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The EU and Kosovo: Structural Diplomacy in Action - but on the basis of one-sided paradigms?

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This Policy Paper is the fourth in a series that will be produced by the Jean Monnet Multilateral Research Network on 'The Diplomatic System of the European Union'. The network is centred on three partner institutions: Loughborough University (UK), Katholieke Universiteit Leuven (BE) and Maastricht University (NL). It also brings together colleagues from a wide range of academic institutions within the EU, and includes participants from EU institutions and non-governmental organisations. The aim of the Policy Papers series is to contribute to current debates about the emerging EU system of diplomacy and to identify the key challenges to which the EU's diplomatic system will need to respond in the short and medium term.

The EU and Kosovo: Structural Diplomacy in Action - but on the basis of one-sided paradigms?¹

Overview

The EU's diplomacy towards Kosovo is a prime example of *structural diplomacy*: a diplomacy which seeks to influence or shape sustainable political, legal, socio-economic, security and other structures in a given geographic area. The qualification 'structural' points to two key aspects: the objective to influence or shape *structures* (norms and institutions), and the objective to shape structures that are also *sustainable* in the long run. To be effective, such diplomacy needs to be comprehensive and focus simultaneously on the various inter-related structures (political, legal, socio-economic, security, etc.), be seen as legitimate by the country or region that is the subject or target of this diplomacy, and also incorporate the priorities and policy objectives as defined in that country.²

From an EU point of view, the EU's policy towards Kosovo can indeed be considered as comprehensive. It focuses on a wide range of structures and covers the wide spectrum of the EU's external relations; it involves a wide range of EU actors (including the EU Special Representative to Kosovo, the EULEX rule of law mission, and the European Commission Liaison Office); and it is embedded in a long-term and sustained engagement of the EU towards Kosovo and the Balkans at large.

However, this comprehensiveness from an EU perspective does not mean that the policy is also perceived as comprehensive from a Kosovan perspective. The reason is that the EU's structural diplomacy towards Kosovo is mainly based on a set of Brussels-generated commitments and paradigms (such as the paradigms of stability, multi-ethnicity and enlargement), which do not always match with and include the Kosovan priorities and the paradigms which from a Prishtina-perspective should equally or even more inform EU policy (such as the employment and welfare paradigm – not to mention the accession paradigm). One example can serve to illustrate this: in 2009 the unemployment rate in Kosovo was 73% amongst the under 25 population and 45% in general, but the EU seems to be rather blind for this reality and seems not at all inclined to consider employment as a priority in its policy.

In this Policy Brief, we assess the paradigms underlying the EU's structural diplomacy towards Kosovo by examining the role and commitment of each of the EU's three main actors in Kosovo – the 'political commitment' of the EU Special Representative, the 'operational commitment' of EULEX Kosovo, and the 'reform-driving commitment' of European Commission Liaison Office³ – and by confronting them with possible priorities and paradigms as defined from a Kosovan perspective.

ICR/EUSR: Which 'political commitment'?

From a political point of view, the main EU actor would seem to be the 'ICR/EUSR', which is a double-hat institution run by a single official (in late 2010 Mr. Feith) holding the position of the International Civilian Representative for Kosovo (ICR) and EU Special Representative (EUSR). Its mandate is to supervise implementation of and compliance by local institutions with the Comprehensive Status Settlement Plan (CSP) in its ICR capacity (which reports to an *ad hoc* International Steering Group made up of countries that recognised Kosovo), as well as to provide political guidance to EULEX and coordinate EU presence in Kosovo, in its EUSR capacity. The position of the ICR/EUSR is though

¹ The opinions expressed in this paper are only the co-authors' and do not necessarily represent the views of the institutions for which they work. This policy paper draws upon the analysis in Keukeleire, S., A. Kalaja and A. Çollaku (2011), 'The European Union's Policy on Kosovo', in P. Koutrakos, ed, *European Foreign Policy: Legal and Political Perspectives*. (Edward Elgar Publishing, pp. 172-202); On EULEX, see also Keukeleire, S. and R. Thiers (2010), 'EULEX Kosovo', in Blockmans, S., J. Wouters and T. Ruys (eds.), *The European Union and Peacebuilding. Policy and Legal Aspects* (TMC Asser Press, pp. 353-374).

² For a more elaborated analysis, see Keukeleire, S., R. Thiers and A. Justaert (2009), Reappraising Diplomacy: Structural Diplomacy and the Case of the European Union, *The Hague Journal of Diplomacy*, 4, pp. 146-152; Keukeleire and MacNaughtan, *The Foreign Policy of the European Union* (Basingstoke: Palgrave Macmillan, pp. 25-28).

³ See the EU's portal page "EU in Kosovo": <http://www.euinkosovo.eu/>. The analysis in this Policy Paper is based on the division of labour between the various EU actors in Prishtina which stems from the pre-Lisbon Treaty framework and which late 2010 was still in place.

highly ambiguous and seriously weakened in view of the refusal to recognise Kosovo on the part of five EU Member States (Spain, Romania, Slovakia, Greece and Cyprus).

The latter not only leaves Kosovo as the only potential candidate with no normal contractual relations with the EU, but also implies that as an ICR Mr. Feith has to fully support Kosovo as an independent sovereign state, whereas as EUSR he has to remain status-neutral. This double-hat function reflects the EU's creative way of dealing with diverging internal views in such a way as to avoid a stalemate in its policy. But the awkward situation of ICR/EUSR also mirrors the perception of the EU as an international actor that is not able to agree on politically important issues and that in this sense is only of limited international relevance – even though the EU *de facto* carries out the bulk of the work on the ground.

So far, as prescribed by the CSP, ICR/EUSR has been mainly involved in activities that to a large extent have been focused on moderating the tension between communities and ensuring a protective environment for the minorities, mainly through embedding into the Kosovan legal and institutional order mechanisms allowing for both political representation and more autonomous action for minorities and less interference from the central government. This has chiefly been done through the activities in the area of decentralization, whereby local governments' powers have expanded. Through concerted efforts of international and local institutions, under direct control of the ICR Pieter Feith, new mainly Serb-majority municipalities have been established, as the integration of the Serb minority in the political, economic and social system, mainly controlled by the Albanian majority, has so far proved to be very difficult.

Although the ICR (and to a certain extent the EUSR as run by the same official) has been closely involved in state-building measures in the independent Kosovo, one of the main paradigms which is at the basis of this function is that of stability through fostering multi-ethnicity. This mirrors an understanding of the tension between the Albanians and Serbs as the main threat to stability within Kosovo. However, opinion polls indicate that this premise is shared by neither ethnic Albanians nor ethnic Serbs in Kosovo, who consider unemployment and poverty as the main potential sources of instability.⁴ According to the latest Balkan-wide opinion poll, the situation has become worse, with 54% struggling financially (21% more than last year), 37% thinking that the economy is worsening (14% up from 2009), and 59% of unemployed people seeing no prospect of employment within a year from now (8% up from 2009).⁵ Moreover, the multi-ethnicity paradigm is considered by both ethnic Albanians and Serbs as rather problematic: for the Albanians in view of their experience under the Serbian discrimination and violent oppression in the 1990s, and for the Serbs in view of their experience during the 2004 riots. On the Kosovo Albanians' side, a strong indication of such a perception is support for the so-called 'Greater Albania': 81% (27% higher more than in 2009).⁶

In view of the EU's political inability to commit itself to Kosovo's EU membership on an equal footing with its Western Balkans neighbours, the predominant multi-ethnicity paradigm and the related strong concern for minorities (in the current context mainly the Serb minority) can be perceived as the real 'political commitment' of the EU. However, this does not correspond to the predominant political priorities of the majority population, which focus predominantly on state-building – and in the long run on entering the EU as a sovereign and internationally recognized state.

EULEX: Which 'operational commitment'?

As the largest and most costly ESDP mission to date the mandate of the EU Rule of Law Mission in Kosovo (EULEX) focuses on strengthening the three fields of rule of law: judiciary, police and customs. The EU decided to deploy this mission to Kosovo so that it could have direct influence in the security sector of the country, as it was feared that a complete handover of the law enforcement agencies to local authorities would not only endanger what (little) had been achieved by UNMIK in setting them up during the 2000s, but would also endanger the stability of the country. EULEX chiefly uses what it calls the Monitoring, Mentoring and Advising (MMA) approach, although it also retains some executive power in its justice component. EULEX's 'operational commitment' is aimed at a

⁴ UNDP, *Early Warning Report*, April 2009, p. 5, http://www.ks.undp.org/repository/docs/FF_24_English.pdf (accessed 19/12/2009).

⁵ Gallup & European Fund for Balkans, *Balkan Monitor – Insights and Perceptions: Voices of the Balkans*, pp. 12 and 19, http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf (accessed 06/12/2010).

⁶ *Ibid.*, p. 13

through institutional reform and transformation of the governance mentality in the sector of rule of law, using a complementary approach involving joint agreement on setting policy priorities, local ownership in policy implementation, and synergy in institutional development by integrating capacity-building efforts of other actors involved.

However, the EULEX mission is perceived as being modelled in accordance with the typical supranational top-down paradigm: intervening from above (just as any international presence ever since 1999). This also points to one of the paradoxes of this mission: its documents and external communication tools strongly emphasise the principle of ownership and the fact that “Kosovo authorities will be in the driver’s seat”, but it is obvious that the EULEX leaders still keep a hand on the steering wheel and largely design the roadmap that must be followed – but that only partially reflects the actual situation of the country.

Thus far, the priority-setting process seems to have been rather an ‘outside-in’ one, since it has been EULEX-driven rather than based on priorities being set and planned locally, agreed by all the Kosovan relevant stakeholders and presented to the EU. The EULEX Programme Report does not really indicate that it has made major efforts to streamline its operational objectives with the overall Kosovo Government policy planning. Moreover, providing idealized policy guidelines and recommendations on a too large a number of issues – as the EU is doing now – may be less successful than actually handing over full authority to local institutions over their field of responsibilities so that they incrementally can build their capacities while performing.

The latter is also relevant when it comes to developing strategies to address weaknesses. As the Government of Kosovo has since 2008 adopted several strategies, local ownership would be built more easily and profoundly by focusing on the implementation and further elaboration of what to a larger or lesser extent has already been developed by the Kosovan authorities. The EULEX Programme Strategy neglects all too often the fact that institution-building and law enforcement priorities have been set out in sector-specific national strategic policy documents that are already in force. In terms of capacity-building, if the EU acknowledged and built upon what already existed by supporting the implementation of policies adopted by the government, it would promote ‘learning by doing’ and would reflect accurately the principle of ownership – even if, in the short term, this would inevitably imply some major failures and mismanaged endeavours.

The reluctance of EULEX to give a larger role to the Kosovan actors and to consequently implement the ownership principle is inspired by what we can call the “stability paradigm” and “success paradigm”, which are at the basis of this ESDP mission. Stability in Kosovo has been understood by the international community as a situation free from violence - be it inter-ethnic or against the international presence and local institutions – as well as free from any significant outbreak of demonstration of dissatisfaction. As its enforcement-related policies are not designed to go much beyond maintaining order and pursuing only gradual improvements (in order to avoid violent reactions), EULEX thus risks turning itself into ‘a condition of stability’.

The “success *sine qua non* paradigm” means that, in view of major failures of the EU in the Balkan wars in the 1990s and in view of the fact that EULEX is the largest and most expensive civilian ESDP mission, its failure is simply (and understandably) not an option for the EU. This also explains why the EU is rather risk-averse, avoids delegating responsibility to local judges in sensitive cases, and prefers to take its own high standards as the point of departure rather than the sometimes rather shaky strategies developed by the Kosovan authorities. This sheds another light on the “operational commitment” of EULEX: it reflects too the commitment to keep operational control on the most sensitive parts of the rule of law system in Kosovo, that is the judiciary, and to steer the operational activities of the Kosovan authorities in very clear directions in the two other components of EULEX Kosovo.

ECLO: Which ‘Reform Driving Commitment’?

In the long term, of all of the EU actors on the ground, the European Commission Liaison Office (ECLO) can be considered as the most important. ECLO is at the forefront of monitoring the development of the overall EU integration framework that practically takes the form of partnerships, reporting and political and technical dialogue with the Kosovo authorities as well as the provision of

financial and other assistance. The EU's integration policy in Kosovo is driven by the Stabilization and Association Process, which pursues objectives of stabilisation and transition to a market economy, regional cooperation, and the preparation for EU accession. The most far-reaching instrument is the European Partnership and the related European Partnership Action Plans (EPAP), which identifies short and medium-term priorities that Kosovo needs to address. With Kosovo remaining the only potential candidate country with no normal contractual relations with the EU, the Council adopted the Commission's Kosovo study in December 2009.⁷ This opens the way for a trade agreement, which is not limited to trade alone but also involves wide-ranging institutional and legal reforms. Potentially, this could substitute for a normal Stabilization and Association Agreement like those that have been offered to other accession aspirants in the region.

So far, ECLO has been in charge of programming and implementing its annual Instrument for Pre-Accession Assistance (IPA) programmes that have been focused on institution-building and completion of legal and institutional frameworks, especially in the sectors of rule of law, minorities and economic development, while assistance has been rather limited in the sectors of labour, education and health. Under the IPA Regulation, Kosovo is not eligible for other forms of assistance consisting of regional, rural and human resources development, as they are accessible only to candidate countries. This is perceived as rather problematic in Kosovo itself, as unemployment, limited human resources and the poor state of the educational sector are seen as major problems which are insufficiently tackled by the international community.

This points to a first paradox: the 'reform driving commitment' of the European Commission is largely based on an "enlargement paradigm" and "institution-building paradigm", but as Kosovo is not recognized as a candidate country the Commission is not able to provide substantial aid to tackle the daunting socio-economic challenges. Moreover, the enlargement and institution-building paradigms seem to be to the detriment of other possible paradigms which might inspire the reforms pursued by the Commission. The "welfare paradigm" or "employment paradigm" are examples of paradigms which reflect the major public concerns, as unemployment and poverty are seen as the main potential sources of instability by both the ethnic Albanians and ethnic Serbs in Kosovo.⁸ In 2009 the unemployment rate was 45% in general and more than 70% amongst the population younger than 25, while it is estimated that around 37% of Kosovans live below the poverty line. Kosovo's general economic performance indeed remain very poor, as indicated by a GDP of only around €3.9 billion, which is also a result of an underdeveloped agriculture, weak infrastructure as well as a large informal economy (encouraged by an annual per capita income of only €1,790 and high unemployment rates).⁹ Furthermore, the education system also remains weak as a result of lack of tradition, discrimination and limited attention by both international and local actors. Adopting a welfare paradigm, employment paradigm – and integrating them properly into the Commission's policy towards Kosovo - would be considered as important by the population in Kosovo and could influence local perceptions of whether the European involvement is a success, while it is estimated that around 37% of Kosovans live below the poverty line.

A second paradox related to the enlargement and institution-building paradigms is obviously that, on the one hand, the EU technically applies its enlargement approach to Kosovo (including the very extensive set of requirements involved in this enlargement approach) but that, on the other hand, Kosovo has no political prospect of even becoming a candidate country as long as not all EU Member States do recognize Kosovo. Moreover, the current EU enlargement policy is mostly a legacy of the EU's engagement in earlier enlargement rounds with the Central and Eastern European candidate member states. Kosovo though differs from them due to its short experience as an independent country, underdeveloped public administration, socio-economic conditions and political culture, as well as the Albanian-Serb ethnic chasm. A related complication arises from the fact that the enlargement policy has traditionally been meant to be a tool in dealing with reforming an already existing institutional setup, but not to build institutions from scratch.

⁷ European Commission, 'Communication from the Commission to the European Parliament and Council: Kosovo-Fulfilling its European Perspective', http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf (last accessed: 5 December 2010).

⁸ UNDP, *Early Warning Report*, April 2009, p. 5, http://www.ks.undp.org/repository/docs/FF_24_English.pdf (accessed 19/12/2009)

⁹ European Commission, *Kosovo 2010 Progress Report*, Brussels, 9.11.2010, SEC(2010) 1329, pp. 23-24. World Bank, *Kosovo – Country Brief 2010*, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KOSOVOEXTN/0,,contentMDK:20629286~menuPK:297777~pagePK:1497618~piPK:217854~theSitePK:297770,00.html> (accessed 20/09/2010)

A third paradox touches upon the relationship between the 'enlargement paradigm' and the 'stability paradigm'. The predominance of the 'stability paradigm' implies that the European Commission is largely deprived of the possibility to utilize its conditionality tools with a view to influencing the reform process in the country. It is indeed difficult to exert conditionality and to put pressure on the authorities to stick to the agreed reforms in a context where the EU also depends on these actors to maintain stability. In this sense, it is no surprise that the 2009 Progress Report pointed to the rather limited progress in implementing the European Partnership priorities. Up to late 2009, only a modest total of around 20% of activities foreseen in the EPAP had in fact been implemented by local institutions.¹⁰ Nevertheless, the European Commission (at least not publicly) has never indicated any use of threats in discontinuing its financial support under IPA, as this might possibly undermine the functioning of the EU's other activities on the ground as well.

Concluding recommendations

The policy paper concludes with some policy recommendations which are aimed at rebalancing the paradigms of the EU's Kosovo policy and strengthening its legitimacy and chances of realizing sustainable structural changes.

- The EU in Kosovo should focus on creating conditions for the implementation of its enlargement policy which entail structural transformation in the receiving context, but this requires that the EU addresses the problems and paradoxes related to the 'stability' and 'success' paradigms.
- The EU should develop a platform which integrates its rule of law activities in Kosovo more with its enlargement policy and identifies it less with ESDP, as this would ensure that there are more sustainable reforms in the sector. In parallel with offering Kosovo a determinate timeframe for establishing fully-fledged contractual relations within the Stabilisation and Association process, the EU should come up with a feasible and realistic timeframe of completing EULEX's mission. This should be done in the form of a joint EU–Kosovo political commitment preceded by close consultations with Kosovan authorities.
- The EU should more explicitly acknowledge and build upon what already exists by supporting and demanding the implementation of policies adopted by the Government in Prishtina – thereby promoting learning by doing, even if this inevitably implies some major failures.
- The EU should simplify and modify parts of how it implements the enlargement policy in Kosovo, bearing in mind that it has to deal with a newly created state administration which is still under development. The EU in Kosovo should not refrain from utilising conditionality measures, as this will also make sure that the existing policy frameworks are taken more seriously by the local authorities.
- The EU has to focus more on the various socio-economic sectors and the educational sector and make sure that it tackles in a visible way the major challenges of unemployment, poverty and poor education – which will also enhance the legitimacy of the EU in Kosovo.

In this way, by integrating the priorities and policy paradigms that are perceived as essential from a Kosovan perspective, the EU can develop a structural diplomacy that is not only comprehensive from a Brussels perspective but also from a Prishtina-perspective. This can increase the legitimacy and effectiveness of the EU's diplomacy, and contribute to assuring that the EU's diplomacy towards Kosovo also becomes a prime example of successful structural diplomacy.

¹⁰ Interviews in Prishtina, September 2010.

The Diplomatic System of the EU Network, funded by the European Commission's Jean Monnet Programme, brings together three partner universities with a strong tradition in the study of European integration in its international context. The lead partner is Loughborough University, and specifically its Department of Politics, History and International Relations and Centre for the Study of International Governance. The other partners are Katholieke Universiteit Leuven, from Belgium, and Maastricht University, from the Netherlands. Each partner is responsible for key events and a research strand. In addition selected experts drawn from EU and Member State institutions and from relevant sections of civil society will be invited to participate in selected network activities.

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