www.eusrinkosovo.eu/d/22062010_EUSR_Speech_in_AFET_ENG.pdf 20/09/2010)

¹⁴³ Ibidem.

¹⁴⁴ Ibidem.

Kosovo, Pieter Feith stated that: 'In light of the upcoming International Women Day on 8 March, I would like to remind Kosovo authorities about their commitments to ensure greater participation of women at all levels of decision-making. Continuing efforts are needed to address issues like domestic violence and human trafficking within a strengthened institutional framework.'¹⁴⁵ Recently he also made a similar statement on the protection of minorities. In April 2010 the EUSR and the head of the EULEX mission made a visit to a village where they met with Serb returnee families who had suffered from violent attacks a few days earlier. Here he reminded Kosovo's authorities of their objectives: 'The recent acts of violence in the village of Žaç/Zallç are completely unacceptable. The right of return in accordance with the law is a fundamental human rights principle and the return process in the Istog/Istok municipality as well as in other areas in Kosovo must and will proceed. The EU will continue to support a secure return process in coordination with all involved parties. Kosovo has made important strides as a multi-ethnic society and it is crucial that it continues to strengthen trust among the communities in view of its European perspective.'¹⁴⁶

For a last example we can have a look at the opening speech by Pieter Feith at a New Year reception held by the combined EU presences in Kosovo. While welcoming representatives of local authorities, international organizations and civil society, Feith summarized what the priorities for 2010 should be for both Kosovo's authorities and the EU. 'I continue to stress the hard work that still lies ahead for all of us in taking the right steps toward realizing the European perspective. Dialogue and co-operation with neighbours in the region is as critical as development within Kosovo. Key efforts in 2010 should include a focus on achieving a stronger Progress Report for Kosovo, establishing an enhanced EU presence in Northern Kosovo, and redoubling our efforts to ensure an even stronger focus on strengthening the rule of law. By all counts, we will be busy in the upcoming months but be assured of our support in all areas where you may need it.'¹⁴⁷ The concrete impact of such criticism is difficult to estimate, but it seems logical to assume that Kosovo's institutions will care deeply about the opinion of the EUSR. He represents Kosovo's European perspective, in addition to having executive powers in his position as ICR. While the overall progress in Kosovo could be better, the contribution of the EUSR has been assessed as quite positive for example by the director of Community Building Mitrovica/Mitrovicë, one of the largest local NGOs working in (Northern) Kosovo. She has 'congratulated Mr Feith on his constructive criticism towards the Kosovan institutions. As a result of this criticism, our institutions are able to do a better job.'¹⁴⁸ International monitoring NGOs have not extensively discussed the potential of the EUSR as interlocutor, as most of their attention has gone to more obvious aspects of peacebuilding, such as institution-building, reform and the rule of law (especially EULEX). However, without explicitly referring (only) to the EUSR, the International Crisis Group has made several recommendations that could be seen as referring to his role, such as: 'Maintain strong pressure on the government to implement the rule of law and ensure that international advice and assistance are coordinated and consistent.'¹⁴⁹

The EUSR is the main point of contact for Kosovo's media on all issues related to ESDP/CSDP. On his website, the EUSR has a section where all EU statements on Kosovo

¹⁴⁵ 'EUSR: higher representation of women in politics and economics important for Kosovo's progress', *EUSR Press Release* (4 March 2010).

¹⁴⁶ 'Successful return process crucial for Kosovo's European future', *Joint EUSR EULEX Press Release* (25 April 2010).

¹⁴⁷ 'Progress in governance and regional co-operation are key for 2010 – EU Heads', *EUSR Press Release* (2 February 2010).

¹⁴⁸ Website of Community Building Mitrovica, 'Pieter Feith (ICO) visits CBM'

(http://www.cbmitrovica.org/index.php?option=com_content&task=view&id=70&Itemid=27 20/09/2010).

¹⁴⁹ 'The rule of law in independent Kosovo', *International Crisis Group Europe Report 204* (19 May 2010).

are collected, a section with general information on the European Union, and a media centre which provides various documents such as speeches, articles and interviews with the EUSR. A lot of this information is available not only in English, but also in Albanian and Serbian in order to provide Kosovo's media and others with reliable information on EU affairs. This information was also useful for this thesis as it offers many examples of how the EUSR works to improve information sharing and increase public engagement. He has (co-)organized some activities, participates in civil society initiatives and attends various kinds of public activities. For example, on 7 August 2010 he visited *Dokufest*, a large European Commission sponsored documentary film festival in Prizren, and handed out a "Best Human Rights Documentary" award.¹⁵⁰ He also participates in activities by NGOs, for example a roundtable debate on addressing child poverty in Kosovo, which was held on 1 June 2010 (International Children's Day).¹⁵¹ The EUSR also regularly gives speeches at various occasions, in which he tries to foster engagement for Kosovo's European integration. Examples include speeches at the International Summer University Prizren, where he called upon students to be critical towards political leaders and to work and study hard to become 'the generation that will help this country leave behind economical and political hardship',¹⁵² and a large conference for young entrepreneurs, where he made similar remarks.¹⁵³ While many of these outreach activities aimed at increasing engagement for the peacebuilding process are aimed at all communities in Kosovo, it is clear that engaging the Serbian minority has been quite difficult. To improve his contacts with this community, the EUSR has applied a round table format 'in which a number of key Kosovo Serb representatives are joining together with members of the government to discuss practical issues related to health, education, decentralisation and preserving the cultural and religious heritage of Kosovo. I think that is an encouraging step forward.'¹⁵⁴ This statement was made in early 2009 while addressing the European Parliament. Some developments after that, such as the appointment of the Facilitator for the Serbian Orthodox Church, and the fairly successful implementation of administrative decentralisation in Serbian municipalities, seem to be an indication that these contacts do have a positive impact.¹⁵⁵ It is probably because of this good experience that the EUSR has more recently hosted a similar round table discussion on strengthening women citizenship in the decentralization process, with a focus on political and administrative participation.¹⁵⁶

In addition to these activities and public appearances, the EUSR has also (co)organized some concrete events that aim to spread knowledge on the peacebuilding process and European integration, and to increase engagement with these issues. The EU-teach-a-day project is an example of an initiative of the office of the EUSR, which was organized together with Kosovo's Ministry of Education, Science and Technology in the past two years. The goal is to 'give school children around Kosovo the opportunity to meet with EU diplomats and representatives from EU institutions and learn about Europe and Kosovo's opportunities and challenges in the European integration process.'¹⁵⁷ Various diplomats and foreign representatives make visits to elementary, secondary and

¹⁵⁰ 'EUSR human rights award at Dokufest in Prizren', *EUSR Press Release* (7 August 2010).

¹⁵¹ 'Reducing child poverty, part of Kosovo's European perspective – Feith', *EUSR Press Release* (1 June 2010).

¹⁵² 'EUSR delivers speech at the International Pristina Summer University', *EUSR Press Release* (19 July 2010).

¹⁵³ 'EUSR: Kosovo needs entrepreneurs that build businesses and strive for excellence', *EUSR Press Release* (17 July 2009).

¹⁵⁴ 'Kosovo 1 year on: EU Special Representative Pieter Feith interviewed', *European Parliament Press Service* (13 February 2010). (http://www.eusrinkosovo.eu/pdf/PF%20EUparliament_en.pdf)

¹⁵⁵ *Review of decentralization – Functioning of Serb majority municipalities*, Kosovar Institute for Policy Research and Development (Pristina 2010).

¹⁵⁶ 'EUSR Pieter Feith: decentralization offers new opportunities to women', *EUSR Press Release* (13 September 2010).

¹⁵⁷ Website of the EUSR in Kosovo, 'EU teach a day' (<http://www.eusrinkosovo.eu/euday/en/index.html> 20/09/2010)

higher education schools throughout Kosovo in the course of one month at the end of the school year. The presentations and discussions are intended to communicate European rules and values, and to explain what Kosovo's European perspective means to students and young people in general. The media were invited to attend the first of these lectures, which was of course accompanied by reach out activities and public speeches on the European future of the young generations by both Kosovo's Minister for Education and the EUSR.

Another example is an initiative by the EUSR and the Media Centre Çagllavicë/Caglavica, who together organize the Progress Report Debates. The annual Progress Report is the primary tool to monitor Kosovo's European ambition. The report 'analyses the political situation in Kosovo in terms of democracy, the rule of law, human rights, protection of minorities, and regional issues; analyses the economic situation in Kosovo; [and] reviews Kosovo's capacity to implement European Standards, that is, to gradually approximate its legislation and policies with those of the *acquis*, in line with the European Partnership priorities.'¹⁵⁸ The report is based on information gathered and analysed by the EC, but also on contributions by the other EU presences in Kosovo, the individual Member States, and other international and nongovernmental organizations.¹⁵⁹ Every year the publication of the Progress Report evokes discussion among figures in politics, media and society, but during the rest of the year little discussion is heard on how the identified challenges in the report are addressed by the government. The Progress Report Debates aim to bring the content of the report into attention of the media and the public, and to create transparency and understanding on what reforms are required to bring Kosovo closer to the EU. Kosovo's authorities get an opportunity to explain what they are doing to make progress, while the media and the public get an occasion to ask questions.¹⁶⁰ The debates have a focus on priority issues of the Progress Report, such as economic governance and progress, human rights, the environment and rule of law. The panels at the debates consist of experts from civil society actors, and international and local institutions, but participation is also open to visitors, and especially representatives of the media.¹⁶¹ Through these debates the EUSR works to improve communication and information exchange, as well as to increase engagement of the media, civil society actors and subsequently the general populace with the peacebuilding and reform processes.

4.3 Peacebuilding paradoxes & civil society engagement

Peacebuilding dilemmas and the ICO and EUSR

The analysis of the role of the EUSR in the peacebuilding process is somewhat complicated as he is deliberately "double hatted" as ICR. While both appointments have different mandates and tasks, they cannot be considered completely separate of one another. Leaving the ICR out when discussing the dilemmas of peacebuilding would lead to an incomplete picture, and therefore we have to discuss both positions. As ICR, Pieter Feith has extensive executive powers in Kosovo, although he has frequently and explicitly stated that he did not intend to use these unless Kosovo's authorities left him no other choice. While this might lead to more political rows and problems in the short term, ultimately this will give Kosovo's politicians the feeling that they "own" the political processes and reforms that are being implemented in the country. In the meanwhile the

¹⁵⁸ 'Kosovo under UNSCR 1244/99 2009 Progress Report', *Commission of the European Communities* (14 October 2009).

¹⁵⁹ *Ibidem*.

¹⁶⁰ 'Progress Report Debates: "6 months after – 6 months to go"', *Joint Press Release by the EUSR and Media Centre Çagllavicë/Caglavica* (27 April 2010).

¹⁶¹ Website of the Media Centre Çagllavicë/Caglavica, 'Kosovo Progress Report Debates' (<http://ecdebates.medijacentar.info/component/content/article/3-other/2-about/20/09/2010>).

ICR monitors the process and has the power to intervene if necessary. It seems that the international community has learned from Bosnia, where the international presence is still taking most important decisions. However, the sole existence of the executive powers raises the paradox that external intervention is used in support of self-government. A survey by the Gallup Balkan Monitor taken a short period after the appointment of the ICR/EUSR has showed that only about 35% of the Kosovo Albanians thought that there was need for a position such as the ICR/EUSR in Kosovo, while 38% disagreed and 27% did not know or gave no answer. Among Kosovo Serbs, 58% saw no necessity for the ICR/EUSR, while only 26% supported the presence and 17% did not know or gave no answer.¹⁶² However, support for future integration into the EU is at a staggering 88% in Kosovo and people may be willing to accept some external interference if it helps Kosovo with the challenges on the road towards Europe. Yet, it is still important for external interveners to operate in a culturally sensitive way that is focused on promoting local ownership and actively works towards transferring the executive powers to the legitimate local leaders as soon as reasonably possible. It seems that the ICR has dealt with this issue quite successfully so far by his reticent attitude on the executive powers. He has also promoted local ownership of the political process by successfully overseeing the administrative decentralization that was foreseen in the Ahtisaari Plan. This also enabled Kosovo Serbs to have an influential role in local politics in the areas where they constitute a majority of the population.

In addition to his engagement with Kosovo's government, the ICR has supported several NGOs, multi-ethnic events, and the preservation of cultural heritage through a small special projects fund. Here we encounter the dilemma that an external actor is involved in identifying and supporting local civil society leaders. Those that want to work towards "European Standards" of democracy and civil society will get support, while they may not always be backed by the general population. However, the urgent need for the development of a sustainable civil society justifies the support to actors that are selected by an external party. Identifying and supporting political leaders would be much more problematic, but these are democratically elected in Kosovo. As long as external support policies show awareness of the fact that they shouldn't create relations of dependency, they can contribute to the development of local civil society organizations. The ICO's special funds project doesn't seem problematic in this respect, as all the money has already been spent and there is no follow-up programme as of yet.

There is always some tension between the socio-cultural traditions and the universal values that are promoted by external parties as a solution to conflict. However, while the values of "liberal Europe" are still in development throughout the former Yugoslavia, they are not completely opposing the local socio-cultural particularities. Although the communist regime was repressive, it did recognise the Universal Declaration of Human Rights, and it was mainly in the period of disintegration that severe and frequent human rights violations were committed. Kosovo's post-war political system can be regarded as a functioning parliamentary democracy, but politics and institutions are still very much "ethnicized" and not representing Kosovo Serbs and other minorities. Although these serious challenges remain, there is a breeding ground for democracy and liberal values in Kosovo, and if the country wants to integrate into the European Union it has no choice but to foster democratization. Actual change has to come from within Kosovo's society, but for now it seems that international assistance remains necessary for Kosovo to become a "civil society". This is especially the case as the external involvement in the development of democratic institutions in Kosovo has been taken over from

¹⁶² *Focus On #3. Kosovo's independence*, Gallup Balkan Monitor (July 2010).

UNMIK, which had decided to build upon existing Kosovo Albanian structures that have local legitimacy.¹⁶³ Politics and governmental institutions are therefore dominated by the pre-war and wartime Albanian elites. This leads to the paradoxical tension between continuity and change during the transition from conflict to peace, although it is mainly EULEX that has to deal with this problem.

When acting solely as EUSR, Pieter Feith also has to represent those EU countries that do not recognise Kosovo, which makes his position more complicated. Acting ‘status neutral’ while having executive powers over Kosovo’s government would seriously harm the relationship with Pristina, and therefore he has tended to simply support Kosovo without explicitly talking about independence. This strategy has sometimes led to debate within the European Council, but has preserved the good working relation with Kosovo’s government. Although Pieter Feith does not have executive powers when acting solely in his position as EU Special Representative, he still has a somewhat intrusive impact in Kosovo’s politics. He is a diplomatic heavyweight for the European Union, who provides advice and support to Kosovo’s authorities on issues related to the EU’s policy objectives in the widest sense. He combines this role as political representative with the responsibility to provide political leadership and coordination to both EULEX and the ECLO. While the advice he gives to Kosovo’s authorities as EUSR is not binding, he personally represents Kosovo’s European perspective, in addition to having the executive powers as ICO. Although Pristina respects these formal powers, the “carrot” of European Integration is another good incentive to accept external interference while working on rapprochement to the EU. In return, the Union offers its political support and financial assistance to assist Kosovo’s authorities.

Overall, it seems that the ICR/EUSR has been relatively successful in dealing with the paradoxes of peacebuilding, although serious challenges continue to exist. More formal political progress might have been achieved by more frequent use of the ICO’s executive powers, but that could have led to a decrease in popular support for the international presence and the peacebuilding activities. However, continued reform efforts remain necessary, and unless Kosovo’s authorities and the international presences achieve progress on accountability, good governance, and minority representation, there is still a risk that Kosovo will become an international protectorate and bottomless pit for foreign support. But there is room for some optimism. Kosovo Serbs have started to pragmatically engage with Kosovo Authorities (most notably at the municipal level), many institutions are increasingly operating in line with international standards, and the government has remained dedicated to the European perspective – the most important “carrot” the international community has to offer to Kosovo. Being surrounded by EU and NATO members, the countries in the Western Balkans do not seem to have any alternative routes to peace and prosperity. All the large political parties remain in favour of working towards the European perspective, although the turnout at elections has been dramatically low at about 40%. Even the nationalist self-determinacy activists of Vetevendosje! want Kosovo to join the European Union, although they oppose the “undemocratic rule over Kosovo” of the ICO/EUSR and EULEX.¹⁶⁴ The current situation may be accepted for now because of the European perspective, but tangible results are necessary to maintain support.¹⁶⁵ The longer external parties hold the executive powers, the stronger the opposition will grow. The current spirit of cooperation between Pristina and the external involvement could turn into one of confrontation if executive powers are not devolved to local actors as soon as

¹⁶³ J. Narten, ‘Assessing Kosovo’s postwar democratization. Between external implementation and local self-government’, in: *Taiwan Journal of Democracy* Vol. 5 No. 1, 127-162.

¹⁶⁴ A. Kurti, ‘EULEX causing damage to Kosovo’ *New Kosova Report* (2 September 2010).

¹⁶⁵ Ibidem.

reasonably possible, or if one of the parties abandons the shared long-term goal of a multi-ethnic Kosovo that is peacefully embedded in its region and (ultimately) integrated into the European Union. While Kosovo's politicians are in the driving seat on the road to progress, the international community still acts as a driving instructor. Kosovo will need to pass the test of accountability and good governance before it can get its drivers licence, but the sooner this happens, the better it is.

Coherence of engagement with civil society

The EUSR represents the Union as some kind of EU ambassador 'avant la lettre', and many of his visits to NGOs and other actors can be seen as political statements on the one hand, while on the other hand these visits and participation in civil society activities provide him with valuable contacts and information. While the impact of meetings and contacts are hard to estimate, they offer the possibility for information exchange and confidence building, which can lead to various forms of cooperation in the future. As an influential interlocutor that personifies Kosovo's European perspective, he also has the possibility to give various forms of political support. With these limited possibilities, the EUSR has still engaged with various kinds of civil society organizations. As noted before, however, there does not seem to be much strategy behind the EUSR's engagement with civil society organizations. The EUSR is also not involved in funding civil society organisations, although the ICO has had a small special funds project that aimed to promote reconciliation by increasing local engagement and ownership of the peacebuilding process. Most of the beneficiaries could be seen as either promoting the preservation of cultural heritage, multi-ethnic education, or spreading information about decentralization and other reforms through the media.¹⁶⁶ Yet, strictly this cannot be considered as part of the EUSR's activities. Overall, the capacity of the EUSR to promote civil society engagement with the peacebuilding process is fairly limited compared to the ECLO and EULEX. An extensive discussion of each of the "tracks" of civil society is therefore somewhat misplaced in this chapter, as some occasional contacts cannot be considered as intense engagement with a certain aspect of civil society. Especially his contacts with the "tracks" of business and activism are insufficient to be considered as sustainable engagement. The focus is therefore on the exceptional cases where the EUSR is actively supporting or cooperating with civil society actors.

In general, the EUSR's engagement with civil society is closely connected to his political role in Kosovo. It is therefore not strange that the activities in which he has been personally involved in organizing focus either on promoting involvement and engagement of civilians in Kosovo's politics, or on disseminating information on the reform process in order to enhance popular support. Many of these activities can be considered as "track 2" (non-governmental engagement with politics and governmental peacebuilding) or "track 4" (activities by and for private citizens). There is often no clear distinction between these two "tracks" in the EUSR's activities, as fostering engagement and promoting reconciliation and human rights (which are both part of his mandate) go hand in hand. His activities include speeches at special public occasions, and participation in discussions, round tables and other activities organized by NGOs, in which he exchanges information and acts as an interlocutor between various organisations and governmental institutions. Furthermore, he has made use of a round table format to engage with groups that are underrepresented in Kosovo, most notably women and Kosovo Serb civil society actors.

The EUSR's contacts with the Kosovo Serb community through the round table format has led to an example of engagement with religious organizations ("track 7") that

¹⁶⁶ Website of the International Civilian Office, 'The ICO Special Funds Project' (<http://www.ico-kos.org/d/100602SPF%20on%20ICO%20websiteEng.pdf> 27/9/2010).

stands out among all three EU presences. Through his role as interlocutor the EUSR became aware of the problems concerning the preservation of religious and cultural heritage of the Serbian Orthodox Church, which led him to suggest the appointment of a facilitator for this problem, who is assisted by the office of the EUSR/ICO. The engagement of the EUSR with religious organisations still remains limited, because it doesn't come very natural for a governmental actor as the EU to work together with religious organizations. However, it is clear that this is an important field as the religious aspect of the conflict plays a big role in Kosovo. The Gallup Balkan Monitor shows that 86% of the Kosovo Albanians have "some" or "a lot" of confidence in religious organizations, while in the Kosovo Serb majority areas this is still about 72%.¹⁶⁷ The EUSR considers the promotion of intercultural and inter-religious dialogue among all the communities in Kosovo as very important to the peace process, but it remains a difficult topic in a country that is emerging out of a conflict that was often framed in religious terms.¹⁶⁸

Apart from these initiatives for direct civilian involvement, the EUSR is the European Union's main point of contact for Kosovo's media ("Track 9") on all issues related to the CSDP. In this capacity he has given pressuring statements that were intended to remind all stakeholders in Kosovo of their responsibilities, but he has also tried to foster public awareness and support for the European Perspective and the necessary state- and peacebuilding process. In addition, the EUSR spreads knowledge on the reform process and European integration through some concrete events that aim to increase public engagement with these issues. The Progress Report Debates have been organized to enhance discussions on the Progress Report among politicians, the media and various other aspects of civil society. This project has broad media outreach and tries to promote public awareness and involvement of individual citizens and organized civil society actors. The EU-Teach-a-Day project also aims to promote knowledge and awareness of the peacebuilding process and European integration, but his activity does so by personally engaging EU diplomats and representatives in the education of children. This is clearly a "Track 5" activity, but the considerable media attention throughout the country for this project seems to be an equally important goal. If it was just about teaching children about the EU, it wouldn't be necessary to use the time of many top-level officials and diplomats.

¹⁶⁷ Website of the Gallup Balkan Monitor, 'survey data' (<http://www.balkan-monitor.eu/> 27/09/2010).

¹⁶⁸ For example: 'Kosovo 1 year on: EU Special Representative Pieter Feith interviewed', *European Parliament Press Service* (13 February 2010).

5. European Union Rule of Law Mission

5.1 Background and mandate

The European Union Rule of Law Mission (EULEX) is the largest and most ambitious civilian mission under the Common Security and Defence Policy to date. EULEX has a staff of almost 1400 EU police officers, 300 judicial officers (including prison staff, judges and prosecutors), about thirty customs officers, and some supportive staff. In addition to this international staff, EULEX deploys some 1100 locals. EULEX's main tasks involve monitoring, mentoring and advising Kosovo authorities within the broader rule of law area, including police, justice, correctional services and customs.¹⁶⁹ The mission also has limited executive powers regarding 'the prosecution of organized crime offenses, inter-ethnic crimes, war crimes, corruption and the maintenance of public order.'¹⁷⁰ The major goal is to assist the authorities and law enforcement agencies in Kosovo in their development towards sustainability and accountability. Essentially, EULEX is a post-conflict peacebuilding operation that works on establishing the institutional preconditions for durable peace and reconciliation through Security Sector Reform. This includes the development and strengthening of an independent and multiethnic police force, justice system and government administration. EULEX aims to assure that these institutions are living up to international and "European Standards", and are free from political interference.¹⁷¹ Another specific task is the fight against corruption in, which 'exists in many different forms and in all sectors'¹⁷² in Kosovo. Security Sector Reform also typically includes reform of the military and intelligence agencies, but the task of training and monitoring the new security force has been given to KFOR. EULEX was formally established on 4 February 2008 by the Council of the European Union, and it has had a budget of €265 million for the period from 16 February 2008 to 14 June 2010.¹⁷³ On 8 April 2010 the Council adopted an extension of the mandate for a period of two years until 14 June 2012.¹⁷⁴ At the moment of writing only the budget for the period of 15 October 2010 to 14 October 2011 has been set, which amounts €165 million.¹⁷⁵ EU officials have stated several times that the operation will continue until all the benchmarks in the fields of police, justice and customs are fulfilled. Contributing states include most EU Member States, as well as other states that are active in the International Steering Group. Staffing is on a voluntary basis, which made it easier for EU Member States that resist the recognition of Kosovo to agree with the operation.¹⁷⁶

Initially it was planned that EULEX would completely replace UNMIK, but attempts to provide the replacement of UNMIK by the CSDP operation with a Security



¹⁶⁹ Webportal of the European Union on its presences in Kosovo (<http://www.euinkosovo.eu/> 20/09/2010).

¹⁷⁰ These have been nicely summed up by the Auswaertiges Amt. Website of the Auswaertiges Amt, 'Westlicher Balkan' (<http://www.auswaertiges-amt.de/diplo/en/Europa/WestlicherBalkan/Kosovo.html> 20/09/2010).

¹⁷¹ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *Official Journal of the European Union* (L42/2008) 92-98.

¹⁷² P. Collaku, 'Corruption Widespread in Kosovo', *Balkan Insight* (9 December 2010).

¹⁷³ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *Official Journal of the European Union* (L42/2008) 92-98.

¹⁷⁴ 'EULEX mandate extended for two years', *EULEX Press Release* (8 June 2010).

¹⁷⁵ *Factsheet EULEX Kosovo*, EU Council Secretariat (October 2010).

¹⁷⁶ *Factsheet EULEX Kosovo*, EU Council Secretariat (October 2010).

Council resolution were blocked by Russia and China. The start of deployment was initially foreseen in the spring of 2008, but could only proceed in December 2008 after the EU had accepted the demand of Serbia, and its veto-powered allies, not to implement the Ahtisaari Plan through the rule of law mission.¹⁷⁷ The status-neutral deployment of EULEX seems to create some tension with the mandate of the ICR/EUSR, whose task it is to oversee the implementation of the Ahtisaari Plan. On the other hand, it made it easier for the Member States that do not recognize Kosovo to agree with the extension of the mandate in 2010. These countries had accepted the original decision to establish EULEX less than two weeks before Kosovo's declaration of independence, when the adoption of Joint Actions under CFSP was not yet marred by disagreement between Member States on Kosovo's status.¹⁷⁸ Taking notice of the EU's readiness to formally start with EULEX in late 2008, and also its unwillingness to continue financing UNMIK, the UN Secretary General restructured UNMIK in a way that offered space for EULEX to be deployed.¹⁷⁹ This reconstruction was later endorsed in a statement of the President of the Security Council, but this is not an official authorization of EULEX as such.¹⁸⁰ From a UN legal perspective the position of EULEX remains therefore rather fragile.

The start of EULEX operations on 8 December 2008, after months of negotiations between UN, EU and authorities in Belgrade and Pristina, was celebrated as a diplomatic victory in both capitals. Belgrade presented the "status neutral" deployment as better than implementation of the Ahtisaari Plan through EULEX, which mentioned "supervised independence". For Pristina the "status neutral" must have been a bit of a disappointment, but the deployment of EULEX was still better than continuing UNMIK, which explicitly recognized Serbia's sovereignty over Kosovo in its mandate. On 6 April 2009 the operation had reached full capacity, as was declared on that day by Head of Mission Yves de Kermabon at the inauguration of EULEX's new headquarters in Pristina. By then EULEX had begun to fulfil its mandate, and Yves de Kermabon listed some of the early achievements: 'EULEX judges and prosecutors and their local counterparts have scheduled more than 80 hearings; EULEX has completed the first trial at Mitrovicë/a District Court since 19 February 2008; EULEX carried out 13 exhumations and identified the remains of 23 missing people; 18 of these have already been returned to their families. The Mission also has a 24/7 police and customs presence at gates 1 and 31. The re-establishment of partial customs controls at the northern gates has resulted in a measurable increase in revenue collection and a considerable decrease in oil smuggling.'¹⁸¹ Despite this good start after months of delay, many challenges and problems are still lying ahead.

RULE OF LAW AREA	Sectors	2010vs2009
POLICE	Tackling Crime effectively	B
	Tackling patrol issues and ensuring public order	B
	Providing secure borders	A
	Providing a sustainable organisation	B
JUSTICE	Kosovo Judicial Council	B
	Judges	B/C
	Public prosecutors	B/C
	Special Prosecution Office (SPRK)	B
	Ministry of Justice	B/C
	Office of Missing Persons and Forensics	B/C
	Correctional Service	A/B
CUSTOMS	Integrating Government strategies into operational plans	B
	Improving Internal Communication.	B/C
	Co-operation with other law enforcement agencies.	B
	Integrated Border Management Strategy.	B/C

A = Progress
B = Slow progress/Need more impetus
C = Problematic/Very limited or no progress
D = Serious concern/regression

¹⁷⁷ 'EU accepts Belgrade's conditions for EULEX', *Balkan Insight* (7 November 2008).

¹⁷⁸ S.Blockmans and R.A. Wessel, 'The European Union and crisis management', 276-279.

¹⁷⁹ Security Council, *Statement by the President of the Security Council S/PRST/2008/44* (26 November 2008).

¹⁸⁰ S.Blockmans and R.A. Wessel, 'The European Union and crisis management', 276-279.

¹⁸¹ 'EULEX fully operational', *EULEX Press Release* (6 April 2009).

The progress of EULEX is presented in the annual Programme Report. The Programme Report 2010 was presented on 4 June 2010, and was based on the previous twelve months of constant reporting by EULEX monitors placed in Kosovo's justice, police and customs institutions.¹⁸² This report concentrates on the Monitoring, Mentoring and Advising (MMA) activities and less on the use of EULEX's limited executive powers.¹⁸³ While establishing and maintaining the rule of law is an important precondition for peacebuilding efforts to be successful, the ultimate goal of the MMA activities is to establish local ownership of independent and professional judicial institutions. The Report's preface by Yves de Kermabon states that: 'we all must be aware that the problems that are being tackled are substantial and there are no quick fixes. The rate of development is dictated largely by the resources and capabilities of the police officers, customs staff, prosecutor, judges and court administrators; they own and control the change process, whilst EULEX assists with monitoring, mentoring and advising. In many areas the process is also complemented by the ECLO, other international organizations and/or donor-funded projects.'¹⁸⁴ The report includes a graphic overview of progress in all MMA sectors. This shows that there has been some slow overall progress, but also points out that major challenges remain, especially in the rule of law area of justice. Independent researchers and international monitoring NGOs such as Human Rights Watch, the International Crisis Group and Freedom House largely share the conclusions on accomplishments and challenges that are presented by EULEX, although they criticize the slow pace of progress.¹⁸⁵

5.2 Police

Most MMA progress has probably been made within the Kosovo Police (KP). The Programme Report states that the KP is still lacking the capacity to convert good intentions and new policies into implemented actions, but that it nevertheless has moved forward in developing institutions and improving practices. An early success in becoming representative of Kosovo's population was made in June 2009, when 307 of the 325 police officers of Serbian descent returned to work in the north of Kosovo, after sixteen months of absence following the declaration of independence.¹⁸⁶ This was a great boost for the KP, because the general confidence in government institutions is very low in the Kosovo Serb minority. Kosovo Serbs are also more likely to perceive their areas as being unsafe,¹⁸⁷ although the crime levels are not worse than in Kosovo as a whole.¹⁸⁸ The relative professional performance of the KP is also reflected in the fact that EULEX police officers only once had to intervene to maintain public order, although they were standing ready several times. Several small riots and (potential) disturbances of order were dealt with by the KP alone, including the elections in November 2009, which has increased public trust in the KP.¹⁸⁹ In the past year the responsibility for surveillance of the border with Albania and for securing some religious and cultural heritage sites were transferred

¹⁸² *EULEX Programme Report 2010*, European Union Rule of Law Mission (Pristina 2010).

¹⁸³ 'Progress and challenges in the rule of law', *EULEX Press Release* (4 June 2010).

¹⁸⁴ *EULEX Programme Report 2010*, 5.

¹⁸⁵ B. Ward, 'Slow Progress on Rights in Kosovo', *The European Voice / Human Rights Watch* (24 February 2010).

I. Deda, 'Kosovo', in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia*

(Freedom House, Washington/Budapest 2010) 273-287.

'The rule of law in independent Kosovo', *International Crisis Group Europe Report 204* (19 May 2010).

¹⁸⁶ H. Dijkstra, 'Een jaar EULEX Kosovo: resultaten en uitdagingen' [One year EULEX Kosovo: results and challenges], *Internationale Spectator* 64 nr. 6 (Juni 2010) 336.

¹⁸⁷ Small arms and human security in Kosovo: An agenda for action, The Forum for Civic Initiatives (Pristina 2007).

¹⁸⁸ 'The rule of law in independent Kosovo', *International Crisis Group Europe Report 204* (19 May 2010).

¹⁸⁹ *Ibidem*.337-228.

from KFOR to the KP. While these are important and symbolic steps, the number of outputs so far was described as “modest” by the Programme Report.¹⁹⁰

The general tone of the Programme Report is slightly positive about the progress the KP has made. This is reflected by the International Crisis Group, which recently concluded that the KP is one of Kosovo’s ‘genuinely multi-ethnic institutions, with Serbs and others integrated in all regions and at all levels’.¹⁹¹ The Crisis Group also pointed out that the KP is poorly managed, lacks vital skills and desperately needs more leadership and training. It states that the KP can deal effectively with low-level crime, but has problems with addressing ‘organized crime, financial crime and fraud, drugs and human trafficking and other specialised challenges’.¹⁹² In addition, improvement is necessary in the hostile relationship with the public prosecutors, who are charged with leading police investigations of serious crime. It was also in the area of police that EULEX itself has probably made its largest mistake. In order to address cross-border organized crime and smuggling in the region, EULEX officials felt they needed to negotiate with Serbia on a police protocol on exchanging information. Although both Kosovo and Serbia have an interest in tackling organized crime, EULEX has received a lot of criticism and nationalist outrages over dealing with Serbia. Bad communication had created the false impression that EULEX was compromising on Kosovo’s territorial integrity. This has damaged popular support for EULEX among Kosovo Albanians. After a lot of criticism from Pristina, EULEX felt the need to defend itself in a press release: ‘These arrangements, signed today on behalf of EULEX with the full support of the EU 27 Member States, are an important step forward with a view to improve the Rule of Law throughout the whole of Kosovo. Regional cooperation is a key factor in combating cross border criminality. The mission will continue to seek operational cooperation on all such issues, related to its mandate. However, in this context it is important to underline that EULEX is here to support Kosovo in the Rule of Law area and would never take any steps that would harm Kosovo’.¹⁹³ Although EULEX pushed this arrangement through, from this point on technical issues around police, justice and customs that required contact with Serbian authorities have generally been arranged in informal ways, which has led to several delays.¹⁹⁴ However, overall there is room for some optimism, despite the many remaining challenges. EULEX’s Programme Report 2010 concluded that the KP had started to become a “learning organization”, with a ‘growing ability to bring about large-scale organisational change. [...] In a very real sense, this emerging ability can be described as the hidden, extra MMA Action’.¹⁹⁵

An interesting aspect of many Police MMA Actions is the inclusion of activities that refer to civil society representatives as players that have to be involved in the implementation phase. Especially aspects of MMA Actions with a direct public impact tend to have a reference to civil society, for example activities to increase public confidence in the police.¹⁹⁶ Below we will see that the same is true for the rule of law area of Justice, while NGOs have a limited role in Customs MMAs. According to the Programme Report, ‘the functioning of rule of law institutions – and the fight against corruption in particular – remain a high priority for many non-governmental

¹⁹⁰ EULEX Programme Report 2010.

¹⁹¹ ‘The rule of law in independent Kosovo’, *International Crisis Group Europe Report 204* (19 May 2010).

¹⁹² Ibidem.

¹⁹³ ‘EULEX statement: We would never take any steps that would harm Kosovo’, *EULEX Press Release* (11 September 2009).

¹⁹⁴ H. Dijkstra, ‘Een jaar EULEX Kosovo: resultaten en uitdagingen’ [One year EULEX Kosovo: results and challenges], *Internationale Spectator* 64 nr. 6 (Juni 2010) 338.

¹⁹⁵ EULEX Programme Report 2010, 9.

¹⁹⁶ Ibidem, 62-68.

organizations; analyses, reports and policy recommendations on these themes have been numerous over the past twelve months. NGOs have demonstrated a remarkable capacity in identifying strengths and weaknesses in the rule of law mechanisms.¹⁹⁷ While there are no specific MMA Actions on partnership with local NGOs, the involvement of NGOs in several (Police and Justice) MMA Actions helps to ensure a critical assessment of achievements and challenges, and contributes to operational improvements and increased public support. It is therefore that EULEX has actively called upon NGOs to give their feedback on the MMA Activities, and has occasionally invited NGOs to round tables and workshops on EULEX activities in order to build capacities for critical feedback and involvement. In this regard EULEX has benefited from a relatively long preparation period, in which plans were made on involving civil society actors in evaluations to increase the operation's accountability. Interestingly, the European Peacebuilding Liaison Office (EPLO) has recently published a report titled *Accountability and effectiveness of CSDP missions: the role of civil society. The cases of EULEX (Kosovo) and EUPOL COPPS (Palestinian Territories)*.¹⁹⁸ The EPLO is 'the platform of European NGOs, networks of NGOs and think tanks active in the field of peacebuilding, who share an interest in promoting sustainable peacebuilding policies among decision-makers in the European Union.'¹⁹⁹ This report is even more specific about EULEX's "infrastructure" for cooperation with civil society actors (CSOs): 'In terms of promoting participation, CSOs were involved in the process of planning EULEX, the Mission includes a Human Rights and Gender Office which is responsible for managing relations with CSOs, the EULEX Programme Office has produced a CSO directory and Mission staff members have informal/ad hoc meetings with representatives of CSOs.'²⁰⁰ Nevertheless, the report also shows some points of criticism. Based on contacts with local NGOs, the EPLO concludes that cooperation between EULEX and NGOs has remained largely informal and unstructured, although EULEX is now developing mechanisms to ensure a more systematic approach in the future. Another problem is the limited number of CSOs that have participated in evaluation processes so far, and the EPLO calls upon EULEX to explore other mechanisms to redress this. In addition to improving the possibilities for cooperation and involvement for NGOs, EULEX should work on its transparency. While EULEX lives up to European norms on transparency and accountability, 'a perceived lack of transparency of the Mission remains a major concern for CSOs. This has the potential to undermine EULEX's credibility.'²⁰¹

5.3 Justice

The rule of law field of justice is where EULEX is facing its biggest challenges, and it is the field where EULEX has most of its executive powers.²⁰² EULEX legal experts divide their time between MMA actions and the executive functions. Some progress has been made on the executive tasks, but the development of judicial capacities in Kosovo is in a standoff, or as EULEX puts it in the Programme Report 2010: 'The performance of the Kosovo justice system is still showing signs of weakness.'²⁰³ A recent research public inquiry showed that the courts are the lowest-ranking institution in terms of public

¹⁹⁷ Ibidem, 12.

¹⁹⁸ Malin Palm, *Accountability and effectiveness of CSDP missions: the role of civil society. The cases of EULEX (Kosovo) and EUPOL COPPS (Palestinian Territories)*, (European Peacebuilding Liaison Office 2010).

¹⁹⁹ Ibidem.

²⁰⁰ Ibidem.

²⁰¹ Ibidem.

²⁰² I. Deda, 'Kosovo', in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010) 273-287.

²⁰³ *EULEX Programme Report 2010*, 9.

satisfaction, with a level of 20 percent.²⁰⁴ To improve confidence in the system, Kosovo needs to move forward with the reform agenda. Some immediate challenges mentioned in the Programme Report include: ‘The lack of progress in establishing the basic mechanisms of co-operation and co-ordination between prosecutors and Kosovo Police, as well as between prosecution officers and courts’, ‘poor management and lack of support staff’ in prosecution officers, and improvement in ‘the treatment of victims of domestic violence, in cases related to trafficking of Human Beings and in gender-related cases.’²⁰⁵ Similar, but worse problems have been encountered in attempts to restore the judiciary in the North of Kosovo by reopening the court in Mitrovica/Mitrovicë, but the problems in the north will be discussed below in a separate section.

Some positive developments in the reporting period include the establishment of the Kosovo Judicial Council and the appointment of an Anti-Corruption Task Force in the Special Prosecutor’s Office of Kosovo, which is supervised by EULEX and has the exclusive competence to ‘investigate and prosecute the most serious crimes such as war crimes, serious breaches of the Geneva conventions, terrorism, organised crime, trafficking in Human Beings and money laundering.’²⁰⁶ Both the Judicial Council and Anti-Corruption Task Force are still in early stages of implementation, and their ability to contribute to further development of the judicial sector will be tested in the coming months and years. The objective of the Task Force will be to ‘investigate and fight high profile corruption-related crimes as well as various forms of participation in such crimes.’²⁰⁷ It is a good example of cooperation between international legal officials with local ones. The Task Force consists of ‘eight prosecutors, five (5) of whom will be local and three (3) prosecutors will be EULEX appointments. [...] In addition to the eight Task Force prosecutors, the Government of Kosovo has committed to engage thirty (30) Kosovo Police Investigating Officers who will serve in a support role to the Task Force. As of 20 April 2010, five KP officers were assigned.’²⁰⁸ The development of the Kosovo Judicial Council is supported by EULEX through a MMA action designed for this purpose. It is an independent institution that has a central role in ensuring the efficiency and independence of the judicial system as a whole. It seeks to reflect the multi-ethnic nature of Kosovo by recruiting and proposing candidates for (re)appointment to judicial offices, and it has the ability to undertake disciplinary measures against judges. The MMA Action on the Judicial Council is also a great example of the way EULEX attempts to stimulate frequent interaction between local rule of law institutions and NGOs, which are seen as consultation partners on several Justice MMA Actions. The EULEX MMA Action on the Council ‘schedules regular meetings with civil society, and involves its representatives in relevant justice reform processes.’²⁰⁹

Despite these mixed but generally positive developments, the field of Justice remains the most problematic part of the rule of law mission. This has been acknowledged by several monitoring NGOs. For example, the 2010 Freedom House report on Kosovo states that the presence of EULEX has not yet resulted in improvements in the field of justice during 2009.²¹⁰ Apart from all the problems “in the field”, EULEX has suffered from a shortage of good international judges and prosecutors. Because the international

²⁰⁴ *Monitoring the Courts. Monitoring the work and administration of courts in Pristina, Peja, Mitrovica, Gjiilan, Ferizaj, Vushtrri and Skenderaj*, Balkan Investigative Reporting Network (Pristina 2009).

²⁰⁵ *EULEX Programme Report 2010*, 9-10.

²⁰⁶ *Ibidem*, 42.

²⁰⁷ *Ibidem*, 43.

²⁰⁸ *Ibidem*, 44.

²⁰⁹ *Ibidem*, 12.

²¹⁰ I. Deda, ‘Kosovo’, in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010) 276.

judges and prosecutors are involved in sensitive cases, they have to be selected with some care. This has been somewhat of a problem, as deployment abroad has become a common phase in the career of military or police forces, but this is not (yet) the case for legal professionals. In addition, they have to be willing to live with heavy security measures.²¹¹ By now EULEX is fully operational, but the slow filling of all staff openings was a real problem when the operation started, as it had to clear away a massive number of civil law cases left by UNMIK. So far EULEX has been much more effective than UNMIK was, but a backlog of cases remains, even though at least 400 cases had to be closed due to lack of perspective on successful closure, which wasn't easy to explain to victims or relatives, but necessary to achieve overall progress.²¹² Court rulings are made in mixed panels of EULEX judges and local judges, but the EULEX judges are ultimately in charge. International judges and prosecutors continue to have an important role in ensuring that sensitive crime cases, including organized crime, corruption and war crimes, are properly investigated and prosecuted according to the applicable law and international standards.²¹³ Achieving real progress remains problematic however, especially in high profile cases. An important example is the case against the nationalistic Albanian activist Albin Kurti, who is leader of the political activist group Vetëvendosje! that aims for self-determination without international interference. Albin Kurti is charged for involvement in a violent protest, where two persons were killed by UNMIK police officers in a clash with the activists. While the outcome of such trials is not predetermined, and a professional judiciary should be able to deal with such sensitive issues, the issue remains somewhat of a threat to popular support for EULEX. Taking on such sensitive political cases, while there is a huge number of pending criminal and civil cases, makes the mission an easy target for criticism. A group of 14 NGOs has already made a joint statement calling on EULEX to concentrate on organized crime, corruption, and bringing the judiciary in line with "European Standards", instead of taking on controversial political cases.²¹⁴ There is some truth in this criticism, and the way EULEX operated in the case has been criticized as well by Amnesty International and Human Rights Watch.²¹⁵ The Programme Report 2010 stated that a general degree of satisfaction with EULEX was still registered among NGO participants of EULEX performance evaluations, but also that these organisations have made clear that 'the continuing lack of concrete results, interposed by actions such as the [Police] Protocol issue or the Kurti trial, would bring about a decrease of civil society support for the EULEX MMA endeavours.'²¹⁶

The conduct of the Albin Kurti trial is a good example that shows many of the problems facing the judiciary in Kosovo. On 19 April 2010 the Kurti Trial was postponed for the eighth time. When Kurti had to appear at the court, the local police failed or refused to bring him there. The case had been adjourned before for reasons such as the absence of the court-appointed defence lawyer or because the judge involved in his case was suddenly "ill".²¹⁷ EULEX issued a statement after the postponement, pointing out that the ex officio appointed lawyers had violated their official duties by not showing up in court, and that 'the shortcomings which are being made evident during this trial

²¹¹ H. Dijkstra, 'Een jaar EULEX Kosovo: resultaten en uitdagingen' [One year EULEX Kosovo: results and challenges], *Internationale Spectator* 64 nr. 6 (Juni 2010)

²¹² Ibidem.

²¹³ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *Official Journal of the European Union* (L42/2008) 92-98.

²¹⁴ 'Kosovo: pressure mounts on EU over Kurti trial' *Balkan Insight* (18 February 2010).

²¹⁵ 'Kosovo(Serbia): Vetëvendosje! Activists beaten during Kurti arrest' *Amnesty International Public Statement* (18 June 2010).

'Kosovo: Investigate police operation', *Human Rights Watch Press Release* (15 June 2010).

²¹⁶ *EULEX Programme Report 2010*, 63.

²¹⁷ Ibidem, 31.

unfortunately show the continuing weaknesses that need to be addressed within the local rule of law institutions, if Kosovo is to achieve European Standards.²¹⁸ In short, the justice system is hampered by a lack of internal capacity, insufficient coordination with the police, and has problems with corruption and independence. Prosecutors, judges and witnesses are often subject to pressure and intimidation, although this is difficult to prove in concrete cases. The Programme Report concludes on these difficulties that the readiness of local judges and prosecutors ‘to participate or even take the lead in adjudicating cases of corruption or organised crime is often paralyzed by threats against themselves or their families. However, often enough the reluctance to participate in investigations and trials sometimes could also be interpreted as tacit disagreement with EULEX’s course of action in the field of justice (e.g. to convict ‘war heroes’).’²¹⁹ In addition, the Programme Report stated that ‘[political] interference at different levels and in a variety of forms was observed. This interference with the work of the justice system, both in criminal and civil proceedings, has often resulted in practical problems (such as the pre-emptive abstention of local judges and prosecutors to deal with sensitive cases).’²²⁰ The scope of this interference is showed in an article published in June 2010 by *Balkan Insight*. The article covered a leaked EULEX memo dating back to August 2009, in which Kosovo Prime Minister Hashim Thaci was criticized for ‘blunt political interference in the judicial process’ after he had publicly stated that three defendants in EULEX war crime trials were innocent.²²¹ Although EULEX refrains from criticism on leaked and “unofficial” documents, it seems that in the past period EULEX has more frequently issued statements underlining the importance of the independence of the judiciary. The work of the Judicial Council and the reappointment and vetting of judges and prosecutors by EULEX officials will also help to improve the independence of the judiciary and reduce corruption, but this process has been slow and it will take some more time before results become visible. A press release on 30 July 2010 stated that EULEX and local authorities had stepped up their pace. In the three weeks before that date a former judge was convicted for corruption, searches and arrests were made related to war crimes, and investigations for corruption had started against several top officials, including the Governor of the Central Bank of Kosovo and the Director of the state-owned Post and Telecom of Kosovo.²²² It seems therefore that 2010 will show more progress in the field of justice.

Kosovo needs progress in the rule of law sector as a whole in order to become a sustainable and accountable country, which is necessary to increase societal trust in governmental institutions, move towards the European Union and improve inter-ethnic ties. While working on these issues is a clear part of peacebuilding in Kosovo, there are also specific issues that are even more clearly related to the conflict-ridden past - most notably the issues of clarifying the fate of missing persons and prosecuting war crimes. According to Amnesty International about 2000 people remain unaccounted for in Kosovo ten years after conflict has ended.²²³ On the last International Day of the Disappeared (30 August), Yves de Kermabon acknowledged the importance of solving the issue of the missing: ‘Dealing with the legacy of past human rights violations is one of the many challenges facing Kosovo today. Initiatives undertaken to confront impunity and to promote the rule of law by investigating past abuses are important factors towards forging a justice system that advances international human rights standards, restores public

²¹⁸ ‘Kosovo: Kurti trial postponed for eight time’ *Balkan Insight* (19 April 2010).

²¹⁹ *EULEX Programme Report 2010*, 32.

²²⁰ *Ibidem*, 9.

²²¹ ‘Leaked memo slams Kosovo PM’s interference in the judiciary’ *Balkan Insight* (4 June 2010).

²²² ‘EULEX and local authorities stepping up the pace’ *EULEX Press Release* (30 July 2010).

²²³ *Burying the past. 10 years of impunity for enforced disappearances and abductions in Kosovo*, Amnesty International Publications (June 2009).

confidence, fights impunity and strengthens the fabric of civil society.’²²⁴ EULEX forensic experts and missing person experts are co-located in Kosovo’s Department of Forensics Medicine of the Ministry of Justice, in order to support efforts to determine the fate of the missing. EULEX and the Department of Forensics Medicine (before the Office of the Missing Persons and Forensics) have also organized over 130 coordination meetings with families, family associations, and other stakeholders, which have led to a significant number of important leads for investigations.²²⁵ In his speech on 30 August 2010, Yves de Kermabon summarized the achievements so far: ‘185 field operations [have been conducted] where 79 missing persons have been located and identified. 135 remains of the missing plus other victims of the conflict and its aftermath have been forensically examined, identified and returned to families. An exhaustive examination of unidentified remains was begun and is continuing. Over 800 files related to commingled, fragmented and burnt cases have been reviewed. More than 1.000 bone samples have been selected for further analysis.’²²⁶ While a lot of effort has been put into the issue, the progress is considered as slow or even problematic in the Programme Report, mainly because the number of missing persons remains huge compared to achievements since the start of EULEX. The Report concludes that the greatest challenges for 2010 are ‘finding reliable information leading to the location of potential grave sites, determining the identity of the remains [about 200] held in OMPF (now Department of Forensics Medicine) and having the cooperation of families and Family Associations.’²²⁷

Clarifying the fate of the missing and identifying human remains helps people to move on after their loss, as it ends uncertainty. However, relatives and (surviving) victims also seek justice for past war crimes. The Department of Forensics Medicine and EULEX forensic experts assist the judiciary in war crimes investigations by determining the fate of the missing and offering forensic expertise.²²⁸ The War Crimes Investigations Unit in EULEX is charged with the criminal investigations on the missing and the circumstances of their disappearances. This unit also locates gravesites, collects evidence of war crimes in order to identify perpetrators and bring them to justice.²²⁹ Benjamin Ward, the deputy director of Human Rights Watch who oversees research on the Western Balkans has recently stated that ‘EULEX has also sent some encouraging signals on accountability for war crimes, an issue on which Kosovo lags years behind other parts of the Balkans. It opened an investigation, for example, into the fate of 400 missing people, mostly Serbs, who were allegedly transferred in 1999 to detention facilities in Albania by the rebel Kosovo Liberation Army.’²³⁰ Although it is indeed encouraging that EULEX has stepped up its activities in this field after UNMIK had failed to do so, real progress with war crimes cases has yet to be made. Ward observed that ‘the lack of a war crimes strategy has hampered efforts to identify the highest-priority cases among the hundreds of files the EU inherited from the UN.’²³¹ In addition, a recent OSCE report on war crimes trials assessing the period from 1999 to 2009 has slammed what it describes as ‘a systematic failure to adjudicate war crimes cases.’²³² As far as the OSCE could determine, 37 individuals had been tried for war crimes allegations in Kosovo, while almost 2000 acts of suspected war

²²⁴ ‘The day of the missing in Kosovo’ *EULEX Press Release* (27 April 2010).

²²⁵ ‘Statement from Roy Reeve, acting Head of EULEX, on the International Day of the Disappeared’ *EULEX Press Release* (26 August 2010).

²²⁶ ‘The day of the missing in Kosovo’ *EULEX Press Release* (27 April 2010).

²²⁷ *Annual Activities Report*, EULEX/Office on Missing Persons and Forensics (2010).

²²⁸ ‘Statement from Roy Reeve, acting Head of EULEX, on the International Day of the Disappeared’ *EULEX Press Release* (26 August 2010).

²²⁹ ‘The day of the missing in Kosovo’ *EULEX Press Release* (27 April 2010).

²³⁰ B. Ward, ‘Slow Progress on Rights in Kosovo’, *The European Voice / Human Rights Watch* (24 February 2010).

²³¹ Ibidem.

²³² *Kosovo’s war crimes trials: an assessment ten years on. 1999-2009*, OSCE Mission in Kosovo (May 2010).

crimes have been identified by UNMIK and handed over to EULEX in 2008. These 37 include a few trials by the International Criminal Tribunal for the former Yugoslavia, which only deals with the “big fish”. In the case of Kosovo these are a few Serbian (para)military leaders and former KLA commanders, including the (acquitted) former prime minister of Kosovo Ramush Haradinaj.²³³ EULEX had tried only four war crimes cases until the OSCE report was published. The report mentions three major causes for this slow pace: war crimes have been not been prioritized, insufficient funds have been allocated for the difficult and long-term investigations and prosecutions that accompany war crimes cases, and the witness protection programme in Kosovo has been too weak.²³⁴ This is very problematic, because it will become increasingly difficult to deal with war crimes cases as time passes, because victims, witnesses and evidence will become less available. Clearly a lot of urgent work remains to be done in this aspect of the Justice component of EULEX.

5.4 Customs

The field of Customs is a sensitive topic, as it deals with border issues and therefore with the international status of Kosovo. Border control is also a very important issue for Kosovo, because 60 to 70 percent of the government’s revenues comes from customs duties.²³⁵ EULEX has started its work on gradually improving Kosovo’s customs agencies by just copying the cargo papers of all trucks entering Kosovo, which led to an increase of customs revenues of about 80 percent.²³⁶ EULEX also re-established a customs regime at Gates 1 and 31 on the border with Serbia. According to De Kermabon smuggling has been reduced by approximately 60%, and ‘this has led to an increase of €1,5 million in revenue collected monthly at South Mitrovica Terminal’.²³⁷ However, EULEX does not collect taxes at the northern border gates, because that is related to Kosovo’s status and needs to be decided on a political level. This customs work was also useful for Serbia, which has fired dozens of its own customs officials after EULEX presented evidence of their smuggling activities. Still, progress is difficult as Serbia has problems with every expansion of tasks in the field of customs, while the government of Kosovo thinks EULEX should do more in this field. It is therefore that the status quo has been largely maintained. Although arranging practical measures in the field of customs could contribute to an improvement of the contact between Serbia and Kosovo, it is more likely that progress on customs issues is just a reflection of the overall relationship between the two governments, which faces problems of a completely different dimension. Fighting corruption and promoting good governance and a multi-ethnic and gender-neutral human resource policy within the customs service will contribute to sustainable development of Kosovo as a whole. Of itself however, the customs service has less impact on the peace process than the police and judiciary. Nevertheless, developing a professional customs service is a part of promoting law-enforcement, and also a requirement for future European integration. The Customs Service facilitates legal trade and fights smuggling and trafficking, but also contributes to the fight against organized crime and terrorism,

²³³ He was acquitted of all charges, but recently the ICTY decided to partially repeat the trial because the original trial is said to have been marred by witness intimidation. ‘New war crimes trial for former Kosovo PM Haradinaj’ *BBC News* (21 July 2010).

²³⁴ ‘OSCE in Kosovo: War crimes casus must be priority’ *Balkan Insight* (16 June 2010).

²³⁵ H. Dijkstra, ‘Een jaar EULEX Kosovo: resultaten en uitdagingen’ [One year EULEX Kosovo: results and challenges], *Internationale Spectator* 64 nr. 6 (Juni 2010) 339.

²³⁶ *Ibidem*.

²³⁷ L. Karadaku, ‘De Kermabon: status quo unsustainable in northern Kosovo’ *Southeast European Times* (12 April 2010).

which contributes to the protection of intellectual property rights – issues on which EULEX cooperates with EC-funded projects on customs.²³⁸

The graphic overview of the Programme Report 2010 shows that there has hardly been substantial progress in the field of customs between 2009 and 2010. There has been no progress in the functioning of the Independent Review Board of the Customs Service, the backlog in customs appeals has not improved over the reporting period, and human resources systems are still as unreliable and poor as in 2009.²³⁹ Nevertheless, the Programme Report starts describing the Customs Service as: ‘a well established Service which meets its revenue collection objectives virtually each year.’²⁴⁰ Although little progress has been made in the operational aspects of the Customs Service, the legislative and institutional embedding has been strengthened. A Customs and Excise Code entered into force in September 2009, and the Programme Report mentions good progress in issuing administrative instructions, regulations and guidelines that are in line with the new customs legislation. For example, a Strategic Operational Framework has been drafted for the period 2010-2012. In addition, new legislature has been approved in support of the professionalization of the Customs Agency, such as a law on the protection of intellectual property rights.²⁴¹ Improvements are also visible in the cooperation of the Customs Service with other law enforcement agencies. A plan has been made for a joint operation with the Kosovo Police to detect the illegal import and export of money through the Pristina International Airport, and a memorandum of understanding on closer cooperation was signed between Kosovo Customs, Kosovo Police and the Tax Administration of Kosovo. 2009 also saw some agreements on customs cooperation and mutual assistance with neighbouring countries, and some more are under preparation.²⁴² In the meanwhile, EULEX reports limited progress in the improvement of the internal communication and information flow within Kosovo Customs: ‘EULEX assessments revealed that the availability and use of intelligence data in Kosovo Customs remains relatively unsophisticated and that there was a need to enhance operational response in the area of serious/organized crime.’²⁴³ The MMA action in response to this observation has seen little progress, partly due to a general lack of sufficient human resources in the Customs component of EULEX. In order to deal with this challenge, a new recruitment round for 50 customs officers was scheduled for 2010, and the position of Director General for customs at EULEX has been recently advertised.²⁴⁴ The general image that is reflected in the Programme Report 2010 indicates that 2009 was an “in-between year” for the customs component of EULEX. Most MMA actions that followed the Programme Report 2009 were being implemented, but most results will become visible only during or after 2010. The prospects are that the Programme Report 2011 will show more positive results, although the development of the Customs Service remains to be a challenge, and especially its work in the north of Kosovo and along the border with Serbia.

5.5 Northern Kosovo

Although EULEX’s mandate and goals in the areas of police, justice and customs are the same for entire Kosovo, there are problems in the north that justify a separate and somewhat more extensive treatment. The Kosovo Serbs constitute a majority of the

²³⁸ Website of EULEX, ‘EULEX Kosovo customs component’ (<http://www.eulex-kosovo.eu/en/customs/> 20/09/2010)

²³⁹ *EULEX Programme Report 2010*, 55-60.

²⁴⁰ *Ibidem*, 55.

²⁴¹ *Ibidem*, 11.

²⁴² *Ibidem*, 11.

²⁴³ *Ibidem*, 58.

²⁴⁴ ‘De Kermabon: Strong, fair and multiethnic rule-of-law institutions make the so-called parallel structures irrelevant’, *EULEX Press Release* (14 January 2010).

population in the northern region of Kosovo, which is immediately bordering Serbia. Serbian authorities are active in this area and still provide a variety of services and financial support measures in order to maintain some control over this area and underscore Belgrade's position on the status of Kosovo.²⁴⁵ The developments here can be seen as an intensified reflection of the inter-ethnic relations between Kosovo Serbs and Kosovo Albanians in Kosovo as a whole. The problems in the north are not likely to be solved before the discussion on the status of Kosovo is over, because Kosovo Serbs will continue to affiliate themselves with Serbia as long as Belgrade objects Kosovo's independence. This is true for the whole of Kosovo, but especially in the Serbian municipalities directly bordering Serbia proper. For Serbs in the North it is relatively easy to reject the central government of Kosovo, while Serbs in the rest of Kosovo live in small minority communities and have had little choice but to work pragmatically with the central government in Pristina and integrate with the rest of the state.²⁴⁶ Although EULEX cannot be blamed for the refusal of Kosovo Serbs in the north to cooperate with the government in Pristina, the operation should do more to improve the rule of law in this region, as has also been pointed out by Ms Idrizi, the head Community Building Mitrovica, a local NGO that facilitates interethnic dialogue and advocacy in Mitrovica/Mitrovicë and has received an EIDHR grant for its work. She stated that law and order form a precondition for the normalization of life in the north, and called upon EULEX to increase its activities: 'something which is expected by all citizens of Mitrovica.'²⁴⁷ The lack of integration of Kosovo Serbs into the rule of law initiatives has also been the major point of criticism on EULEX by international monitoring NGOs.²⁴⁸

The political standoff between Pristina and Belgrade doesn't mean that EULEX cannot achieve practical improvements in the rule of law in the north. Proper rule of law institutions are also necessary in the unlikely scenario that the whole of Kosovo will again become an autonomous province of Serbia. In this sense the status neutral deployment of EULEX may be an advantage, although it is also contributing to delays in status talks. The Joint Action of all EU Member States on EULEX makes clear that it should assist the Kosovo institutions, judicial authorities and law enforcement agencies, and not recognise or assist the parallel structures that Belgrade runs in (North) Kosovo. Strong multi-ethnic institutions for all the communities are considered the only option.²⁴⁹ This does not imply that EULEX always acts in favour of the government in Pristina, as the status neutral deployment of EULEX has ensured an approach that focuses on dialogue and step-by-step progress. This process has seen several diplomatic disputes between Belgrade and Pristina, and between both of these and EULEX; as has also been pointed out in the paragraph on EULEX Police activities. The divisiveness in the European Union has simultaneously led to inconsistencies in the policies of the various international presences. A recent example is the Strategy for the North, which has been developed by the ICO and the Government of Kosovo in line with the Ahtisaari Plan in order to establish control over this area. The EU cannot formally support this strategy, but EULEX does execute those parts of the strategy that deal with rule of law.²⁵⁰ This includes an enhanced EULEX presence in the north, and intensified efforts to make the Mitrovica/Mitrovicë Court

²⁴⁵ 'Kosovo Serbs' bonus payments 'to continue', *Balkan Insight* (20 August 2010).

²⁴⁶ I. Deda, 'Kosovo', in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010) 274-275.

²⁴⁷ Website of Community Building Mitrovica, 'Pieter Feith (ICO) visits CBM'

(http://www.cbmitrovica.org/index.php?option=com_content&task=view&id=70&Itemid=27 20/09/2010).

²⁴⁸ S. Blockmans and R.A. Wessel, 'The European Union and crisis management', 276-279.

²⁴⁹ 'De Kermabon: Strong, fair and multiethnic rule-of-law institutions make the so-called parallel structures irrelevant', *EULEX Press Release* (14 January 2010).

²⁵⁰ 'Serbia minister: EULEX doesn't back north Kosovo strategy', *Balkan Insight* (4 March 2010).

functional again. However, in working towards these goals EULEX aims to find functional solutions that are acceptable to all communities.²⁵¹

The Programme Report 2010 only gives limited information on concrete activities in the north, as it reflects on the 12-month period before its publication. In the previous paragraphs we have already discussed some EULEX activities in the north in this period. We have seen that the Kosovo Police needs to be further professionalized as a whole, including those parts operating in the north, but the return of the Serb police officers to their jobs has definitely offered some room for optimism. Other early achievements mentioned before include the restoration of police and customs presence at the border gates with Serbia, which has resulted in a decrease in smuggling, and the reopening of the District Court in North Mitrovica/Mitrovicë, which has already started to deal with cases although EULEX is having difficulties with finding local judges and prosecutors for this court. However, EULEX only stepped up its activities in the north of Kosovo after the opening of an office in North Mitrovica/Mitrovicë on 26 March 2010. For the recent activities and developments in the north we have to look at press releases and media coverage, as they are not yet discussed in the Programme Report 2010. However, the Report does reflect awareness of the delicate situation in which EULEX currently operates in the north: ‘Building trust among Kosovo Serb citizens towards the local police and judiciary is one of the most difficult challenges for the EULEX programmatic approach. [...] Whilst, on the one hand, the Mission’s ultimate goal is to work closely with Kosovo institutions and support them in applying consistent standards and procedures regardless of citizens’ ethnicity, on the other hand EULEX is often perceived by Kosovo Serbian communities as a third party charged with arbitration functions, and as an agency to be used for settling disputes over alleged misconducts by the Kosovo rule of law bodies.’²⁵²

By opening the “EU House” in North Mitrovica/Mitrovicë, EULEX has tried to respond to the difficult situation. The concrete goals are to become more visible in the north, and eventually start deploying the full range of MMA activities in this region – instead of only focussing on some urgent forms of law enforcement.²⁵³ While these objectives are in line with Pristina’s strategy for the north, EULEX has operated “status neutral” and has tried to find practical solutions acceptable to both Belgrade and Pristina. In addition, EULEX has been working on its relationship with Kosovo Serb civil society actors, ‘in order to clarify the mandate of the Mission and, at the same time, to familiarize citizens with the need to address their concerns to appropriate bodies.’²⁵⁴ During 2009 the focus was on ‘mapping the local civil society set-up and detecting suitable partners for future cooperation’.²⁵⁵ As elsewhere in Kosovo, EULEX also helped to disseminate information on the 2010 call for EIDHR proposals, and stimulated project proposals that are linked to the rule of law. A more concrete result was the establishment of regular contact with the Kosovo Policy Action Network, a group of about 60 (mostly Serb) non-majority NGOs, which now regularly update EULEX with information and reports. The Deputy Head, Roy Reeve, has recently participated in a debate on the security situation in Kosovo organized by this network, and here he said that: ‘the first and most important action [in the north] is to restore full operations at the District Court in North Mitrovica/Mitrovicë. It is a huge humanitarian issue.’²⁵⁶ This conclusion is supported by the International Crisis Group, which has recently stated that the biggest problem in

²⁵¹ ‘EULEX chief meets with Serbian officials’, *Balkan Insight* (3 March 2010).

²⁵² *EULEX Programme Report 2010*, 65-66.

²⁵³ ‘EULEX to open a new office in North Mitrovica’, *EULEX Press Release* (15 October 2009).

²⁵⁴ *EULEX Programme Report 2010*, 66.

²⁵⁵ *Ibidem*.

²⁵⁶ ‘Reeve: Four steps to security and stability’, *EULEX Press Release* (16 July 2010).

Kosovo at this moment is that ‘effort to replenish the Mitrovica court with local judges have failed, while offending both Pristina and Belgrade.’²⁵⁷

A large part of the administrative staff of the District Court in North Mitrovica/Mitrovicë quickly returned after it was reopened by EULEX. EULEX has already appointed several international judges, but it has been unable to bring back local prosecutors and judges, which have to be appointed in an ethnical balance between Serbs and Albanians. Attempts to find practical solutions through talks with both governments have only led to disagreements so far. For example, when Serbia was willing to grant special leave to two Serbian judges (who still had UNMIK contracts but no longer worked in Kosovo) and send them to Mitrovica/Mitrovicë, the President of Kosovo and the Judicial Council rejected this solution. On 13 July 2010 Yves de Kermabon stated in a EULEX press release that the appointment of local judges and prosecutors, which was planned for 15 July, had been postponed until further notice. He added that the court would only be partly functional for the time being, operating just with EULEX judges and prosecutors, and dealing only with criminal cases. The slow progress in discussions between Belgrade and Pristina was a disappointment for EULEX, although the press release mentions that discussions are still continuing between relevant stakeholders.²⁵⁸ Yves de Kermabon also reemphasized the urgent need to restore the full functionality of the court, as EULEX works to ensure that ‘everyone, regardless of ethnicity, has free and fair access to the law’, and ‘the return of Kosovo Serb and Kosovo Albanian judges and prosecutors will ensure that justice will be delivered by a single court and multi-ethnic judiciary which will benefit all communities.’²⁵⁹

At the time of writing no further progress has been made, which shows the weakness of the status neutral approach. A unified EU stance on Kosovo would give a boost to the diplomatic persuasiveness of EULEX, but in terms of peacebuilding and strengthening inter-ethnic relationships this slow process of finding practical solutions that are acceptable to all parties is not that bad. The process of decentralisation in Kosovo has been quite successful and the recognition of the newly created municipalities by Serb voters have diminished the prospects for the partition of Kosovo.²⁶⁰ Kosovo Serb participation in the work of Municipal Community Safety Councils has also been increasing over the last years, which are a feature of applicable law established by UNMIK in order to promote cooperation and communication between the municipal authorities, civil society stakeholders and the Kosovo Police Service.²⁶¹ So there seem to be some positive developments, but the idea of a possible partitioning of Kosovo as a solution to the status problems with Serbia continues to pop up in the media. This has also been pointed out by the latest report on Kosovo by the International Crisis Group, which has always supported the Ahtisaari Plan, but admits that even a coarse land swap is one of the possible solutions to the current impasse. ‘Neither Pristina nor Belgrade proposes this openly, but officials in both capitals have begun to speak of it quietly in contacts with Crisis Group. Many in the international community would be unhappy with this option. Crisis Group believes that ruling out this or any specific mutually-agreed option from the onset, however, would risk freezing the Kosovo-Serbia conflict, with no guarantee of eventual resolution.’²⁶²

²⁵⁷ ‘The rule of law in independent Kosovo’, *International Crisis Group Europe Report 204* (19 May 2010).

²⁵⁸ ‘Statement by Head of EULEX regarding Mitrovica Court’ *EULEX Press Release* (13 July 2010).

²⁵⁹ *Ibidem*.

²⁶⁰ I. Deda, ‘Kosovo’, in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010) 273-287.

²⁶¹ *EULEX Programme Report 2010*, 66.

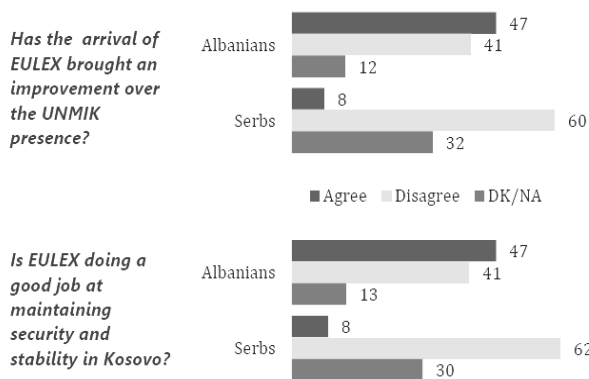
²⁶² *Kosovo and Serbia after the ICJ Opinion*, International Crisis Group Europe Report 206 (August 2010).

5.6 Peacebuilding paradoxes & civil society engagement

Peacebuilding dilemmas and EULEX

EULEX is a post-conflict peacebuilding operation that works on establishing and strengthening multi-ethnic rule of law institutions in Kosovo through Security Sector Reform. While the operation is mainly engaged in monitoring, mentoring and advising the local institutions in the rule of law area, EULEX also has some executive powers. In terms of peacebuilding paradoxes this means that an external actor is in control over the rule of law sector, in order to support self-government. This is the first paradox that we have defined in Chapter 1, and which we have also encountered for the EUSR/ICO. While the executive powers wielded by Pieter Feith are officially more far-reaching than those of EULEX, the degree and frequency of external intrusion is somewhat different in practice. The judiciary, police and customs are vital components of a state's sovereignty, and in

Albanians divided about EULEX, Serbs disapprove strongly



Survey wave: 2009, base: respondents in Kosovo

operation, which has been analysed by the Gallup Balkan Monitor.²⁶³ Support for EULEX is much higher among Kosovo Albanians than among Kosovo Serbs. However, while overall support for EULEX is higher than for the ICO/EUSR, it remains fragile, and the rule of law mission faces the same challenges with paradox one. If intrusiveness is too strong or lasts too long, there is a risk of creating dependency among the political elite, while losing public support. If EULEX fails to quickly improve the rule of law and devolve powers to local actors, it risks becoming as ineffective and unpopular as the UNMIK police and justice component was during its last years. The radical self-determinacy movement (Vetëvendosje!) is already arguing that the promotion of local ownership and accountability by EULEX is a fairy tale, and that it is UNMIK in all but name.²⁶⁴ Their major points of criticism are that EULEX is said to be an interim mission while its mandate has no deadline, and that EULEX has executive powers over Kosovo while it does not recognise the independence, which is especially confronting when EULEX cooperates with Serbia on issues such as the police protocol. Vetëvendosje! represents a radical minority opinion, but one that is likely to gain more support the longer EULEX lasts. Nevertheless, tangible results are necessary before responsibilities can be handed over to Kosovo's government. The current consensus in the international community is that Kosovo still needs external assistance to achieve progress in the rule of law sector. This opinion is shared by the EU and the International Steering Group, as well

Kosovo these are controlled by the European Union (while KFOR maintains external control over military affairs). This is especially problematic, as EULEX has to operate 'status neutral' because not all EU Member States have recognized Kosovo. However, for Pristina this is still better than the police and justice component of UNMIK that was replaced by EULEX, as this UN operation recognized Serbia's sovereignty over Kosovo even more explicitly in its mandate. This is reflected in the popular support for the

²⁶³ Focus On #3. Kosovo's independence, Gallup Balkan Monitor (July 2010).

²⁶⁴ A. Kurti, 'EULEX causing damage to Kosovo', *New Kosova Report* (2 September 2009).

as NGOs such as the International Crisis Group, Human Rights Watch and Freedom House.

The intrusiveness of EULEX is most obvious in its executive powers. The operation is not only working on capacity building within Kosovo's institutions, but also ensures law enforcement and justice during the transition period. Most of the executive tasks are concentrated in the Justice component of the operation, in which they are closely linked to the MMA actions. Whereas EULEX police and customs officials are working on the MMA actions together with their local counterparts, EULEX judges and prosecutors also actively take part in the legal process. They cooperate with their local counterparts in mixed panels or teams, to make sure that 'cases of war crimes, terrorism, organized crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law.'²⁶⁵ In addition, the MMA actions also have some intrusive aspects about them, no matter whether they are part of the Justice, Police or Customs component. EULEX involvement in each MMA Action starts up with monitoring, which can be considered as the least intrusive activity. The aim of monitoring is to come up with an assessment of the state of affairs in the rule of law, in order to reveal the needs for mentoring and advising. It is therefore that monitoring was the most dominant action in the first months of EULEX's deployment. Mentoring is way more intrusive, as EULEX officials are getting involved in the supervision and training of their local counterparts. In the judicial component this mentoring is closely connected to the executive tasks. EULEX police and customs officers are not co-located as consistently as judges and prosecutors, and they have to work with larger groups of local counterparts, but "de facto" they are also in command during the mentoring phase. If the mentoring phase is successful, it will gradually develop from coercive guidance into counselling and advising. The three MMA phases can be seen as distinct and subsequent steps in theory, but they are interrelated and applied simultaneously in practice. However, the advising phase also has some separate responsibilities and possibilities. When the preceding attempts to establish an accountable and multi-ethnic rule of law sector have proved inadequate, the Assembly of EULEX Judges has the power to issue guidelines or recommendations to the judicial, legislative and governmental authorities in Kosovo. This power has been used on various topics, from the distribution of the Official Gazette throughout Kosovo's courts, to the establishment of a proper case allocations system.²⁶⁶

In order to minimize the negative impact of external intrusion in Kosovo, EULEX has taken measures to increase popular support for the reform process and to promote local ownership respectively. Examples are the establishment of the Anti-Corruption Task Force and the Kosovo Judicial Council that aim to restore popular trust in government institutions and the judiciary. EULEX judges still play an important role in these institutions, but the role of their local counterparts is set to gradually increase when these institutions are performing in line with international standards. EULEX has also tried to limit the usage of executive powers and coercive mentoring in the MMA actions in general. Many tasks have already been devolved to local institutions, while EULEX continues to function as monitor/mentor and backup. For example, the Kosovo Police is taking care of the maintenance of public order, while EULEX officers continue to stand ready as backup in situations of special concern. While mentoring and advising continue to be somewhat intrusive, it is ultimately up to Kosovo's institutions to make the changes. An interesting comparison to describe this situation was made by Frank Harris, EULEX

²⁶⁵ Website of EULEX, 'Judicial functions' (<http://www.eulex-kosovo.eu/en/justice/judicial-functions.php> 1/10/2010).

²⁶⁶ EULEX Kosovo – Mandate, structure and implementation: essential clarifications for an unprecedented EU mission Centre for the law of EU external relations (2010).

Programme Manager. At a meeting with police officers to discuss the recommendations from the Programme Report he said that: ‘the KP was like the Barcelona football team, trying to win the champion’s league. EULEX was like a coach: it provided a strategy, monitored performance to improve operational and managerial skills. “MMA will help you but only you will score the goals. The idea is you and you alone are on the field,” he continued. In short, it’s about accountability and local ownership.’²⁶⁷

While the Programme Report 2010 is not very positive on the progress that has been made in the previous year, it also shows that there is a growing capacity in Kosovo (especially within the police force and customs agency) to bring about change and reforms. This is very important, as the external assistance in support of local self-government continues to raise tensions. The worst example was the row over the police protocol, which to many in Kosovo seemed to confirm all the doubts about EULEX. This shows the importance of accountability and transparency of external interference in local affairs. Ensuring accountability is important for specific operations, but also for the “internal” legal and disciplinary accountability within EULEX, and “external” accountability towards the EU and the government and people of Kosovo. EULEX has been granted immunity against local legal and administrative process, which is in line with other international and diplomatic missions around the world. If local legislation is violated, EULEX staff can be held criminally liable in their home countries in order to maintain internal accountability. The operational accountability is ensured through the “programmatic approach”. EULEX staff members that are co-located with local counterparts have to answer a series of questions every month, which over time becomes a useful tool for monitoring development and process throughout the rule of law institutions. The results are measured against the strategic objectives, and once these are fulfilled EULEX will leave the full responsibility for the rule of law in Kosovo in the hands of local institutions. In addition, EULEX has a Human Rights and Gender Office that has an advisory and coordination function in ensuring that respect for human rights and gender issues are mainstreamed throughout all EULEX activities. Within EULEX this body is also responsible for managing contacts with civil society organizations. External accountability is maintained in various ways towards the different actors. The relationship with the EU is maintained by the Head of Mission, who reports to the EU Council through the High Representative for Foreign Affairs and Security Policy. Accountability towards the political authorities in Kosovo is assured through frequent contacts, and cooperation in the joint Rule of Law Board. In terms of local ownership and public support, the social accountability of EULEX towards the people of Kosovo is very important. The mission tries to provide transparent and timely information on activities to Kosovo’s civil society, journalists and others on a daily basis. The EULEX website is a vital tool, which provides press releases and loads of information about e.g. the MMA tracking mechanism, court hearings and proceedings, service contracts and tenderers. It also has a complaints form, which offers citizens the possibility to share their thoughts about EULEX. In addition, the independent Human Rights Review Panel deals with complaints about human rights violations by EULEX in the conduct of its mandate.²⁶⁸

While the first paradox is the most troublesome to EULEX, the mission also has to deal with other ones. The second paradox (as described in Chapter 1) is that foreign actors are involved in identifying and supporting local legitimate leaders. A major issue with this dilemma is that a balance needs to be found between working with former fighters in order to create short-term stability directly after the conflict, and drawing in moderate voices

²⁶⁷ ‘The name of the game: Kosovo Police local ownership’, *EULEX Press Release* (10 September 2009).

²⁶⁸ Website of EULEX, ‘EULEX Accountability’ (<http://www.eulex-kosovo.eu/docs/Accountability/EULEX-Accountability-05.01.2010.pdf> 5/10/2010).

and the general populace into the political process. In Kosovo this problem is also present. Jens Narten has described that ‘UNMIK missed the chance to follow a “clean-slate” polity to replace the pre-war and wartime elites in 1999 and to facilitate a transparent political process, free of corruption and clientelism. Instead, UNMIK built on Kosovo’s polity structures that were dominated by pre-war Albanian party elites.’²⁶⁹ While the Kosovo Police is one of the most multi-ethnic institutions, the Customs Service and the judiciary are dominated by Kosovo Albanians. UNMIK has tried to enforce ethnic quota by using its executive powers, but this has not been very successful. EULEX has inherited this situation, as well as the responsibility to support Kosovo in becoming the multi-ethnic state it claims to be in its declaration of independence and constitution. This means that the operation has to fight corruption and political interference in the judicial process, while retaining the support and cooperation of Kosovo’s officials. However, it seems that EULEX is still reluctant to challenge top politicians for their intermingling in the judiciary. Opposing the democratically elected local leaders will harm the legitimacy of EULEX within Kosovo, while not fighting corruption, clientelism and interference in the judiciary will impede progress and also harm the position of EULEX. In an attempt to start tackling this dilemma, EULEX has recently stepped up its efforts in “cleaning up” institutions by starting investigations against several top officials. This could serve as a notice to others in the public administration, without actually opening up investigations against popular political leaders. In addition, EULEX is increasing the independence and professionalism of the judiciary through the reappointing and vetting of judges and by establishing the Judicial Council. While EULEX is involved in selecting local judges, this is not so much of a problem as the requirements in terms of professional performance and accountability are clear. It is up to the judges to act according to the regulations, and EULEX only suspends those who don’t.

By making demands on “European Standards”, and by implementing “western” models in the rule of law, EULEX encounters the dilemma that universal values and ideas of governance are implemented as a solution to civil conflict and other problems. This leads to the challenge that policies have to be developed that are appropriate both to the external interveners and the local population. However, as already argued in Chapter 4, this is not so much of a problem in Kosovo. The country has a very pro-European constituency that seems supportive of the reforms that are required for European integration. This does not imply that there is massive support for the ICO/EUSR and EULEX. Many Kosovo Albanians appear to have the feeling that they can meet the demands without coercive assistance, but the European perspective does seem to enhance their willingness to accept and cooperate with the external intervention. What also helps is the fact that EULEX is working towards reforms in the rule of law sector by monitoring, mentoring and advising in order to transform Kosovo’s institutions, instead of imposing a “new society”. While EULEX retains some executive powers and provides the ultimate targets that need to be achieved before full sovereignty can be handed over to Pristina, this approach puts quite a lot of focus on local ownership and responsibility for the reform process. However, as the transition from post-conflict country to EU candidate or Member State will be a long one, it is very important to further increase local ownership in order to uphold popular support and fasten up the reform process.

Coherence of engagement with civil society

Civil society organizations have been involved in the process of planning EULEX and the functioning of the rule of law continues to be a high priority to many civil society

²⁶⁹ Narten, J., ‘Assessing Kosovo’s postwar democratization. Between external implementation and local self-government’, in: *Taiwan Journal of Democracy* Vol. 5 No. 1, 152.

organizations in Kosovo. Various civil society organizations have the ability to assist EULEX by cooperating in MMA Actions, providing feedback in evaluation meetings and workshops, and by independently making policy recommendations, analyses and reports that identify strengths and weaknesses in the rule of law institutions. There are no specific MMA Actions on partnerships with local civil society organizations, but many actions in the fields of justice and police include cooperation with civil society stakeholders. Non-governmental actors are not specifically mentioned in MMA Actions on customs, but they are referred to as consultation partners for judicial matters, and as ‘players to be involved in the implementation phase’ in police MMA Actions with a direct public impact.²⁷⁰ In addition to this engagement in specific MMA Actions, EULEX has tried to promote awareness of the programmatic approach among interested NGOs. An example was the workshop held on December 15th 2009, which was attended by 44 local NGOs. Organisations representing all the various aspects of civil society are welcome to engage in such activities. Overall it seems that the programmatic approach has mostly encountered positive feedback from local NGOs. Maintaining such a good working relation is really helpful to promote local ownership and engagement with the reform process. However, this is not easy as various incidents that stand apart from MMA Actions continue to have a huge impact on civil society support. An assessment conducted among Kosovo Albanian civil society organizations after the row over the police protocol showed widespread disappointment with EULEX. A similar situation occurred after the start of the Kurti Trial, when 14 influential NGOs published a statement showing their perplexity with the perceived priorities of EULEX. In the weeks that followed these incidents EULEX has experienced difficulties in getting hold of organizations that had previously expressed their willingness to cooperate on the programmatic approach and MMA Actions. Contacts have improved again after EULEX Police conducted searches in the Kosovo Ministry of Transport and Telecommunications. For many NGOs in Kosovo this was a signal that EULEX had straightened its priorities and was stepping up the fight against corruption and clientelism. A new joint statement was given by most of the NGOs that had opposed EULEX before, now showing appreciation for the ongoing investigations and willingness to cooperate with EULEX and Kosovo investigators in anticorruption activities. In addition to this fluctuating relationship, the cooperation in the programmatic approach and MMA Actions has been analyzed by the EPLO as too informal and unstructured. EULEX is already open to all civil society organisations that want to be involved, but a more structured and transparent approach could make this cooperation more worthwhile, and also attract a larger number of civil society organizations. The Programme Report 2010 seems to indicate that EULEX wants to deal with these critiques by improving its information sharing towards civil society actors. Continuously updating local actors on the progress of MMA Actions will enable the mission to verify the compliance of plans with civil society expectations. Besides, the increased transparency is also expected to improve the capacity of local NGOs to monitor the operations and achievements of EULEX, which will increase the quality of their input.²⁷¹

The Programme Report 2010 also states that EULEX would like to increase the number of joint initiatives with local civil society organizations. However, EULEX has no real budget that is dedicated to supporting NGO work. Partnerships that go beyond engagement with civil society as a whole, which has been described above, remains difficult to establish, as the funds for larger initiatives need to come from the involved NGOs or external resources. It is therefore that EULEX does not have many projects or

²⁷⁰ *EULEX Programme Report 2010*, 12.

²⁷¹ *EULEX Programme Report 2010*, 68.

activities that are aimed at supporting or cooperating with particular aspects of civil society. EULEX's activities in the rule of law contribute to a free and fair business climate, freedom of religious worship and other aspects of a civil society, but most of these "tracks" are not specifically targeted with actions. However, there are some exceptions.

EULEX has been particularly engaged with "Track 4" (citizens), "Track 5" (research, training, education"), and the mission has active media policies promoting its own activities and providing transparency to the public. These actions are in line with the mandate to promote the development of a multi-ethnic rule of law sector by offering monitoring, mentoring and advising, and respond to the need for popular support and local ownership. One of the best examples to increase citizen involvement in the rule of law are the Municipal Community Safety Councils, which have been established in all Kosovo municipalities. These Councils host discussions on security issues between the Kosovo Police, municipal authorities, civil society stakeholders and civilians from all ethnic communities living in a municipality. Many NGOs with a focus on rights issues and civilian involvement have worked on fostering the capacities in these municipal councils, and EULEX has given political and administrative support to some of these activities.²⁷² The Programme Report 2010 shows that EULEX is pleased with the results of the Municipal Community Safety Councils and considers MMA involvement in these structures a natural step forward. This makes sense as the Kosovo Police already has a key role in establishing and maintaining these councils. The discussions on local developments and security concerns remain important, but EULEX hopes that by expanding the existing cooperation with these local civil society organizations it will receive feedback on its MMA strategies that helps to streamline Police MMA Actions on a national level with the needs of local communities.²⁷³ Citizen groups and organizations have been engaged in MMA Actions before, which has contributed to good results. While the involvement of civil society organizations in MMA Actions has mostly been consultative, and not particularly focussed on particular types of actors, the involvement of civilian groups in the MMA Action on the Ministry of Justice and Department of Forensics Medicine has gone beyond plain consultation on operations. Their involvement was essential to achieve success in determining the fate of missing persons. Dozens of meetings with families and family organizations have provided very useful information for the investigations. Although the fate of many missing persons has not yet been clarified, the early results already show the benefits of close cooperation with civilian groups. In a general way this example also shows us how EULEX adjusts its cooperation with various organisations according to the needs of the MMA Actions.

The involvement of EULEX with research, education and training ("Track 5") has two aspects. On the one hand, all of the MMA activities can be seen as part of this "track" for the obvious reason that EULEX is providing education and training to Kosovo's rule of law institutions. The mission has also occasionally provided training to civil society actors, for example on how to write applications for EIDHR grants. On the other hand, it seems that local civil society actors that engage in research have had an impact on EULEX operations. While all kinds of civil society organizations are welcome to join evaluation and information-sharing meetings, some have done so with more success than others, by also coming up with structured assessments and reports. To EULEX it is always useful to receive information and research by third parties, which can be used to adjust policies, monitor developments and respond to local concerns. Local organizations that have influenced EULEX include (among others) the Kosovo Institute for Policy Research and

²⁷² *EULEX Programme Report 2010*, 67.

²⁷³ *Ibidem*.

Development, the Kosovo Democratic Institute, Movement FOL and the Kosovo Rehabilitation Centre for Torture Victims. The annual reports by this last organization have for example provided EULEX with various recommendations for improvements in detention infrastructure and the treatment of prisoners. Their most recent evaluations showed that the treatment of prisoners has improved with the arrival of EULEX, but also that there are still various complaints about excessive use of force.

Apart from promoting the engagement of civil society organisations in the programmatic approach and MMA Actions in general, EULEX has also been working on its relationship with Kosovo Serb civil society actors. Support for EULEX is much lower among Kosovo Serbs, and much remains to be done to better integrate this community (especially those in the north) in the rule of law system. This makes the involvement and input of Kosovo Serb organizations very valuable to EULEX, but it also makes it very hard to find civil society actors that are willing to cooperate with EULEX. It is therefore that the mission has explicitly dedicated some extra attention to improving its engagement with Kosovo Serbs. Some small successes have already been achieved, as this community is also concerned about public safety and the performance of the police and judiciary. During 2009 the focus was on mapping Serb civil society actors and identifying suitable partners for future cooperation. EULEX also assisted in the dissemination of information on the 2010 call for EIDHR proposals among Serb NGOs in the north of Kosovo. Regular contact has been established with the Kosovo Serb organizations represented in the Kosovo Policy Action Network, which now regularly updates EULEX. Some Kosovo Serb NGOs have also attended regular MMA meetings, but overall the engagement with the MMA Actions continues to be meagre. However, promising signs can be witnessed on a more local scale. The participation of Kosovo Serbs in Municipal Community Safety Councils has significantly increased. This development shows that although most Kosovo Serbs may not accept the government in Pristina, they do not lack the willingness for active engagement, and are ready to pragmatically engage with local rule of law institutions.

6. The European Commission Liaison Office

6.1 Background

The European Commission showed its eagerness to consolidate a lead role in Kosovo by organizing a Donors' Conference in support of Kosovo's socio-economic development only months after the declaration of independence. The European Commissioner for Enlargement, at the time Olli Rehn, opened the conference by saying: 'I am proud that by pledging half a billion Euro, the EU today clearly demonstrates its commitment to Kosovo and to the stability of the Western Balkans. I am also thankful to our international partners for their contribution and engagement. The €1.2 billion pledged today will help to bring about a better future for all living in Kosovo.'²⁷⁴ The money is intended for investments in infrastructure to connect Kosovo with the rest of the region, but also to improve education and to support the institutional development necessary to consolidate democracy and the rule of law in Kosovo's multi-ethnic society.²⁷⁵ The European Commission is in charge of coordination and division of tasks with other the donors, and the ECLO in Kosovo convenes regular meetings with EU Member States and other international donors active in Kosovo.²⁷⁶



The Liaison Office is the oldest of the three components of EU involvement in Kosovo, as it was established in September 2004. By opening this local office, the Commission intended to maintain closer contact with the ongoing UNMIK operation and with the provisional institutions of self-government on the ground.²⁷⁷ The primary goal of this direct local presence was to support Kosovo's approximation to the EU by managing and overseeing its engagement in the Stabilization and Association Process (SAP). The Liaison Office is able to use all the regular enlargement tools that are available to the EC, most importantly the Instrument for Pre-Accession Assistance (IPA). This basically means that the European Commission offers political, technical, and especially financial support to Kosovo's authorities in order to drive political and socio-economical reform. The ECLO manages the funds that are allocated by the Commission for assistance projects to Kosovo, and it is in direct and frequent contact with Kosovo's Ministry of European Integration,²⁷⁸ which coordinates the governmental applications for funds.²⁷⁹ Other notable funding instruments that are used to support the peace process and development of Kosovo are the European Instrument for Democracy and Human Rights (EIDHR) and the Instrument for Stability (IfS), which will both be discussed below. Some other regular European Commission programmes have also been opened for applicants in Kosovo, on which the ECLO provides information to potential beneficiaries in Kosovo. The Trans-European Mobility Programme for University Studies (TEMPUS) enables universities from EU Member States to cooperate with those of Kosovo (and other partnership

²⁷⁴ 'The international community pledges €1.2 billion to Kosovo' *European Commission Press Release* IP/08/1134 (11 July 2008).

²⁷⁵ Ibidem.

²⁷⁶ *COMMISSION DECISION of 2009 adopting an Annual Programme for Kosovo (under UNSCR 1244/99) under the IPA Transition Assistance and Institution Building Component for 2009*, The Commission of the European Communities (Brussels 2009).

²⁷⁷ Website of the European Union delegation to the UN, 'Commission opens Liaison Office in Pristina, Kosovo' (http://www.europa-eu-un.org/articles/en/article_3760_en.htm 20/09/2010).

²⁷⁸ Until 2 April 2010 it was called the *Agency for Coordination of Development and European Integration*.

²⁷⁹ Website of the ECLO, 'Instrument for Pre-Accession Assistance (IPA)' ([www.http://delprn.ec.europa.eu/?cid=2,94](http://delprn.ec.europa.eu/?cid=2,94) 20/09/2010).

countries) through projects aimed at improving the higher education system in Kosovo. The broader goal of the programme is to support the Bologna Process of creating a common European Higher Education Area. In total about €7 million in support has been given for 25 projects.²⁸⁰ The Erasmus Mundus programme also promotes partnerships and cooperation between universities in the EU and (potential) candidate countries. It allows Kosovo students and scholars to study and work in universities across Europe, and offers financial support for travel, insurance and tuition fees, and monthly allowance.²⁸¹ Both of these programmes are very useful, as there are significant challenges in this field. To give just one example: higher education authorities in Kosovo generally highlight the need for promoting reconciliation and cooperation to support a stable and peaceful environment, but in reality they haven't done much. The University of Pristina is completely controlled by Albanians and does not have any Serb students. The opposite is the case in the University of Mitrovica, which operates according to curricula of the universities in Serbia, and does not have any Albanian students.²⁸² The Technical Assistance and Information Exchange (TAIEX) instrument provides 'short term technical assistance and advice in the fields of approximation, application and enforcement of the *acquis communautaire* in the legislation of the beneficiary countries.'²⁸³ The instrument is demand driven, meaning that requests can be submitted for seminars, workshops, study visits and expert visits on specific topics. The major target groups are civil workers, the judiciary, rule of law authorities, parliaments, and representatives of social partners (such as trade unions).²⁸⁴ In total, the European Commission has provided almost €2 billion in financial assistance since 1999, in order 'to build and improve Kosovo's institutions, foster socio-economic development and further advance Kosovo's regional integration.'²⁸⁵ The European Union is the largest international donor to Kosovo, and it will continue to 'allocate more resources to Kosovo on a per capita basis than to any other place in the world over the next three years.'²⁸⁶

6.2 Instrument for Stability

The Instrument for Stability is the EC's principal funding instrument for short-term crisis prevention and recovery actions. The Instrument was initially proposed by the Commission in 2004 to improve the link between assistance operations of the first pillar (Commission) and foreign policies of the second pillar (Council/CFSP), and to streamline short-term crisis response operations with longer-term development and support programmes of the Union.²⁸⁷ After co-decision by the Council and Parliament, the Instrument was formally created in 2006, and it replaced the Rapid Reaction Mechanism that was unwieldy because it could only finance projects up to six months. The Instrument for Stability has a budget of €2,062 billion for 2007-2013, which is divided between the two components of the instrument: 72% is allocated to the short-term component, and

²⁸⁰ Website of the ECLO, 'Tempus IV' (<http://www.delprn.ec.europa.eu/?cid=2,146> 20/09/2010).

²⁸¹ Website of the ECLO, 'Erasmus Mundus' (<http://www.delprn.ec.europa.eu/?cid=2,101> 20/09/2010).

²⁸² A. Tahirsylaj, 'Higher Education in Kosovo: Major Changes, Reforms and Development Trends at University of Pristina and University of Mitrovica and their role in peace building and reconciliation during post-conflict period' *Proceedings of the 4th International Barcelona Conference on Higher Education, Vol. 5. The role of higher education in peace building and reconciliation processes* (Barcelona 2008).

²⁸³ Website of the ECLO, 'Taiex' (<http://www.delprn.ec.europa.eu/?cid=2,99> 20/09/2010).

²⁸⁴ Website of the DG Enlargement of the EC, 'What is Taiex' (http://ec.europa.eu/enlargement/taiex/what-is-taiex/index_en.htm 20/09/2010).

²⁸⁵ Website of the ECLO, 'Role of the Liaison Office' (<http://delprn.ec.europa.eu/?cid=2,110> 20/09/2010).

²⁸⁶ *Ibidem*.

²⁸⁷ Y. Yudin, *Multilateralization of the nuclear fuel cycle. The need to build trust* UNIDIR/2010/1 (New York and Geneva 2010).

23% to the other long-term component.²⁸⁸ The Instrument is primarily aimed at crisis response, and even long-term measures under the instrument are not supposed to be a substitute for country or regional strategies funded from the “regular” financing instruments – such as the European Development Fund (EDF), Neighbourhood and Partnership Instrument (ENPI) or Instrument for Pre-accession Assistance (IPA).²⁸⁹

In the period of transition from UNMIK to EULEX and ICO/EUSR, the IfS provided €9 million to support the liquidation and running costs of the EU component (pillar IV) of UNMIK, which lasted longer than initially planned because of the problems with deploying EULEX.²⁹⁰ The IfS continued to play a quite modest role in Kosovo in terms of the number of projects, but the total amount of money spent on IfS contracts signed by the ECLO is almost €26 million. This sum is divided between just four IfS contracts, which were all managed and signed by the ECLO. Two large and subsequent contracts, each of €10 million, were given in 2008 and 2009 in support of the establishment and functioning of the International Civilian Office in Kosovo. Although the Comprehensive Proposal for the Kosovo Status Settlement, also known as the “Ahtisaari Plan”, was never adopted by the Security Council, the ICO was set up following Kosovo’s declaration of independence as was envisaged in the plan. This was a difficult time as several UNMIK-activities had to be transferred to Kosovo’s authorities and the EULEX operation, which could only be deployed months later because of fierce opposition from especially Serbia and Russia.²⁹¹ After these two grants it is planned to finance the European share in the future costs of the ICO through regular IPA funding. The third IfS contract existed of a €5 million project to support the re-appointment of judges and prosecutors in Kosovo.²⁹² This project is co-financed by the United States and is implemented by Pristina Project Centre of the United Nations Office for Project Services. The project established the International Judicial Prosecutorial Commission, which was mandated to conduct a comprehensive review of all appointments for judicial and prosecutorial positions in Kosovo.²⁹³ This project was financed through the IfS budget because of the urgency of improving and supporting the basic legal infrastructure in Kosovo in the period before EULEX could be (completely) deployed. As we have seen in the previous chapter, EULEX has now taken over the task of vetting and appointing judges and prosecutors, and it has also started with an MMA action on the Judicial Council, which is to perform this task independently in the future.

The fourth contract was a relative small grant of €770,000, which was given to support the development of conflict prevention capacities in civil society. While this grant can be found on an overview of contacts signed by the ECLO,²⁹⁴ it is not traceable in the Financial Transparency System, which supposedly shows all grants provided by the EC.²⁹⁵ Probably this is just an administrative error, or maybe the grant has not yet been processed into the Financial Transparency System. However, from an European Commission report on the stocktaking and scoping of the Peacebuilding Partnership (which is financed through the IfS) we can derive that this initiative has been active in Kosovo, which

²⁸⁸ Website of EuropeAid, ‘Instrument for Stability (IfS)’ (http://ec.europa.eu/europeaid/how/finance/ifs_en.htm 20/09/2010). Note that the other 5% must be “overhead” costs.

²⁸⁹ Ibidem.

²⁹⁰ *Annual report from the European Commission on the Instrument for Stability in 2008*, Commission of the European Communities SEC(2009)932 (Brussels, July 2009).

²⁹¹ Ibidem.

²⁹² *Contracts signed by ECLO. Situation on 31/03/2010*, European Commission Liaison Office (http://delprn.ec.europa.eu/repository/docs/Report_310310.xls).

²⁹³ ‘Vetting of judges and prosecutors’, *ECLO Press Release* (19 February 2010).

²⁹⁴ Ibidem.

²⁹⁵ The European Union Financial Transparency System can be found here: http://ec.europa.eu/beneficiaries/fts/index_en.htm.

clarifies the grant. The project is implemented by CARE International Kosovo and ProPeace Platform, who have described their overall objective as: ‘to promote sustainable peace by encouraging greater civil society leadership and political participation among Kosovo’s youth.’ The project works to establish the Kosovo Conflict Prevention Group that will promote action and advocacy for peacebuilding and conflict prevention among Kosovo’s youth.²⁹⁶ In addition, the project has supported some small, short-term projects on youth and peacebuilding, and it works on developing an online “Early Warning System” based on information sharing among civil society organisations. This System aims to report on social and political events in order to monitor potential conflicts or inter-ethnic clashes.²⁹⁷ In the European Commission Report on the Peacebuilding Partnership some doubts are risen about the consistency of this programme and the degree of complementariness to other funding instruments of the Commission: ‘in Kosovo, the project was viewed as broadly complementary to other activities but probably surplus to requirement since, in Kosovo, there is “an abundance of money” (telephone interview with Commission Official in ECLO Kosovo, June 2009) for civil society capacity building in all areas.’²⁹⁸ A problem seems to have been that the first call for funding applications under the Peacebuilding Partnership was global, and had limited possibilities for exchanging views with local European Commission delegations. In order to improve coherence and complementariness of the Peacebuilding Partnership with other European Commission programmes, the study recommends a larger role of the local delegations of the Commission in future grant schemes, instead of another global call.²⁹⁹ Nevertheless, the Instrument for Stability has overall been very useful to quickly provide funding in order to address urgent issues, which is exactly the goal of the instrument. In terms of peacebuilding the IfS has been used for capacity building of Kosovo’s civil society through the Peacebuilding Partnership, it has contributed to the smooth transition from UNMIK to ICO and EULEX, and assisted the rule of law in this difficult period. While these are not peacebuilding activities of themselves, they have usefully assisted the international presences in Kosovo (and to smaller extent NGOs) in their peacebuilding activities.

6.3 European Instrument for Democracy and Human Rights

The European Instrument for Democracy and Human Rights (EIDHR) is an European Union programme that aims to provide support for the promotion of democracy and human rights in non-EU countries. It entered into force on 1 January 2007 as the successor programme to the European Initiative for Democracy and Human Rights. EIDHR funds are complementary to the EU’s geographical programmes, such as the IPA and European Neighbourhood and Partnership Instrument. Democracy and human rights are also mainstreamed into these programmes, but the focus is primarily on public institution building. EIDHR does not only offer the EU the opportunity to support the development of civil society in general, but also to support particular initiatives or activities it couldn’t implement itself. The formal objective is to ‘provide assistance, within the framework of the Community’s policy on development cooperation, and economic, financial and technical cooperation with third countries, consistent with the European Union’s foreign policy as a whole, contributing to the development and consolidation of democracy and

²⁹⁶ Website of the Conflict Prevention Project in Kosovo, ‘About’ (<http://conflictprevention-ks.org/?page=about> 20/09/2010).

²⁹⁷ Ibidem.

²⁹⁸ S. Bayne, P. Trollet, *Stocktaking and scoping of the Peacebuilding Partnership* (August 2009, for the European Commission - DG RELEX A/2).

²⁹⁹ Ibidem.

the rule of law, and of respect for all human rights and fundamental freedoms.’³⁰⁰ The EIDHR and its predecessor mostly work in support of civil society activities in the promotion of human rights and democracy. However, they have also supported international human rights instruments, EU election monitoring operations and the international criminal justice system, including support to the International Criminal Court (ICC). The total assistance budget for the period 2007-2013 for the EIDHR is €1,1 million.³⁰¹ The Strategy Paper for this period has recognized five distinct objectives:

- ‘1) Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk;
- 2) Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation;
- 3) Supporting actions on human rights and democracy issues in areas covered by EU Guidelines, including on human rights dialogues, on human rights defenders, on the death penalty, on torture, and on children and armed conflict;
- 4) Supporting and strengthening the international and regional framework for the protection of human rights, justice, the rule of law and the promotion of democracy;
- 5) Building confidence in and enhancing the reliability and transparency of democratic electoral processes, in particular through election observation.’³⁰²

Not all of the objectives are equally relevant regarding our case of Kosovo. Election observation for example receives about 25% of the total budget, but this has not been practiced in Kosovo. The focus in Kosovo is strongly on the country-based (objective 2) and regional (objective 4) support schemes to civil society actors. These schemes are based on previous experiences with support to civil society organizations in the Balkans since 1996. They are designed to support various small-scale and innovative actions by civil society organisations in the field of human rights and democracy. By working with and through civil society organisations, the EU will ‘on the one hand, promote the kind of open society, which civil society requires in order to thrive, and on the other hand, will support civil society in becoming an effective force for dialogue and reform.’³⁰³

Kosovo has been mentioned in four grants providing support to regional civil society initiatives. One of these was a worldwide project titled “Initiative for Peacebuilding (Preparatory Action for the Establishment of a Conflict Prevention Network”, to which the EU contributed €3 million; 77.5% of the project’s budget. The goal was to ‘pull together international expertise in the field of conflict prevention to ensure that all actors can access independent analysis in order to better facilitate more evidence-based policy decisions.’³⁰⁴ The project started in September 2007 and its duration is three years. The beneficiary was a consortium of ten partners led by the

³⁰⁰ Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (Brussels 2006).

³⁰¹ Website of EuropeAid, ‘European Instrument for Democracy and Human Rights (EIDHR)’ (http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm 20/09/2010).

³⁰² European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007 – 2010, The Commission of the European Communities DG RELEX/B/1 JVK 70618 (Brussels 2007).

³⁰³ European Instrument for Democracy and Human Rights (EIDHR) Country Based Support Scheme (CBSS) for Kosovo. Guidelines for grant applicants, European Commission Liaison Office EuropeAid/129-787/L/ACT/XK (Pristina 2010).

³⁰⁴ Promoting democracy and human rights worldwide. The European Instrument for Democracy and Human Rights (EIDHR) Compendium January 2007 – April 2009, The Commission of the European Communities (Brussels 2009).

London-based charity and NGO International Alert, but also including e.g. Clingendael, the International Peacebuilding Liaison Office, and International Centre for Transitional Justice. Kosovo may not have directly benefited very much from this project, but it has promoted and enhanced skills and knowledge among organisations involved in Kosovo. These vary from local and international civil society organisations and think tanks to governments and international institutions. The project also intended to improve policy dialogue within and between these organisations.³⁰⁵ The second international EIDHR project with a regional focus that includes Kosovo is the “Outreach Programme of the International Criminal Tribunal for the Former Yugoslavia” (ICTY), to which the EU contributed €1 million (80% of the total project). The outreach activities were planned to start after 1 January 2009 and last for two years, in line with completion of the ICTY’s activities, which was at that moment still foreseen by the end of 2010.³⁰⁶ The third project was a €1,76 million (50% of total project costs) contribution to a “Network of Schools for Political Studies” which is maintained by the Council of Europe. The goal is to ‘support the activities of the Schools of Political Studies to help train young leaders in the development and consolidation of pluralistic democracy, human rights and the rule of law.’³⁰⁷ The Council of Europe schools run annual courses on topics such as ‘European integration, democracy, human rights, the rule of law and globalisation, with the participation of national and international experts.’³⁰⁸ The network now includes 16 schools across East and South-East Europe and the Caucasus, including one in Kosovo. In 2009 one more project was granted under EIDHR’s regional grant scheme. A €1,2 million grant was given to the Humanitarian Law Centre, a Belgrade-based NGO that also has an office in Kosovo. The grant was given for its activities to strengthen the role of civil society in post-conflict truth seeking and truth-telling in the Western Balkans.³⁰⁹ The Centre ‘helps post-Yugoslav societies re-establish the rule of law and come to terms with the legacy of large-scale past human rights abuses, in order to prevent their recurrence, to ensure accountability, and to serve justice.’³¹⁰ The Humanitarian Law Centre researches war crimes and human rights violations, which makes it not surprising that the Centre is one of the leading organisations in attempts to establish a regional Truth Commission for the former Yugoslavia, tasked with establishing and publishing facts related to the victims of the wars from 1991 to 2001. Over 400 organisations and 300 eminent individuals are gathered in the CORECOM (Coalition for Regional Commission), which recently also received backing from Croatian President Ivo Josipovic; the first head of state to endorse the project.³¹¹ Overall, these global and regional projects under EIDHR can have a positive influence on the peacebuilding process in Kosovo. They work to increase the knowledge and capacities of various institutions, local and international organisations, to address the problems facing post-conflict Kosovo (and other countries in the region, or even on a global scale). By promoting awareness of the activities of the ICTY, and by strengthening cross-border civil society cooperation throughout the former Yugoslavia, the EIDHR also contributes to creating an environment for reconciliation and progress towards regional and European cooperation and integration.

³⁰⁵ Website of the Initiative for Peacebuilding, ‘About us’ (http://www.initiativeforpeacebuilding.eu/about_us.php 20/09/2010).

³⁰⁶ EIDHR Compendium.

³⁰⁷ Ibidem.

³⁰⁸ Website of the Council of Europe, ‘The schools of political studies’ (http://www.coe.int/t/dc/files/themes/ecoles_politiques/default_en.asp 20/09/2010).

³⁰⁹ EIDHR Compendium.

³¹⁰ Homepage of the Humanitarian Law Centre (<http://www.hlc-rdc.org/Donatori/index.en.html> 20/09/2010).

³¹¹ ‘Croatian president backs regional truth commission’, *Balkan Insight* (30 August 2010).

Within Kosovo a lot remains to be done as well, and to understand how the European Union supports the development and activities of civil society actors within Kosovo, we will now take a look at the EIDHR grants that have been given for projects within Kosovo. The local delegation of the European Commission is responsible for the implementation of the country-based schemes, including the selection of projects and the management and evaluation of given support.³¹² So far the ECLO has launched three calls for proposals, as Kosovo became eligible to the country-based support schemes after 2007. The latest call for proposals was issued in the spring of 2010, combining the funds available under the 2009 and 2010 EIDHR allocations for Kosovo and thereby doubling the amount of the total country-based budget to €1,746 million. This call 'represents the opportunity for civil society organisations to receive EU funded grants for the next two years.'³¹³ To support local NGOs with their proposals, the ECLO has hosted special training sessions throughout Kosovo on how to apply for EIDHR funds. The selection process of this award scheme is still underway, and according to the indicative time table final contracts will not be signed before November 2010.³¹⁴ It is therefore that this thesis has focused on the schemes that were launched in 2008 and 2009, which both had a total budget of €873,000. In total, these two schemes have given 18 grants to selected projects.³¹⁵ The activities under EIDHR 2007 (which were granted in 2008) and under EIDHR 2008 (granted in 2009) will be discussed simultaneously in this thesis, as civil society experienced no dramatic changes in Kosovo in this period. The selected projects in the country-based schemes reflect the particular needs of those countries as considered by (the local representation of) the EC. This will show us which priorities the EU sees for civil society actors, and what type of projects it considers necessary for the development of Kosovo. Not all the projects that have received EIDHR grants are equally related to post-conflict peacebuilding. About half of them seem to have a clear relation to Kosovo's post-conflict situation, while this differs a lot among the rest. These vary from activities addressing issues that could be seen as symptoms of a post-conflict society, to activities that of themselves seem to have no relation to the conflict. In general, activities that focus on minority rights are considered as clearly relating to post-conflict peacebuilding. Children's and women's rights issues are also symptomatic to post-conflict societies, but not all projects with this focus are necessarily related to post-conflict peacebuilding. Projects focussing on the rights of people with (mental) disabilities are considered as least related to post-conflict peacebuilding, although they are part of an overall strategy to promote respect for human rights and democratic values. First we will discuss the grants that are clearly related to peacebuilding and then the others.

Several projects that have received EIDHR funding have a focus on promoting minority rights and multi-ethnic cooperation. An example is the 18-month project titled "Power sharing – basis for coexistence in Kosovo". This is an initiative of the Kosovo Development Centre, that has received a €84,245 EIDHR grant. This project works to improve the quality of life in multi-ethnic communities by building the capacities for democratic power sharing. The Law on Local Self-Government and the Law for Protection and Promotion of Rights of Minorities in Kosovo (including equal participation) have been passed in accordance with the Ahtisaari Plan, but implementation

³¹² Website of the ECLO, 'EIDHR' (<http://www.delprn.ec.europa.eu/?cid=2,102> 20/09/2010).

³¹³ 'More EU money for Kosovo civil society organizations' *ECLO Press Release* (18 January 2010).

³¹⁴ *European Instrument for Democracy and Human Rights (EIDHR) Country Based Support Scheme (CBSS) for Kosovo. Guidelines for grant applicants*, European Commission Liaison Office EuropeAid/129-787/L/ACT/XK (Pristina 2010).

³¹⁵ *European Instrument for Democracy and Human Rights (EIDHR) Country Based Support Scheme (CBSS) for Kosovo. Guidelines for grant applicants*, European Commission Liaison Office EuropeAid/129-787/L/ACT/XK (Pristina 2010).

needs more attention. The knowledge and skills of local monitoring actors need to be developed to follow the implementation process and monitor Kosovo's local authorities, especially regarding minority rights. The project therefore includes the establishment of a multi-ethnic and gender balanced lobby group that will aim to raise awareness of the concept of multiculturalism and cohabitation among members of municipal councils. This focus on multi-ethnic cooperation along formal lines is also present in the activities of the Humanitarian Law Centre, which we have already encountered during our discussion of the international and regional grant schemes. This organisation has also received a €98,111 grant for 'Promoting the Protection of Minority Rights in Kosovo.'³¹⁶ The goal of the 18-month project is to 'contribute to combating discrimination, promoting the protection and development of equal participation of men and women from minority communities in the social, economic and political life of Kosovo within the broader context of strengthening HR, political pluralism and democratic political participation in Kosovo.'³¹⁷ Expected results include an increased awareness of minority issues among central and local authorities, which should contribute to the full implementation of anti-discrimination legislation. The Centre is also supported to continue its work to 'strengthen civil society in Kosovo to promote the protection of human rights in general and minority rights in particular.'³¹⁸

Another way to address minority issues and human rights in general is presented by the Balkan Investigative Reporting Network (BIRN), which has received a grant of €95,000 for a 24-month project titled 'Life in Kosovo: TV debates, trainings and monitoring Public Institutions.'³¹⁹ The European Commission supported this project because it intends to ease inter-ethnic and social tensions by developing a public dialogue between communities, political representatives and civil society. The expected results included 80 TV debates, tackling issues such as security, corruption, accountability and reconciliation. This activity is expected to contribute to transparency of institutions and politics, and to increase public awareness of EU standards of human rights, rule of law, health and education. In addition, it would ensure minority representation in the public media, while also simply supporting BIRN's critical journalism as a watchdog of public institutions. Raising public attention is also the goal of the Forum Theatre in Kosovo. This initiative by the Centre of Visual Arts Multimedia has received a €93,229.00 EIDHR grant. The overall objective of this project is 'to support community members in Kosovo to take an active role in their community by engaging them into discussion directly through forum theatre and seeking solutions to human-rights related issues and problems that these communities face.'³²⁰ The grant will be used to carry out 80 theatre plays in various communities of Kosovo, thereby directly involving around 5600 persons in this initiative, and reaching thousands more through performances. These theatre plays promote the arts as a form of public discussion, which will assist communities in confronting social and human rights issues in a positive and non-violent manner, and raise awareness of these issues among the general public. Reports will be written on the feedback of each theatre play, and the combined findings of all these reports will be published as a book aimed at decision-makers and stakeholders. The grant should also be

³¹⁶ *European Instrument for Democracy and Human Rights: Projects selected under the first Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo*, European Commission Liaison Office Operations Section (Pristina 2008).

³¹⁷ *Ibidem*.

³¹⁸ *Ibidem*.

³¹⁹ *Ibidem*.

³²⁰ *European Instrument for Democracy and Human Rights: Projects selected under the second Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo (EIDHR CBSS 2008)*, European Commission Liaison Office (Pristina 2009)

used to train 20 youths from Kosovo in the Forum Theatre methodology, in order to create the capacity to apply this platform of public dialogue at any time and space in Kosovo.³²¹

In addition to human rights advocacy along formal lines, and raising public attention for these issues, there are various organisations that have a focus on promoting direct contact between people from different communities. These could be seen as so-called “grassroots activities”. An example is the local NGO Syri I Vizionit, which has received a €78,557 EIDHR grant for a project titled BRIDGE (Bridging Rights Initiatives in support to Democracy, Good Governance and Equity).³²² The objective of the project is to promote ‘a better understanding, acceptance and realisation of rights between communities, thereby enhancing their capacity to effectively contribute to the inter-ethnic reconciliation process.’³²³ The NGO will work towards this goal by establishing four core groups that will actively engage on promoting human rights and democratic values among the targeted beneficiaries; minorities, children, women, and people with special needs. The expected result is that these groups will be empowered to take action in defence of their rights. This should subsequently enhance the awareness and capacities among community leaders and public officials to promote and protect human rights, in adherence to the principles of good governance and accountability in public decision-making. A similar methodology can be seen in the activities of the Centre for Common Ground. This NGO has received a €99,750 EIDHR grant for an initiative called the “Kosovo Youth for Democracy and Peacebuilding”. This 18-month project has the objectives ‘to increase the ability of youth in Kosovo to actively participate to society and engage in their own communities; To facilitate integration and understanding among Kosovo youth from different ethnicities and backgrounds; To promote dialogue on issues of interest to the target groups and facilitate reaching common ground solutions to problems perceived as priority; To train and support Kosovo NGOs in their efforts toward inclusion, respect for human rights and active engagement in society and in their ability to respond to young people’s need.’³²⁴ A completely different minority rights project, but also focused on individual persons and implemented throughout the country, is organised by the Civil Rights Programme Kosovo. This NGO has received a €92,554 grant for an 18-month project on the ‘Enrolment and Registration of Roma, Ashkali & Egyptian (RAE) Children in Primary Education in Kosovo.’³²⁵ The project aims to improve the monitoring of RAE enrolment in educational institutions, and works to increase awareness of the importance of education in these local minority communities. This should subsequently lead to an increase in the number of RAE children registered in educational institutions. The goal is to register up to 3000 children that were not participating in public education at the start of the project.

While the last two organisations described above have some sort of grassroots methodology, they operate with civilians throughout Kosovo. There are also two EIDHR-funded projects with a grassroots approach that explicitly have a local focus. The Kosovo Stability Initiative has received €99,615 of EIDHR support for its project titled ‘The Political Economies of Mitrovica/Mitrovicë and Gjakovë/Đakovica: impacting Social, Economic, and Political Stability.’³²⁶ The major objective is to ensure ‘democratic

³²¹ Ibidem.

³²² *European Instrument for Democracy and Human Rights: Projects selected under the first Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo*, European Commission Liaison Office Operations Section (Pristina 2008).

³²³ Ibidem.

³²⁴ *European Instrument for Democracy and Human Rights: Projects selected under the second Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo (EIDHR CBSS 2008)*, European Commission Liaison Office (Pristina 2009)

³²⁵ Ibidem.

³²⁶ Ibidem.

participation of diverse civil society actors in Kosovo's social, economic, and political development toward a joint European future.³²⁷ More specifically, the project works to improve the involvement of civil society in, and their democratic oversight of, the political-economic processes and reforms towards the EU. The focus is especially on working towards consensus within two divided communities, of which Mitrovica/Mitrovicë is the largest and best-known one. By increasing interaction and dialogue between Albanians, Serbs and RAE (Roma, Ashkali, Egyptians), the Kosovo Stability Initiative hopes to come up with information and knowledge on common concerns, which will lead to recommendations on coherent and more feasible political, social and development policies for these divided communities. The local NGO Zana also practices such a methodology. This organisation received a €78,125 grant for its activities in the region of Peja/Pëc to improve the human rights of women, youth and minority groups through awareness raising and education. The 30-month project aims 'enable an open dialogue and foster cooperation among different communities, youth and women groups by creating a multi-ethnic network from Peja/Pëc region through training on HR [human rights] & improving their role in the decision making process of the Region.'³²⁸

The EIDHR projects discussed so far have all focused primarily on the general population, multi-ethnic cooperation and minority issues. However, many of the projects that have received EIDHR funding have specific target groups. For example, the ECLO has given a €78,000 grant to the Kosovo Rehabilitation Centre for Torture Victims (KRCT) for a project that works to prevent torture and other human rights violations in detention centres in Kosovo. The NGO is to create an independent monitoring and documentation mechanism for places of detention to increase respect for human rights of detainees. In working towards this goal the KRCT should build coalitions with national and regional civil society organisations and other relevant international actors, who can advocate together for legislative changes in the prevention of torture and ill treatment. Bad conditions in prisons are not caused by the post-conflict situation of Kosovo's society, but there is a relationship, as a lot of the problems of the detention system have been inherited from the conflict. Many guards have never had proper training, and a substantial number of the prisoners are detained for inter-ethnic violence during or after the conflict, which in turn might have consequences for their treatment.

Poor compliance with children's and women's rights in Kosovo is also not necessarily related to the conflicts in the recent past, but again these issues are often symptomatic to post-conflict societies. One of the most serious problems regarding the position of women in Kosovo is caused by international criminal organisations. To them the vulnerable women of Kosovo are a potential source of income. The problem of human trafficking is definitely a symptom of the conflict-ridden past of Kosovo and of the weakness of its society and institutions. It is therefore that the Centre to Protect Victims and Prevent Trafficking in Human Beings has received a €76,000 grant for a 20-month project aimed at the prevention of the trafficking of human beings in and from Kosovo. The focus is mainly on the most vulnerable groups in rural areas of Kosovo: 'school pupils, gender-based violence victims, girls who dropped out of school.'³²⁹ These groups will be targeted by information campaigns, in order to increase understanding of the risk of trafficking, and to empower potential victims to find better opportunities by improving

³²⁷ *European Instrument for Democracy and Human Rights: Projects selected under the second Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo (EIDHR CBSS 2008)*, European Commission Liaison Office (Pristina 2009)

³²⁸ *European Instrument for Democracy and Human Rights: Projects selected under the first Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo*, European Commission Liaison Office Operations Section (Pristina 2008).

³²⁹ *Ibidem*.

their social and professional skills.³³⁰ Older women also experience risks and problems in Kosovo. For the survivors and relatives of the victims of physical or mental traumas it is hard to make a decent living in Kosovo. This is especially the case with women whose husbands have disappeared or are no longer able to provide income for their families in the way they used to do before the conflict. It is therefore that a €100,000 has been given for a 24-month project called “Women Together for Human Rights” which is carried out by Caritas Kosovo in partnership with Community Building Mitrovica. The goal is to establish five inter-ethnic women’s groups ‘working together for their Human Rights and the rights in Mitrovica/Mitrovicë Municipality irrespective of their gender, ethnicity or religion.’³³¹ These five groups will be linked in an Association of Multi-ethnic Women’s Groups, that organizes ‘activities for the promotion of Human Rights to demand equal opportunities for all and greater representation of women in the existing policing making institutions.’³³² Another Women’s Organisation is being created by Medica Kosova, which has received a €100,000 grant for the establishment of a national “Women Farmer’s Organization”. The goal is the ‘empowerment of disadvantaged women farmers in rural areas of Kosovo, especially widows and women affected by war trauma, to influence the social, economic and political life of their region.’³³³ The organisation will work to strengthen the role of women farmers in social and political life, and the equal participation in economic and political development. In addition to these projects that target specific groups, the Lawyers Association “NORMA” has received a €96,029.06 grant to address women’s rights in general. It has an 18-month project called ‘Research and monitoring of the Implementation of the Law on Gender Equality.’³³⁴ The overall objective of the project is ‘the enhancement of respect for human rights and fundamental freedoms through women’s rights.’³³⁵ The NGO will work towards establishing a monitoring mechanism for the implementation of the law on gender equality, and advocate for a better realisation and implementation of women’s rights and human rights in general. A similar initiative, but then aimed at children’s rights, is organised by the Kosovo Education Centre. This NGO has been granted €100,000 for a 30-month project aimed at promoting the rights of the Child in the field of Education. The Centre uses the grant to ‘raise awareness on the situation of children’s rights in the field of education in Kosovo by organizing concerted monitoring action of CSOs in cooperation with central and local authorities and building capacity of schools to contribute to this endeavour.’³³⁶ These actions should lead to an increased capacity to address cases of violation of children’s rights in the education system.

Several NGOs have received EIDHR support to improve the position of (mentally) disabled people in society in Kosovo. A €100,000 grant has been given to the Kosovo Mental Disability Rights Initiative, that works to strengthen the participation of people with mental disabilities in Kosovo society. Two NGOs (Ne per Ne and Surviving

³³⁰ Ibidem.

³³¹ *European Instrument for Democracy and Human Rights: Projects selected under the second Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo (EIDHR CBSS 2008)*, European Commission Liaison Office (Pristina 2009)

³³² Ibidem.

³³³ *European Instrument for Democracy and Human Rights: Projects selected under the first Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo*, European Commission Liaison Office Operations Section (Pristina 2008).

³³⁴ *European Instrument for Democracy and Human Rights: Projects selected under the second Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo (EIDHR CBSS 2008)*, European Commission Liaison Office (Pristina 2009)

³³⁵ Ibidem.

³³⁶ *European Instrument for Democracy and Human Rights: Projects selected under the first Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo*, European Commission Liaison Office Operations Section (Pristina 2008).

Together) are cooperating in a project to establish an independent Mental Disability Rights Committee. They also work to raise public awareness about the human rights of people with mental disabilities and the UN Convention on the Rights of Persons with Disabilities. A similar goal is pursued by the organisation Handicap Kosovo, which has received a €89,576 grant for an 18-month project on ‘Ending Institutional Discrimination by Promoting the Voice of People with Disability in Mainstream Media.’³³⁷ The project has three concrete goals. First, ‘to raise capacities of Kosovo Journalists for enhanced professional presentation of disability related issues in electronic and written Medias and acknowledge disability as human rights issue.’³³⁸ Second, to ‘To raise awareness of representatives of Human Rights Units at local and national level regarding disability issues and perception of disability from the perspective of the human rights.’³³⁹ And third, ‘To develop capacities of Disability Persons Organisations to improve the way of communication among themselves and with community as well as to built self-confidence among people with disabilities and proceed and complain to media when facing discrimination.’³⁴⁰ Another EIDHR-supported organisation working on the human rights of people with disabilities is the Down Syndrome Association of Kosovo. This NGO received a €73,439 grant for a project titled ‘Advocacy for Early Intervention programme for children with disability.’³⁴¹ The project has two specific objectives. First, it should strengthen understanding of early intervention on children with Down syndrome as a human rights issue, which is consistent with EU standards. Second, the awareness among decision-makers and relevant authorities of the importance for inclusive education for disabled children should be increased. The project will work towards these goals by making family visits, organising lectures and workshops on the Down syndrome and other development disabilities and creating a summer programme for pupils with Down syndrome. In addition, the NGO will continue its work on creating a partnership and sustainable communication with similar organisations in the region and with relevant governmental institutions and agencies.

6.4 Instrument for Pre-accession Assistance

The Instrument for Pre-Accession Assistance (IPA) accounts by far for the largest sum of financial support to Kosovo. For the period from 2007 to 2013 the EU has allocated around €640 million of IPA funds to Kosovo.³⁴² This “pre-accession assistance” supports the Stabilisation and Association Process (SAP) of candidate and potential candidate countries for EU membership. This support is given on the basis of the European Partnerships of the potential candidates, which is the most far-reaching instrument of the SAP. These partnerships are concluded separately with each country, and they set up a framework of priorities and targets the EU expects (potential) candidate countries to address.³⁴³ Progress in meeting these goals determines how much assistance is available

³³⁷ *European Instrument for Democracy and Human Rights: Projects selected under the second Kosovo grant scheme managed by the European Commission Liaison Office to Kosovo (EIDHR CBSS 2008)*, European Commission Liaison Office (Pristina 2009)

³³⁸ *Ibidem.*

³³⁹ *Ibidem.*

³⁴⁰ *Ibidem.*

³⁴¹ *Ibidem.*

³⁴² *Instrument for Pre-accession Assistance (IPA) multi-annual indicative financial framework for 2011-2013*, Commission of the European Communities COM(2009)543 Final (Brussels 2009).

³⁴³ The European Council updated the European Partnership with Serbia and Kosovo on 18 February 2008, just one day after it had declared its independence.

‘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’, *Official Journal of the European Union* L80 (2010) 46-70.

and how fast accession negotiations will start.³⁴⁴ Only two of the five components of IPA are available to the potential candidates, which includes “Kosovo under UNSCR 1244”. These two components are transition assistance and institution building, and cross-border cooperation. Starting from 2010, an annual contribution of almost €3 million³⁴⁵ has been allocated in the second component, following a decision by the European Council to open this component. By doing so, the Council followed the recommendations in the European Commission report *Kosovo – Fulfilling its European Perspective* that was adopted in October 2009.³⁴⁶ When comparing this €3 million to the total budget, it clearly shows that the major focus of IPA in Kosovo continues to be on the first component.

The European Commission decides upon the priorities of IPA, and these are clearly lined out in multi-annual indicative planning documents. The priorities are divided into three fields: the political criteria, the economic criteria and the “European Standards”.³⁴⁷ In addition to the categorization of projects under the three priorities, the Commission has defined “cross-cutting issues” that need to be systematically addressed throughout all projects. A part of the budget for projects can be allocated for this purpose. These issues are civil society, environmental protection, equal opportunities and non-discrimination of minority and vulnerable groups, and good governance with particular attention to the fight against corruption.³⁴⁸ The European Commission and the Liaison Office frequently consult with local bodies in charge of these issues, including civil society actors, to ‘help Kosovo's institutions mainstream horizontal issues effectively in line with European Standards and appropriate practices.’³⁴⁹ The attention for promoting a diverse workspace in the “Support to the Environment Sector” project discussed below is an example how this can work out. These IPA priorities are already an indication of themselves that the instrument is indeed an important peacebuilding tool, although the official goal is to support the rapprochement of Kosovo to the EU. Activities that support democratization, rule of law and socio-economic reform are clear-cut examples of governmental peacebuilding in the context of the post-conflict societies in the former Yugoslavia, because these issues address root causes of conflict and are pivotal for the transformation of society into durable peace. To clarify this, a closer look at the priorities and some examples of recent IPA funded projects is in order. A selection is necessary as dozens of assistance projects have received IPA funding over the last few years and discussing them all into detail does not comply with the scope and size of this thesis. The focus is therefore on the thirteen major IPA projects in 2009, of which the most relevant ones in terms of peacebuilding will be discussed most extensively.³⁵⁰ The main reason for

³⁴⁴ The website of the European Union, section with summaries on EU legislation, ‘Partnerships with the Western Balkans’ (http://europa.eu/legislation_summaries/enlargement/western_balkans/r18008_en.htm 20/09/2010).

³⁴⁵ *Instrument for Pre-accession Assistance (IPA) multi-annual indicative financial framework for 2011-2013*, Commission of the European Communities COM(2009)543 Final (Brussels 2009).

³⁴⁶ *Kosovo – Fulfilling its European Perspective*, Commission of the European Communities Com(2009)5343 (Brussels 2009).

³⁴⁷ *Instrument for Pre-accession Assistance (IPA) multi-annual indicative planning document (MIPD) Kosovo (under UNSCR 1244/99) 2009-2011*, Commission of the European Communities (Brussels 2009).

For the earlier programme, which has practically the same goals and priorities: *Instrument for Pre-accession Assistance (IPA) multi-annual indicative planning document (MIPD) 2008-2010 Kosovo (under UNSCR 1244/99)*, Commission of the European Communities (Brussels 2008).

³⁴⁸ *Instrument for Pre-accession Assistance (IPA) multi-annual indicative planning document (MIPD) 2008-2010 Kosovo (under UNSCR 1244/99)*, Commission of the European Communities (Brussels 2008).

³⁴⁹ *Commission decision of 2009 adopting an Annual Programme for Kosovo (under UNSCR 1244/99) under the IPA Transition Assistance and Institution Building Component for 2009*, Commission of the European Communities (Brussels 2009).

³⁵⁰ A summary of all the thirteen programmes can be downloaded here: Website of the ECLO, ‘Summary of Projects under IPA Annual Programme 2009 for Kosovo’ (http://www.delprn.ec.europa.eu/repository/docs/Summary_of_projects_under_IPA_Annual_Programme_2009_for_Kosovo.pdf 20/09/2010).

choosing 2009 is that it is the most recent year on which extensive information on projects is available. At the time of writing only basic information was available on 2010, which at least showed that most projects continued without drastic changes to 2009.³⁵¹

Most IPA assistance is given to and through Kosovo's authorities. Whereas many projects have components of which the implementation has been tendered to NGOs or other organisations through service contracts, IPA also has components to which civil society organisations can apply with their own initiatives. Such support to the civil society is given both through the national IPA allocations and through the "multi-beneficiary programme" managed directly by the Directorate General for Enlargement. The scope and size of this thesis offer no space to discuss the multi-beneficiary programmes at large. However, there is one major project that demands some attention. The Technical Assistance for Civil Society Organisations (TACSO) project is a cooperation of several NGOs from the EU that work to 'strengthen the civil society within a participative democracy, to stimulate a civil society-friendly environment and culture, as well as to strengthen the overall capacities and accountability of Civil Society Organisations (CSO) within IPA beneficiaries.'³⁵² In Kosovo the TACSO provides information on grants and various forms of technical assistance to NGOs, but also assists the ECLO in organising its consultations with civil society actors in Kosovo. This project shows how the European Commission recognises the importance of civil society in the process of European integration in general, and in its peacebuilding dimension in the context of Kosovo and other post-conflict (potential) EU candidate countries.

Despite the focus on the IPA 2009 programme, there is also one IPA 2008 activity that has to be mentioned in order to create a better overview of how the European Commission wields its pre-accession funds in Kosovo. While the annual IPA programmes are not very different in general, the 2008 programme included a €1,8 million grant scheme to support civil society organisations in Kosovo, that was organized in addition to EIDHR grant schemes. The aims and practical implementation of this scheme were very similar to those of the EIDHR, although the IPA 2008 scheme has had a strong focus on three particular issues; environment and equal opportunities, provision of social services for abused children and children with special needs, and the organisation of the Kosovo Kids Festival in Pristina. As it takes a while to organise and execute a grant scheme, disbursements were planned in three stages from the second quarter of 2009 to the third quarter of 2011. This is an example of how annual programmes can overlap and mingle because they finance projects that take more than a year.³⁵³ While knowledge of the grant scheme helps us to understand how the IPA is used by the EC, there is no need to discuss this scheme more extensively. The IPA scheme was really used in addition to the EIDHR funds that were allocated for Kosovo, and even the ECLO itself does not clearly differentiate between projects financed under the two grant schemes in its press releases on support to civil society organisation.³⁵⁴ Grants have been given to the Centre for Common Ground, Civil Rights Programme Kosovo, One to One Children's Rights, SOS Kinderdorf, Handikos, Agrokline, Partners for Democratic Change International and Interkulturelles Zentrum. The TACSO gives technical assistance to these beneficiaries, supporting the implementation of their projects.

³⁵¹ Ibidem.

³⁵² 'Grant Opportunities for the Civil Society in Kosovo', *Information sheet created by the Technical Assistance for Civil Society Organizations (TACSO)* (Pristina 2010).

³⁵³ Project fiche 5 IPA 2008 Support to Media & Civil Society.

³⁵⁴ 'More EU money for Kosovo civil society organizations' *ECLO Press Release* (18 January 2010).

6.4.1 IPA Political Criteria

In the framework of the political criteria, the European Commission has defined its ultimate aim for Kosovo as ‘a multi-ethnic, democratic society firmly anchored in the rule of law and respecting and protecting the rights of the Serb and other minorities, and protecting religious and cultural heritage’.³⁵⁵ This clearly is an ambitious goal that will take long-term efforts to create a democratic political culture in Kosovo. On a more practical level, the political criteria for IPA support have a particular focus on improving and consolidating the administrative and judicial set-up of Kosovo, including the fight against corruption, the development of civil society, the protection of minorities and their cultural heritage.³⁵⁶ These activities should complement to the objectives of the EUSR and the EULEX mission, because the development of Kosovo’s governmental capacities is deemed of top-priority. The planned budget for the political criteria accounts for 27 to 40 percent of the total IPA budget for 2009 to 2011, of which 2 to 5 percent is set aside for civil society initiatives. Despite such fairly precise allocations, the reality shows that many support projects are based on a combination or overlap of the three priorities.

The creation of a Support Measures and Technical Assistance Facility was a major €10 million IPA-project in 2009.³⁵⁷ This facility should improve the planning and project preparation capacity of Kosovo’s Agency for Coordination of Development and European Integration (now transformed into the Ministry for European Integration) and other ministries in the implementation of IPA-supported projects. Enhancing this capacity should increase local ownership of European Commission assistance to Kosovo and improve the efficiency and effectiveness of IPA financed projects in the future. Although this project of itself can be seen as mostly related to the political criteria and improvement of governance, its goal is to support projects under all three criteria.

Another example of a project that is mainly categorized under the political criteria, but also has links to the “European Standards”, is the IPA-support that is given to strengthen the rule of law in Kosovo. In 2009 a contract was signed for a three-year project of more than €15 million, in which the European contribution accounted for €12 million.³⁵⁸ This project was intended both to support reform in the relevant governmental institutions, and to further alignment with the *acquis* – meaning the implementation of “European Standards” in the area of justice, freedom and security. Although the ultimate goals in these areas are obviously the same as those of EULEX, both operate at a different level. The project has multiple purposes, varying from the setting up of a secure and functional Civil Registration Agency and a unified address system in Kosovo, providing essential equipment to prosecutorial offices, the forensics laboratory of the Kosovo police and the headquarters of the Ministry of Internal Affairs, to the development of curricula for legal translators and interpreters and the University of Pristina. A somewhat similar project that aims to strengthen the capacities of Kosovo’s authorities is titled “strengthening the human resources and the institutional capacity of the Kosovo local administration”.³⁵⁹ This €6,5 million project is aimed at offering postgraduate education in EU universities to civil servants in order to strengthen the institutional capacity of municipalities. The particular focus of this capacity-building project is on local development, environment, water and waste management – issues that have priority according to the multi-annual indicative planning document. Those who participate in the

³⁵⁵ *Instrument for Pre-accession Assistance (IPA) multi-annual indicative financial framework for 2011-2013*, Commission of the European Communities COM(2009)543 Final (Brussels 2009).

³⁵⁶ *Ibidem*.

³⁵⁷ *2009 Project Fiche 13 Kosovo – IPA centralised programmes*, European Commission Liaison Office (Pristina 2009).

³⁵⁸ *2009 Project Fiche 1 Kosovo – IPA centralised programmes*, European Commission Liaison Office (Pristina 2009).

³⁵⁹ *2009 Project Fiche 2 Kosovo – IPA centralised programmes*, European Commission Liaison Office (Pristina 2009).

schooling programme have to continue working for the government at least two years upon finishing their studies.

A rather different project, but still under the political criteria, is the support that is given to the media sector. This €4 million project is in fact made up of two separate projects: the establishment of a Broadcasting Monitoring System, and a PR impulse on the EU Perspective in Kosovo in order to increase public awareness and engagement with the process. The Broadcasting system will be created in support of Kosovo's Independent Media Commission, and is expected to improve the overall quality of the broadcasted media. The system will make it possible to identify and address the abuse of the frequency spectrum, or of the code of conduct by a broadcaster. Overall, the system contributes to the protection of the rights of Kosovo inhabitants to fairness and accuracy, as it offers safeguards and legal possibilities to address (perceived) injustices or discrimination in the media.³⁶⁰ The EU Information and Cultural Centre in Pristina is supposed to make relevant information on "EU integration values" more accessible to the public, in order to increase public trust in the EU, but also in government institutions and the reform process in general. The Information Centre works towards this goal by providing information and making it easier for different groups of professionals (journalists, government representatives, NGOs, businesses) to engage themselves in dialogues on European integration and the general socio-economic and political developments in Kosovo.³⁶¹ 'Through different public awareness tools, the EU perspective will be brought closer to Kosovo society and the benefits of this process will be closely linked to every day needs of Kosovo students, farmers, businesses, institutions, civil society, etc.'³⁶² Hereby the ECLO works to improve local engagement and ownership of the reforms towards the EU, and subsequently of the peacebuilding processes in Kosovo.

Although the projects described above enhance governmental capacities and the rule of law in Kosovo, there are also projects under the political criteria that are even more clearly related to peacebuilding because they focus on Kosovo's communities. One of the priorities for assistance under the political criteria is the promotion of human rights and the protection of minority communities. It is therefore that several IPA-projects try to combine the development of equal and culturally aware policies in Kosovo (which can be seen as a "Track 1" activity) with concrete goals that could be categorized in various aspects or "tracks" of civil society. An example is a €3,1 million project titled "Support to communities". This project aims to stabilize minority communities by supporting small enterprises with essential resources, it has confidence building measures, and works to improve access of the Roma, Ashkali and Egyptian communities to education.³⁶³ The Community Stabilisation Programme is a continuation of the EC's socio-economic assistance to minority communities since 2002. Over 1600 projects have already received funding before, creating or securing over 6000 jobs in vulnerable communities. The confidence building measures are designed to assist Kosovo Albanian and Serb leaders in identifying issues of mutual interest, to build mutual trust and strengthen the political will for rapprochement and cooperation. The implementation of the project has been granted to the International NGO Project on Ethnic Relations without an open call for proposals, which was possible because of the high degree of specialisation of this organisation and a proven track record in enabling meetings and discussions between Kosovo Albanian and Serb communities. In this project the Project on Ethnic Relations has to hold meetings between senior Kosovo government officials, political party leaders of Kosovo Albanian

³⁶⁰ 2009 Project Fiche 5 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

³⁶¹ Website of the EU Information and Cultural Centre (<http://euicc-ks.com/en>) (11/10/2010).

³⁶² Ibidem.

³⁶³ 2009 Project Fiche 3 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

and Serb communities, municipal leaders and representatives of the international presences, in order to improve mutual relations and assist in the implementation of administrative decentralisation as foreseen in the Ahtisaari Plan. The project will also work to consolidate the political base of Kosovo Serb moderates by facilitating contacts between Serb leaders and the local communities. Additionally a Forum for Dialogue and Reconciliation will be established comprised of influential Serb and Albanian representatives, ethnic relations experts, businessmen and civil society activists. The third aspect of the “Support to communities” project continues with previous (also EU) initiatives to tackle the problems of the RAE communities. Based on the current needs and the expertise of the Open Society Foundation (the implementation partner), a scholarship programme has been designed to support the integration of RAE students into all levels of especially higher education. By providing training and education, RAE students will be empowered to find different (and create new) employment opportunities, which will improve the living standard and sustainability of these minority communities as a whole.

The last two IPA 2009 projects under the political criteria that have a clear link to peacebuilding were two separate contributions to Kosovo’s Ministry of Culture, Youth and Sports. A €3 million was launched aimed at promoting respect for cultural rights of all communities in Kosovo, as well as strengthening the capacity and sustainability of both the private and civil society sector working in the field of culture.³⁶⁴ This project had two components. The first component, “Culture for all”, aimed to promote the cultural and creative sector and cultural diversity in Kosovo ‘as a vector for ensuring participation of all communities to social life.’³⁶⁵ Financial support is provided for cultural activities already organised throughout Kosovo, as well as assistance to the development of new ‘small scale cultural projects fostering inter-community exchanges and/or intra-community exchanges.’³⁶⁶ The second part is the restoration of Prizren Fortress, in order to convince both investors and the general population of the potential value of cultural heritage development by providing an example of the possible benefits, such as the generation of jobs, economic activities and cultural tourism. Clearly this component is also related to the economical criteria of the IPA programme. The project should also promote appreciation for the preservation of cultural heritage and ‘contribute to foster inter-community links through common valorisation activities of Kosovo cultural and sites [sic], thereby ensuring a sustainable strategy for the conservation of all types of sites.’³⁶⁷ The second project with the Ministry of Culture, Youth and Sports was a €14 million contribution to the improvement of living conditions in Pristina and Mitrovica/Mitrovicë through fostering the use of multi-purpose facilities for all communities. This included the renovation of existing buildings and the creation of new facilities for the youth, and for sports and cultural activities, which are expected to support reconciliation efforts and the development of civil society in Kosovo.³⁶⁸

6.4.2 IPA Economical Criteria

Economical development and cooperation is one of the core issues within the EU itself, and IPA support under the economical criteria is one of the key objectives for European Commission assistance to Kosovo. The unemployment rate in Kosovo is between 40 and

³⁶⁴ 2009 Project Fiche 4 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

³⁶⁵ Ibidem.

³⁶⁶ Service Procurement Notice – Culture for all, European Commission EuropolAid/128985/D/SER/KOS (23 September 2009).

³⁶⁷ 2009 Project Fiche 4 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

³⁶⁸ 2009 Project Fiche 6 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

50 percent, and it is the poorest country in South Eastern Europe.³⁶⁹ Sustainable peacebuilding is only deemed possible when the economy improves and offers equal opportunities to all communities. The ECLO financially supports several large projects in sectors such as public infrastructure, but also provides backing to initiatives that aim to support small and medium enterprises, improve the quality of education and training opportunities, and for example promote rural and agricultural development. The economical issues are tightly connected to the political issues and “European Standards”, as for example corruption and political interference in the judiciary have a very bad influence on Kosovo’s appeal to foreign investors.³⁷⁰

One of the typical projects aimed at economic development is the €7,8 million contribution to “Trade and Regional Development”. The project is composed of two parts. On the one hand there is technical assistance to further development of Kosovo’s trade policy, in which the ECLO cooperates with the Ministry of Trade and Industry. The goal of this subproject is to promote awareness of the benefits and consequences of trade liberalization, and to support the institutional development of the Ministry in formulating Kosovo’s trade policies in line with international rules and “European Standards”. This should enhance the environment for trade and foreign investments in Kosovo, which are necessary for further economic development.³⁷¹ On the other hand, this IPA project is aimed to provide support to concrete initiatives for regional development. To be able to do so, the capacities of the (independent) Regional Development Agencies and of the municipalities had to be strengthened, and regional strategies and relevant projects needed to be identified. By now the Regional Development Agencies are operational and provide small-scale project-funds to regional economical initiatives.³⁷² The ultimate purpose is to assist local institutions in the creation of economical regions in which different municipalities have to cooperate – which is in line with EU practice. The Agencies also work to support ‘economic regeneration, job creation and human and infrastructural development in different regions, and enhancing the presence of women in businesses’.³⁷³ By creating more opportunities for citizens and businesses of different communities in Kosovo to cooperate, the Agencies also contribute and facilitate ethnic reconciliation efforts throughout Kosovo.³⁷⁴ The IPA assistance finances the operational costs of the agencies and the required technical assistance, but also specific projects in line with regional development strategies.³⁷⁵ A somewhat similar grant scheme is used in a €7,8 million project to support rural, mainly agricultural development, although that project also includes a component that focuses on technical assistance to the ministry in charge of forestry management.³⁷⁶

The largest socio-economic development project under the IPA 2009 programme is the €10,3 million contribution in support of employment and education, which exists of

³⁶⁹ Website of the CIA, ‘The World Factbook – Kosovo’ (<https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html> 21/09/2010).

³⁷⁰ N. Watson, ‘Corruption and politics tarnish Kosovo’s appeal to investors’, *Business new Europe* (4 May 2010).

³⁷¹ 2009 Project Fiche 7 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

³⁷² A summary of all the thirteen programmes can be downloaded here: Website of the ECLO, ‘Summary of Projects under IPA Annual Programme 2009 for Kosovo’ (http://www.delprn.ec.europa.eu/repository/docs/Summary_of_projects_under_IPA_Annual_Programme_2009_for_Kosovo.pdf 20/09/2010).

³⁷³ ‘European union supports establishment of regional development agencies in Kosovo’, *ECLO Press Release* (16 December 2008).

³⁷⁴ ‘European Commission Liaison Office signed operational grant contracts with five regional development agencies’, *ECLO Press Release* (24 June 2009).

³⁷⁵ ‘European union supports establishment of regional development agencies in Kosovo’, *ECLO Press Release* (16 December 2008).

³⁷⁶ 2009 Project Fiche 10 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

three components. The overall objective is to ‘address poverty and inequality through improvements in education and employment with particular attention to the quality of education, training and skills development in Kosovo and promotion of employment opportunities linked with public regeneration schemes to enhance the quality of life for all people of Kosovo.’³⁷⁷ The first component is called “Teacher’s Training”, and aims to improve the quality of education through comprehensive in-service training of teachers, in combination with a merit-based system regarding salaries and professional advancement of teachers. Also, it offers training to school directors to improve their management capacities. The second component consists of technical assistance to enhance the capacity of the Ministry of Labour and Social Welfare. In particular, the ministry receives support for the revision of social assistance schemes, in order to create a more effective approach to address the high level of poverty and to improve the targeting of vulnerable groups. The third component is called “beautiful Kosovo”. It is an initiative to address unemployment by creating many (mostly temporary) jobs through initiatives that promote urban regeneration, environmental improvements, and the development of public parks, recreational areas and the restoration of cultural heritage sites. People can improve their skills while working on such projects, which will increase their chances on the job market. Another potential benefit is that the project is most active in areas with the highest unemployment rates, and beautifying these areas could make them more attractive for the economical development and tourism.

In addition to socio-economic development, the economical criteria for IPA support argue that more efforts are needed to help Kosovo’s authorities with the development of a reform agenda, ‘which promotes fiscal sustainability, good governance of public expenditure, and sound financial management.’³⁷⁸ Basically this means that in return for investments, the European Commission demands to see reforms that ensure fiscal discipline, economical stability and a free market. Although such activities of themselves are aimed at Kosovo’s government, they also work to improve the investment climate in Kosovo for international financial institutions and the private sector, which could contribute to economic development. An example of financial professionalization in the 2009 IPA programme is a €5 million contribution to boost the capacities of the Tax Administration of Kosovo by introducing a new IT system, that ‘will enable transformation into a modern tax administration and it will help the Tax service to bring the revenue collection mechanisms closer to EU standards.’³⁷⁹ The project includes training of the staff of the Tax Administration and maintenance and monitoring of the IT system to ensure long-term results after delivery of the system. The new IT system will increase transparency and contribute to the fight against corruption, which is necessary to create a positive environment for sustainable economic development, investment and trade.³⁸⁰

6.4.3 IPA “European Standards”

The “European Standards” are the third priority for European Commission assistance, and it accounts for 8 to 15 percent of the IPA budget from 2009 to 2011. Projects under this priority aim to support Kosovo’s rapprochement to “European Standards” and assist the peaceful integration of Kosovo into the Western Balkans, and ultimately the EU. Passing policies and laws that are in line with “European Standards” is not even that difficult, but support is given to the establishment and improvement of those governmental agencies and institutions that are necessary to actually implement and enforce those laws. The focus

³⁷⁷ 2009 Project Fiche 8 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

³⁷⁸ Ibidem.

³⁷⁹ 2009 Project Fiche 9 Kosovo – IPA centralized programmes, European Commission Liaison Office (Pristina 2009).

³⁸⁰ Ibidem.

is therefore on capacity building in Kosovo's structures for European integration. These are necessary for cooperation in the Stabilisation and Association Process (SAP), but also for Kosovo's participation in European Commission programmes and in cross-border initiatives for regional political and economical cooperation. Some examples are the EC's political support for integration of Kosovo in initiatives such as regional and Europe-wide trade and energy agreements, and the European Common Aviation Area.³⁸¹ In addition, concrete measures are taken to support the approximation of legislation (and related issues) in a variety of fields to the "European Standards" of the *acquis communautaire*. These include: 'internal market issues, freedom, security and justice issues, food safety, veterinary and phyto-sanitary domains, agriculture and rural development, statistics, media and electronic communication.'³⁸²

Of the thirteen IPA projects that were supporting Kosovo in 2009, there were only two that fell under the third priority. The first "European Standards project" aims to foster economic development in Kosovo by integrating its energy and transport networks in the regional energy and transports markets, which is in compliance with the Energy and Transport Community Treaties for South East Europe. These treaties are intended 'to increase cross border energy trade and transport of freight and passengers by creating a single market covering the Member States [of the EU] and South Eastern Europe.'³⁸³ This shows again how projects can be based on multiple priorities, as the improvement of infrastructure in energy and transport is seen as one of the cornerstones for future economic growth under the economic criteria of the multi-annual indicative planning document 2009-2011. Cross-border cooperation on these issues will also contribute to Kosovo's regional integration. The €15 million project consists of two major activities. Activity 1 includes the improvement of the transmission capacity for electricity, which will enable a more reliable and secure electricity supply to households and businesses. Technical improvement of the network is also necessary to meet the requirements of the Energy and Transport Treaties. The second activity supports the implementation of reforms in the road and railway sector, in order to improve transport services and integration into the regional transport network. This also includes support to Kosovo authorities in the implementation of energy and transport reforms in order to enhance the legislative and administrative framework for these issues in Kosovo.³⁸⁴

The second "European Standards" project was titled "Support to the Environment Sector".³⁸⁵ The European Commission has contributed €4,8 million to this project that consisted of various subprojects, including support to the institutional development of the Kosovo Environment Protection Agency, the Ministry of Environment and Spatial Planning and the Water and Waste Regulatory Office, the creation of an Air Quality Monitoring System, and the cleaning of the Lepenc River from asbestos waste. The overall goal of these subprojects is to achieve sustainable improvement of environmental conditions in line with EU standards, in particular regarding public health and sustainable economical development. Although these activities are not really focussed on peacebuilding, they do have a positive impact on society because they improve the quality of life for all citizens. In addition, it brings Kosovo closer to EU standards and it is yet another sector where institutional capacities are strengthened. This project is also a good example of how Commission-sponsored initiatives to professionalize the government generally include the promotion of a workplace that is more diverse and representative of

³⁸¹ Website of the ECLO, 'Role of the Liaison Office' (<http://delprn.ec.europa.eu/?cid=2,110> 20/09/2010).

³⁸² Ibidem.

³⁸³ 2009 Project Fiche 12 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

³⁸⁴ Ibidem.

³⁸⁵ 2009 Project Fiche 11 Kosovo – IPA centralised programmes, European Commission Liaison Office (Pristina 2009).

Kosovo's population. By supporting a workspace that is supportive of cultural differences, gender equality and ethnic diversity, it is likely that the outputs or services provided by these institutions are also more sensitive for diversity in the multi-ethnic society.³⁸⁶

6.5 Stabilisation and Association Process and Dialogue

In return for its political and financial support through the Stabilization and Association Process, the European Commission wants to see democratic and socio-economic reform, progress on issues such as the rule of law and human rights, and full cooperation in the mutual political dialogue. As has been indicated before, the implementation and management of European Commission funds granted through the IPA programme is done by the ECLO, which is responsible for proper monitoring, evaluation and reporting on the results and efficiency of IPA-funded activities.³⁸⁷ Before countries can receive IPA funding they have to give permission to the Commission to undertake any actions it deems necessary to monitor and evaluate the assistance programmes. Giving this authority to the European Commission is part of the SAP and the European Partnership. The Commission (including the European Anti-Fraud Office) may carry out on-the-spot checks and inspections at its discretion, either by itself, through outside auditors or the European Court of Auditors. These conditions apply to all contractors, subcontractors and grant beneficiaries who have received European Commission funds.³⁸⁸ Such audits are mainly focussed on checking the professionalism of financial policies and the prevention of fraud. In addition, the IPA programme is subject to: 'ex ante evaluations, as well as interim and, where relevant, ex post evaluations in accordance with Articles 57 and 82 of IPA Implementing Regulation, with the aim of improving the quality, effectiveness and consistency of the assistance from Community funds and the strategy and implementation of the programmes.'³⁸⁹

The results of the ex ante (before deployment) and interim (during projects) evaluations of IPA assistance are taken into account in the programming and implementation cycle of the SAP and the European Partnership.³⁹⁰ From March 2003 until October 2009 the Stabilization and Association Tracking Mechanism was the main instrument for political dialogue on Kosovo's progress between the (provisional) government of Kosovo and the EC. This mechanism was replaced with an intensified political dialogue in the SAP Dialogue (SAPD) at the end of 2009.³⁹¹ Whereas the tracking mechanism reflected the unsettled status of Kosovo, the SAP Dialogue has been applied after Kosovo's declaration of independence. It is largely similar to the Status and Association Agreement Negotiations of other potential EU candidates, but internal division on Kosovo has blocked the European Commission from formally opening this tool for Kosovo. The major goal of this SAP Dialogue is to evaluate, monitor and discuss Kosovo's reforms and rapprochement to the EU, in particular regarding the priorities defined in the European Partnership agreement.³⁹² The meetings are organized together by the ECLO and Kosovo's Ministry for European Integration. On the one hand the discussions in the SAPD should lead to adjustments and improvements in Partnership

³⁸⁶ Ibidem.

³⁸⁷ 'Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)', *Official Journal of the European Union* L210 (2006) 82-93.

³⁸⁸ *Commission decision of 2009 adopting an Annual Programme for Kosovo (under UNSCR 1244/99) under the IPA Transition Assistance and Institution Building Component for 2009*, Commission of the European Communities (Brussels 2009).

³⁸⁹ Ibidem.

³⁹⁰ Ibidem.

³⁹¹ Website of the ECLO, 'Stabilisation and Association Process (SAP)' (<http://delprn.ec.europa.eu/?cid=2,133> 20/09/2010).

³⁹² Ibidem.

programmes and IPA support, while on the other hand they present recommendations and desired “follow-up actions” to Kosovo’s authorities in order to meet the demands of the European Partnership. The implementation of these “follow-up actions” is to be evaluated in following SAPD meetings. The SAPD also provides direct input to the EC’s annual Progress Report on Kosovo, which is the primary monitoring tool on the progress towards the EU and on the political and economical situation. This is a strong incentive for Kosovo’s authorities, because progress in meeting the priorities set in the European Partnership influences the amount of assistance that is available.³⁹³ Nevertheless, the European Commission is also prepared for worst-case scenarios, as it has a suspension clause for the IPA support that is given in the framework of the European Partnership. Financial support can be suspended if beneficiary countries fail to comply with the commitments contained in their European Partnership, do not respect the principles of democracy, rule of law, human rights and minority rights, or when they make insufficient progress in their reform process.³⁹⁴ Participants in the SAP Dialogue include officials from Kosovo’s government and institutions, ECLO-staff and top-level representatives from the EC, and in some cases also the European Union Special Representative (and part of his staff), and representatives from EULEX and individual EU Members States that play a large role in Kosovo. Representatives of the Council of Europe and the OSCE have sometimes joined the discussions in the Stabilization and Association Tracking Mechanism in the past, and are likely to join relevant SAP meetings in the future.³⁹⁵

In addition to the dialogue with governmental institutions, the European Commission has called upon Kosovo’s civil society to contribute to the Progress Report. A March 2009 press release by the ECLO stated the following: ‘The European Commission Liaison Office to Kosovo highly values the dialogue with local civil society organisations as contributors to the Progress Report as a key partner to make EU integration tangible for Kosovo society. We would very much welcome your written input to the 2009 Progress Report. We consider it of utmost importance for an overall objective and in-depth assessment. [...] We will also be organising an information session with civil society organisation on 28 April to discuss any further input you may have or for clarifications.’³⁹⁶ The discussions at this first formalised meeting with civil society on the SAP Dialogue focused on the ‘fight against corruption, freedom of speech, women rights, economic and environmental challenges and general status of NGOs.’³⁹⁷ Representatives of 30 active NGOs from Kosovo have attended this meeting, which was opened by Pierre Mirel, Director for the Western Balkans at the Enlargement Directorate-General of the EC, and Ms. Metka Roksandić, President of the European Economic and Social Committee’s (EESC) Western Balkans Contact Group. The EESC is a consultative assembly of employers, employees and representatives of various other interests, which has a consultative role in the European Union. In recent years the EESC has started to focus increasingly on involving civil society organisation in the European integration

³⁹³ The website of the European Union, section with summaries on EU legislation, ‘Partnerships with the Western Balkans’ (http://europa.eu/legislation_summaries/enlargement/western_balkans/r18008_en.htm 20/09/2010).

³⁹⁴ The website of the European Union, section with summaries on EU legislation, ‘Instrument for Pre-Accession Assistance’ (http://europa.eu/legislation_summaries/agriculture/enlargement/e50020_en.htm 21/09/2010). The exact conditions for Kosovo can be found in the: *Commission decision of 2009 adopting an Annual Programme for Kosovo (under UNSCR 1244/99) under the IPA Transition Assistance and Institution Building Component for 2009*, Commission of the European Communities (Brussels 2009).

³⁹⁵ *Final conclusions of the 16th meeting of the Stabilisation Association Process Tracking Mechanism*, European Commission Liaison Office (12 June 2009).

³⁹⁶ ‘European Commission calls on Kosovo civil society to contribute to 2009 progress report’, *ECLO Press Release* (18 March 2009).

³⁹⁷ ‘European Commission encourages Kosovo civil society to be more active in the EU Integration Process’, *ECLO Press Release* (7 July 2010).

project, and on supporting the role of civil society organisation in non-member countries.³⁹⁸ This also includes Kosovo. At the civil society meeting Ms. Roksandić stated that the EESC ‘has a privileged role to play in Kosovo [...] in the Stabilisation and Association Process. I am glad to see that Kosovo civil society is given a key role in the dialogue between Kosovo and the EU. The Committee will facilitate this communication; we intend to intensify our relationships with Kosovo.’³⁹⁹ Similar meetings have been held for the Progress Report 2010, which will be published in the autumn of 2010.

The Progress Report 2010 has not been published at the time of writing this thesis, and it is expected somewhere in October 2010. Hopefully for Kosovo the 2010 report will be more positive than the 2009 report has been, which covered the period from early 2008, when the SAP Dialogue replaced the tracking mechanism after Kosovo’s declaration of independence, to half 2009. Kosovo has made some progress in the political criteria and in particular by strengthening the legal framework during this period. The main institutions of governance were in place and are fulfilling their responsibilities in cooperation with the relevant international organisations. However, the report assessed that the capacity of the public administration and of the assembly is still in need of strengthening. Reforms in the judiciary need more impetus, and sustained efforts are needed in the fight against corruption and organised crime. More efforts are also needed to build confidence and promote dialogue with Kosovo Serbs.⁴⁰⁰ The Report observes that more needs to be done especially to ensure minority rights, religious freedom and the preservation of cultural heritage in Kosovo. The Progress Report explicitly mentions the continued need for protection and reconstruction of religious heritage, the necessity to send escorts with pilgrims that want to visit cemeteries or religious sites in minority areas, and the inadequate legal framework for religious activities, which obliges religious communities to register as NGOs to acquire legal identity. Some progress has been made regarding the reconstruction of religious sites, but the report clearly states that more needs to be done to reconcile and integrate religious communities in Kosovo. The tone on the economic criteria seemed even more negative, as ‘very little progress towards establishing a functioning market economy’⁴⁰¹ had been made. The report concluded that substantial reforms and major investments remain necessary to prepare Kosovo’s economy for competitive pressure and market forces within the EU. Furthermore, ‘the rule of law, widespread corruption, and uncertainty over property rights continued to be major impediments to economic development. Unemployment remains very high.’⁴⁰² The progress in the field of “European Standards” has been mixed. There was positive progress in creating the legal framework in ‘the areas of customs, taxation, education and policing. The implementation of “European Standards” is at an early stage as regards environment, energy, competition, intellectual property and free movement of goods, persons, services and capital. Approximation remains limited in the areas of financial control and statistics, money laundering, organised crime, terrorism and data protection.’⁴⁰³ Despite the strong criticism of his government, the Prime Minister of Kosovo has welcomed the Progress Report 2009. In his eyes the report confirmed ‘the destructive role of Belgrade’ and provided a clear guideline for the European future of

³⁹⁸ Website of the European Economic and Social Committee, ‘Civil Society’ (<http://www.eesc.europa.eu/?i=portal.en.civil-society> 21/09/2010).

³⁹⁹ ‘European Commission encourages Kosovo civil society to be more active in the EU Integration Process’, *ECLO Press Release* (7 July 2010).

⁴⁰⁰ ‘Kosovo – Fulfilling its European Perspective’, *ECLO Press Release* (14 October 2009).

⁴⁰¹ *Ibidem*

⁴⁰² *Ibidem*.

⁴⁰³ *Ibidem*.

Kosovo.⁴⁰⁴ However, the European Commission expects the Kosovo authorities to actively use the findings in order to implement a coherent and consistent series of reforms to advance Kosovo's approximation to Europe. As the Progress Report 2010 is not yet published, we will take a deeper look at a few of the first meetings that have been held in the framework of the SAP Dialogue. This will help us understand the evaluation process and it may give some insights on what input has been given for the 2010 Progress Report until now.

Plenary SAP Dialogue meetings are planned annually, but the minutes of the first meeting held on the 6th of July 2010 were not yet available at the time of writing. However, from a press release by the ECLO we can conclude that the European Commission does not fear the use of some diplomatic force. Pierre Mirel made some clear statements: 'We recognise that Kosovo has made some progress in adopting legislation, but also emphasise the need to do more, not only to create the right legislative framework but also to implement this. Kosovo needs to deliver on reform in concrete terms, addressing key areas such as judicial reform, stepping up the fight corruption and public administration reform. I very much hope that Kosovo can step up reforms and we can recognise this in our Progress Report this autumn.'⁴⁰⁵ Furthermore, the commission highlighted that 'Kosovo needs to improve its public procurement regime to be able to benefit from investment opportunities, as well as to manage the considerable generosity that donors have shown to Kosovo.'⁴⁰⁶ In addition to the annual plenary meeting, seven sectoral meetings on major EU policy clusters have been set up to deepen technical discussions in the areas of Justice, Freedom and Security; Innovation, Information Society and Social Policy; Trade; Internal Market and Competition; Agriculture and Fisheries; Transport, Environment, Energy and Regional Development; and Economic Development. These sectoral meetings lead to recommendations and agreed follow-up actions, which can be implemented by Kosovo's authorities during the time between meetings.⁴⁰⁷ Most of these have had a first meeting in 2010, but at the time of writing only the conclusions of the first meetings on Innovation and on Justice, Freedom and Security had been finalized and made public on the ECLO website, accompanied by ECLO press releases. Although this first sectoral meeting is generally referred to as the SAP dialogue on Innovation, it is also about human capital, social policy and information society. A whole range of topics were discussed: 'from employment and socio-economic policies to education strategies, promotion and protection of cultural heritage, youth, RTK funding [Radio Television of Kosovo, the public broadcaster] and Kosovo's involvement in European research programmes.'⁴⁰⁸ The general tone of the conclusions is positive, but the European Commission does not refrain from some criticism in its recommendations. Some core issues are summarized in an official press release: 'The European Commission appreciated the efforts towards a modern education but encouraged Kosovo to adopt the relevant core legislation and to build capacities for its enforcement at central and municipal levels. It also urged Kosovo authorities to make its employment services professional and efficient, and insisted on the need to rapidly ensure a sustainable

⁴⁰⁴ 'Kosovo PM happy with EC report', *Balkan Insight* (13 October 2009).

⁴⁰⁵ 'European Commission calls on Kosovo authorities to deliver further on reform agenda', *ECLO Press Release* (6 July 2010).

⁴⁰⁶ *Ibidem*.

⁴⁰⁷ Website of the ECLO, 'Stabilisation and Association Process (SAP)' (<http://delprn.ec.europa.eu/?cid=2,133> 20/09/2010).

⁴⁰⁸ 'European Commission and Kosovo authorities review achievements and challenges towards a modern and inclusive Kosovo', *ECLO Press Release* (4 March 2010).

financing for Kosovo's public-service broadcaster, RTK, which is a key concern for the financial and editorial independence of a key element of Kosovo's media pluralism.⁴⁰⁹

The tone seems quite friendly in this press release, but that is no surprise as the European Commission and Kosovo's authorities have to maintain a positive working relationship for their cooperation in achieving the targets of the SAP and European Partnership. However, such nuanced expressions of criticism should be taken very seriously. Freedom House has for example considered the tightened grip of the Kosovo government on the public broadcaster and independent media as one of the major negative trends in the 2010 Report on Kosovo.⁴¹⁰ The European Broadcasting Union has even accused Kosovo's prime minister of turning RTK into a 'media arm of the ruling party.'⁴¹¹ A similar careful formulation can be found in the ECLO press release after the SAP Dialogue on Justice Freedom and Security: 'The European Commission wishes to continue the good cooperation with Kosovo authorities on rule of law matters and in particular welcomed the commendable efforts of the Ministry of Internal Affairs. However, the Commission also outlined the challenges ahead for the government as major improvements are needed on a number of rule of law matters, especially readmission and reintegration of repatriated persons, fight against organised crime and corruption as well as functioning of the judiciary and the reappointment of judges and prosecutors free of political interference. Improvements are also needed as regards the enforcement of the legislation on human rights and the rights of communities.'⁴¹² Interesting is that the press release explicitly states that progress and tangible results in these areas are crucial for Kosovo to make progress towards eventual visa-liberalization – an issue highly desired by Kosovo's authorities.⁴¹³ This is a clear-cut example of governmental peacebuilding in a more traditional diplomatic sense, which is practiced by the Commission simultaneously and in addition to providing political and financial support for concrete projects. The ECLO has a good working relationship with Kosovo's authorities, which enables the European Commission to successfully use sticks and (many) carrots to speed up legal and institutional reforms in areas that can contribute to a durable peace – in this example most notably the rule of law and human rights.

6.6 Peacebuilding paradoxes & civil society engagement

Peacebuilding dilemmas and the ECLO

Whereas the discussion on peacebuilding paradoxes has dominated the final paragraph of the chapters on the ICO/EUSR and EULEX, for the ECLO the engagement with the various aspects of civil society is the most important and interesting topic. The ECLO has given financial support to the ICO through the Instrument for Stability, and it has supported various governmental institutions through the IPA, but the ECLO itself does not act as an external intervener that takes over executive tasks and responsibilities from Kosovo's government and institutions. The ECLO is responsible for the local implementation and monitoring of the EC's regular financial instruments, of which the EIDHR and IPA are the largest and most interesting ones in the case of Kosovo. The EIDHR provides funds to non-governmental actors, while most of the activities under the IPA are aimed at capacity building within governmental institutions. Kosovo voluntarily cooperates in these IPA programmes, as it ultimately wants to become part of the EU. Of

⁴⁰⁹ Ibidem.

⁴¹⁰ I. Deda, 'Kosovo', in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010) 273-287.

⁴¹¹ 'EBU: Kosovo's RTK is "media arm" of PM', *Balkan Insight* (26 October 2009).

⁴¹² 'First SAP Dialogue meeting on justice, freedom and security', *ECLO Press Release* (28 January 2010).

⁴¹³ Ibidem.

course one can easily argue that in reality Kosovo doesn't have much of a choice but to cooperate "voluntarily" with the EU. Most of the EU countries and the USA have assisted Kosovo on its road to independence, and the declaration of independence and the new constitutions are clearly geared towards the European Enlargement process. Yet, support for EU Membership is higher than in any other country in the Western Balkans,⁴¹⁴ and the responsibility for the implementation of the necessary reforms for rapprochement to the EU lies with Kosovo's institutions. This does not imply that there is no pressure on Kosovo, but it doesn't come in the form of external intervention in support of self-government. The main difference is that the ECLO is not an intervening actor, but an office that is responsible for the implementation of regular programmes and instruments of the directorates general for External Relations and for Enlargement of the EC. These programmes are also implemented in other countries in the Western Balkans, and although they are not necessarily peacebuilding activities, they can be seen as such in Kosovo and other post-conflict countries in the region. Several aspects of the Stabilization and Association Process are somewhat intrusive, but they leave Kosovo's authorities in charge of the reform process. Overall it seems therefore that the peacebuilding paradox of external intervention in support of local self-governance is not much of a problem, especially when compared to the ICO/EUSR and EULEX.

As the first peacebuilding paradox is not very problematic to the ECLO, the same accounts for the other paradoxes. The ECLO has no executive powers that would enable it to identify and support legitimate local leaders. The second paradox is therefore not so much of a problem to most of the activities of the ECLO, and especially the assistance given through the IPA. The liaison office has to work with the leaders and institutions that are already present in Kosovo, and has to deal with many of the same problems that are encountered by EULEX. The so-called "provisional structures for self-government" that were created in Kosovo by UNMIK are dominated by the pre-war and wartime Kosovo Albanian elites. This might have been necessary to create short-term stability, but it is not the best possible basis for creating a peaceful and democratic multi-ethnic state. By putting forward demands on the implementation of "European Standards" in transparency and accountability, the liaison office has some influence on which local leaders and institutions receive support, and which ones encounter criticism. However, "cleaning up" the institutions of corrupt officials is one of the tasks of EULEX, while the ECLO is only able to provide political and financial assistance to the reform process and to increase local capacities for good governance. However, there are some exceptions.

The grant schemes under the IPA and the EIDHR that were launched in support of civil society actors are clearly engaged in selecting and supporting local (non-governmental) leaders. The central idea behind these schemes is that civil society actors can contribute to the democratic process and increase local ownership of the peacebuilding process. Through these grant programmes the EU hopes to contribute to an open, democratic society, while particular grants also enable the Union to support projects it deems necessary but is not able to implement itself. This is especially true as many civil society grants are given for concrete projects, and not as structural funding for institutional development. This is not a problem only encountered by the European Union in Kosovo, but it happens to many foreign donors in various post-conflict societies. Right after a conflict there is generally a lot of funding available for civil society initiatives, which causes local NGOs to sprout like mushrooms. However, it takes some time for a sustainable and self-reliant civil society to develop. The 2010 Freedom House report on Kosovo critically stated that: 'the civil society sector continued to develop in 2009 amid

⁴¹⁴ Website of the Gallup Balkan Monitor, 'survey data' (<http://www.balkan-monitor.eu/> 27/09/2010).

an ongoing proliferation of nongovernmental organizations. These groups often struggled to develop their own agendas, secure stable funding, and fulfil their strategic visions. Moreover, they remained dependent on foreign donors, many of whom have their own priorities and are unwilling to consider and support local initiatives.⁴¹⁵ Although the ultimate sustainability of several individual organisations remains questionable, the NGO sector as a whole seems increasingly able to reach and engage with the general population, while also providing independent monitoring and criticism of Kosovo's government. The EU has strict guidelines for providing financial support, and through the grant schemes it is able to ensure that only organizations that are operating in a professional manner get support.

The usage of such selection criteria leads us to the next peacebuilding paradox; the promotion of universal values as a remedy for civil conflict and other societal problems. The western model of a "civil society", and likewise the so-called "European Standards" for governmental institutions, are considered a solution to Kosovo's socio-economical problems and inter-ethnic tensions. Yet, the paradox is not as problematic as in many post-conflict peacebuilding operations in other parts of the world. As indicated in the previous chapters, Kosovo and the Western Balkans as a whole are surrounded by the European Union, and they want to become part of it. All of these countries are likely to experience some tensions between their socio-cultural and political habits and traditions on the one hand, and the EU accession criteria such as good governance, freedom of expression and human rights on the other. However, in this context it is important to mention the official motto of the European Union: Unity in Diversity. According to the European Commission this motto means that 'Europeans are united in working together for peace and prosperity, and that the many different cultures, traditions and languages in Europe are a positive asset for the continent.'⁴¹⁶ It seems that developing institutions and policies that are appropriate to both the European Union and the local population in Kosovo will be a challenge, but not an impossible one considering the wide variety of forms of democracy and civil society that already exist within the Union at this moment.

Coherence of engagement with civil society

The ECLO is able to engage civil society organizations in the evaluation process of its activities, and make use of reports and feedback by civil society actors aimed at the European involvement in Kosovo. Different from EULEX, such engagement has been limited in the evaluations of the ECLO although civil society actors have explicitly been called upon to contribute to the Progress Report. They can do so by sending in their evaluations and criticism and by participating in the SAP Dialogue sessions for civil society. Until now only about 30 NGOs from Kosovo have participated in evaluation meetings. Most of these are among the most active and influential organizations in the country, which makes their input very valuable. However, the involvement of NGOs in the discussions between Kosovo and the EU could still be increased, and the ECLO is working on improving this relationship in cooperation with the EESC. In addition to civil society engagement in programme evaluations there are two other ways in which the ECLO is able to engage with various aspects of civil society and particular actors. While in theory all civil representatives are welcome to engage with the ECLO in evaluation meetings and discussions, the ECLO's other two ways of engaging with civil society are mostly aimed at specific actors or "tracks". In the first option, civil society is seen as a

⁴¹⁵ Deda, I., 'Kosovo', in: L. Mootz red., *Nations in Transit 2010. Democratization from Central Europe to Eurasia* (Freedom House, Washington/Budapest 2010).

⁴¹⁶ Website of the European Union, 'United in diversity' (http://europa.eu/abc/symbols/motto/index_en.htm 11/10/2010).

target of action, which in our case would mean that the EU aims to reach and influence aspects of society. This is mostly done through the actions under the IPA. Although this instrument is mainly focussed on governmental and institutional reforms and transformation, it includes several projects that are aimed at specific parts of (civil) society. Second, the ECLO is able to cooperate with civil society organizations and provide financial, political or organizational support. Such support has mostly been given through the EIDHR and the grant scheme under the IPA 2008 budget. Actual cooperation on shared initiatives of the ECLO and civil society organisations is rare, especially as service contracts for projects under the IPA that have been signed with NGOs are not taken into account as forms cooperation in this thesis. Finding tenderers for public procurements is a commercial process that is part of how the European Commission operates in order to maintain financial accountability and impartiality. While NGOs have successfully taken part in this process, the activities that they implement are not their own, but are part of the EC's strategy for Kosovo. In some cases tenderers are allowed to come up with their own proposals, but usually there is not too much space for own initiatives. The rest of this chapter will focus on the two ways of ECLO engagement with the various aspects of Kosovo's society. This discussion will follow the eight "tracks" of the framework of Multi-track Diplomacy as defined in Chapter 2. One exception is "Track 8", which relates to the influence of financial donors on the peacebuilding process. Although the EU has no influence on private charities, this is still an important topic because the financial instruments of the European Commission are among the most important policy tools of the Union. It is therefore, however, that it makes no sense to discuss this "track" separately, considering that it would be a repetition of what has been said in all the other "tracks".

Apart from the participation of several professional peacebuilding NGOs in evaluation and discussion meetings, the ECLO has engaged with this "track" primarily by rewarding EIDHR support to several organizations. These professional peacebuilding organizations are not so much distinguished by their goal, which is to prevent, resolve and manage conflict, but by whom they target with their activities. What makes them different from for example "Track 4" (civilians) is that they aim to work with governmental actors and official representatives and stakeholders. Examples are the projects by the Kosovo Development Centre and the Kosovo Stability Initiative. Their exact activities have already been described above, but it is noteworthy that both NGOs work to promote participation in local politics, increase civil society engagement with politics, and to build the capacities for local governance and inter-ethnic cooperation. A different type of professional peacebuilding has been promoted by supporting the Humanitarian Law Centre, which has received both a 'regional' EIDHR grant for its work throughout the former Yugoslavia, and a 'national' grant for activities within Kosovo. The regional activities include the campaign for establishment for a regional Truth Commission, for which it is gathering the support of civil society actors and politicians. The local activities in Kosovo are aimed at increasing awareness of human rights and minority issues among political authorities throughout the country, while also working to strengthen the capacity of other (smaller) local civil society actors to engage with politicians and civil servants on such issues. While such minority rights advocacy actions carry a hint of activism, the Humanitarian Law Centre mostly chooses to work alongside governments, or at least maintain a good working relationship, instead of searching open confrontation. Nevertheless, this shows that there are gradual differences instead of hard divisions between the various "tracks".

Promoting economical development in order to prepare Kosovo for the European Union's market economy is one of the major tasks of the ECLO, for which it primarily

uses the economic criteria of the IPA. The Programme Report 2010 has concluded that substantial reforms and investments remain necessary to revive Kosovo's economy, but that progress is troubled by concerns over the rule of law and corruption. This makes it clear that many of the capacity building initiatives in the rule of law sector and other administrative institutions are very important for improving the economical climate. In addition, the ECLO has activities under the IPA that are solely aimed at the economy, or "Track 3". These activities can be divided into two aspects. On the one hand, there are projects aimed at creating and strengthening the institutional framework that will support economical development. These include the capacity building measures in the Tax Administration of Kosovo, as well as the assistance to developing Kosovo's trade policies in line with "European Standards". Other specific projects that aim to improve the institutional framework for economical revival have focussed on strengthening the Regional Development Agencies and capacity building in municipal institutions on economical issues. On the other hand, there are the activities that are really focussed on promoting the actual economical development. One aspect of these are the grant schemes for various regional and rural/agricultural economic initiatives that have been developed alongside the capacity building measures in the Regional Development Agencies. However, supporting economical development has also been done by promoting the development of human capital throughout Kosovo, for example by developing possibilities for training and education for unemployed people, and by actually creating (often temporary) jobs.

"Track 4" is about peacebuilding through the personal involvement of citizens acting in their own private capacity. This aspect of civil society is very diverse as people can become active in various voluntary peace and development projects, official discussion meetings, citizen exchange programmes, professional interest groups, or advocacy and special-interest groups. The difference with "Track 2" is the focus on civilians, instead of official representatives, politicians and other official stakeholders. This is typically a field in which the ECLO has both supported independent NGO initiatives, while also considering civilians as a target for its own activities and programmes. This division coincides usually with the two major financial tools of the ECLO, the EIDHR and the IPA, but this is not a rule. The EIDHR has been used to support various NGO initiatives throughout Kosovo. Not all of these are clearly related to post-conflict peacebuilding, but the support to human rights and democratization in general is also part of the EU's strategy to stabilize Kosovo and promote "European Standards". Examples of this category are the human rights projects that focus on disabled people, which have been discussed above. The same accounts to some degree for various initiatives aimed at children's and women's rights in Kosovo, although many of the problems in this field are symptomatic to the post-conflict situation. By providing funds to NGOs that work on the empowerment of widows, orphans, and deprived women and youths in general, the EU hopes to improve the societal position of these groups. Various EIDHR grants have also been given to NGOs that aim to establish (often local) multi-ethnic cooperation on various issues of mutual concern. In addition to the EIDHR, civil society organizations operating in "Track 4" have also received funding under the IPA 2008 grant scheme, although this scheme only funded activities on a limited number of societal issues. Many of the other IPA activities that relate to civilians have been implemented by the EU and governmental institutions in Kosovo in what could be seen as a top-down approach. This includes a range of different activities from the renovation of public buildings, which will enable citizens to make use of these facilities again, to technical support to the Ministry of Labour and Social Welfare in order to enhance its capacities to address poverty and engage with vulnerable groups. The European

Commission has also mainstreamed the promotion of diverse and representative workspaces throughout all of its activities, in an attempt to provide equal opportunities, as well as outputs and services that are sensitive to ethnic and gender issues. Additionally, the EU has targeted civilians through its activities in the media sector (discussed below) and by opening up the EU Information and Cultural Centre, which aims to disseminate information on the European Union and its activities in Kosovo. However, there are also IPA activities that do not only target citizens but also try to actively engage with them. The “support to communities” project is one of these, through which the ECLO has tried to respond to some urgent needs in society. One of the major aspects of this project is the promotion of cooperation between Kosovo Serbs and Kosovo Albanians in multi-ethnic communities, but all the details have already been discussed above. Finally, the “Culture for all” project has provided funds to various cultural activities of all ethnic communities throughout Kosovo, in order to promote respect for cultural diversity, and probably also to foster public support for the European Union.

Cooperation in the field of education, research and training is one of the crown jewels of European integration. Initiatives such as the TEMPUS and Erasmus Mundus programmes promote the exchange of scholars, students and knowledge throughout the European Union. The ECLO has assisted in opening up these programmes for universities in Kosovo, but it has also worked on developing capacities in this field through EIDHR and IPA support. Education, research and training are not restricted to universities and schools, but are practiced by various actors in a variety of forms, from academic programmes to human rights education, advocacy training and monitoring efforts on the reforms. The EIDHR is aimed at supporting civil society actions in promotion of democratization and human rights, which does not necessarily involve research, education and/or training. However, a significant number of the grants have been given to projects that relate to such activities, including two of the four international/regional EIDHR grants that benefit Kosovo. The Initiative for Peacebuilding will contribute to the development and dissemination of knowledge on conflict prevention and peacebuilding to increase the capacity of the European Union (and other actors) in these fields. The schools for Political Studies that are established by the Council of Europe provide high quality education and training to students and professionals within Kosovo on topics such as European integration, democratization and the rule of law. Research, education and training activities are also frequently supported under the national EIDHR component. This includes for example the research and monitoring of the implementation of the Law on Gender Equality by the Lawyers Association “NORMA”, and the awareness raising and advocacy training campaign on human rights (especially of women, youth and minority groups) by the NGO Zana. Other organizations have received grants for their work within the regular education system, for example for the promotion of awareness and knowledge of the Convention on the rights the Child throughout Kosovo’s education system, and the enrolment and registration of Roma, Ashkali and Egyptian (RAE) children in primary education. The social deprivation of these minority communities has also been addressed by IPA programmes. One of the aspects of the “Support to communities” project (which has been discussed above) is a scholarship programme to assist the integration of RAE students into higher education, which will help RAE students to find different and better jobs and subsequently to improve the living standards in their communities. As good education helps minorities to improve their situation, the same clearly accounts for society as a whole. The ECLO has therefore also contributed to the quality of education in Kosovo through the “Teachers’ Training” project, which is part of the socio-economic development programmes. As the IPA assists the implementation of “European Standards”, it has also given financial support to capacity-building projects that target

Kosovo's institutions. Examples are the development of curricula for legal translators and interpreters within Kosovo, and the financial contribution to postgraduate education of civil servants in EU universities. Overall it is clear that the ECLO values the opportunities to achieve societal progress through training and education, and has frequently integrated these into various support programmes.

Activists can act as a counterbalance to (inter)governmental actors, making sure that these actors cannot operate unchecked and unrestrained. This role is especially important in societies that have marginalized group, which are unrepresented at governmental level or in influential organizations, and whose interests might otherwise be discarded. Even if local activists oppose the European Union every now and then, their role is very useful to the Union, as it provides critical input on the reform process and developments in society. This is reflected in the support that was given (under the Instrument for Stability) to capacity building for civil society actors in the fields of conflict prevention and peacebuilding. This was not specifically aimed at activists, but the "Early Warning System" based on information sharing among civil society organisations has increased the capacity of many organizations to critically monitor social and political developments in Kosovo, and respond to these. In addition to such general support, the ECLO has used the EIDHR to fund NGO initiatives it couldn't carry out itself. Many of these have already been discussed in other "tracks" and several of the projects aimed for example at political participation of citizens, or at training and education, have included some activist elements. This shows again that there is a gradual difference between the various "tracks". Activism is especially similar to the personal involvement of citizens ("Track 4") in the sense that it sees grassroots action and leadership as critical in the process of societal transformation. However, some projects are more geared towards activism than others. The general difference is that activism usually concentrates on exposing and opposing unjust actions and policies by the government or public institutions, and less on promoting mutual understanding between individual citizens. The activities aimed at the rights of disabled people in Kosovo are an example. The EU has supported the development of legislation on the equality of disabled people, but it isn't able to oversee and monitor the implementation of each law that is passed. It is therefore that several EIDHR grants have been given to advocacy groups that promote equal treatment of disabled people. Another example is the support that is given to the Kosovo Rehabilitation Centre for Torture Victims, which is an activist group that monitors and documents on human rights violations of detainees, and advocates legislative changes that will prevent torture and ill treatment. This is an example of how providing support to independent local activists is useful because it provides critical input to Kosovo's institutions and EULEX, while it also works to enhance local involvement and ownership in the reform process.

Both Kosovo Albanians and Kosovo Serbs have a lot of trust in their respective religious authorities. This gives these institutions a lot of potential for contributing to societal change, although inter-religious dialogue is a sensitive topic in a society that is emerging out of a conflict that was often framed in religious terms. However, there is another problem with this field apart from the problematic relationship between Orthodox Christian Serbs and Muslim Albanians. It doesn't come very natural to an external governmental actor such as the European Commission (and other EU actors) to engage with religious representatives or authorities. Religious differences are closely related to the ethno-nationalist divide in Kosovo and the ECLO has addressed minority rights and the preservation of religious and cultural heritage through various projects. Nevertheless, the ECLO's formal engagement with this "track" has remained fairly limited. The Progress Report has explicitly mentioned the continued need for protection and

reconstruction of religious heritage, the necessity to send escorts with pilgrims that want to visit cemeteries or religious sites in minority areas, and the inadequate legal framework for religious activities, which obliges religious communities to register as NGOs to acquire legal identity. Although some progress has been made regarding the reconstruction of cultural and religious heritage sites, the report clearly states that more needs to be done to ensure minority rights and religious freedom. Various aspects of these are addressed by the general efforts of promoting “European Standards” and accountability and transparency in the rule of law. Promoting actual reconciliation between the various religious institutions and communities in Kosovo is a different story. Maybe the ECLO isn’t the right actor to engage in this process, but this problem has hardly withheld it from supporting civil society initiatives in other fields the Union cannot act itself.

The mass media are powerful actors in society that have the ability to influence public opinion by the information they make available, and in turn they are a vehicle by which public opinion gets shared and spread. The media can use this influence to propagate violence and conflict, but also to contribute to peacebuilding. Mass media have the power to create and disseminate reliable information, offer diverse perspectives, and demonstrate respect for human rights. This makes it an interesting “track”, especially in a “new country” as Kosovo where a lot of institution building remains to be done in the media infrastructure.⁴¹⁷ The ECLO has supported the development of the media sector through its IPA-funded projects under the political criteria of the European Partnership with Kosovo. The public broadcaster, RTK, has been frequently criticised for being the “media arm” of the government. The IPA 2009 programme has therefore included the creation of a Broadcasting System in support of Kosovo’s Independent Media Commission. This system will enable the commission to address the abuse the frequency spectrum by illegal transmitters, as well as to monitor the adherence of legal broadcasters to the code of conduct. The goal is to increase the fairness and accuracy of the media and prevent injustices or discrimination. A similar goal has been pursued by giving an EIDHR-grant to the Balkan Investigate Reporting Network. This independent organization acts as a watchdog of the public media, but also delivers critical journalism to a broad public in Kosovo. In addition, the ECLO itself has frequently made use of the media to increase knowledge about the European Union and the peacebuilding and reform processes in Kosovo. The EIDHR grant that has been given in support of the outreach campaign for the International Criminal Tribunal for the Former Yugoslavia can also be seen in this light. Overall, it seems therefore that the ECLO attaches high value to the influence of the media on society.

⁴¹⁷ R. Howard, ‘An operational framework for media and peacebuilding’, *Institute for media, policy and civil society* (January 2002).

Conclusion

The EU became the most important external actor in Kosovo in the period after the unilateral declaration of independence, and the Union wields both its policies for External Relations and those for European Enlargement in Kosovo. The European Commission Liaison Office is responsible for managing the principal Enlargement instrument that is implemented in Kosovo: the Instrument for Pre-accession Assistance. This thesis has showed that many of the projects under the IPA that support democratization, the rule of law and socio-economic reform can be considered as peacebuilding activities in Kosovo's post-conflict context. The ECLO also implements all other EC programmes that have been opened up to Kosovo, of which the most significant are the EIDHR (under the EuropeAid DG) and the IfS (divided between the DG's for External Relations and EuropeAid). The External Relations aspect of the EU's involvement in Kosovo consists furthermore of the EUSR for Kosovo, the CSDP rule of law mission EULEX, and "regular" diplomatic engagement through top-level contacts between Brussels, Pristina and Belgrade. Such contacts have mostly been symbolic when dealing on the intrastate aspect of the conflict within Kosovo, for which the three local EU presences are responsible. However, the EU seems to be increasingly ambitious in the field of international diplomacy ever since the Lisbon Treaty went into force. Some diplomatic successes have been achieved in the interstate aspect of the conflict, of which the most significant one may have been the withdrawal of the fierce Serbian draft resolution for the UN General Assembly. Serbia has accepted to participate in talks with Kosovo that are mediated by the EU, but it remains to be seen how effective the Union will be as a mediator. The European perspective is the most influential "carrot" of the Union to influence Kosovo and Serbia, and it seems obvious that the "status issue" has to be dealt with before either country can accede to the EU, but this is not a process that is likely to be solved without some (diplomatic) fights. The potential impact of the EU in this field continues to be drastically reduced by the refusal of Cyprus, Greece, Slovakia, Spain and Romania to recognize Kosovo. The EU's presences within Kosovo also suffer from the divisions in the Union, but for now they seem to have more potential to actually contribute to the peacebuilding process than top-level diplomacy. It is therefore that the central goal of this thesis was to make a critical assessment of the role of the EU as an international actor that supports the peacebuilding process *within* Kosovo. Independency has become a road of no return, and Kosovo Serbs and Kosovo Albanians will have to live together regardless of the outcome of future negotiations between Belgrade and Pristina. Weak governmental institutions, ethnic tensions and segregation, and huge socio-economic problems characterize the intrastate dimension of this conflict. As the two issues of "local ownership" and "civil society" are fundamental to successful peacebuilding, they have been directive to this thesis. The specific focus has been on how promotion of local ownership and engagement with civil society are mainstreamed in various EU policies and practices.

The European Union Special Representative

The EUSR could be seen as the Union's "political commitment" to Kosovo, as he is the highest EU official in Kosovo. The position of the EUSR/ICR is quite complicated, as he represents the entire EU as EUSR, including the countries that do not recognise Kosovo, while he has to oversee the implementation of the Ahtisaari Plan when acting as ICR. Nevertheless, it seems that both positions have been a useful addition to the EU's involvement in Kosovo. The EUSR provides political guidance to EULEX and promotes overall coordination between the different EU presences and activities. He also acts as

some kind of EU ambassador, who speaks and listens for the EU as a whole, provides advice to Kosovo's institutions, and frequently engages with a whole range of international and local actors and stakeholders. In addition he contributes to the development and promotion of respect for human rights in Kosovo. Pieter Feith's guidance and advice to Kosovo's government as EUSR are not binding, but he personifies Kosovo's European perspective, which is the most important "carrot" to influence Pristina, while he has executive powers as ICR. This has created the paradox that external involvement is used to support self-governance. The ICO/EUSR has relatively successfully dealt with this issue through a reticent attitude on the executive powers, while also making progress on the implementation of plans such as the administrative decentralization. This was one of the biggest achievements in Kosovo in 2009, and has enabled local communities from all ethnic groups to have an influential role in the municipalities where they live. Even more formal progress might have been possible if the executive powers were used more frequently, but this would in turn be a threat to local ownership and popular support for the peacebuilding and reform processes. Real societal changes demand the involvement and support of local stakeholders, while external interveners can only facilitate and support them. Some tensions exist between the local socio-cultural traditions and the universal values and practices that are promoted by the EUSR/ICR as a solution to the conflict and societal problems in Kosovo. Yet, for Kosovo there seems to be no alternative route to peace and prosperity but to aim for European integration. Kosovo has a huge pro-European constituency, which seems to have increased the acceptance of some external involvement in local affairs. However, concrete results remain necessary, because the longer external parties hold on to their intrusive position, the stronger the opposition will grow in the "host country".

The engagement of the EUSR with civil society actors is fairly limited compared to the ECLO and EULEX. As ICR, Pieter Feith had a small grant scheme for NGO activities, but all the money has been spent, and strictly this doesn't count as EUSR engagement with civil society. The EUSR only had a small number of concrete projects, did not provide funding, and his contacts were mostly unstructured and initiated on an "ad hoc" basis. Most of his activities in this field have focussed on promoting the political involvement of citizens and on disseminating information about the EU and the reform process in order to increase popular support. Simultaneously, the EUSR has promoted inter-group reconciliation and respect for human rights, and therefore there is no clear distinction between engagement with "Track 2" and "Track 4" actors. Probably the two most important projects were the Teach a Day project, which focussed on education ("Track 5") but also had clear goals in public outreach and involvement with the media ("Track 9"), and the Progress Report Debates. These debates aimed to enhance discussions on the Progress Report among politicians, but also in the media and among civil society actors, and they have received a lot of attention in the media. In addition, the EUSR is the main point of contact for the media in Kosovo on all issues related to CSDP, and as such has raised public attention and support for European integration, human rights and democratization.

Overall, it is clear that his role on the governmental level is the most important responsibility of the EUSR. Meetings with civil society provide him with useful input, but pressuring and assisting governmental institutions with reforms towards "European Standards" is his major task. Sustainable engagement with particular "tracks" of civil society is limited, but still the EUSR has occasionally been an important interlocutor through his frequent contacts with various actors throughout the country. The most important example is his involvement in getting appointed a Facilitator for Religious and Cultural Heritage for the Serbian Orthodox Church in Kosovo, which is one of the rare

examples of successful engagement between any of the EU presences and the powerful religious organisations (“Track 7”) in the country.

The European Union Rule of Law Mission in Kosovo

EULEX has been described as the “operational commitment” of the European Union. The rule of law operation focuses on institution building and creating the preconditions for a multi-ethnic state. While the operation has had some early successes, and EULEX is already more effective than UNMIK has been in its last years, the EU will have to continue its efforts in this field for quite some time. There are major challenges and progress has been very slow up until now. Corruption and political interference in the judiciary continue to plague Kosovo, and local police officers, judges and prosecutors often face intimidation and opposition. The activities in the wider rule of law area are very important, because an independent and neutral judiciary and police force are necessary preconditions to increase societal trust and prepare the various communities for reconciliation and peaceful coexistence in a multi-ethnic state. Several evaluations have shown that Kosovo Serbs throughout Kosovo have started to pragmatically deal with the Kosovo institutions, which is a signal that there is room for some optimism. In the north of Kosovo, however, the Serb majority continues to oppose the authorities in Pristina. EULEX has only been able to start some activities here because it works “status-neutral”, and has dealt with Belgrade on some technical issues. Support for EULEX is still much lower among Kosovo Serbs, and EULEX has encountered difficulties in finding cooperation partners in Serb civil society, while their input is very valuable to the mission. The mission has therefore sometimes given some extra attention to engaging with this group.

Although EULEX only has limited executive powers compared to the ICR, the dilemma of external intervention in support of self-governance is a big issue for the mission, as the rule of law institutions are a vital component of a state’s sovereignty. This is especially problematic as EULEX is officially not implementing the Ahtisaari Plan, but has to operate “status neutral”. While Kosovo has little experience with liberal and democratic governance, it has the ambition to become part of the European Union, and therefore has accepted the involvement of EULEX. However, the operation has encountered frequent opposition by activists on its intrusiveness in Kosovo’s politics in general, and has also received criticism by several influential NGOs on particular issues such as the Police Protocol and the Albin Kurti trial. The current consensus in international organizations and NGOs is that Kosovo will need EULEX’s assistance for some time to come, but making more progress is necessary because there is a risk of losing popular support and creating dependency within institutions if external assistance lasts too long. EULEX has therefore tried to minimize the negative effects of its intrusiveness by taking measures that increase popular support and promote local ownership and involvement in rule of law reforms. The mission has tried to limit the use of its executive powers in the judiciary and coercive mentoring in the MMA actions to a minimum, and it has respected strict norms on accountability and transparency, although this has not always been perceived as such by local observers and activists. EULEX is not imposing some kind of “new society”, but works together with Kosovo’s government on the transformation of existing rule of law institutions in line with “European Standards”. This will still be quite a challenge, as UNMIK has focused on short-term stabilization when it was creating Kosovo’s institutions. Now many of these are dominated by pre-war and wartime Albanian elites, which in some cases has a negative impact on the long-term state- and peacebuilding processes. EULEX has recently stepped up the fight against corruption at the top-level of public institutions, but if these efforts will be expanded to

popular public figures and politicians there is a risk that the mission will lose some of its backing.

EULEX has no specific MMA Actions on cooperation with civil society organization, but the mission has frequently engaged with these actors in various ways. Many MMA Actions have referred to civil society actors as consultation partners (mostly in the Justice component) or as players to be involved in the implementation phase (mostly Police). Civil society actors can assist and influence EULEX by providing feedback in evaluation meetings and workshops, but also by independently creating and submitting reports, analyses and recommendations on the strengths and weaknesses of the rule of law institutions, EULEX actions, or popular involvement. Such engagement with EULEX is not necessarily aimed at specific MMA Actions, but often at larger aspects of the rule of law. This input is very useful to EULEX, and helps the mission to adjust its policies in line with local concerns. The mission has therefore organized general meetings to share information with all interested civil society organisation, and called upon them to become critically involved in rule of law issues. These meetings have been useful, and representatives from all “tracks” of civil society were welcome to attend. Representatives from most non-governmental “tracks” have participated in such meetings, with the exceptions of “Track 3” (business) and “Track 7” (religious), which are part of civil society but are not usually organized as NGOs. Yet, these meetings have also received criticism for being too informal and unstructured. EULEX has recently declared it wants to make the involvement of civil society actors more structured and transparent, but it remains to be seen how the mission will address this issue. Apart from the involvement in evaluations, discussions, or other forms of critical input, the engagement of civil society actors with EULEX has been limited. While EULEX’s activities in the rule of law contribute to a free business climate, freedom of religious worship, and other aspects of a civil society, most of the various societal “tracks” are not specifically targeted with actions. Exceptions are “Track 4” (citizens), as EULEX has successfully promoted the involvement of citizens in Municipal Community Safety Councils, and “Track 5” (research, training, and education) which has been addressed through the MMA Actions, information-sharing meetings with civil society actors, grant application training, and through making use of reports by local civil society actors. Even with these tracks engagement has been limited to targeting them as a field for action. The Programme Report 2010 has stated that the mission would like to increase the number of actual joint initiatives with civil society organisations, but that it has no budget for such initiatives.

The European Commission Liaison Office

The European Commission Liaison Office is described by the EU as the “reform-driving commitment”. The Liaison Office is the local representation of the EC, and it works to support Kosovo’s regional and European integration through the implementation of EC programmes. The most important ones are the IfS (which was mainly used to quickly provide funding during the transition from UNMIK to EULEX and EUSR/ICR), the EIDHR (which is used to support civil society initiatives on human rights and democratization), and IPA (which supported capacity-building measures and socio-economical and administrative reforms in line with European Standards). In return for this support, the EC wants to see progress on these issues and demands the full cooperation of Kosovo’s authorities in achieving this agenda. The ECLO therefore also monitors and evaluates the reform process. Until now the results have been mixed at best. The EC and its Liaison Office have often expressed their appreciation for the good cooperation and the efforts of Kosovo’s authorities, but didn’t conceal their criticism on the slow pace of the

progress. A lot more remains to be done both on the legislative side, as on implementing reforms and achieving tangible results.

The peacebuilding paradox of external intervention in support of local self-governance is not so much of a problem to the ECLO, especially when compared to EULEX and the EUSR. The ECLO has no executive powers, and although some EC programmes have intrusive elements, Kosovo voluntarily participates in them. This does not mean that there is no pressure on Kosovo. Kosovo's authorities are in charge of the reform process, but the country clearly does not have much of a choice but to cooperate with the European Union. As the first paradox is not very problematic, the same accounts for the other ones. The ECLO has no executive powers it could use to select and support local authorities, but has to work with the ones already in power. Herein it encounters the same problems with the UNMIK-established institutions as EULEX. Trough demands on "European Standards" the ECLO has some influence on which local leaders and institutions receive assistance and which ones encounter criticism, but EULEX leads the fight against corruption and clientelism. This paradox is more of a concern with the various grant schemes, in which the ECLO is actually involved in selecting and supporting local civil society organisations. The ECLO tries to ensure that only organizations that operate in a professional and sustainable manner will get support, but it seems that many NGOs rely heavily on foreign donors and struggle with the development of their own agendas. EC support is mostly given not as funding for institutional development, but for the implementation of concrete projects the ECLO deems necessary, but is not able or willing to implement itself. While supporting civil society actors clearly has some problematic aspects, for the time being it seems necessary to increase local ownership and public involvement in the peace- and state building processes. This again leads to the paradox that the western models of a "civil society", and "European Standards" in public administration are promoted as a solution to Kosovo's problems. As already indicated for the EUSR/ICR and EULEX, this is not as problematic as in many other post-conflict peacebuilding enterprises around the world. Kosovo is surrounded by the European Union and popular support for a future accession to the Union is massive. Some tensions with local socio-cultural traditions are likely to occur during the reforms towards Europe, but finding solutions that are appropriate both to the EU and to the local population is certainly not impossible. The EU's official motto is "Unity in Diversity", and the Union already boasts a wide variety of forms of democracy and civil society.

The involvement of civil society actors in the evaluation process of IPA assistance has been fairly limited. Only about 30 NGOs have participated in public meetings and discussions to provide input to the Progress Report, while many more representatives from all "tracks" were welcomed to join the discussions. These meetings still provided useful inputs and contacts to the ECLO, but the Liaison Office hopes to increase involvement in the future by fostering civil society cooperation with the EESC. In addition, the ECLO has frequently engaged with the various "tracks" of civil society. On the one hand it has provided financial and political support trough the (regional and national) EIDHR grant schemes and the IPA 2008 scheme, while on the other hand various aspects of society were targeted through the IPA projects. Only this first approach has been used in the "tracks" 2 (professional non-governmental diplomacy) and 6 (activism). In "Track 2" various NGOs have been supported for projects that aim to increase political participation, civil society engagement with politics and reforms, while also promoting inter-ethnic cooperation and awareness of minority- and human rights issues. Many of these issues are related to "Track 6", but activists more often tend to operate in opposition to the political system. This role is useful to the EU, as activists provide critical input on developments in society and make sure that governmental institutions cannot act unchecked. Several

organisations with some activist aspects have received IfS and EIDHR support, but mostly on issues that are directly in line with the Union's agenda in Kosovo.

The "tracks" 3 (business/economy) and 7 (religious organisations) have only been targeted by the ECLO through IPA projects. Preparing Kosovo for the European Union's market economy is one of the ECLO's major tasks, and several IPA projects are completely or partly geared towards this goal. Various projects have worked on creating and strengthening the institutional framework that is necessary to support economical development, on providing support to various regional and rural/agricultural economic initiatives, and on improving the opportunities for training and education for unemployed people. In contrast to all these economic projects, "Track 7" has hardly received attention. Respect for minority rights and ethnic diversity were promoted through various other "tracks", but these do not specifically relate to religious organisations. Some progress has been made with the reconstruction of religious heritage, but legislation on religious organisations remains inadequate, and travelling pilgrims and important religious sites still depend on security measures by UNMIK and the Kosovo Police.

The "tracks" 4 (citizens), 5 (education, research and training) and 9 (media) were addressed by both the EIDHR and IPA. This is an indication of the importance of these aspects to the Union, although business and the economy also clearly have a high position on the list of priorities. EIDHR activities in "Track 4" have mostly focussed on the empowerment of vulnerable groups, such as women, children, disabled people and minorities. Not all the grants are explicitly related to peacebuilding, but many of the problems related to these groups in Kosovo are symptomatic for post-conflict societies. Most of the IPA 2008 grants have also been given to organisations active in this field. The "regular" IPA activities in this field have included a wide range of activities that support the government's capacity to address socio-economical and cultural inequality and engage with vulnerable groups. This includes promoting diverse and representative workspaces, restoring public facilities, facilitating inter-ethnic cooperation in municipalities and funding cultural activities. A similar complementary approach of various EC programmes is visible in "Track 5". The TEMPUS and Erasmus Mundus programmes have been opened to Kosovo, and a significant number of EIDHR and IPA projects have components that relate to research, education and training. A particular focus of many EIDHR-funded projects has been on providing training and education to vulnerable groups in order to increase their chances on the job market, and their capacity to become involved in societal issues. The IPA has furthermore supported education and training opportunities for civil servants on EU-related issues, in order to smoothen up the reform process. Many media projects are related to the "tracks" 4 and 5, as the ECLO has frequently used the media in attempts to inform citizens on the EU and engage them with the peacebuilding process, while EIDHR funds have been given in support of independent research and media reporting. In addition, the IPA was used for measures that are intended to improve the independency of the media in Kosovo.

Conclusive remarks and recommendations

Before moving on with the final remarks, it is important to keep in mind that the EU is not a sole actor that has to do everything. Various other institutions and organizations have their own independent activities aimed at conflict resolution and peacebuilding in Kosovo, while the largest responsibility lies with Kosovo's government and population. The EU is the most important external peacebuilding actor, however, and this thesis has aimed to assess the effectiveness of its policies and programmes in general, as well as in their capacity to promote civil society engagement and local ownership. One of the major problems with this role is the ongoing division within the EU on the "status issue". This is

especially problematic when addressing the interstate aspect of the Serbia-Kosovo conflict, but it has also affected the ability of the Union to act in a decisive manner within Kosovo. The Union should therefore continue its efforts to seek unity on Kosovo, especially now that Belgrade and Pristina have agreed to take part in direct talks that will be mediated by the EU.

Despite the “status neutral” approach of the presences within Kosovo, the combination of CSDP and Enlargement tools has worked very promising so far and has ensured that many of the reforms and developments in Kosovo seem to be more sustainable than those in other post-conflict situations around the world. In this respect it is very important to remark that Kosovo is of great significance to the European Union because of its geographical location. This is reflected in each of the three presences that have been described above, which have different, yet complementary roles. In addition to the prominent EUSR, and the expensive CSDP rule of law mission, Kosovo had the highest IPA budget per capita of all (potential) candidate countries, and a sizeable EIDHR allocation has been reserved for the country. The inclusion of Kosovo in the Enlargement process has been very useful to regular European Commission programmes as well. Instruments such as the EIDHR have been implemented by the local EC Liaison Office, which has more knowledge of local problems and needs than EU officials in Brussels. Another striking aspect of the Union’s engagement with Kosovo was the grant scheme under the IPA 2008 programme in support of civil society, which was implemented in a way that is comparable to the EIDHR. This exceptional use of Enlargement funds shows how the ECLO is able to respond to local needs, as the annual IPA programmes are based on the SAP evaluations, in which both governmental and civil society actors are involved. While Kosovo is important to the EU, rapprochement to the Union equally seems to be the only path to stability and prosperity for Kosovo. Some tensions may exist between Kosovo’s socio-cultural traditions and the “European Standards”, but the country has no choice but to move on in this direction, and public support for rapprochement to the EU is higher than in any other country in the Western Balkans. The paradoxical intrusiveness of the various EU presences in support of self-governance is therefore not so much of a problem in Kosovo, although concrete progress towards “European Standards” has to be made, and responsibilities need to be devolved to the legitimate local authorities as soon as realistically possible.

Despite the good prospects of combining CSDP and Enlargement, both the ECLO’s Progress Report and EULEX’s Programme Report have reported mixed results at best in the institution building and reform efforts. Especially the position of the Kosovo Serbs (and other minority groups) remains an issue of concern. Their support and involvement with the administrative decentralisation of Kosovo and participation in the Municipal Community Safety Councils are positive developments. Yet, more efforts remain necessary to improve the representation of minorities in institutions, and specifically to ensure the rule of law in Northern Kosovo. Now that it has been about two years since the EU has taken over from UNMIK, it is also about time that EULEX starts to make more progress on its executive tasks regarding war crimes cases and the fight against organized crime, corruption, and clientelism. These long-term peacebuilding efforts will not be easy, as the pre-war and wartime Kosovo Albanian elite dominates many of the UNMIK-established institutions. To improve the speed of reforms it seems necessary that the EU increases its pressure on Kosovo’s authorities, both through the EUSR and the “carrot” of European Integration, and the ECLO’s support and reform programmes.

While more and faster progress is desired, the executive powers can only be handed over when Kosovo’s authorities have the necessary capacities and meet the

requirements of good governance and accountability. Any exit strategy that is less ambitious is undesirable and would harm the EU's economical and security interests in the region. As the EU has always known that transforming Kosovo would not be an easy task, all the three presences are mandated to engage with civil society actors in order to enhance public support and promote local ownership of the state- and peacebuilding processes. While a large part of the general public in Kosovo (and elsewhere) probably considers anything that is blue and bears yellow stars as part of a monolithic European Union, in reality there are some challenges in the cooperation of CSDP and Enlargement policies. Overall, the cooperation and exchange of information seems fine on the political and governmental tasks. However, the example that EULEX has complained that the mission and its potential partners in civil society have no budget for shared initiatives shows that some improvements remain possible. The ECLO might for example be able to assist with requesting IfS or EIDHR funds for such projects. Closer coordination between the three presences on engagement with civil society actors is therefore desirable.

A coherent approach could smoothen and speed up the development of a sustainable and professionally organized civil society in Kosovo, and would improve the capacity of NGOs to critically monitor institutions, participate in the legislation process, and give critical input to the Progress and Programme Reports, which is very important to EULEX and the ECLO. Until now the participation of civil society actors in meetings and discussions on these reports has been somewhat disappointing. These meetings were open to representatives from all "tracks" of civil society that were interested to participate, and they have already provided valuable information on local concerns and observations, but a more structured and transparent approach is needed to increase the number of participants and the quality of their input. It would also be useful for EULEX and the ECLO to find a structured way to receive input from "Track 3" (businesses, investors, trade unions) and "Track 7" (religious organisations) actors, as these are often not organized as NGOs and have therefore not joined the evaluation meetings, while they are an influential aspect of civil society.

Although more coordination could improve engagement with civil society, the three presences have already frequently engaged with a wide variety of civil society actors in various ways. Engagement with civil society is very different for the EUSR, EULEX and the ECLO, as each presence has its own tasks and responsibilities. However, when the results of the three are added, we have to conclude that engagement with civil society has not equally focussed on each of the "tracks" of civil society. The Union's engagement with activists and especially religious organisations has been limited compared to the other "tracks". This is not surprising, as these two "tracks" seem to be the two most difficult ones to engage with for governmental actors, but they are also important. The EU has engaged with several organisations that have some activist aspects, but most of these were aimed at goals that are shared by the EU, such as the promotion of human rights and the fight against corruption and political interference in the rule of law. While EIDHR grants can only be used to support such goals, it would be useful to receive input in evaluation meetings and discussions from critical organisations that oppose the EU's executive powers, or have radical viewpoints on independency or inter-ethnic cooperation. Engaging them in the dialogue might be difficult, but the EU should at least make an attempt, as such involvement would increase local involvement and ownership of the reform process, thereby making it more difficult to simply oppose everything that happens. Similar problems have been encountered in "Track 7", as religion is an important aspect in the ethno-nationalist divide in Kosovo. Both Kosovo Albanians and Kosovo Serbs have a lot of trust in their respective religious authorities, which therefore have a lot of potential to influence society both for good and worse. The EUSR's involvement in

appointing a facilitator for the Serbian Orthodox Church was a first positive step in this respect, but more should be done to engage religious organisations in the process of reconciliation and peacebuilding.

The EU's engagement with all other "tracks" was significantly better. Both the Progress Report and reports by international monitoring NGOs have indicated that Kosovo's civil society has slowly moved forward in the years after the declaration of independence, but they also noted that the development of the capacities of independent civil society actors still needs more progress in most "tracks". They are supported by the EIDHR and IPA 2008 grant schemes, which are based on the idea that civil society actors can contribute to an open, democratic society and local ownership of the peace- and state building processes. However, by selecting and supporting civil society actors in Kosovo, the EU and other international donors risk to create financial dependency, which in turn leads to project-based and donor-driven agendas that are not locally embedded and have limited long-term sustainability. This risk also arises as the EU has provided grants to various projects it considers necessary, but is not able or willing to implement itself. Dealing in a satisfactory way with this paradox is complicated, as it takes some time for a sustainable and self-reliant civil society to develop, while the EU relies on civil society actors to increase public involvement and foster local ownership of the transformation and reform process. For now there is need for external assistance to civil society actors in Kosovo is apparent, as the competence of local NGOs to independently monitor governmental institutions, to provide useful input in policy evaluation meetings, and to participate in the legislative process, remains insufficient without financial support for these activities. Even without long-term sustainability these are useful activities, but the existence of independent and professionally organized civil society actors is an essential part of each open, democratic society. If the Union is serious about its efforts to ultimately integrate Kosovo (and the rest of the Western Balkans) into the EU, it should not only give grants to concrete projects, but also provide structural political and financial assistance to the institutional development of civil society.

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Appendix II List of Abbreviations

BIRN	Balkan Investigative Reporting Network
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECLO	European Commission Liaison Office
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EPLO	European Peacebuilding Liaison Office
ESDP	European Security and Defence Policy (has been replaced by CSDP)
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representative
HR	High Representative of the Union for Foreign Affairs and Security Policy
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICJ	International Court of Justice
ICR	International Civilian Representative
IDP(s)	Internally displaced persons
IfS	Instrument for Stability
IPA	Instrument for Pre-accession Assistance
ISG	International Steering Group
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KP	Kosovo Police
MMA	Monitoring, Mentoring and Advising
MTD	Multi-track Diplomacy
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OSCE	Organisation for Security and Co-operation in Europe
PSC	Political and Security Committee
RAE	Roma, Ashkali & Egyptian
RTK	Radio Television of Kosovo
SAP	Stabilization and Association Process
SAPD	Stabilization and Association Process Dialogue
TACSO	Technical Assistance for Civil Society Organisations
TAIEX	Technical Assistance and Information Exchange
TEMPUS	Trans-European Mobility Programme for University Studies
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo