

## Chapter 4

# EULEX Kosovo: Projecting the EU's Normative Power via a Rule-of-Law Mission



EULEX Kosovo was deployed in very difficult political conditions. Already on 14 December 2007, the European Council had approved the mission's sending of 1800 to 1900 people to Kosovo. The final decision on the deployment of EULEX was planned to be taken on 28 January 2008. However, it was postponed due to concerns over the EU lacking the legal grounds for the deployment and the problem of Kosovo's unresolved political status that were raised by particular member states (Grevi 2009, 354–355). At the time, the media speculated the delay was due to the EU's concerns over the second round of the presidential elections in Serbia taking place on 3 February 2008, as well as the possibility of signing the Stabilisation and Association Agreement with Serbia on the same day. These rumours were denied by EU sources (B92 2008).

On 4 February 2008, the EU Council adopted a joint action establishing the mission (Council Joint Action 2008a) and appointed Dutch diplomat Pieter Feith as the EUSR in Kosovo (Council Joint Action 2008b). The final decision to deploy the mission was, however, made as late as 16 February 2008 (External Relations Council 2008). The mission's task was to support the Kosovar authorities in all areas related to the rule of law, with priorities including to address immediate concerns regarding the protection of minority communities, corruption and the fight against organised crime (Grevi 2009).

Kosovo declared its independence only one day later, on 17 February 2008, and committed itself to implementing the Ahtisaari Plan (van der Borgh 2012). By substituting UNMIK with its own mission, the EU wanted to take over the political ownership and oversight of the process of Kosovo's independence, which could not happen without a compromise among EU member states. The day after the declaration of independence, the Council noted the EU member states would accept their decisions on their relations with Kosovo in line with national practice and international law (Zupančič and Udovič 2011).

In short, “while consensus could be achieved within the Union to launch an ESDP operation mandated to reform and support Kosovo's rule of law institutions, member states diverged on the recognition of Kosovo as an independent state” (Grevi 2009, 356). The mission was therefore framed as having a neutral status and retaining

executive powers combined with a widespread local presence. It was argued that the mission's neutral status was a consequence of an innovative procedure within the EU whereby member states put their disagreements aside and instead discussed those points they could all agree on (Interview 7 2016f and 9 2016h).

However, some of those interviewed as part of our project go further and claim that EULEX's creation was an excuse for the lack of any clear policy and commitment to Kosovo of the non-recognising countries and the EU as a whole, while trying to showcase the EU's strong position within the region. This absence of any clear policy and commitment was masked by the emphasis on more technical aspects of the police reform and, as will be shown in this chapter, has posed a significant obstacle to EULEX's performance in Kosovo. As Radin (2014, 183) puts it, EULEX has been in the "awkward position of assisting the Kosovo government while having no formal opinion about whether Kosovo was an autonomous region of Serbia or an independent state".

### **Mandate**

Nonetheless, political ambiguity did not stop the EU member states deploying the first EULEX officers, which then amounted to fewer than 500 personnel (or about one-quarter of the planned figure). De Wet (2009) emphasises that in the transition period EULEX had to accept some compromises regarding its functioning; the postponing of the final negotiation phase regarding the status by one year, as well as the drastic end to the negotiations with Kosovo's unilateral declaration of independence in February 2008, altered many of the original assumptions.

The first of these assumptions was that EULEX would take over reform of the security sector and institution-building in the area of the rule of law, as envisaged in the Ahtisaari Plan. The Ahtisaari Plan had proposed a transition period of 120 days for the Kosovo Assembly to adopt the Constitution and relevant legislation in compliance with the proposal. But the Plan itself remained disputed at the international level while Kosovo Serb municipalities also rejected the proposed legislation.

Second, EULEX was not in a position to be deployed all across Kosovo. North of the Ibar River, Kosovo Serbs demonstrated open resistance. In 2011, they demolished two crossing points linking Kosovo to central Serbia (Jarinje and Brnjak). Three years earlier, in March 2008, a group of Serbs occupied the court building in northern Mitrovica. Such actions made customs collection and the exercise of jurisdiction in the north of Kosovo temporary impossible. Moreover, Serb-majority municipalities in northern Kosovo (Kosovska Mitrovica, Leposavić, Zvečan and Zubin Potok) several times participated in Serbian parliamentary and local elections, electing new city councils outside of the Kosovo state jurisdiction.

Third, there was considerable confusion regarding which law applied to the police, judiciary and customs services—Kosovo Serb authorities in the north of Kosovo applied the 'UNMIK law' (adopted between 1999 and 2007) or earlier Yugoslav regulations, while the new Kosovar authorities enforced new legislation that was meant to be applied all over the country (Grevi 2009, 356–357).

Next, the expected transfer of authority and equipment (buildings, vehicles) from UNMIK to EULEX did not happen since the two missions still co-existed side by

side in 2009. UNMIK was unable to scale down as quickly as anticipated, while EULEX was unable to deploy according to the planned schedule—both factors caused uncomfortable friction between the missions (Grevi 2009, 357). Facing the dilemma of whether to deploy only in parts of Kosovo (Albanian majority areas), with the risk of paving the way towards the eventual split of the country along ethnic lines, or to wait for an improvement of the political context to deploy Kosovo-wide, EULEX entered a period of operational hibernation until December 2009, when EULEX's initial operational capability was finally declared (Grevi 2009, 359). During that transition period, the Head of the EULEX mission delegated the responsibility to undertake the activities necessary for EULEX to be fully operational to EUPT (WOSCAP 2017).

Finally, the political impasse complicated the position of the International Civilian Representative (ICR)/EUSR and complicated its relations with EULEX. The first problem already appeared in the role of the EUSR. Shortly after independence, Peter Feith was appointed the first ICR in Kosovo by the International Steering Group (a group of countries that recognised Kosovo's independence and supported full implementation of the Ahtisaari Plan from the outset).

Peter Feith then had two duties to perform; one as the EUSR and the other as the ICR. As the WOSCAP report (2017, 21) notes “when performing his ICR tasks, Feith had to constantly declare the irreversibility and importance of Kosovo's newly gained independence for stability in the region, while as the EUSR he represented the EU—of which five countries did not recognize Kosovo's independence”. According to Greiçevci (2011, 297), this has hindered EULEX's capacity to act as a consistent actor in Kosovo. Moreover, it has created a problem in planning the mission's activities. For example, the Greeks and the Cypriots argued there could be no reference to specific Kosovar ministries as a counterpart to EULEX in any EULEX documents since that would per se imply that Kosovo is an independent state (WOSCAP 2017, 21).

The EULEX mission has therefore been unique in many respects. Its mandate, adopted in February 2008, is vast and unprecedented in the context of the civilian CSDP. When launched, the mission's main goal was to support and assist local institutions, judicial authorities and law enforcement agencies in becoming accountable, inter-ethnic, sustainable and independent of political interference, according to the best international and so-called European standards (Grevi 2009, 356–357).

As declared in Article 2 of the Council Joint Action (2008a), the mandate of the EULEX is to:

assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. EULEX KOSOVO, in full cooperation with the European Commission Assistance Programmes, shall fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

The first mandate of EULEX from 2008 until 2010 was therefore supporting Kosovar authorities by MMA activities in each rule-of-law component (judiciary, police, customs). Through these activities, EULEX was assisting Kosovar institutions, judicial authorities and law enforcement agencies so as to reinforce a multi-ethnic justice system, police, and customs service.

In addition, EULEX obtained *executive powers*. Those functions were “narrower in scope, covering the repression and prevention of crime, civil justice and crowd and riot control” (Capussela 2015, 107). They were also residual in nature, meaning that EULEX only exercises them when its MMA activities were insufficient. In those cases, EULEX had a duty to act. Particularly in criminal matters, the mission’s task was to ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated and prosecuted (European Union External Action 2015).

The criteria for deciding to act in an executive or advisory capacity were set in the mission’s operational plan, as well as in Kosovar law, according to which “the mission’s police and judicial staff must investigate, prosecute and judge the cases that fall into a set of pre-defined categories—which Kosovo’s authorities were *ex ante* deemed not yet fit to deal with—as well as those lesser crimes in respect of which the domestic authorities appeared unable or unwilling to act impartially and effectively” (Capussela 2015, 107). With regard to such executive powers, Capussela (*ibid.*) notes that EULEX’s mandate was daunting, especially considering how “widespread crime and impunity were in Kosovo and how weak its law enforcement system was”.

To fulfil these tasks, EULEX was allocated an annual budget of approximately EUR 125 million and a staff exceeding 3000 during the first four years of its functioning until 2012 (EULEX 2016a). For comparison, in early 2008 UNMIK had a budget of EUR 160 million and a staff of approximately 5000, although the UN mission was not only in charge of the rule of law but also of administering Kosovo (Capussela 2015, 108). In June 2010, EULEX’s mandate was prolonged by another two years. Content-wise, another extension of EULEX’s mandate came in 2012 when the mission was reconfigured into two major sections: the Executive Division, focused on the mission’s executive mandate, and the ‘Strengthening Division’ aimed at working on MMA activities in the local judiciary, customs and police (EULEX 2016a; Fig. 4.1).

In addition to these two core objectives, another two operational objectives of EULEX should be mentioned. Through its ‘North’ objective, the Mission sought to restore the rule of law throughout the north of Kosovo (areas north of the Ibar River mostly populated by the Serbs). In this regard, EULEX maintained its executive functions at the Mitrovica Basic Court and provided structured MMA support to the key leadership of Kosovo Regional Command North.

The fourth operational objective of EULEX’s mandate was supporting the implementation of dialogue between Serbia and Kosovo. In practice, this meant the mission was obliged to provide technical support in implementing rule-of-law related agreements reached in the EU-facilitated dialogue, including the integration of Kosovo Serbs into Kosovar security structures and some other tasks (EULEX 2016a).



**Fig. 4.1** Two sides of EULEX's mandate (IECEU 2016b)

In the second half of 2012, the number of authorised staff was reduced to 1250 'internationals' and 1000 positions for local support staff (Capussela 2015, 114). The next important change in the mission's mandate came on 12 June 2014 when the EULEX's mandate was again redefined (Council Decision 2014/349 CFSP). A new composition of the court panels was set. Since then, the composition has consisted of a majority from Kosovo, with 'internationals' being in the minority.

Further, it was decided that EULEX would not take on new cases and would gradually hand over competences to the Kosovar judicial system, with the exception of Northern Kosovo where EULEX was supposed to remain in charge of judicial proceedings until the EU Facilitated Dialogue between Serbia and Kosovo also brought a solution for the judiciary (*ibid.*). In June 2016, the Council of EU extended the mission's mandate until June 2018 and provided over EUR 60 million for the mission's budget. This prolongation of the mandate for another two years did not bring any substantial changes and followed the path of handing over responsibilities to the Kosovar authorities (Boštjančič Pulko and Pejič 2016, 111; Zupančič et al. 2017).

The EULEX mission is therefore complex and its mandate is constantly evolving and integrating new challenges needing to be addressed by the mission. It is moreover challenged by public opinion in Kosovo. This CSDP mission attracts broad and often legitimate criticism of deficiencies in the planning and implementation of the mission's mandate, including criticism from its own personnel; further, it is often criticised in academic circles (Greičevci 2011; Radin 2014; Qehaja 2017; Mahr 2017; Zupančič et al. 2017). We can briefly point to the so-called Jacque Report published in April 2015, published in answer to public accusations by a mission staff member who highlighted the existence of corruption in the judiciary (Jacque 2015).

Federica Mogherini, the EUHR for CFSP, wanted to clarify these allegations. She asked Professor Jean-Paul Jacque to investigate them. In his report, Jacque refuted the concrete allegations of corruption, but also highlighted important shortcomings

of the EULEX mission. In doing so, he proposed this CSDP mission be completely reformed, or consider a complete withdrawal from Kosovo (Jacque 2015).

Dr Andrea Capussela, another former worker at the mission, not only thinks the mission is unsuccessful in fulfilling its mandate; its presence is even hurting Kosovo, hence EULEX should be recalled immediately (Capussela 2015). Kursani (2013), Radin (2014), Malešič and Juvan (2015) also note the mission has only made limited progress with the judiciary, especially in relation to organised crime and corruption. Moreover, the 2012 European Court of Auditors report found the EU assistance to Kosovo has not been sufficiently effective in relation to the rule of law, once again notably in terms of the pervasiveness of corruption and organised crime (The European Court of Auditors 2012).

However, it is indeed not surprising that the peacebuilding literature often examines Kosovo as a case study since it is the largest and longest running civilian CSDP mission ever deployed by the EU (Grilj and Zupančič 2016). Therefore, a theme in the literature is to regard EULEX Kosovo as a case study of the constantly evolving CSDP (Kammel 2011; Grilj and Zupančič 2016).

The following subchapters will take a different and innovative approach in identifying the limits of the EULEX mission. In accordance with the book's theoretical framework, we explore whether the EU is expressing its normative identity in its interactions with others—does it see it as its obligation to contribute to peace, does it build its image as a peacebuilding actor. It will analyse if the EU's normative interests are others-empowering, based on values perceived as a force for good, which reflect the mission's ultimate goals (in our case, peacebuilding). Moreover, it will assess whether the EU itself 'behaves' according to the values and norms it itself promotes, and if it tries to reproduce these norms elsewhere. Last but not least, the normative ends achieved with this—which we will consider thoroughly—should also be a force for good. The outcomes of the mission should be to correct the attitudes and behaviours in 'a targeted country' that once led to violent conflict.

## 4.1 Police

With regard to strengthening the Kosovo Police, EULEX has specifically wanted to pursue a strategic approach. Previously, the UNMIK mission included a large international policing component (UNMIK Police) with two tasks: to establish a new police force and maintain civil law and order. However, as noted by Eckhard (2016, 102), EULEX mission "managers were determined not to repeat what they perceived as a mistake made by UNMIK"—before then, the international community's involvement "had been considered as extremely reactive to the immediate necessities on the ground, lacking strategic over- and fore-sight" (Spernbauer 2010, 18).

As a result, the mission's administration ('Programme Office') drafted the so-called programmatic approach that outlined a cascade of activities in the Programme Implementation Documents (PIDs) (EULEX 2009, 6). These included a list of MMA activities. For example, one action aimed to formulate a

crime-reduction strategy together with the Kosovo police. Each of these actions was linked to performance indicators and a scheme that enabled reporting.<sup>1</sup> In short, the document was there to ensure that concrete outputs on the ground would follow the mission's strategic objectives (Eckhard 2016, 102).<sup>2</sup>

In the EULEX's own wording, what is envisaged in the document "is a process of reform: i.e. moving Kosovo's police /.../ from their 'current state' to a 'desirable state' of sustainability, accountability, multi-ethnicity, freedom from political interference, and adherence to internationally recognised standards and European best practices" (EULEX 2009, 7). This statement clearly refers to the EU's normative identity in this case of peacebuilding: the desirable state is what the EU perceives as its contribution to peace in the country (if the desirable state is ever achieved). The EU is therefore setting a 'standard' or a normative interest of its foreign policy that is empowering somebody other than itself, it is a statement of values. It reflects the 'good' goals of peacebuilding: "the 'desired end state' envisages rule of law institutions that are able to operate without international intervention or substitution" (EULEX 2009, 7).

In the next few years, 11 Project Implementation Documents were produced, focussing the MMA actions on four main areas according to the 'baseline assessment' established in June 2009 that presented the shortcomings of the Kosovar police force (EULEX 2009, 12). In the documents following the baseline assessment, these four key action areas were tackling criminal activities more effectively, conducting effective patrolling and ensuring public order, providing secure borders and, lastly, strategic policing and management. Another important action was to keep the Kosovar police as multi-ethnic as possible, with a considerable share of Serbs being integrated into the police force.

Some capabilities were to be established from scratch, such as the protection of sites and monuments of religious nature, a border police along 'the green border' with Macedonia and a task force to deal with corruption (EULEX 2010, 4). According to EULEX's own reports, there was almost always progress in each of these four key areas. In a report noting progress between 2009 and 2010, for example, three out of the four areas are graded with a B (slow progress/need more impetus), while "providing secure borders" is ranked as A (progress) (EULEX Programme Report 2010, 7). This shows the EU itself believes it is achieving the normative peacebuilding goals, indeed improving the circumstances required to achieve a peaceful society (addressing 'bad' behaviour). However, is this really the case?

Despite the initial EUPT findings that the main focus of EULEX should be the judicial sector, the initial deployment of EULEX personnel looked more like a robust executive police mission (in its structure and staff composition) than a

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<sup>1</sup>EULEX based its self-assessment on EULEX monitors dispersed throughout the police component over a period of time. For more details, see the CONOPS and related documents referring to PIDs, as the instruments whereby programme activities, performance indicators and reporting mechanisms are defined (EULEX 2009, 9).

<sup>2</sup>A 'catalogue' of all MMA Actions can be found at the EULEX official website: <http://www.eulex-kosovo.eu/en/tracking/>.

judiciary (Interview 18 2016p). While some interviewees suggested there might be financial reasons behind it, noting judges and judicial staff are much more expensive than police, others claim this was a necessary first step to secure basic conditions for development of the rule of law (Interview 9 2016h).

### ***4.1.1 Security Environment***

Although the mission was deployed to Kosovo almost one decade after the end of major armed hostilities, several interviewees mentioned the issue of security limitations due to security threats. EULEX employees pointed out that “it took almost a year for Head of Mission to sign permission for EULEX police to go on joint patrols with Kosovo Police in the North, and even that was limited only to daytime” (Interview 14 2016l).

This has prevented the mission from realising its objective of strengthening the rule of law. On numerous occasions, Kosovo Serbs have erected barricades and roadblocks in the North of Kosovo that effectively prevented EULEX, as well as Kosovar Customs and Police, from operating north of the Ibar River and thus reaching Kosovo's northern border with Serbia. Protests and resistance in the north have probably also had an impact on the reluctance to engage EULEX more in the north (in order not to provoke more riots and violence) (Interview 7 2016f). Such limits have had a negative impact on the wider picture of the mission's engagements, and thus also resulted in reduced efficiency, especially in its executive mandate (Mahr 2017; Qehaja and Prezelj 2017). These concerns were strengthened in 2013 when EULEX suffered a tremendous blow when its Lithuanian customs officer Audrius Senavicius was shot and killed in his car near Zvečan north of the Ibar (Interview 20 2016r).

It should be noted that EULEX's inability to access northern Kosovo has decreased in the last couple of years; some positive changes have been made for the movement and security of EULEX staff in northern Kosovo, although access is still not as good as in areas south of the Ibar River (Cierco and Reis 2014). The failure to also ensure a comprehensive presence in the north was exposed as an important EULEX shortcoming (Interview 11 2016j). Security limitations thus remain one of the main factors seriously constraining any greater executive engagement of EULEX in the north of Kosovo.

Such events also act as a reminder of the country's continuing very fragile state of security. Moreover, it is almost impossible to argue that EULEX (and the police sector) has been the only institution playing a crucial role in preventing any new escalation of conflict. Several international organisations, NGOs and foreign embassies are present in Kosovo that pursue their own interests and follow their own agendas, which occasionally run contrary to the general goal of peacebuilding in Kosovo. Hence, one cannot attribute credit for the success in conflict prevention and peacebuilding to just one organisation or mission.



### 4.1.2 *EULEX as a Mediator*

In terms of strengthening the police, EULEX has directly and indirectly served as a link between Serbian and Kosovo authorities, in line with the EU's broader engagement in the region: the so-called Serbia–Kosovo dialogue and its “Support to Dialogue Implementation” objective. The EU-facilitated dialogue between Belgrade and Prishtina may be seen as a major example of the EU's positive impact, substantially influencing all areas of the EU's engagement in the region (Interviews 1 2016a and 20 2016r). Some interviewees also argue this shows the EU's potential to foster reconciliation. EULEX's substantive ‘middle man’ role can, however, be viewed as both positive and negative for Kosovo's long-term development (Interviews 13 2016k and 14 2016l).

On the positive side, EULEX has helped with the normalisation of relations between Kosovo and Serbia by taking steps in the direction of bringing representatives from both sides to the table, establishing the exchange of information, along with a certain degree of coordination and cooperation (Interviews 14 2016l and 15 2016m).<sup>3</sup> The first signs of cooperation between the Kosovar and Serbian border police here were regarded as a successful practice (Interview 15 2016m). This clearly shows that technical cooperation on the tactical level between two countries' police forces, which often have a common goal (e.g. preventing human trafficking), can progress relatively well if not hindered or prevented by ‘higher authorities’ pursuing their own political agendas, that are often counterproductive for peace-building. Further, EULEX has also helped accelerate the integration of former Serbian police staff into the Kosovar Police, and provided basic orientation training courses for officers of Serb ethnicity wishing to join the Kosovo Police (EULEX 2016a).

On the negative side, our interviewees noted that current contacts and exchanges between the Serbian and Kosovo Police are only possible because of EULEX. Without the presence of EULEX, meetings are often cancelled or postponed. When this research was conducted in 2015, several interviewees pointed out that Serbia then preferred to talk only through EULEX, seen then as ‘a bridge’ between the two countries. An interesting question that arises here is thus what will happen when EULEX eventually ends its mission, and whether the links and cooperation so established will be strong enough to survive the absence of EULEX (Interviews 14 2016l and 19 2016q).

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<sup>3</sup>Aside from the police sector—peeking into the internal affairs sector more in general—the mission also certified a total of 12,391 copies of original civil and religious registry books of birth, marriage and death, and handed them over to the Ministry of Internal Affairs and the Civil Registration Agency in March 2013. EULEX also assisted Belgrade and Prishtina in establishing six co-located interim crossing points, where both parties share common infrastructure at the same geographical location (Interview 14 2016l; EULEX 2016b).

### 4.1.3 *Cooperation with other Actors*

The norms established by the EU as a mediator via its normative power—promoting cooperation—should reflect the EU's own way of acting. The EU should therefore behave according to the norms and standards it promotes. In this field, cooperation between EULEX and KFOR was seen as an example of good practice in civil-military relations (Interview 9 2016h). Cooperation and coordination are established on different levels, such as heads of missions, deputy heads of missions, chiefs of staff, chiefs of security, intelligence, as well as the police.

A joint operation procedure defines the interoperability and comprehensiveness of the mission's goals and operations between EULEX and KFOR. It distinguishes the two missions' procedures and sets the basic framework for them to cooperate. Counterpart representatives of the two missions assessed it as a clear and comprehensive tool that was jointly prepared and coordinated by both missions (Interview 6 2016e). This is quite a new tool that has developed over time when a need for closer coordination was recognised and necessary measures to alleviate the issue were introduced.

Moreover, an actor with normative peacebuilding goals should function as 'a force for good' in a post-conflict society, which in our case means good cooperation and coordination with other prominent actors in this field so as to try to maximise the positive effect. However, a certain lack of coordination was identified in the authority and responsibility over the two institutions in situations where both EULEX police and KFOR military units find themselves in the same field of operation. Some interviewees from KFOR believe the cooperation between EULEX and KFOR is weak due to the widely held opinion among EULEX personnel that KFOR is no longer necessary (e.g. during protests in December 2015 and January 2016 the Kosovo police was in charge of riot control and did very well) (Interview 6 2016e). The quality of cooperation is evaluated somewhat differently and more positively by high-level EULEX officials (Interview 9 2016h). EULEX and KFOR exchange liaison officers on a permanent basis and cooperate in other ways (Interview 20 2016r). Joint trainings have also been introduced to address the issue and increase interoperability in the field.

But while cooperation on riot control between EULEX and KFOR is therefore evaluated as generally good, communication with the Kosovo Police and the consequent coordination of all three responders has occasionally been challenging (Interview 20 2016r). For example, KFOR is the third responder and so must go through EULEX structures if it is to cooperate with the Kosovo police, leading to criticism of the long response times, especially among KFOR staff:

EULEX should be in the line of communication between the Kosovo and Serbian police. If something happens at the border, the Serbs call EULEX, EULEX calls the Kosovo border police, and the latter calls people on the ground. But for this process they need one day! If there is illegal activity this is useless. The communication does not work /.../ (Interview 17 2016o).

As noted, in extreme cases a whole day may be needed for the communication to proceed and a decision to be taken, which is neither acceptable nor normative in situations requiring an urgent response. EULEX, as the second responder, is especially a link between the Kosovo Police (first responder) and KFOR (third responder). This implies that the quality of communication between KFOR and the Kosovo Police *can only be as good* as the communication between EULEX–KFOR and EULEX–Kosovo Police. Simply put, the relations among the three actors responders (Kosovo Police, EULEX, KFOR) are assessed as somewhat problematic since according to interviews there is a lack of coordination and clear division of responsibilities (Interview 6 2016e).

In terms of the cooperation of the actors engaged in peacebuilding in Kosovo, one must also acknowledge the common trainings hold the potential to boost and enhance the efficiency of the actors while also contributing to overall comprehensiveness. There are positive examples of common trainings, such as the joint EULEX–KFOR training, revealing promising aspects of civil–military cooperation (Interview 20 2016r). Another example of good cooperation occurs between EULEX and the OSCE in the field of training Kosovo Police, where EULEX is continuing the process of police education that started with the Kosovo Police Academy, previously managed by the OSCE (ibid.).

Some of our interviewees believe there are still further possibilities of improvement regarding joint trainings which could flow from joining the resources of several institutions in Kosovo. It would be necessary to strengthen information sharing, for example, in the field of training where EULEX, the OSCE and the International Criminal Investigative Training Assistance Programme (ICITAP) could work together and see what type of training of the Kosovo Police is provided by each organisation (Interviews 1 2016a and 8 2016g). This would not only relieve some of the burden on the EULEX training unit, but also benefit the EULEX budget (Interview 1 2016a).

Finally, the EU can make a positive impact as a normative power in achieving positive ends on the ground through cooperation by visibly correcting the conflict attitudes in this post-conflict society. Regarding specific operational cooperation with local actors,<sup>4</sup> very good coordination is acknowledged relative to the Kosovo Police (especially riot-control units and rapid-reaction forces) and border control. Moreover, EULEX supported the training of the Kosovo Police North Quick Response Team and the integration of 287 Kosovo Serb police officers into the Kosovo Police Command North.

A multi-ethnic specialised unit to protect religious and cultural heritage throughout Kosovo was established with EULEX assistance (EULEX 2016a). The protection of religious and cultural heritage is in line with the values the EU promotes and upholds. Importantly, it is also in line with the goal of achieving outcomes facilitating the building of peace in the country—by protecting the

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<sup>4</sup>A Joint Rule of Law Coordination Board is the main body for ensuring coordination between EULEX and the locals (Interview 20 2016r).

nation's heritage, or what makes this group distinct, is part of recognising that the opposite side is "a legitimate other" as opposed to a "shameful other" (Lixinski 2013, 108).

In addition, both EULEX and the local Kosovo Police have been cooperating with each other in the police sector and appreciate the effective and timely exchange of information, knowledge-sharing and on-the-ground assistance (Interviews 15 2016m and 19 2016q). However, certain limitations are perceived in relation to the sharing of information. For example, some experts believe the Kosovo Police is occasionally reluctant to share information with EULEX (Interviews 2 2016b and 8 2016g), and *vice versa*, while others think that the cooperation is very efficient (Interview 14 2016l). As seen from the interviews, this perception depends largely on the individual experience and position held by a given EULEX staff member.

The next limit influencing information sharing between the local police and EULEX is technology. Interviewees who work closely with the Kosovo Police noted the lack of certain specialised equipment required for advanced investigations and data-sharing, which may be considered a technical limitation. In order for the Kosovo Police to take full responsibility and ownership over its work, additional efforts should be made to equip and train officers to use this technology.

However, most interviewees agreed the equipment and technologies donated by the international community are seen as a great improvement by local actors since they now have modern technical capabilities to conduct their operations. Border police and customs are generally equipped with very sophisticated technology provided by international donors. A problem that often arises is the lack of continuity and sustainable training for newcomers on how to use such advanced technologies (Interviews 13 2016k and 15 2016m). Therefore, it frequently happens that the modern technology cannot be used properly—or even at all—as newcomers often have no idea how to use it. Despite certain sectors of the police and customs being equipped with adequate technological means, the following shortcomings are noted:

- the lack of appropriate information and communication technology (not all of which meet EU standards); and
- local IT systems are not connected with Europol, Interpol and several other crucial international systems (Interview 14 2016l).

Besides EULEX, considerable donations from the OSCE, ICITAP and individual countries significantly help the Kosovo Police gain both the necessary equipment and knowledge for how to use it (Interview 15 2016m). Several members of the Kosovo Police have also been trained and educated at prestigious police and defence academies in foreign countries (*ibid.*).

Finally, the relationship between local Kosovo institutions (including the Kosovo Police) and the broader public has been significantly impacted by the infamous EULEX corruption allegations. These has affected the mission's public image among the local population, including its police personnel and its work with the local Kosovo Police. Here we should also note the Jacques Report from April

2015 and the criticism expressed by Capussela (2015), Kursani (2013), Radin (2014) and Malešič and Juvan (2015), as well as the 2012 European Court of Auditors' report (2012).

Such criticism means the loss of trust seen today, reflected in the largely negative perception of EULEX, is no surprise (Qehaja 2017). The situation has been broadly used—and abused—by Kosovar political leaders for their own political gains. This has only further eroded EULEX's credibility among the locals. Yet claims that local leaders are not informed or engaged with the mission, its goals or framework are often politically motivated and do not accurately reflect the true situation (Interview 10 2016i).

#### ***4.1.4 European Values, Standards and Practices***

The EULEX 2009 programme report states the mission will help move the Kosovo Police's shift towards "adherence to internationally recognised standards and European best practices" (EULEX Programme Report 2009, 7). In this regard, the vast majority of our interviewees noted the Kosovo Police is to be regarded as one of the most successful examples of the EULEX engagement. This can also be attributed to the international community's strategic long-term focus on establishing and developing the capability of the Kosovo Police (Interviews 8 2016g and 11 2016j).

Almost all major international civilian actors in Kosovo (UNMIK, OMIK, and EULEX) claim credit for establishing a functioning Kosovo Police. Statements concerning EULEX's role in training and mentoring Kosovar police must therefore be duly considered in this light and by also considering the earlier work of other international actors. The following EU best practices and concepts are noted as considerably impacting the Kosovo Police's operational capacity (Interviews 2 2016b, 8 2016g, 9 2016h, 15 2016m, 17 2016o and 18 2016p):

- gender, vulnerable groups and minority training;
- community and intelligence-based policing;
- riot-control unit training;
- integrated border management and customs; and
- dealing with sensitive crimes (hate crime, ethnicity-related crime, religion-related crime etc.).

If EULEX is to continue transferring its so-called European practices to the Kosovo Police, due to the rotations of personnel it needs to have a well-established system of pre-deployment training to ensure the efficient transfer of these concepts. Pre-deployment training conducted in several EU member states lacks harmonisation with the police sector and is thus inadequate. Hence, it is not surprising that staff training can vary from very good specialist training to general basic training (Zupančič et al. 2017). This results from uncoordinated training procedures that are

mostly left up to the authority and responsibility of the specific contributing state (Interview 8 2016g).

If we look, for example, at the specific post of border police and customs, we can see that certain participating countries send well-trained border police officers with specialised knowledge and experience, while some (countries) deployed regular police without long-term specialised border knowledge, which results in different levels of knowledge and experience, consequently impacting the quality of EULEX MMA activities (Interview 11 2016j).

When considering the training of EU personnel, the balance of quality and quantity should be taken into account. While the staff believed the sheer amount of training is sufficient, the content and quality of the necessary specialised training is sometimes debatable. Especially when considering important strategic topics, a more tailor-made approach would benefit the overall usefulness and quality of training (Interviews 1 2016a and 4 2016d). An example of such a tailor-made programme is the EU seminars for the Heads of Delegations and the educational training programmes for the Heads of CSDP missions. Nevertheless, these are usually very short-term programmes (usually lasting just one day), so they can hardly be described as specialised or comprehensive staff training (Interview 20 2016r). Some limited joined pre-deployment training is also available for other EULEX staff, usually an introduction and briefing programmes held in Brussels primarily focused on CSDP mission procedures (*ibid.*).

One positive step here is the establishment of an online database entitled Schoolmaster. The database is to eventually become part of a broader information system called Goalkeeper and contains information on all courses delivered throughout the EU that are relevant to the CSDP. Based on the lessons learned, Goalkeeper has the potential to improve some of the persistent shortcomings of the CSDP training and deployment process (EEAS 2016).

Most interviewees note the great improvement in the training on gender-related topics, a priority across the EU, that is included in the knowledge transferred to the local police. Both international and local staff stated that gender training (in both the pre-deployment phase and on the ground) is showing a positive impact (Interviews 1 2016a, 4 2016d and 6 2016e). In this regard, the EU is upholding its normative values and interests, while also promoting its normative identity as the advocator of the values of gender equality, minority rights, and multi-ethnic society. However, according to some interviews the attitude of local counterparts towards these topics is still occasionally reserved (Interview 6 2016e) and, generally speaking, Kosovo has yet to improve its record in these areas (Haug 2015).

Overall, concerning the use of soft instruments to achieve the 'force for good' status as a normative power in Kosovo, the interviews show that the decision of EULEX to change its initial focus from the judiciary to the police was instrumental for achieving this status. This might be since it is much cheaper and easier to achieve the set goals with the latter, and that the Kosovo Police was not in too poor shape when EULEX took over: "The Kosovo police was found to have a comprehensive legal structure, properly trained and sufficiently skilled staff, an adequate budget, and sufficient equipment to meet its legal objectives" (EULEX 2009, 12).

EULEX officials believe the mission has had a much stronger impact on the police than other sectors (Interview 9 2016h and 15 2016m). EULEX has been relatively successful in providing police training, but the Kosovo Police had already proven it was capable of working without its assistance (especially for low-profile cases not involving white-collar crime or the unlawful activities of political and economic elites). The Police has integrated the border-management aspects of work into its structures and improved its riot control response (Interview 18 2016p).

One could argue that, as a proportion, the money for police (also customs as shown in the following chapters) was relatively well spent compared to the huge sums spent on the judiciary. The overall conclusion of this subchapter is that the Kosovo Police has benefited significantly from EULEX. EULEX has helped the Kosovo Police develop new policing concepts (community-led policing, intelligence-based policing) and related training. Moreover, EULEX has made people more willing to cooperate with the police; police officers are better educated, receive gender and minority training and are more ethnically diverse and more professional in behaviour than before. This may be understood as an attempt to project the existence of ‘European values’ to a certain country.

EULEX also had an important role in the training of the Kosovo Police in riot control, helping the force to meet the EU’s vision of law-enforcement agencies able to operate without international support (EULEX 2009, 7). In addition, the local community generally sees EULEX’s intervention in the police sector as no longer necessary because they regard the national capabilities as being sufficient and ready to take over and function independently, especially given the mentioned work of the Kosovo Police (Interviews 13 2016k, 15 2016m and 17 2016o). However, the police still attracts legitimate criticism, such as by Capussela (2015), that it performs poorly in cases of high-profile corruption as well as in cases of white-collar crime and organised crime.

Moreover, EULEX helped facilitate dialogue between Kosovo and Serbia since the first signs of cooperation between the Kosovo Police and its Serbian counterparts may be attributed in part to the role played by EULEX. One might therefore argue the EU has achieved certain normative goals and envisioned outcomes that have added to its identity as a legitimate power in peacebuilding. However, it would be over-ambitious and wrong to declare the EU’s identity as a normative power based on analysis of just one actor within its structure.

## 4.2 The Judiciary

### 4.2.1 *The Judicial System in Kosovo: 1999–2008*

Following the end of NATO’s military operation in June 1999 and the withdrawal of FRY institutions from Kosovo, the international actors tasked with peace- and state-building faced a shortfall of educated and trained experts able to effectively administer justice in Kosovo. Namely, most administrative positions in Kosovo

prior to 1999 were held by Serbs for two reasons: firstly, at the time, they were treated preferentially and, secondly, the Albanians had started boycotting Serb-dominated institutions upon the rise of nationalism and the measures introduced at the expense of Kosovo Albanians (Yannis 2004; Weller 2009).

This can be illustrated by considering some numbers. For example, in 1999 just 30 out of the 756 judges and prosecutors in Kosovo were Kosovo Albanians, with the Kosovo Albanian majority even seeing them as collaborators with Milošević's regime or traitors (Skendaj 2014a, 88). These figures changed dramatically after June 1999 when NATO's military campaign brought about an end to Serbian rule over Kosovo. After the summer of 1999, only a handful of experts of Serbian nationality (police officers, prosecutors and judges) remained in Kosovo. They generally refused to participate in the newly emerging justice system being set up by UNMIK. Those who had left for Serbia with the retreating armed forces took with them official property and court documents (Zupančič 2015).

After the 1999 ceasefire, the OSCE—as one of the four main international organisations responsible for post-conflict reconstruction—considered bringing in international jurists to Kosovo to fill the previously described vacuum. But UNMIK as an umbrella organisation did not agree to bringing the 'internationals' into a war-torn society. The OSCE plan was different: trying to identify Kosovo Albanian judges and prosecutors in refugee camps and bring them back to Kosovo, where they would work together with the international judges brought to the war-torn country. UNMIK rejected the proposal out of "concern that adding international judges and prosecutors to their executive and legislative power would make them vulnerable to accusations of neo-colonialism" (Skendaj 2014a, 89).

Moreover, many UN officials believed that Kosovo was able to handle its own administration. Finally, at the time international jurists were not included on the 'institutional development checklist'; including international judges and prosecutors in national judicial systems was unprecedented before the creation of hybrid courts in Kosovo. Therefore, at first UNMIK only took the liberty of appointing local judges and prosecutors to the so-called Emergency Judicial System. Interestingly, not a single Kosovo Serb was appointed, which reflected substantial bias against Kosovo Serbs and other ethnic minorities in Kosovo (ibid.).<sup>5</sup> On the other hand, it

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<sup>5</sup>Skendaj (2014a, 89–90) mentions the problem of the prolonged detaining of accused Kosovo Roma or Serbs even on insubstantial charges, while the KLA members would be released and cleared of charges immediately. He writes that "the Kosovo Albanian judges and prosecutors were under tremendous political and social pressure to favour their ethnic kin. The jurists could lose their jobs, be denied promotion, or face threats against their lives. Politicians could threaten the judges and prosecutors in order to stop the prosecutions of people connected to them. /.../ After ten years of systematic repression against Kosovo Albanians, the neighbours and contacts also exercised pressure on the Kosovo judges and prosecutors to be harsh on the Kosovo Serbs and Roma and easy on the Kosovo Albanian 'war heroes'. Human rights activists regarded such detentions as violating the rights of the detainees and the activity that undermines the judicial independence of the local courts. Also, KFOR at the time used similar detention procedures—if KFOR believed that a person could pose a danger to stability, he or she would be detained in KFOR facility for a time period to be determined by KFOR itself (ibid.).



has to be noted that the ambitions of Kosovo Serbs at the time to join the institutions of the newly-emerging country were extremely low. These characteristics of the judicial system were indeed problematic, especially given the international actors wanted the local judges to focus on interethnic and political crimes, namely, two types that are particularly difficult to address in post-conflict societies.

In order to address the bias against the Serbs and other ethnic minorities among Kosovo Albanian judges, UNMIK finally introduced a programme of international judges and prosecutors, reaching this decision incrementally over time. This radical shift came because Kosovo's sovereignty rested with UNMIK—the international judges and prosecutors could take on cases involving any type of crime, including those already assigned to local judges (Skendaj 2014a, 89–91).

The judicial system therefore formally fell within UNMIK's authority because the system was essentially related to security; in other words, the international actors were worried about the possible flaring up of inter-ethnic tensions, or any attempts in meddling and intimidation in the judicial system that might endanger the rule of law. Put differently, the concern of the international actors in Kosovo was that “crimes against ethnic minorities and crimes committed by political elites would not be prosecuted” (ibid.). Moreover, the economic stagnation of Kosovo that had created poverty and unemployment during UNMIK's rule was identified as likely to expose the country to the risk of social unrest and political instability (Capussela 2015, 42).

The UNMIK mandate included the creation of an independent, impartial and multi-ethnic judiciary with high standards of competence and professional ability (Report of the Secretary-General, 1999). UNMIK held legislative and executive powers, including administration of the judiciary. These powers were exercised by UNMIK's chief administrator, the head of the mission, and the SRSG (Cerone and Baldwin 2003, 28). His role as the sole legislator and executive authority holding the power to administer and appoint officials to the judiciary showed the centralisation of power with the goal of coordinating the international administration (Skendaj 2014a, 88).

Kosovar courts under UNMIK are counted among ‘hybrid’ or ‘internationalised’ courts (Cerone and Baldwin 2003, 26). The system derived its competence from UNMIK mission regulations and was composed of both national and international judges and prosecutors trained in applying laws of both a national and international character. However, the system was unique by virtue, as it did not have a fixed internationalised court or panel. Rather, the judges were sitting on the panels in Kosovo on a case-by-case basis. Further, the courts' competence overlapped with the International Criminal Tribunal for the former Yugoslavia (ibid.).

However, UNMIK's administration over the judicial sector proved problematic. Skendaj (2014a, 91) notes that the “inclusion of international judges and prosecutors did not insulate the local jurists from political and social pressure”. UNMIK appointed judges based on recommendations of the Transitional Council composed, paradoxically, of local political leaders. Moreover, the newly established Advisory Judicial Commission failed to discipline certain judges and prosecutors despite evidence of misconduct.

Recruitment procedures in the judiciary were also inadequate. Almost no new judges were recruited between 2001 and 2008; the measures to reduce backlogs were not taken; merit was not a factor in either recruitment or promotion since Kosovar judges had no system for evaluating their performance in place. No security measures were taken to protect the judges and their families when dealing with difficult political crimes, making them easily vulnerable to incentives offered by political elites. The training of judges was also not systematic, whereas the internationals were often unfamiliar with the legal framework of Kosovo (Skendaj 2014a, 91–92).

UNMIK's administration of the judiciary did not bring the expected results as it did not manage to build up capacity in this sector. Skendaj (2014a, 96) even states that “when multiple donors funded various consultants to work on the same policy without coordination, technical assistance was wasted because the local bureaucracy did not gain knowledge and capacity. When the international donors have been divided, local politicians have played them against each other”.

#### 4.2.2 *EULEX's Arrival and the Kosovo Judiciary*

It soon became clear that the root causes of the dysfunctional rule-of-law system in the country should be re-examined with high priority after Kosovo's proclamation of independence. Judicial reform, if successful, would also affect the performance of economic institutions (Zupančič et al. 2017, 5).<sup>6</sup> To achieve this, the EU struck upon an idea: to launch a CSDP mission to improve the rule of law in Kosovo.

Capussela (2015, 114) notes that “EULEX was asked to improve the rule of law precisely in order to allow the economy to grow and stabilize the country: and a crucial precondition for doing so was reducing impunity for corruption and organized crime, which Kosovo's institutions and endogenous forces were unwilling or unable to do”. EULEX was therefore deployed immediately after the country's independence, thereby placing the judiciary in the EU's hands. This overtaking of the judiciary by the EU is, more than in any other sector, a clear reflection of the EU's efforts to be seen as a normative actor. The overarching aim within the mandate concerning the judiciary was for the branch to become “sustainably accountable, independent, multi-ethnic and free from political interference” (Capussela 2015, 107). As mentioned, EULEX was tasked with two different sets of responsibilities: first, to monitor, mentor and advise (from 2012 on, Strengthening Division) and, second, to directly exercise judicial powers (Executive Division).

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<sup>6</sup>One of the main pillars of the *ordoliberal* peacebuilding lies in “building a strong state through the construction of a social-moral order, which is why rule of law must be upheld” (Zupančič et al. 2017, 5). A functional state can create the institutional environment for the normal functioning of a liberal economy. *Ordoliberal* theory does not identify itself with a weak state at the mercy of economic forces, but a strong state that restrains competition and secures the social and ideological preconditions of economic liberty (Bonefeld 2012 in Zupančič et al. 2017).

### 4.2.3 *General Normative Misconception of the Executive Mandate for the Judiciary*

The strengthening part of EULEX's *mandate* is in line with the EU's normative character; it presents itself as a force for good, aiming to improve the functioning of the institutions that are a precondition for the development and democratisation of the country. Moreover, it focuses on the empowerment of society (normative interest) and is in line with the EU values of democracy, rule of law, local ownership and multi-ethnic institutions. If performed well, it can possibly have a correcting influence.

However, the EULEX Executive Division is focused on delivering rule-of-law services until the local authorities become professional enough and the executive functions can be fully transferred to them (EULEX 2016c). Already this part of the mandate completely dismantles the EU's interest to empower society—since, in fact, it takes away its sovereign right (that the EU helped it obtain) to have control over its own criminal justice, over its citizens and its territory. This is a non-normative behaviour of an EU institution, making the assertion that Kosovo is a protectorate seem legitimate (Capussela 2015). On the other hand, it is difficult to argue from the perspective of a functioning rule-of-law sector that local judges and prosecutors should take over all the responsibilities from the very beginning, without being properly trained to perform the work.

While the local community commonly perceives EULEX and its executive engagement as no longer necessary in the fields of customs and the police (Interview 13 2016k, 15 2016m and 17 2016o; Qehaja 2017), only a handful of people identify the Kosovar judiciary as capable and efficient (Interview 15 2016m). However, several EU member states argue that EULEX is doing all the work as local institutions are perceived as incapable, thus inflating their responsibility towards the other extreme. Again, every two years, when the need to extend EULEX's mandate is in question, we can see a clear motivation to extend the mission's mandate by another two years also among EU officials; namely, EULEX is by far the largest CSDP mission and thus offers a considerable number of well-paid jobs that would be threatened by the mission's sudden closure (Grilj and Zupančič 2016).

All of these findings can be seen as reflecting a self-empowering interest, not based on genuine peacebuilding normative values of doing good, and especially not in line with the declared normative behaviour. It should be noted that local structures often try to portray themselves as more effective than they perhaps really are, and thus see a foreign agency as a threat to their public credibility (Interview 15 2016m). This leads to the mission encountering local contestation from several angles (Qehaja 2017; Mahr 2017) and the normative goal of establishing attitudes in the society that would lead to a brighter future cannot be perceived as achieved in this case.

Moreover, the EU claims it wants to create an independent and transparent judicial system, but acted differently when planning EULEX's mandate. This regards the status and organisational allocation of judges in the mission, which definitely creates a legal dilemma: the norm of independence of the judiciary may

be questioned due to the mission's structure and the constitutional meaning of the separation of powers is not being respected as the police, prosecutors and judges are all part of the same organisational division (Interview 3 2016c). While judges and prosecutors are, structurally speaking, separated within different departments, the true separation is not really possible as they are still part of the same division and leadership structure, led by the same division head (Interview 16 2016n). Several interviewees described this structure of the mission as a bad practice.

#### 4.2.4 *Normativity and the Transfer of European Values*

Besides its role in security and the judiciary, the EU has a fundamental transformative role that affects all levels of Kosovo society. 'EU values and standards' make up the core of the reforms EULEX is trying to enforce and this lie in the centre of its normative functioning. Therefore, when assessing the EU's supposed normative character, it is important to also take into account the EU's own values, procedures and code of conduct.

As some interviewees noted, staff from non-EU states often have limited knowledge of EU values and procedures. The problem usually arises when non-EU countries contribute staff to higher (strategic) levels of the mission. Such workers might not be the most appropriate for these positions from the perspective of the EU's values, procedures and best practices, because they come from a different environment (outside the EU). For example, staff members from the USA, Turkey and certain other states were, mentioned when discussing the lack of understanding of EU values, procedures and code of conduct (Interviews 6 2016e and 8 2016g; Zupančič et al., 2017).

This is also a problem with staff, which is *seconded* from EU countries. The main recruitment instrument in CSDP missions generally is secondment (experts sent to the mission by a certain country, which also pays them salary and provides for other benefits related to deployment), while *contracting* (a contract-based relationship between an expert and the mission itself) is used secondarily, mostly to fill gaps not filled with seconded staff before (Interview 20 2016r). On top of this, the lack of standardised selection procedures at the national level is persistently seen as a challenge (Interview 11 2016j). Due to the non-standardised procedures the quality and qualifications of the seconded staff who are selected can vary significantly (Interviews 1 2016a and 10 2016i). The outcomes of these challenging recruitment and selection processes may thus affect broader capabilities and the mission's efficiency (Interview 8 2016g; Grilj and Zupančič 2016).

Instances of EU member states sending workers with inadequate language and cultural skills are also identified as a problem, like with staff from non-EU countries (Interviews 1 2016a, 10 2016i and 11 2016j). Part of the responsibility lies with the member states and another part can be attributed to the interview panel at the mission level, which has a final say in recruiting candidates (Interview 10 2016i). Last but not least, the human resources department must also ensure that important

EULEX posts are dispersed relatively evenly among the EU member states. In other words, the likelihood of being recruited as a EULEX judge, for instance, also depends on a candidate's country of origin and whether that country is already under- or over-represented in EULEX.

Moreover, the different backgrounds of incoming staff create a challenge for the mission of how to ensure continuity in its MMA engagements, while having internal differences in perceptions and understandings of common EU practices (or a lack of them). Most interviewees agreed this is a fundamental issue in the field of operational capability that needs to be addressed (Interviews 1 2016a, 2 2016b and 11 2016j). A challenge in shaping a common approach was noted especially among EULEX judges because they also come from very diverse judicial backgrounds and traditions, with different experience (for example, judges from the United Kingdom with a common law background and the judges from the majority of EU states that have a civil law tradition).

Being a judge in Greece is unlike being a judge in the United Kingdom, which has a different judicial system, but both judges are expected to apply the same laws once they begin working in EULEX. Nation-specific skill sets and backgrounds must thus be taken into consideration when evaluating the skills and background of personnel (Interview 1 2016a).

While diversity and exposure to a range of backgrounds and traditions is generally a sought-after quality among the judges, a certain level of standardisation and pre-deployment training would also benefit the judiciary (Interview 16 2016n).

This is not only important when discussing the EU's normative behaviour, but is clearly problematic also because the EU is unable to train its 'own' personnel to uphold the values it wants to transfer to Kosovo. Namely, judges seconded to EULEX will, after their secondments expire, most likely return to work in the country that seconded them. This will, at best, take place in a few years' time; often the seconded judges return back home relatively soon. Thus, it remains a challenge to make a judge consider him- or herself as an 'EU judge' only while deployed on a CSDP mission.

These inadequacies are also a problem from the point of view of the normative ends; if the EU with its peacebuilding character wishes to leave a long-lasting footprint in Kosovo by transforming it into a peaceful society, it should be engaging in the efficient cultivation of corrective attitudes and improve the identified inefficiencies instead of ignoring—or even deliberately not addressing—them for the sake of stability, as noted by Capussela (2015).

Both international and local employees warn about the negative implications of the relatively short-duration deployments of EULEX staff. This directly affects this CSDP mission's operational capacities and efficiency. While staff contracted directly by Brussels/the mission usually stay in Kosovo for several years, staff seconded by member states are often deployed for relatively short periods, usually a year or less, with limited opportunity for contract renewal (Cierco and Reis 2014, 654; Grilj and Zupančič 2016).

Due to the relatively short deployments, there is not enough time for newcomers to "catch up with the speed" of the mission and, when they finally do, their turn is already

over (Interview 16 2016n). If someone is thus deployed for one year, their effective deployment (including annual leave, sick leave and training) will only be about 6–7 months. This is especially disturbing when assessing continuity on the strategic level (leadership), where long-term commitments are a must. As noted by some interviewees, a strategic-level employee needs at least one year to “get into” the system and become well acquainted with it and to acquire the necessary knowledge on local Kosovar issues in order to operate effectively. It also takes time to establish a relationship of trust with local counterparts in order to be able to conduct, for example, effective bilateral meetings and negotiations (Interviews 7 2016f and 8 2016g).

One of the complaints that Kosovo people will tell (is that) 12 months is pretty short. And each new employee is working in his own way, even though they have similar viewpoints. If I could, I would keep the team for longer than 1 year. Some countries allow this—Italians for 3 years, French 5 years ... people need to learn how to operate, what the local habits are, how things work etc. (Interview 1 2016a).

These short-term jobs are also more attractive to younger and (often) less experienced professionals (Jacque 2015). Of special concern is an issue that occurs with judiciary staff as member states are unwilling to provide their *best* judges and prosecutors since they are needed at home (Zupančič et al. 2017). Moreover, differences in pay among employees from various states working in similar positions, due to the different secondment policies, affect employees' motivation (Interviews 9 2016h and 10 2016i). This is particularly important for the motivation of highly specialised staff, for example of judges and prosecutors. CSDP missions find it difficult to provide financial motivation to expert staff that is stimulating enough for them to leave their well-paid and secure jobs at home and come to Kosovo to work for EULEX.

The mission has been trying to solve or at least mitigate this issue by seconding ‘cheaper’ judges and prosecutors from certain economically less developed EU countries where the pay received by deployed staff is (compared to their pay back home) much higher but still below that in western EU countries. While this does not automatically imply these judges are in any way less qualified for the job, it does reveal an important challenge of the mission. This research has pointed out certain weaknesses in staff selection, yet the mission's internal evaluation system generally paints a different picture, showing that the majority of staff are performing very well or above expectations (Interview 20 2016r). The relatively big difference between the internal system and the interviews conducted anonymously may indicate shortcomings in the mission's internal review mechanism.

Last but not least, we concur with Cierco and Reis (2014) who argue that the high staff turnover rates cause legal and operational inconsistencies. Based on these findings, we may claim the EU's effort is insufficient for achieving long-lasting change, especially since the problem has already been identified during EULEX's lifetime and reported to Brussels on several occasions (Interviews 15 2016m and 16 2016n).

Nevertheless, local contracted staff were identified as very helpful in this respect as they are usually contracted for longer periods, meaning they have both organisational and cultural knowledge, as well as the requisite contacts. The assistance

they give the international staff is thus important for the mission's long-term continuity and sustainability (Interviews 2 2016b and 8 2016g). Enhanced pre-deployment training, education on history, culture and other aspects related to cultural awareness could accelerate the adaptation time needed and improve the newcomers' efficiency (Interview 3 2016c).

#### ***4.2.5 The Success and Challenges of EULEX Judges and Prosecutors in the Local Context***

Although we have already touched on the work motivation aspect of the EU's judicial personnel that might influence perceptions of the EU as a genuine peace-building actor, we must also consider whether the EU is perceived as a true force for good by the locals.

Work motivation varies between contracted and seconded staff; however, it would be incorrect to make any hasty generalisations. The interviewees noted the locally contracted staff are mostly motivated by excellent salaries, especially compared to the low local salaries (EULEX local staff are usually paid several times more than employees at Kosovo institutions holding similar positions). Due to relatively high salaries received by this small circle of 'chosen locals' at the mission, the local environment often regards them as a privileged elite. In the last few years when EULEX has been reducing staff, this may also have exerted a limited impact on the support for EULEX in the local community as a certain number of people were about to lose their well-paid jobs (Interview 6 2016e). From a methodological viewpoint, it has to be noted that, generally speaking, local staff working for EULEX was not willing to share any critical opinions about EULEX with the researchers.

What does that indicate with regard to the normativity of the EU's means, goals and outputs? Clearly it is not the EU's altruistic character pushing the locals to work for the EU, therefore the EU is not fully capable of attracting the public in a post-conflict society only through normative means, but economic ones as well—something to be expected in poor, war-torn societies. Yet, in terms of the outcome of using such economic means compared to normative means, we can talk of a deepening division in society ('chosen locals') and a paradox commonly known as dependency syndrome. Kosovar society may become, and in the opinion of many (Capussela 2015; Cigler 2017) already is, 'addicted' to the international aid and the continuing presence of the EULEX mission since it brings employment and stimulates the local economy. In this sense, the normative ends are not being achieved.

When assessing the judicial aspects of EULEX's normative influence, the locals' second point was that EULEX is generally perceived as spending too much time examining alleged war crimes and not paying enough attention to organised crime and corruption (Interview 19 2016q). This could in part be attributed to the over-ambitious expectations initially set by the mission's leaders and the highest political figures of the EU, such as Javier Solana, then EUHR for the CSFP:

The mission will be crucial for the consolidation of rule of law in Kosovo, and furthermore, the development of rule of law and strengthening of multi-ethnic institutions will be to the benefit of all communities in Kosovo. The mission is proof of the EU's strong commitment towards the Western Balkans and it will contribute to the enhancement of stability in the whole region (Council of the European Union 2008b).

Another reason is the poorly communicated essence of the rule-of-law concept that is consistent with the public's general dissatisfaction with EULEX's role in the judiciary and the rule-of-law reform process (Interview 18 2016p). The EU's wider role in Kosovo is complex, having gradually developed from its initial function as the fourth pillar of UNMIK—dealing primarily with economic reconstruction and development—to today's much broader engagement (Zupančič et al. 2017).

The EU is nowadays present in Kosovo chiefly through the EUSR and the European Union office in Kosovo (2017). Parallel to this, EULEX is dealing with the rule of law. The complexity of this engagement is difficult to communicate to the local public (Interview 20 2016r). Combined with the poor public image, this explains why the mission has never really been perceived as part of local society and not constituted an integral part of local life (Interview 19 2016q). On the other hand, as Mahr (2017) notes, the EU as an institution remains a relatively well-trusted actor in Kosovo.

Despite this, the mission is often still perceived as foreign, perhaps even imposed on the local environment. Certain political parties, most notably Vetëvendosje (Self-Determination), build their programmes and political actions on insisting that EULEX and other international organizations should withdraw from Kosovo, as international actors only prolong the dependence of Kosovo and block its independent development. Thus, local actors have often been reluctant to cooperate, or worse, worked hard to make it impossible for EULEX to prosecute someone from their ranks.<sup>7</sup> The latter is a main reason for the local contestation seen among Kosovo Albanians (Mahr 2017).

Second, local judges, prosecutors and politicians have often been 'hiding behind EULEX' and pointing the finger at international actors to deflect attention from their own inefficiency, mismanagement or lack of capacity. The excuse 'this is a task for EULEX' is commonly heard and a prime example of the limits of local ownership. Such a combination of internal protectionism and excuses of local actors

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<sup>7</sup>Capussela (2015, 117) in his Annex to the book *Statebuilding in Kosovo* analyses the cases of Fatmir Limaj (an effective military commander) and Hashim Thaçi (the current president), where EULEX failed to achieve satisfactory results "not only because fighting serious crime is a complex enterprise, as the mission and many analysts correctly remark, but also because it disregarded its mandate". In some cases regarding these two high-ranking leaders, EULEX conducted "no investigations, or issued no indictments, despite the fact that it disposed of credible and well-documented evidence strongly suggesting that serious crimes had been committed". On the other hand, local elites rejecting the authority of EULEX when it comes to prosecuting their own. Skendaj (2014a, 73) writes that "when EULEX investigated offices and houses of the minister of transport, Fatmir Limaj, in May 2010, the prime minister claimed that such independent investigations were a violation of Kosovo's institutions. However, according to the constitution and the Ahtisaari plan, EULEX had the authority to investigate such crimes".



has impacted the chances of improving local ownership and the overall efficiency of EULEX's efforts (Interview 19 2016q).

Local institutions' general ability to take over responsibility from EULEX varies from sector to sector, task to task. After years of a prominent international presence, especially in a country established with considerable international assistance, the transfer of tasks to local institutions is challenging. A key lesson is that influential locals can play a significant role in post-conflict reform.

Removing influential local leaders from key positions would most likely destabilise the country and undermine the process (Interview 20 2016r). EULEX staff are well aware that quite a few prominent leaders (like members of the KLA with enormous social and now also economic capital, often regarded as heroes) who would have no difficulty mobilising the electorate to go onto the streets of Kosovo and demonstrate against 'the internationals', bringing the possibility of violence in the blink of an eye. Yet, the price of stability, namely the reluctance to prosecute certain key individuals, is an often criticised element of EULEX's work (and the EU's engagement in general) and thus seen as a failure in preventing political interference and tackling high-level crime.

At the start of this subchapter, we considered a recent case illustrating such a state of affairs. It is necessary for the EU to realise that sacrificing its legitimacy for political stability might also impact the legitimacy of its overall peacebuilding endeavours. In this sense, in the judicial sector at least, it is evident that the 'normative power Europe' is difficult to realise. It is clear that when it comes to the politically-heavy involvement that the EU is disregarding its own mission's goals and principles, its own values of local ownership and fighting corruption, while also failing to meet the desired outcomes since corruption continues in modern Kosovo (European Commission 2012; Transparency International 2016).

Hence, EULEX needs to make the local community understand that law exists above the unwritten local rules: no easy task (Interview 20 2016r). The interviews in general reveal the rule of law has not been fully implemented in Kosovo given that there are still too many local networks with the power to discourage the locals from speaking out against them, despite the existence of evidence (Interviews 6 2016e, 15 2016m and 18 2016p).

If you want to prosecute a politician, of course they will run a campaign against you—hence EULEX is not popular (Interview 17 2016o).

One problem which remains is that EULEX officials too often give locals what they have, but not what they need. To be able to give people what they need, you need to know the situation, culture, tradition etc. (Interviews 1 2016a and 17 2016o). Thus, EULEX has never become an integral part of Kosovar society (Qehaja 2017; Interview 19 2016q). One case of interest is that Kosovars are more interested in the pursuit of crimes happening *since* the war (e.g. corruption, crime) than war crimes, yet EULEX is still mainly focused on the latter (Interviews 9 2016h and 18 2016p).

A paradoxical example of post-war corruption is the international assistance provided. Among the other international actors, the investment, donations and assistance money provided by the USA have to be considered first given that it is

one of the biggest stakeholders in the country next to the EU. One would therefore expect a high level of coordination to exist between the EU and US investment, donation and assistance efforts yet, as stated by some interviewees, that is often not the case. This leads to duplication, unnecessary investments in the same or similar projects and ultimately a waste of money. The project on the civil code is an example that is mentioned.

There's a USD 8 million project run by the Americans, and a EUR 4 million project by the EU on the same topic. In addition, there's money spent by the OSCE. Some local actors are abusing such duplication for their own personal gains (Interview 10 2016i).

Local stakeholders are understandably interested in receiving money from various sources, even if the purpose of using the funds is often dubious. In order to prevent such misuse, a better overview and greater coordination are required—however much a cliché this might sound (*ibid.*). Such a waste of EU funds and the locals' perceptions of the EU's efforts in the framework of a post-conflict society do not speak well for the EU's role as a normative peacebuilding actor. This again shows while the EU might be relatively successful in fulfilling its technical role, its political role and the legitimacy of its aims often come into question due to absence of strong internal political agreement among the EU member states on what Kosovar society should look like in the future.

Last but not least, one has to be quite careful to avoid making too hasty conclusions about the supposed ineffectiveness of EULEX's judiciary, sometimes exclusively wrongly ascribed to the incapability of EULEX itself. Namely, in the geopolitical context where international actors have such divergent and often contrary agendas, it is difficult to blame a single agency for all failures, let alone the fact that not even the EU member states are unanimous on Kosovo's political future as an independent state.

#### 4.2.6 *Future Challenges for Kosovo's Judiciary*

One of the current challenges facing the Kosovar judiciary is integrating Serb judges and administrative staff into it. Namely, the judges and prosecutors in the north of Kosovo, who are mainly Serbs, refused to become part of the Kosovar justice system after the FRY *de facto* lost control over Kosovo in 1999.<sup>8</sup> The wish to integrate Kosovo Serb judges into Kosovo's judicial institutions is due to the

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<sup>8</sup>As mentioned, after the end of war in Kosovo, the judges and prosecutors in the north of Kosovo operated as part of the FRY (later Serbia and Montenegro; later the Republic of Serbia) judicial system, only answering to the authorities in Belgrade. Later on, the authority of UNMIK was recognised, and thus the justice system in the north of Kosovo started to operate as a conglomerate of UNMIK and FRY/Serbian laws. However, after 2008 this was replaced by local laws, with exception of those courts in the north of Kosovo which continued to use SFRY's laws, declaring themselves part of the Serbian justice system which also pays their wages.

broader-than-EULEX *political* dialogue between Kosovo and Serbia led by the EU, in an attempt to persuade local powerholders to secure some sort of stability in Kosovo. In February 2015, an agreement to integrate Serbian judges and prosecutors into Kosovo's judiciary for work in northern Kosovo municipalities was reached (Aliu 2017).

However, the EU's involvement in the negotiations is inconsistent with EULEX's objective to develop this multi-ethnic judiciary transparently and "free from political interference", as the appointment of judges was a result of political actions whose meaning may be called into question by both Albanian and Serbian political elites, according to one former employee of EULEX, Andrea Capussela (2015). This has been a source of the locals' contestation against EULEX that constituted a very important element of the revolt of Kosovar society (Mahr 2017).

In his book, Capussela (2015) states that the Serb and Kosovar elites have shared certain interests ever since when it comes to cooperating with the international community. However, Capussela warns against the political exploitation in this regard: "Yet such leaders benefit from the support of the international community—which their party 'owes existence' to—because they serve as a visible symbol of Kosovo's 'multi-ethnic' character" (Capussela 2015, 88–89).

Therefore, on one hand the EU may be considered as a positive peacebuilding actor since occasions like the integration of Serbian judges into Kosovo's judiciary suggest a real improvement in the otherwise tense political situation in Kosovo. The EU, aspiring to be a successful peacebuilder, also emphasises the need for local ownership in reform of the judiciary, which presumes 'broad and inclusive negotiations and compromise building'. As such, the reform is supposedly aimed at others-empowerment. However, the EU's approach to local ownership is often based on quite a technocratic approach often lacking in efficient communication channels that could be effectively used by all local actors (Mac Ginty 2017; Ejodus and Juncos 2017). Further, with its allegedly normative behaviour the EU weakens the role of its own EULEX mission in the field. EULEX is tasked with facilitating the creation of an independent and multi-ethnic judiciary, but by seeking consensus it again places power into the hands of local elites.

Expressed differently, is the EU really correcting the attitudes of this post-conflict society or merely casting shadows in 'Plato's cave', able to deceive the eyes of the international community? The EU facilitated the dialogue that led to the establishment of a more multi-ethnic judiciary based on the European insistence on local ownership whereby it left decisions in the negotiations up to local leaders. This can be seen as a genuine normative end given the final outcome was indeed the establishment of multi-ethnic courts. However, Ejodus (2017) comments that the concept of local ownership in this case is focused on the local powerholders or elites that directly benefit from EULEX's policies. In this way, it simply helps further consolidate their grips on power. This could be interpreted as the EU sacrificing its long-term legitimacy and sustainability for the sake of short-term stability.

In the words of the representative of one local NGO:

How is the EU going to send a mission to fight the criminals who have unintentionally but willingly transformed into the EU's best partners for stability? Even if the EU sent an army of prosecutors, judges and police, it would fail because the EU is not ready to 'risk' a little and say perhaps that if they fight these criminals they will not sacrifice stability after all. The EU did not and does not want to 'gamble' even a little on this. So it is a matter of geopolitics, internal parameters within the EU, it is the idea of success on paper etc. that is preventing any real success.

To sum up, we can criticise the power the EU places in the hands of leaders who 'behave well' (both current presidents of Serbia and Kosovo) that could be misused for their own purposes; for example, it is said Kosovo President Hashim Thaçi could be prosecuted in up to eight cases (mainly concerning corruption and organised crime) (Capussela 2015, 117–119).

Yet, at the same time, this book can complement the EU's ability to help make a step forward in the integration of these two post-conflict communities, for decades separated and torn apart by war. On 6 November 2017 judges of Serbian nationality—despite strong contestation in early stages—started working within Kosovo's judiciary, thereby completing the task of integration in that area. In 2017, 13 prosecutors and 33 administrative staff from non-majority communities were integrated in northern Kosovo, while 41 judges and 107 civil servants were appointed across the Kosovar judiciary (Kosovo Prosecutorial Council 2017). This surely heralds more productive relations between Kosovo Albanians and Kosovo Serbs in the future.

Putting aside the challenge of integrating Serbian judges and prosecutors and now turning to the mission's outcomes, the official figures on EULEX's executive tasks show the mission has been involved in several cases. Since the beginning of the EULEX mission, Kosovo's Special Prosecution Office has been involved in different stages of proceedings in approximately 1350 cases, with currently more than 100 cases still in progress. EULEX has also been involved in over 42,700 conflict-related property cases through the Kosovo Property Claims Commission (EULEX 2016a). Many of these were inter-ethnic in character (Interview 20 2016r).

Nevertheless, Capussela (2015) states the actual results of EULEX's work in the judiciary in Kosovo are poor. "Considering how widespread political corruption and organized crime are in Kosovo, these results are gravely inadequate: averages of 2.5 indictments and 0.7 convictions per year, and 0.3 convictions per indictment, can neither repress nor deter such phenomena. Assuming that those involved in serious crime /.../ are as few as 1600 (ten times the number of SHIK's salaried members in 2003, or one sixth of the KLA's strength and 0.09% of the population), over the past six years each of them faced a cumulative of 0.25% risk of being convicted" (Capussela 2015, 118). He candidly adds that "despite EULEX's deployment, therefore, serious crime was an effectively risk-free profession" (ibid.).

Moreover, when Capussela (2015) looked deeper into the cases of the 'leading figures' of Kosovo, such as those involving Fatmir Limaj and Hashim Thaçi, he discovered that on some occasions EULEX conducted no investigation or issued no indictment despite holding evidence strongly indicating serious crimes had been

committed. Some cases were in fact opened only after EULEX became aware its inaction would soon be discovered, after its inaction had already been discovered, or after EU or international public opinion demanded an investigation. In certain cases, EULEX convicted secondary figures and did not investigate higher ranking ones. In two cases inspected out of 23, EULEX only appealed the one where the elites had a smaller interest.

Capussela (2015, 121) also suggests that in at least 15 out of 23 inspected cases concerning two members of the elite, EULEX arranged for investigations by the police, prosecutors and judges that strongly suggest “the mission tended not to prosecute high-level crime, and, when it had to, it sought not to indict or convict prominent figures”. Revelations like this cast a dark shadow over EULEX’s normative character as well as the ‘normative power EU’ argument.

This raises an important question: how did this all happen? Why was the mission left to perform so poorly in some aspects? Capussela states (2015, 224–225) the mission is failing (in his view, completely) due to the insufficient incentives provided by management to work according to the EU’s interests, while the EU was unable to move out of the area: the Kosovo crisis on the occasion the CSDP was practically born, and EULEX is the EU’s flagship mission. Moreover, according to Capussela the sums of money invested in Kosovo are basically unprecedented: the overall cost for the EU and the member states exceeds EUR 1 billion.

With the goal of shedding light on EULEX’s normative power character, we may conclude the EU and its personnel hold the potential to contribute to peace, yet the mission’s planning and actual capabilities often prevent it from acting effectively. In the words of one interviewee: “I know cases where three or four different judges have worked on one case (they had to leave after 6 months)” (Interview 19 2016q). Further, the mission’s success often depends on the motivations and effectiveness of a person holding a certain position. However, the biggest problem is that this mission does not reflect others-empowering interests, but often uses the local elites as a factor to ensure stability, even though they might have an ulterior purpose for becoming involved.

First, stability in Kosovo means stability in the Balkans—the EU’s backyard. Second, stability in Kosovo allows the EULEX flagship mission to be perceived as relatively successful in the international community’s eyes—creating a (shallow) image of the EU as a new normative player in the world. But the normative outcomes presented above in the case of the judiciary have not ‘corrected’ the problematic behaviour in Kosovo—the ‘big fish’ are still free to swim around the world of politics—meaning the possible threat of violent conflict continues to exist.

### 4.3 Customs

After the war in Kosovo ended in 1999 and following the withdrawal of the FRY’s institutions, one of the first bodies to be created to help fill the security and political vacuum in Kosovo was the customs service. It officially began operating on 3

September 1999. It was established as a Customs Service within the UNMIK pillar aimed at ensuring the fair and consistent application of customs rules and other provisions (Skendaj 2014a).

As the “final state bureaucracy” (Skendaj 2014b, 466), the role of the customs service is to “collect revenue for the state budget and facilitate the movement of goods and people across borders” (ibid.). The service is responsible for collecting general revenue at the international borders and therefore provides important state budget revenues. As mentioned in previous chapters, the international actors in Kosovo believed in the idea of a market economy with a fiscally responsible state and strong government able to manage its own budget in a democratic, transparent and responsible way.

### ***4.3.1 Establishing a New Customs Service (1999–2008)***

When preparations for the post-conflict reconstruction of Kosovo were starting in 1999, the group of countries leading the process met together with the World Bank, the IMF and the EU in Brussels to discuss macroeconomic policies to help integrate Kosovo into the region and, ultimately, into the EU. They decided upon a macroeconomic policy that would include “a liberal trade and customs system, a stable currency, a functioning banking system, a regulatory framework that would ensure property rights, and a sustainable budget for the provision of basic services” (Skendaj 2014a, 120).

UNMIK had to raise local revenues since the donors were not prepared to fully finance Kosovo's budget deficit. The problem was resolved in two ways: the Group of Eight, the World Bank and the IMF decided to fund a higher budget deficit for a limited time, while the EU would take responsibility for rapidly developing the customs service along the borders with Kosovo's neighbours (ibid.). The core idea behind it is to increase revenue levels by making it “rational for business entrepreneurs to pay taxes instead of avoiding them” (Blair et al. 2005, 219).

Moreover, by establishing a stable flow of domestic revenue to fund public services UNMIK also planned to undermine the grey and black economy that had emerged during the war and had created links among various criminal networks in the region (concerning illegal trade with cigarettes, fuel, arms, human trafficking). By providing basic services and public goods, it was intended to reduce the population's reliance on such networks (Skendaj 2014a, 120–121).

Both the UN and EU discussed early on how to pursue the goal of establishing a functioning customs service. The first idea was to set up a similar system as for UNMIK's international police and to bring foreign experts into Kosovo. However, a British customs director from the European Commission managed to deter UNMIK officials from this policy—his experience in Bosnia and Herzegovina after 1995 and in Albania after the state collapsed in 1997 led him to recommend that UNMIK use local staff. The problem was that, during the Yugoslav period, due to its non-republic status Kosovo did not have its own customs service, even though

quite a few officials from Kosovo worked in the Federal Yugoslav Customs Service (Skendaj 2014a, 121).

The EU hired 37 of those officials, with the service gradually expanding the number of workers over the years. Initially there was only one international officer for customs in Kosovo—the director-general. With the passing of time, their number rose from three to four international customs officers holding the highest positions. Their tasks were first and foremost to insulate the customs service from political influence and interference. They also enjoyed direct access to the Office of the SRSB, enabling them to dictate policies in their field without fear of an UNSC veto (Skendaj 2014a, 121–123).

Interestingly, Paul Acda (in Skendaj 2014a, 122–123), the first international customs officer in Kosovo of British origin, states the international community had no idea of how to establish a customs service from scratch. Hence, as a precedent for Kosovo Acda took the example of the establishment and development of the customs service in the Russian Federation. That body was formed after dissolution of the USSR (before the Soviet Union’s collapse, its customs service was insignificant: it employed less than 3000 people as the Soviet Union did not engage in free trade, hence only focused on its own goods and people who went abroad, disregarding those flowing into the country). The borders were managed by the KGB. When the USSR fell apart, the customs service had to be established despite the small revenues the country could offer to future officials (they had to increase their number six-fold).

The solution adopted by the Russian Federation at the beginning of the 1990s was to recruit young people. The most suitable were aged around 18 years old, not holding university degrees. These young people were then given a chance to enrol in universities and academies for five years to graduate from economics, law, finance etc. In this way, they were ‘made’ customs officers immediately after school. These students were told they were part of an elite group of young people given college education to lead and manage an important component of the Russian Federation’s governance (ibid.). As Skendaj (2014a, 123) puts it: “the Russian officers started doing work at the age of 22, sharing the idea that they were doing something important for their nation”.

A similar approach, albeit not on such a big scale, was followed in Kosovo. This strategy also brought good results in terms of including ethnic minorities in the emerging institutions of the Kosovar government (with an exception of the Kosovo Serbs who were understandably not interested in joining). As most of the other-than-Serb minorities living in Kosovo did not have a high education, those leading this process decided to lower the entry bar in some regions (only secondary education was required).<sup>9</sup> What is more, women also started to join the ranks in

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<sup>9</sup>Today, the ethnical division numbers are estimated at 85 to 90% of the population being Albanian, between 6 and 10% Serbs, 3–4% Bosnian, 1–2% Turks, Roma, Ashkali and Egyptians together comprising 2–3% of the population, and Gorani representing between 0.5 to 1% of the population. When taking the median into account, we can conclude that the ethnic composition of Kosovo Customs even today relatively fairly represents the ethnic composition of the population, especially when it comes to Albanian and Serbian representatives. The figures are slightly

greater numbers. This is not surprising given that unemployment has always been high in Kosovo (Skendaj 2014a, 123–124).

### 4.3.2 *Customs in the EULEX Period*

By April 2007, all customs operations were being run by local officials. The EU was always involved through both UNMIK and bilaterally. The Kosovo Customs has benefited from developmental assistance programmes such as IPA, twinning programmes and other EU-led initiatives. The programme reports from the period before EULEX's deployment in 2008 are positive. The 2007 Kosovo progress report noted good overall progress in the field of customs. It acknowledges that the adoption of the Kosovo Customs Code in March 2004 was broadly compliant with the EU legislation. It further noted the system for directly connecting and monitoring all border points had been operational since March 2007 (EULEX Progress Report 2007).

Serious efforts have also been made to ensure greater public confidence in Customs and enable the reporting of possible corruption (EULEX Programme Report 2007). Especially the former—corruption and protection of the customs service from political influences—was the main approach the international actors used to build up this sector in the years after the war in Kosovo. As Skendaj (2014b, 471) states, “from early on, one key task of the international administrator was to prevent political interference from the Kosovo self-government institutions or UNMIK” and to successfully import the EU's rules and institutional mechanisms to penalise corruption in the customs service.

Due to the nature of the customs service, it holds “high potential for corruption since it processes taxes at the border and its officials have strong incentives to misrepresent the goods in exchange for a large bribe” (Skendaj 2014b, 468). The customs bureaucracy could therefore be one of the most corrupt and least effective institutions around the world; this holds true for many post-conflict societies. However, as our interviewees argue, the internal institutional mechanisms put in place in Kosovo have worked relatively well to control and prevent corruption.

Complaints about possible misconduct by customs officers have been examined. Individuals found guilty of abusing their positions have been punished. In UNMIK's initial years, many Kosovo Albanian officers were removed from the service by this mechanism. Afterwards, despite the considerable potential for corrupt behaviour the Kosovo customs service has been quite successful in disciplining such misconduct, especially compared to other customs services in other countries in the region (*ibid.*).

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underrepresented in the case of the Roma/Ashkali/Egyptian minorities and the Bosnian minority, while Turks are slightly overrepresented. It is also clear from the graphs presented above that the numbers of police employees have changed greatly in the last 8 years, especially in regard to Serb minority—whose numbers have almost doubled since 2012.



When EULEX took over, it first and foremost had to ensure the continuation of the managerial capabilities so as to limit any political influence on the customs service. This was done by the previously mentioned international officers who could be found on the outside of the ‘patronage networks’ that could give jobs in exchange for personal loyalty. Therefore, they were able to evaluate the knowledge of selected locals and complete the recruitment process for top positions in the customs service. The technical assistance service ensured the most capable candidates with the best managerial skills at the time were chosen (Skendaj 2014a, 129–130).

Immediately after independence, the Kosovo government tried to politicise the customs service by firing its director, but was forced to reinstate him after immense pressure from the EU and the USA. In 2010, a similar attempt was again made; once more EULEX did not hesitate to intervene and took measures to oppose this act. The attempts to politicise customs (as well as police) undermined the authority and impartiality of these institutions (ibid.).

Today Kosovo continues to rely economically to a great extent on the collection of customs revenues arising from international trade. The customs service raises approximately 70% of Kosovo’s state revenues every year (Compact progress report 2015). Customs has ensured that Kosovo’s self-government budget has been fully financed by domestic sources already since 2003 (Skendaj 2014b, 467). Hence, it is considered one of the most crucial sectors in Kosovo.<sup>10</sup>

### 4.3.3 *EULEX’s Normative Power in the Customs Sector*

It is clear the EU was ready to play its role as a normative actor in the customs sector. After 1999, it took the initiative in the fourth pillar of UNMIK—overseeing customs—and saw it as its obligation to also contribute to peace in Kosovo in this way. At the same time, contributing to the growth of general revenues by collecting taxes from international trade worked well for the economic logic underlying the EU’s peacebuilding efforts: aiming to successfully engage the state to build a strong institution for collecting revenue.

Before 2008, the EU had achieved four (out of the five) criteria needed for it to be perceived as a normative actor. First, it built up its normative identity in interaction with others; it has successfully overtaken the fourth UNMIK pillar (reconstruction and economic development). Moreover, the EU used normative means in its activity: regulations, setting an example in this area and its customs blueprints (guidelines for strengthening the customs sector), which “allowed for overall coherence in terms of formal rules as well as flexibility for its field operations” (Skendaj 2014b, 471).

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<sup>10</sup>The studies of earlier European and American state-building processes indicate that revenue extraction was crucial for ensuring the state’s longevity and the accountability of states to their citizens (Skendaj 2014a, 182).

Customs officers also received both formal and on-the-job training as part of preparing for their position. Recruits had to go through eight weeks of formal training after which there was a six-month probation period. In any of these stages, a recruit could lose their position if they did not meet the expected performance behaviour or engaged in corrupt activity. The customs service also provided for clear evaluation policies—performance indicators and relevant promotion policies within a definite hierarchy (Skendaj 2014b, 472).

In terms of normative behaviour, once again the EU not only acted according to its own values (tax collection and revenue from international trade is extremely important for the EU), but also imported this behaviour directly through the mentioned blueprints and regulations. In terms of the normative ends achieved—correcting attitudes in a post-conflict society the EU wished to influence—it is, as our interviewees believe, clear that in this period the EU was successful in penalising corrupt behaviour and political influences that could affect the revenue collected through the customs service.

What can we say about the EU's 'others-empowering' normative interests in the case of EULEX's customs service mandate? It is evident that if the EU wanted to stabilise Kosovo, it had to work on improving the economic situation in the country which, as illustrated, largely occurred via the customs service. EULEX has supported structural changes in Kosovo Customs that led to real progress such as 5% increase in customs revenue collection and a 500% rise in the sum of undeclared cash seized at Pristina airport customs. The mission has supported Kosovo Customs in implementing full customs controls and collecting associated revenues and taxes at the crossing points in the north of Kosovo (EULEX 2016a).

Following the EU-facilitated Dialogue between Kosovo and Serbia, the Development Fund for Northern Kosovo municipalities was established in 2013. The fund is made up of revenues collected at the crossing points of "Gate 1" (Jarinje) and "Gate 31" (Brnjak) and distributed to development projects in Northern Kosovo. The Fund is managed by a management board composed of the EUSR in Kosovo as the Chair, the Kosovo Minister of Finance on behalf of the Kosovar authorities, and a representative of the Serb community in the four municipalities (Peci 2013).

While several Kosovo Albanian opposition politicians remain critical of this EU initiative due to the presumed creation of a parallel budget for Serbian municipalities that could lead to the further loss of control over the north of Kosovo, the initiative's main goal is to foster the social and economic development of people in the northern municipalities, to fight against instability and poverty and, ultimately, to reduce the threat of home-grown radicalism, which could also arise from the dire economic situation (*ibid.*). By 1 March 2016, the Fund had collected more than EUR 8.3 million. As at that date, the management board had approved 13 different projects involving a total of EUR 6.4 million (European Union Office in Kosovo 2017).

Moreover, several other activities are performed through EULEX that in a way also help the EU keep the Union safe. Several EU actions have been dedicated to increase the capacity of Kosovo customs, including twinning in the field of

Integrated Border Management and the fight against drug trafficking, as well as in the area of fighting organised crime (European Commission 2015). Tzifakis (2013) adds that EULEX helped Kosovo Customs adopt and further develop the Kosovo Customs Code in line with European standards, and especially to realise some progress in developing its cooperation and information sharing with other Kosovo law-enforcement agencies.

Another recent challenge of great relevance is the control of irregular migration across Kosovo's borders. During the increased influx of migrants toward the EU in 2015, but also before then, an extensive spike in irregular migration from Kosovo to EU countries was noted. The EU-sponsored dialogue with Serbia on irregular migration led to closer cooperation with Belgrade in this area (Kosovo Report 2015) and the Kosovo Border Police has, hand in hand with Kosovo customs, taken actions to address this pressing issue.

As shown in a 2016 Report of the EUHR for the UNSG on EULEX's activities in Kosovo, the mission held an advisory and support role for the Kosovo border police and customs on the country's preparedness in the event of a considerable influx of migrants.<sup>11</sup> However, long-term and comprehensive policies to prevent any further spikes in irregular migration must still be considered and addressed.<sup>12</sup>

While those challenges do not directly fall within the scope of the mission's original mandate, they form constitutive parts of the broader security environment and hold direct and indirect implications for the mission's operational work (Interview 20 2016r). Changes should be first implemented at the strategic level and then all the way down to the tactical level, and should be accompanied with adequate financial adaptations to support the directions set (top-down approach).

It should be noted that the past attempts to prioritise specific issues following the "bottom-up approach" have been identified as only partly successful (Interview 8 2016g). Due to its rigid and lengthy planning process, the mission's flexibility is limited. It usually takes 1 year to 1.5 years for the mission to change its direction and operational focus, which is not suitable if it is to address such imminent challenges.

We may therefore conclude there are many 'self-empowering' interests invested in improving the customs service in Kosovo. By improving the customs service in Kosovo, the EU becomes safer in terms of reducing the chance of having a 'social time bomb' exploding on its doorstep. In addition, it can cooperate with capable local authorities in terms of preventing money laundering, organised crime, human trafficking and, more recently, irregular migration threats from the south.

Capussela (2015, 116) states that organised crime and threats such as terrorism through a lack of control over irregular migration pose obvious direct risks for Europe. On the other hand, corruption and economic crime are included in the

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<sup>11</sup>Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 2016, S/2016/407. [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2016/407](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/407)

<sup>12</sup>Measures are also needed to tackle the underlying causes of emigration, in particular high unemployment, especially among young people.

mandate because corruption and related economic crime are both a (proximate) cause of state fragility and the necessary companions of organized crime. Since Kosovo is losing its 'peacebuilding momentum', some of the solutions (such as increased flexibility of the mission in order for the mandate to adapt to more pressing threats) are still not being considered by the EU member states.

### **Achievements in border control and state security—normative ends?**

However, the EU was able to achieve many peacebuilding normative ends in the case of the customs service. The 2009 EULEX Programme Report noted that Kosovo customs officials were quite well trained to perform their basic duties, that the government strategy on integrated border management had been adopted, and that operational plans had been developed. The main challenges then identified were the lack of adequate equipment and facilities, staff shortages, poor communication and the particularly low level of intelligence exchanged between customs, the Kosovo Police and other law-enforcement agencies. The report also noted that overall the customs legislation is insufficient and there is a strong need for advanced and "tailor-made" trainings etc. (EULEX 2009 Programme Report).

If we compare the state of affairs in customs half a decade later (Compact Progress Report 2015), we can observe an improvement in the internal restructuring of Kosovo Customs and improved recruitment; yet staff shortages remain a challenge. A new 'paperless customs system' has been introduced which, in addition to facilitating trade, responded to and addressed alleged corrupt practices.

An important development is the construction of permanent border crossing points between Kosovo and Serbia. An agreement on Integrated Border Management between Kosovo and Serbia was reached in December 2011, and the technical protocol was initiated in 2012. It was immediately signed by Kosovo, whereas the Serbian side stalled signing it by 7 months (European External Action Service 2014, 21). The process was later followed by an agreement on an Action Plan which, together with the Technical Protocol, laid down two phases of integrating the border management.

The first phase included the establishment of temporary buildings, followed by building permanent premises in line with EU standards in the second phase. The parties agreed to establish six border crossing points, three of which were located in Kosovo and the other three of them in Serbia (Interview 13 2016k). Yet the implementation process did not run smoothly, as it was marred by different incidents resulting from counterreactions, including the burning and damaging of facilities at the border crossing points at Brnjak and Jarinje in 2011, while shots were fired at local and KFOR personnel at both border crossing points.

Six months later, attacks were also reported in Zvečan/Zveçan, injuring German troops (European External Action Service 2014, 21). According to one interview, full presence and functionality at the Brnjak and Jarinje border crossing points were restored in 2013 with the Operational Plan of EULEX. The plan was drafted by Kosovo Customs and took account of all agreements made during the meetings in Brussels, as well as the Kosovo legislation and conclusions from the technical

negotiations on Integrated Border Management. The clearance of all goods and collection of customs duties, excise duties and VAT commenced at the Jarinje and Brnjak border crossing points on 14 December 2013 as a result of the conclusions negotiated in Brussels (Interview 21 2016s).

With regard to regular border patrols on the so-called green border, KFOR troops in particular noted that EULEX does not have sufficient capabilities and manpower to effectively execute the border control tasks, placing an extra burden on KFOR (Interview 17 2016o). Due to the lack of border control capabilities, certain parts of the green border remain exposed and vulnerable; one of the main problems in the area is illegal logging. Such criticism applies most strongly to the north of Kosovo where for security and political reasons EULEX staff only have a limited capability to contribute to border control, although the situation has improved significantly in the last couple of years (Interview 19 2016q). On the other hand, the EU's wider engagement in border control, especially the mentioned agreement on Integrated Border Management for crossing points, has brought substantive progress to the normalisation of border management with Serbia (Interview 13 2016k).

While certain interviews indicate the green border remains a key challenge not sufficiently addressed by Kosovo Customs and EULEX, the official reports do suggest improvements. EULEX facilitates meetings with KFOR, while organising joint trainings with the Kosovo Border Police and Kosovo Customs aimed at developing an operational plan for these "green border patrols" (Compact Progress Report 2015).

The mission also has an important role in facilitating interagency meetings among relevant Kosovar stakeholders in border management (e.g. customs, police, food and veterinary agency, tax office etc.). These meetings are held on both the national level and in coordination with the Serbian counterparts (Interview 11 2016j). Specifically, within customs joint meetings on the regional level between Serbian and Kosovo customs staff have taken place every two months (Interview 14 2016l). EULEX has therefore helped normalise the relations between Kosovo and Serbia by taking steps in the direction of bringing representatives from both sides to the table, establishing the exchange of information, along with a certain degree of coordination and cooperation (Interview 15 2016m).

With the goal to achieve higher interoperability and efficiency in border management, EULEX supported the establishment of the National Centre for Border Management. The centre facilitates the collection, analysis and dissemination of information, and supports cross-border and regional cooperation. The centre is also one of the most important benchmarks achieved on the Kosovo roadmap for visa liberalisation (EULEX 2016b).

### **Normative identity tested**

One can find different evaluations of customs and, interestingly, the poor public evaluations of customs as being one of the most corrupt governmental services have continued despite the relatively small number of cases brought to court (European

Court of Auditors 2012). The UN Development Programme (UNDP) Public Pulse Report 2015 shows that 32.3% of respondents identified Customs as one of the most corrupt government agencies in Kosovo (UNDP 2016). This public perception of corruption in Kosovo Customs remains a *perceived* challenge, endangering the EU's image as a normative actor in this field. It is necessary to increase public confidence in the national institutions to assist the EU in its goal of being perceived as a force for good in the country.

However, Skendaj (2014a, 109) explains this deviation from the otherwise well-perceived Customs' success and notes that "when asked about their sources for evaluating the extent of the corruption, 46% of the respondents claimed it was based on the media, and only 10% claimed they had a personal experience with the corruption". Skendaj (2014b, 469) also notes that the "customs service is constantly ranked as the most responsive bureaucracy in Kosovo by various assessments, both national and international. According to the responsiveness to public requests assessments by the Youth Initiative for Human Rights, the customs service received the maximum possible rating of 100% and stood out high above all other local institutions" since it responded to all public requests for information demanded by this non-governmental organisation.

In concluding this assessment, we evaluate the EU's impact on Kosovo Customs as mostly positive. The European Court of Auditors' report (2012) viewed the EU's assistance as largely having achieving its objectives of building the capacity of Kosovo Customs, leading to increased revenue collection, improvement in the fight against money laundering, a contribution to reforming the customs regulations and their implementation.

Similarly, according to the European Commission's Kosovo 2015 Report, the country is moderately prepared in the area of customs, and while its customs legislation is largely compliant with the EUs' customs code, Kosovo is advised to implement customs legislation in line with EU practices (European Commission 2015, 40). The report states that the Kosovo Customs operates throughout Kosovo, although only to a limited extent in the north. This has improved in the last years. Accordingly, we may conclude that the EU has succeeded in attaining its goal of transferring EU best practices to Kosovo Customs and to some extent in providing sufficient technical capabilities to enforce them.

On the other hand, certain shortcomings must still be addressed. According to the mission statement, EULEX shall assist the Kosovo institutions in their progress towards sustainability and accountability and in further developing and strengthening multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices (Declaration on the European Union Rule of Law Mission in Kosovo 2008). Specific mission tasks in relation to Kosovo Customs are defined to help ensure that all Kosovo rule-of-law services, including the customs service, are free from political interference; contribute to the fight against corruption, fraud and financial crime; make sure that all its activities respect international standards concerning human rights and gender mainstreaming etc. (ibid.).

Therefore, EULEX's main task in the future is, as mentioned, to ensure that customs remains (or become even more) politics-free in the future. This would make sure the service continues on a professional basis and show the EU is indeed basing its normative behaviour in the country on its own values—impartiality, anti-corruption, as well as strong democratic institutions in which minorities and social groups are equally represented. Moreover, EU member states are expected to remain on their toes about Kosovo's future and pay attention to threats like migration, radicalism, terrorism and home-grown foreign fighters. A true normative actor should provide long-term solutions to these imminent threats and challenges, although EU member states might already be losing their interest in providing funding and real solutions for this conflict-torn country.

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## Interviews

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