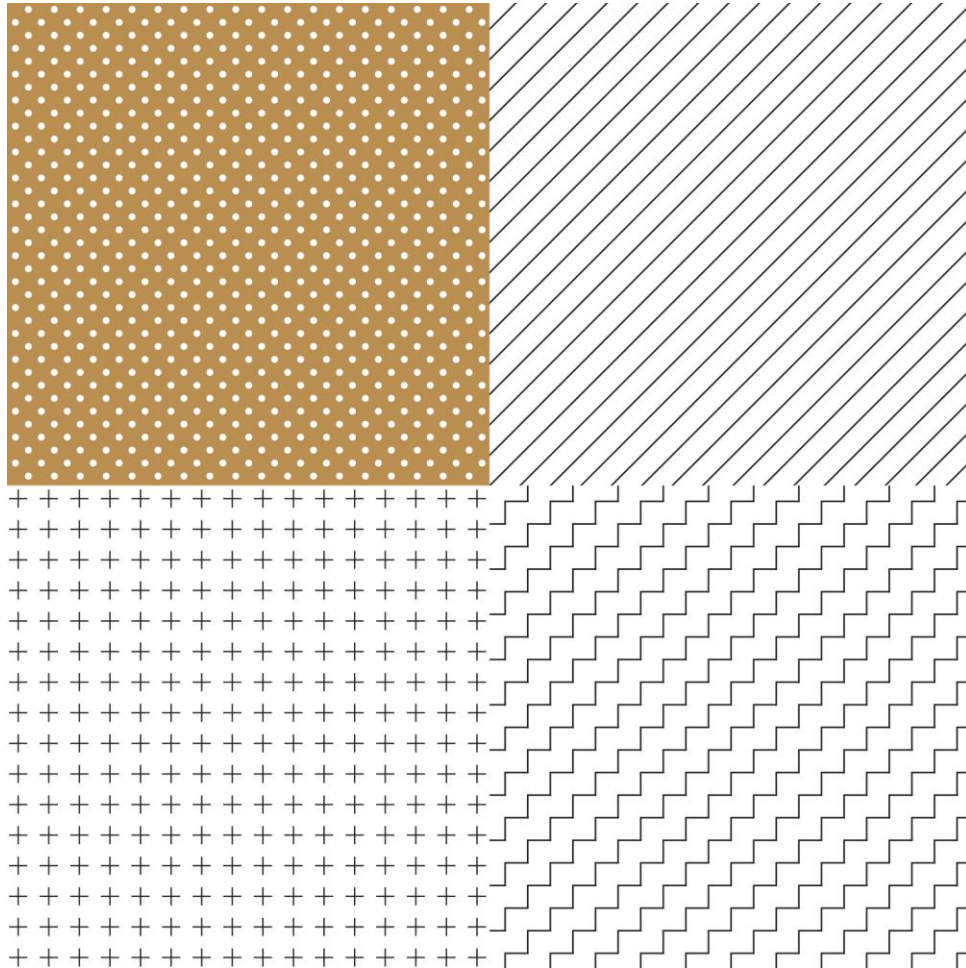


W O S C A P

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EU peacebuilding capabilities in Kosovo after 2008: an analysis of EULEX and the EU-facilitated Belgrade-Pristina Dialogue

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Whole of Society Conflict Prevention and Peacebuilding

This study discusses the capabilities of the European Union in Kosovo in the fields of conflict prevention and peacebuilding. It pays particular attention to two interventions that took place under the auspices of the CSDP; the EULEX mission and the EU-facilitated dialogue between Serbia and Kosovo. It has been produced as part of the project "Whole-of-Society Conflict Prevention and Peacebuilding" (WOSCAP). This report complements the other in-depth research cases with a broader view of EU interventions regarding conflict prevention and peacebuilding in Georgia, Ukraine, Mali, and Yemen; and desk review studies in Sri Lanka, Afghanistan, Guatemala and Honduras. More information at www.woscap.eu.

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Abbreviations

AAK	Alliance for the Future of Kosovo
AKR	New Kosovo Alliance
CFSP	Common Foreign & Security Policy
CPC	Civil Protection Corps
CSDP	Common Security & Defence Policy
CSP	Comprehensive Status Proposal
DS	Democratic Party
DSS	Democratic Party of Serbia
EEAS	European External Action Service
EU	European Union
EULEX	European Union Rule of Law Mission
EUMM	European Union Monitoring Mission
EURA	European Union Readmission Agreement
EUSR	European Special Representative
FAC	Foreign Affairs Council
FRY	Federal Republic of Yugoslavia
GAC	General Affairs Council
IA	Interim Agreement
IBM	Integrated Border Management/ Integrated Boundary Management
ICG	International Crisis Group
ICJ	International Court of Justice
ICO	International Civilian Office
ICR	International Civilian Representative
ICTY	International Criminal Court for the former Yugoslavia
ISG	International Steering Group
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KP	Kosovo Police
LDK	Democratic League of Kosovo
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Cooperation
PDK	Democratic Party of Kosovo
PISG	Provisional Institutions of Self-Government
PSC	Political and Security Committee
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
SFRY	Socialist Federal Republic of Yugoslavia
SNS	Serbian Progressive Party
SPS	Socialist Party of Serbia
SRS	Serbian Radical Party
SRSG	Special Representative of the Secretary

Introduction

This report discusses selected EU policies in the field of conflict prevention and conflict management in Kosovo. The EU's role in Kosovo has increased over the past decade and the EU took a leading role after Kosovo declared itself independent in 2008. The EU relations with Kosovo are multi-faceted. Kosovo hosts the largest CDSP mission, and the amount of financial and technical cooperation with the country are among the highest in the world. While the EU has made massive investments in Kosovo, the EU intervention and policies have had to adapt to particular characteristics of the conflict history of the country and the international presence there. The conflict about Kosovo's status has never been settled, leading to ongoing contestations about the statehood and governance of Kosovo.

The present study is one of the desk studies conducted by Utrecht University in the framework of the EU funded WOSCAP project. The objective of this case study is to provide insight into the capabilities of the EU in the field of conflict prevention and peacebuilding, based on screening existing academic reports, policy documents and evaluations, journalistic articles, as well as a number of interviews with a select number of persons. The study pays particular attention to two interventions that took place under the auspices of the CDSP; the EULEX mission and the EU-facilitated dialogue between Serbia and Kosovo.

In line with the theoretical and methodological framework of the project, emphasis is placed on the processes of intervention and policy making in a complex national and international context (see Martin et al, 2016). Thus, rather than looking for the effectiveness or impact of interventions per se, the report looks at how interventions are influenced, developed and renegotiated in a volatile context, while analyzing the different assessments (and criteria for assessment) of a range of stakeholders (both local, national and international). In other words, the report considers the strategic maneuvering of the EU in a volatile and complex context, and the principal actors and events that the EU had to relate to, and the assessments, evaluations and portrayals of the role of the EU made by different stakeholders.

The report is organized as follows. Chapter 1 provides a short background of the conflict in Kosovo, the international interventions aiming to stop the conflict, the post-1999 international administration and the post-independence developments. Chapter 2 zooms in on the role of the EU in Kosovo. The wars in the Balkans and the EU's incapacity to deal with them were reason to develop new policies, instruments and agencies. These initiatives have all had very tangible consequences for Kosovo and are briefly introduced. Chapter 3 and 4 discuss the two case studies: the EULEX mission and the EU-facilitated dialogue. Both chapters start with a brief introduction and some background information, they move on to a presentation of the development of the EULEX mission and the dialogue respectively, and end with a discussion of different assessments and evaluations of the two interventions and a conclusion which summarizes the main findings per case. The conclusion of the report provides a preliminary reflection on the capabilities of the EU in the case of Kosovo.

1. Kosovo: war, peace and international interventions

The conflict over Kosovo's status between Kosovo and Serbia has a long history, with inter-ethnic tensions between Kosovo Albanians and Serbs long preceding Kosovo's fight for independence from Serbia (Guzina and Marijan 2014). Most relevant for this research is the period leading up to the violent conflict, the Kosovo War itself, and the post-conflict situation in the region.

1.1 The Kosovar conflict and international involvement until 1999

Kosovo used to be an autonomous province within Serbia under the Socialist Federal Republic of Yugoslavia (SFRY). Having been an autonomous province rather than a republic, Kosovo was denied the possibility of becoming an independent state after the dissolution of SFRY, as was established by the Badinter Arbitration Commission in 1991-1992 (Bieber 2015). Under the SFRY constitution of 1974, the province had enjoyed a high degree of autonomy. However, it was brought under Belgrade's direct authority by the Serbian President Slobodan Milošević in March 1989 (Bieber 2015). Rising tensions between the Federal Republic of Yugoslavia (FRY)¹ and the Kosovo Liberation Army (KLA), culminated in the Kosovo War, particularly when in March 1998, a clampdown by FRY security forces on the operations of KLA militants resulted in a growing cycle of violence and a tense refugee situation (Tierney 2011). When FRY troops began an ethnic cleansing campaign, targeting the ethnic Albanians in Kosovo and forcing them to flee to Albania, Macedonia and Montenegro, the international community considered the conflict a humanitarian crisis and began to respond.²

The lead was taken by the Contact Group, which included the United States, Russia, the United Kingdom, France, Germany, Italy and representatives from the European Union Presidency and the European Commission. Throughout the Kosovo War, the Contact Group attempted to 'build a coherent strategy which involved a variety of different organizations, in particular the UN Security Council, the Organization for Security and Cooperation (OSCE), the European Union and NATO' (Tierney 2011). The impetus for the establishment of the Contact Group was the deteriorating security situation in Kosovo. However, the removal of Belgrade's authority in Kosovo and a revision of Kosovo's status were also high on the international community's agenda.

In a statement on 9 March 1998, the Group presented a list of proposals aimed at resolving the conflict, including immediate, practical initiatives, such as an arms embargo and economic sanctions. The Group also made clear that a long-term solution for the conflict would involve greater autonomy for Kosovo. Throughout the spring of 1998, the Contact Group tried to convince the FRY to enter into internationally mediated negotiations with the moderate

¹ After the dissolution of the SFRY five independent states were established: the Federal Republic of Yugoslavia (FRY), which included Serbia and Montenegro, and Bosnia-Herzegovina, Croatia, Macedonia and Slovenia. See Tierney, S. (2011).

² NATO, 'NATO's Role in Relation to the Conflict in Kosovo', <http://www.nato.int/kosovo/history.htm#1>

Democratic League of Kosovo (LDK), led by Ibrahim Rugova, who had distanced himself from the KLA's militant strategy. The FRY government refused and held a referendum within Serbia, including Kosovo, on Kosovo's demand of autonomy. 'This served as a clear statement that Kosovo was not a republic within FRY but was simply a province of Serbia, therefore reinforcing Kosovo's weak institutional status vis-à-vis the FRY as a whole' (Tierney 2011, 6).

After six months of escalating violence, the FRY and Serbia attempted to negotiate bilaterally with the Kosovo leadership to avoid international involvement, which led to a number of meetings on a presidential level between Milošević and Rugova. These negotiations were already suspended by the end of May when the hostilities in Kosovo further deteriorated (Weller 1999; ICG 1998). The international community implemented economic and political sanctions against the FRY in an attempt to broker a political deal. The UN Security Council followed the Contact Group's lead and with Resolutions 1160 and 1199 the following three objectives were established: to control the conflict, to alleviate the humanitarian crisis, and finally, to secure a political resolution for the dispute over Kosovo's status.

Also the EU and OSCE continued to stimulate a dialogue between the parties, but despite this notable degree of international cooperation, Belgrade insisted negotiations should involve the Republic of Serbia rather than the FRY, reinforcing the argument that Kosovo was constitutionally part of Serbia (Tierney 2011). Moreover, the UN Security Council resolutions, several European Parliament Resolutions, EU joint actions and common decisions, did not lead to any results. Following NATO's threat of military intervention, Serbia did accept an OSCE peace mission, the Kosovo Verification Mission, in Kosovo in October 1998 (Bislimi 2012).

After another failed attempt to work out a political resolution to the conflict in October 1998, especially after the OSCE Mission documented the massacre of 45 ethnic Albanians by the FRY forces on 15 January 1999, the Contact Group, with great support from the EU, organized the Rambouillet Conference in February and March 1999. The Serbian/FRY delegation rejected the Rambouillet Agreement, which was quite surprising considering the threat NATO had issued before the start of the Rambouillet Conference, particularly warning the FRY it would resort to force if the negotiating parties failed to reach an agreement (Bislimi 2012). On 24 March 1999, without the approval of the UN Security Council, NATO commenced a bombing campaign targeting Serbian military facilities in both Serbia and Kosovo. NATO's strategic objectives were to 'demonstrate the seriousness of NATO's opposition to Belgrade's aggression in the Balkans', to 'deter Milošević from continuing and escalating his attacks on helpless civilians and create conditions for him to reverse his ethnic cleansing', and, finally, to 'damage Serbia's capacity to wage war against Kosovo in the future' (Fenrick 2001, 490).

On 10 June 1999, after the bombing campaign which lasted seventy-seven days, NATO's air operations against FRY were suspended as FRY had started with the withdrawal of its forces from Kosovo.³ The campaign officially ended with the Kumanovo Technical-Military Agreement between NATO and FRY reached on 9 June 1999, which gave way to the UN-mandated KFOR (Kosovo Force), a NATO US-led military presence, to enter Kosovo in June 1999 that facilitated the complete withdrawal of all FRY troops from Kosovo (Bislimi 2012). Despite NATO's presence in Kosovo, the first year after the war was unstable. This became

³ NATO, 'NATO's Role in Relation to the Conflict in Kosovo' (1999, July 15), NATO, <http://www.nato.int/kosovo/history.htm#1>

evident when KFOR failed to protect the Kosovo Serbs who were targeted in revenge killings and reverse ethnic cleansing, leading thousands of Serbs to flee to Serbia and to Serb-dominated regions in the north of Kosovo (Van der Borgh 2012).

1.2 International administration of Kosovo

With the suspension of NATO's bombing campaign, on 10 June 1999, the UN Security Council passed Resolution 1244, which welcomed the FRY's withdrawal from Kosovo⁴, and announced the Council's decision to replace FRY authorities with the deployment of international civil and security presences in Kosovo, respectively the United Nations Interim Administration Mission in Kosovo (UNMIK) and the KFOR. Additionally, Resolution 1244 envisaged the appointment of a special representative of the UN Secretary-General (SRSG) responsible for Kosovo's administration and coordination with KFOR (Yannis 2004). UNMIK demonstrated a high degree of international cooperation, but the mission was also critiqued for having 'too many masters' (Visoka 2011).

Although Resolution 1244 recognized FRY's sovereignty over Kosovo, it also stated UNMIK would promote 'meaningful self-governance'. The international community thus postponed the decision on Kosovo's status, 'which had become the main bone of contention between the Serbian minority in Kosovo and the majority Kosovo Albanians, [and] it remained a key issue for the parties to the conflict, who fundamentally disagreed about the meaning of meaningful self-governance' (Van der Borgh 2012, 31).

When UNMIK was deployed in Kosovo, three different governance structures were already in place. Firstly, the non-violent opposition movement of the LDK, which had emerged between 1989 and 1999, controlled its own shadow parliament and government, a health-care and educational system, and a parallel tax system. Secondly, the KLA had established its own government in exile, which was separate from and uncoordinated with the parallel structures of the LDK. Finally, Belgrade and the Serbian community in Kosovo established their own parallel structures, reorganizing the remnants of the old regime, and directly linking them to Serbian state structures (Van der Borgh 2012, 32).

Although the UN was successful in reshaping the functioning of the two former governance structures, it failed to integrate the Serbian parallel structures (Van der Borgh 2012). The predominantly Serb population in Kosovo's northern municipalities, including Leposavic, Zubin Potok and Zvecan, and a small part of the Mitrovica municipality north of the Ibar River, continued to reject integration into Kosovo. Before the violent conflict Serbs had lived throughout Kosovo, but the Kosovo War, the 2000 anti-Serb reprisals, and the March 2004 riots at which ethnic Albanians took part in wide-ranging attacks on Kosovo Serbs, resulted in their withdrawal into enclaves and their migration to the north of Kosovo and Serbia. Kosovo Serbs, particularly in northern Kosovo, feared Albanian leadership, and even though the northern political elites and the Serbian government belonged to different political parties and were bitter rivals, northern Serbs overwhelmingly cleaved to Serbia and continued to depend on Serbia's financial contributions to the region (ICG 2011).

⁴ Ibid.

Faced with this problematic political reality in Kosovo, UNMIK delayed transferring power to local institutions, and avoided to engage in a discussion on Kosovo's status between 1999 and 2002 (Visoka 2011). This made UNMIK widely unpopular among the Kosovo Albanians, who scornfully referred to the UN mission as 'anmik', which means 'enemy' in Kosovo-Albanian (Koeth 2010). The UN started to devolve parts of its authority to a newly established Provisional Institutions of Self-Government (PISG) and adopted its 'Standards before Status' policy in 2002 (Koeth 2010). This policy outlined benchmarks Kosovo had to achieve before a decision could be made on Kosovo's status. Many Kosovo Albanians, however, started to lose hope Kosovo would become an independent state, and the antagonism between international and local stakeholders increased (Visoka 2011). The absence of a clear road map about the future status of Kosovo 'posed a virtually insurmountable obstacle in the efforts of the international administration to bring lasting peace and stability' (Yannis 2004, 75). By the year of 2004 events on the ground, including the anti-Serbian riots in March, forced the international community to put the issue of Kosovo's status back on its agenda (Yannis 2004, 75).

1.3 The Ahtisaari plan and Kosovo's declaration of independence

In the first instance, the riots of March 2004 backfired on Kosovo as the Kosovo Albanians lost much of the international community's sympathy that they had enjoyed in their role as victims of the war. However, in the long run, 'the violent riots served as a wake-up call to the international community which was reminded that the current situation was unsustainable and that the status question could not be dodged indefinitely' (Koeth 2010, 231). As a result, UNMIK speeded up the process of devolving its authority to the PISG, and after the publication of a report by UN envoy Kai Eide in 2005, which confirmed the lack of sustainability of the current situation, the UN organized talks between the government of Belgrade and representatives of Kosovo in Vienna in February 2006, which were mediated by the former Finnish president Matti Ahtisaari, assisted by two EU officials from both the Council of the European Union and the European Commission.

The chance the Ahtisaari talks would bring about a solution acceptable to both sides was very limited from the beginning, as particularly the Serbian politicians feared being associated with a process that would result in a loosening Serbian grip on Kosovo. One year after the beginning of the negotiations, in February 2007, Ahtisaari presented his draft 'Comprehensive Status Proposal' (CSP) to both Belgrade and Pristina. The CSP recommend 'conditional independence supervised by the international community, [...] that reintegration into Serbia was not viable, and continued international administration was not sustainable' (Koeth 2010, 232). Unsurprisingly, the Serbian side rejected the conclusion of the Ahtisaari report. The Serbs living in Kosovo were also very much opposed to the Ahtisaari plan, as they feared Kosovo's independence would ultimately lead to Albanian domination in Kosovo, and would result in their loss of the practical and financial advantages of the Serbian state presence in Kosovo (Bieber 2015).

The EU and the US hoped the UN Security Council would endorse Ahtisaari's CSP with a new resolution that would supersede Resolution 1244, even though Serbia had rejected the draft. When it became clear the CSP did not receive enough support within the Security Council due to the expected negative veto of Russia and China (Visoka 2011), the EU, unable

to define her position towards Kosovo and aware that inaction could damage her reputation, began to consider bypassing the Security Council. Finally, the United States, together with a group of EU Member States, facilitated Kosovo's unilateral declaration of independence, delivered by Kosovo's political representatives on 17 February 2008 (Koeth 2010). The declaration specifically mentioned the Ahtisaari Plan, and Kosovo pledged it would fully implement it (Bislimi 2012).

1.4 Kosovo after independence

After 2008 the status issue was still far from settled and continued to plague efforts to bring stability and peace to the region and to build a new Kosovar state. As will be explained in the chapter 4 (on the EU-facilitated dialogue), Serbia was not willing to recognize Kosovo's independence and continued its influence in Kosovo by supporting Serbian 'parallel' governance structures. In this regard the EU-brokered April 2013 agreement between Kosovo and Serbia was a step forward, since it proposed a solution for the north Kosovo. As a result of the agreement the relations between Kosovo and Serbia somewhat stabilised, although this still did not imply Serbia's recognition of Kosovo.

By September 2016 two of the permanent five members of the Security Council – Russia and China – did not recognize Kosovo (111 countries had recognized Kosovo as an independent state).⁵ Moreover, five of the 27 members of the EU – Spain, Slovakia, Greece, Romania and Cyprus – had not recognized Kosovo's independence either, leading to serious challenges for the EU in dealing with the state (see chapter 3). This continuing international disagreement about Kosovo's status continued to hamper the deployment of the international community. In the period after Kosovo's independence a reconfiguration of the international presence took place. The EU stepped up its presence in Kosovo, with the EU Rule of Law Mission in Kosovo (EULEX) largely replacing UNMIK (see chapter 3), but this still happened under UNSCR 1244, a resolution that was utterly ambiguous about Kosovo's future status.

One of the key challenges of the EU in Western Balkans was the problem of organized crime, including human, drugs and arms trafficking and supporting the rule of law systems in the region became a key objective.⁶ In this regard, the situation in Kosovo was and remained worrisome. A report of the European Court of Accountants published in 2012 stated that corruption still was a major problem in Kosovo, and the effectiveness of the EULEX to stamp out corruption had been largely ineffective (Radin 2014; ECA 2012).

Last but not least, the end of 2014 saw a massive increase of asylum seekers from Kosovo in EU member states. The 'exodus' started immediately after Serbia simplified travel rules in 2014, making it possible for Kosovo citizens to reach the borders of the EU via Serbia. According to Weber (2015, ii), it was to a large degree a reaction of Kosovo citizens that had 'lost hope that the political system of their country can deliver change in the near future'. In

⁵ See Republic of Kosovo Ministry of Foreign Affairs. (2016). *International recognitions of the Republic of Kosovo*. Retrieved from Republic of Kosovo Ministry of Foreign Affairs, <http://www.mfa-ks.net/?page=2,224>

⁶ See e.g. Council of Europe and European Commission (2006) 'Situation Report on Organised and Economic Crime in South-Eastern Europe, Vienna'; EUROPOL (2004) 'European Union Situation Report on Drugs Production and Drug Trafficking 2003-2004', Den Haag; United Nations (2007) 'United Nations World Drug Report', New York, in: Tolksdorf, (2013).

2015, 70.000 people, some even say 200.000 people, had fled the country. For months there have been airplanes that on a weekly basis bring back Kosovars to their home country.⁷

1.5 Conclusion

Over the past two decades a broad range of international organizations have been involved in the management and resolution of the conflict on and in Kosovo. After Kosovo's declaration of independence the EU stepped up its presence in Kosovo, inheriting a series of structural problems that were not easy to resolve. Kosovo's status was and remained a point of contention between Kosovo and Serbia, within the EU and at international level. The state building process of Kosovo was seriously hampered by the lack of consensus about Kosovo's status, as well as the high levels of corruption in the country.

⁷ Author's interview diplomat Pristina, Kosovo, 28 June 2016.

2. The EU and Kosovo

2.1 Introduction

This chapter discusses the most important EU relations with Kosovo, as they evolved in the period after 1999. Over the past 15 years the EU became 'the main international actor in Kosovo [and] its influence in the country has been expanding gradually into the political, judicial, economic and security spheres' (Krasniqui 2015). In the period after Kosovo's declaration of independence the EU played an ever more prominent role in Kosovo. Below we discuss the most important relations of the EU with Kosovo in that period.⁸

2.2 The EU under UNMIK

When, in the weeks following 10 June 1999, UNMIK was deployed in Kosovo, the EU agreed to become a stakeholder in the UN mission through financing the fourth of UNMIK's pillars, also referred to as 'Pillar IV' or 'the EU Pillar'. Completely financed by the European Commission, the EU Pillar, together with the newly established European Agency for Reconstruction (EAR) and the EU Monitoring Mission (EUMM) of the Council of the EU, made up the EU presence in Kosovo (Koeth 2010). Meanwhile, most of the international assistance from the European Union to the Western Balkans was provided under the Community Assistance for Reconstruction, Development, and Stabilization program (CARDS) over the period 2000-2006.⁹ In 2007, CARDS was replaced by the Instrument Pre-Accession Assistance program, which functioned until 2013.¹⁰

2.3 CSDP

The responsibility of the European Union to contribute to the resolution of the immediate instability, and the general stabilization and development of South-Eastern Europe in the long term, was recognized by the European Council on 14 April 1999, and by the General Affairs Council on 8 and 26 April, and 27 May 1999,¹¹ at the height of the Kosovo War. According to Koeth, it was the EU's failure to play a constructive role during this conflict, particularly in the autumn of 1998, which gave birth to the European Security and Defence Policy, now known as the Common Security & Defence Policy (CSDP) (Koeth 2010). At the 1999 European Council

⁸ See for an overview the EEAS, 2016, Kosovo and the EU,

http://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-the-eu_eu

⁹ European Council (2000) Council Regulation 2666/2000 of 5 December 2000, on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC.

¹⁰ European Council (2006) Council Regulation 1085/2006 of 17 July 2006, establishing an Instrument for Pre-Accession Assistance (IPA).

¹¹ See Commission of the European Communities (1999) 'Communication from the Commission to the Council and the European Parliament on the Stabilization and Association Process for Countries of South-Eastern Europe', Brussels, 26 May, Com (1999) 235 final.

meeting in Cologne, the Member States agreed that 'the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and the readiness to do so, in order to respond to international crises without prejudice to actions by NATO.'¹² According to the European Council, the CFSP contributes to global peace and security in a number of ways: the EU is directly involved in peace negotiations, the EU works closely together with other international and regional partners, such as the United Nations, and finally, the EU has a wide range of tools, both political and economic, at its disposal in tackling complex security challenges.¹³

In Kosovo the EU deployed its largest CSDP mission. After UNMIK started to devolve its authority to local stakeholders, which was a process that accelerated in 2005, the role of the EU in Kosovo increased. In 2006, the European Union began preparations for a mission in Kosovo; in April a European Union Planning Team Kosovo was established to prepare the EULEX mission.¹⁴ With Kosovo's declaration of independence on 17 February 2008, the EU took over the most important tasks of Kosovo's post-conflict restructuring (Bislimi 2012). In order to avoid pronouncing itself on Kosovo's declaration of independence, which a number of EU Member States were not willing to recognize, the Council of the EU hastened to establish a CSDP and European Union Special Representative (EUSR) mission in Kosovo prior to 17 February 2008 (Koeth 2010). With the European Council Joint Action 2008/124/CFSP of 4 February 2008, the EU established the EU Rule of Law Mission (EULEX) in Kosovo, which was the largest and most ambitious CSDP mission the EU ever organized.

Whereas UNMIK's EU Pillar was mainly established due to the UN's need for the EU's economic and development resources, EULEX meant an increasingly important role for the EU in Kosovo (Bislimi 2012), but because EULEX would also be deployed north of the Ibar River, Serbia and Russia insisted on an UN mandate. In late November, the UN Security Council approved a six-point plan for EULEX' deployment in Kosovo, 'which included provisions for separate chains of command for ethnic Albanian and Serb police, a status-neutral force, and an agreement 'not to implement' the Ahtisaari Plan' (Hamilton 2012: 6) In April 2009, EULEX was fully deployed. Next to EULEX, the International Civilian Office (ICO) was established, headed by the International Civilian Representative (ICR) and the EU High Representative (EUSR), which reported back to the European Council and the International Steering Group (ISG) on Kosovo. Both EULEX and ICO had the objective of bringing Kosovo closer to its European future (Bislimi 2012).

Another major CSDP initiative was the EU-facilitated dialogue between Kosovo and Serbia. With the status of Kosovo still not settled, it was not surprising that the deployment of EULEX in the North of Kosovo was resisted by local leaders, leading to a very limited presence north of the river Ibar. After tensions flared up in the North in 2010, and after the unsuccessful appeal at the International Court of Justice (ICJ) against Kosovo's independence, the EU used its leverage to propose a new round of talks between Kosovo and Serbia. In a resolution of the UN General Assembly, the EU was asked to facilitate these negotiations. While Germany

¹² 'About CSDP - The Cologne European Council', *European Union External Action Service*, http://www.eeas.europa.eu/csdp/about-csdp/cologne_council/index_en.htm

¹³ Council of the European Union, (2015) 'Draft Annual Report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament on the Main aspects and basic choices of the CFSP - 2014', Brussels, 20 July, 11083/15.

¹⁴ Official Journal of the EU (2006), in Cierco, T. and L. Reis (2014, 650).

played a key role in pushing for these negotiations, the EEAS was formally in charge and became deeply involved in the EU-facilitated dialogue. The aim of this mediation effort was to normalize relations between Belgrade and Pristina, promote cooperation between the two sides, to help them achieve progress on their path to EU membership, and to improve the lives of the people of Serbia and Kosovo.¹⁵

2.4 Stabilisation and association process (SAP)

Next to CSDP, the Stabilization and Association Process (SAP) was developed as a common framework for relations with the Western Balkans up to their accession to the European Union. Concerned with the EU's apparent inability to resolve the Kosovo War, the European Commission laid down the principles for the SAP (Koeth 2010) in a Communication to the Council and the European Parliament in May 1999, which was confirmed by the Council in June 1999 (Nugent 2013). The Commission argued that despite the European Union's support for the countries of South-Eastern Europe, they continued to suffer from inter-ethnic tensions and conflict – particularly referring to the ongoing Kosovo War – which necessitated a further development of EU policy towards the Western Balkans. Combining existing instruments with new initiatives, the following content of the SAP was established:

- 'The development of Stabilization and Association Agreements (SAA), a new kind of contractual relations, taking into account the individual situation of each country, with a perspective of EU membership on the basis of the Amsterdam Treaty and once the Copenhagen criteria have been met;
- The development of existing economic and trade relations with and within the region;
- The development / partial reorientation of existing economic and financial assistance;
- Increased assistance for democratization, civil society, education and institution-building;
- The use of new opportunities for cooperation in various fields, including justice [and] home affairs (in particular following the entry into force of the Amsterdam Treaty);
- The development of [a] political dialogue, including at [the] regional level.¹⁶

The SAP for the Western Balkans was officially endorsed at the Zagreb Summit in November 2000 (Koeth 2010), and further developed at the Thessaloniki European Council of 19-20 June 2003, at which the 'Thessaloniki Declaration' and the 'Thessaloniki Agenda for the Western Balkans: moving towards European integration' were presented. The policies towards the Western Balkans were 'enriched' with elements taken from the Enlargement process, reinforcing the ultimate goal of extending membership of the EU to the region.¹⁷ A series of concrete measures were added to SAP, including the introduction of European Partnerships, which, in preparation for closer integration with the EU, identify short and medium term goals

¹⁵ European External Action Service, 'EU facilitated dialogue for the normalization of relations between Belgrade and Pristina', http://www.eeas.europa.eu/dialogue-pristina-belgrade/index_en.htm

¹⁶ See Commission of the European Communities (1999) 'Communication from the Commission to the Council and the European Parliament on the Stabilization and Association Process for Countries of South-Eastern Europe', Brussels, 26 May, Com (1999) 235 final, p. 3.

¹⁷ IP/03/721, Brussels, 21 May 2003 p. 1.

for the potential candidate country. Furthermore, support for institution building was strengthened, and in order to improve political cooperation, the Western Balkans countries were 'invited to associate themselves with EU declarations, Common Positions, and other decisions in the framework of the Common Foreign and Security Policy'.¹⁸ Finally, several measures were added to the region's economic development, the rule of law, as well as regional cooperation and democracy.¹⁹

However, what Kosovo's European future would exactly entail was unclear. The EU endorsed the SAP at the Zagreb Summit in November 2000 but failed to mention Kosovo in the Summit's declaration. Again at the Thessaloniki European Council in 2003, at which the EU reaffirmed 'the future of the Balkans is within the EU', the one fundamental question remained unanswered: would Kosovo become an independent Member State within the European Union? The European Commission tried to clarify the issue with its Communication on Kosovo in 2005, declaring 'The European perspective of the Western Balkans, confirmed in the Thessaloniki Declaration of 2003, is also open to Kosovo', but it was still unclear whether the EU would be prepared to award Kosovo with the title of (potential) candidate *country*. Following the March 2004 riots, within both the European Commission and Council of the EU, there was a growing awareness that Kosovo was not likely to reunify with Serbia (Koeth 2010). As described above, the EU finally played an important role in the Ahtisaari negotiations between 2006 and 2007, several EU Member States facilitated Kosovo's declaration of independence in 2008, and the EU established EULEX and ICO.

Since the beginning of 2012, the relation between the EU and Kosovo intensified, with a number of important developments taking place further materializing Kosovo's European 'perspective'. On 10 October 2012, the European Commission published its Feasibility Study for a Stabilization and Association Agreement (SAA) between Kosovo and the EU, and even though the study identified numerous deficiencies in Kosovo's public systems, it did offer the encouragement that if Kosovo would achieve the benchmarks outlined in the report, the Commission would recommend the Council of the EU to open SAA negotiations (Nugent 2013). However, because five EU Member States did not and were not planning on recognizing Kosovo as an independent country, it was decided that the EU could, as a legal entity, conclude a SAA with Kosovo, whilst respecting the non-recognizers' positions on the status of Kosovo. In the Commission's report, it was argued the situation in northern Kosovo remains a challenge to Kosovo, the Western Balkan regions at large and the EU, and 'it is for the Kosovo authorities to promote a multi-ethnic Kosovo. They need to create conditions for Kosovo Serbs to feel they have future in Kosovo'.²⁰ In its conclusion, the Commission stated that 'Public and political consensus in Kosovo on the EU reform agenda are key to its swift implementation'.²¹

Following the Brussels agreement between Serbia and Kosovo signed in April 2013, the Commission rewarded Kosovo by issuing recommendations to the Council of EU, which stipulated that SAA negotiations should be opened between the EU and Kosovo. Although the Council of the EU welcomed the recommendation, it left it to the European Council, which was

¹⁸ Ibid., p.2

¹⁹ Ibid.

²⁰ European Commission (2012) 'Communication from the Commission to the European Parliament and the Council: on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo*', Brussels, 10 October, Com (2012) 602 final, p. 14

²¹ Ibid.

scheduled to meet on 27 and 28 June 2013, to make a final decision, as well as on possible accession negotiations with Serbia.²² On 27 October 2015, the High Representative, Frederica Mogherini, and the EU Commissioner for the European Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, together with the Kosovo Prime Minister, Isa Mustafa, and Minister for European Integration, Bekim Collaku, signed the SAA between Kosovo and the EU. On 12 February 2016, the SAA was formally concluded, and finally on 1 April 2016, the SAA entered into force. High Representative Mogherini said: 'This agreement opens a new phase in the EU-Kosovo relationship and represents an important contribution to peace, stability and prosperity in Kosovo and the region at large,' and Commission Hahn said: 'This agreement is a milestone for the EU-Kosovo relationship: it will help keep Kosovo on the path of reform and will create trade and investment opportunities.'²³ Currently, Kosovo holds the status of potential candidate.

2.5 Technical and financial cooperation

Kosovo has been one of the most important recipients of European technical and financial cooperation. The political and financial commitments have been used to fund activities of institution building and socio-economic development, as well as the international presence in Kosovo. At the donor conference in Brussels on 11 July 2008, the EU pledged 508 million euro for the period 2009-2011 – which included the allocations of the Instrument for pre-accession assistance (IPA) and the allocations of Marco-Financial Assistance (MFA).²⁴ IPA funds are used for a broad range of activities, including democratic governance and the rule of law. In the period between 2007 and 2013, 672.3 million euro was disbursed.²⁵ The funding allocation for IPA II (2014-2020) amounts to 645 million euro.²⁶ The IPA funding and implementation is managed by the European Union Office (Cierco and Reis 2014, 651) and has been used for many different activities which have close ties to the other EU interventions in Kosovo. As will be discussed in chapter 4, the European Court of Auditors (2012) stated that coordination in the field of rule of law projects between the Commission and EULEX has faced 'major coordination challenges' (ECA, 2012, 7).

EU funds have also been used strategically in support of other EU initiatives. For example, after the Brussels agreement between Kosovo and Serbia was signed in April 2013 an increase in project funding in the North of Kosovo was reported.²⁷ In addition to the increase in development funds for the north of Kosovo, an interesting initiative emerged in 2013, when, as result of the dialogue between Kosovo and Serbia, a development fund was created for the municipalities in northern Kosovo.²⁸ The fund is an effort to contribute to the legitimacy of the Kosovar government in the North, by making the revenues generated at the two crossing

²² Ibid.

²³ European Commission (2016) 'Stabilisation and Association Agreement (SAA) between the European Union and Kosovo enters into force', Brussels, 1 April, http://europa.eu/rapid/press-release_IP-16-1184_en.htm

²⁴ EEAS, 2016, Kosovo and the EU, http://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-the-eu_eu

²⁵ Ibid

²⁶ See Kosovo Financial Assistance under IPA II, http://ec.europa.eu/enlargement/instruments/funding-by-country/kosovo/index_en.htm

²⁷ Author's interviews with EU staff and staff of NGOs in northern Kosovo, June 2016.

²⁸ EEAS, 2016, Kosovo and the EU, http://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-the-eu_eu

points between Serbia and Kosovo (Gate 1 Jarinje and Gate 31 Brnjak, controlled by Kosovar customs) available for local projects. Funds can be used by the four municipalities for socio-economic projects that have a 'direct impact on improving the lives of its citizens'.²⁹ Until March 2016, 21 projects had been approved for a total of 7.7 million euro. The board of the Fund comprises the EUSR (chair), the Kosovar minister of Finance, and a representative of the Serb community.³⁰

2.6 Visa

A key development in the framework for the EU's relationship with the candidate and potential candidate countries of the Western Balkans has been visa liberalisation. The EU made the political commitment to liberalize the short-term visa regime for these countries as part of its Thessaloniki agenda published on 16 June 2003.³¹ The EU may carry out a Visa Liberalisation Dialogue with interested parties, following a Visa Liberalisation Action Plan, which is structured around four blocks regarding 1) document security, 2) integrated border management, migration management and asylum, 3) public order and security, and 4) external relations and fundamental rights.³² The EU considers visa-free travel a 'strong incentive for these countries to speed up their reform efforts, and [it] has, thereby, helped to advance the accession process for the entire region.'³³ Furthermore, the visa liberalisation has, particularly in the case of the Western Balkans, been used as an extra encouragement for these countries to commit to EU Readmission Agreements (EURAs) (Trauner and Kruse 2008), which aim to facilitate the readmission, at request of a Member State, of persons who have not been authorized, or are no longer authorized, to reside in that state.³⁴ 'In policy terms, EURAs are considered a necessary tool for efficient management of migration flows into EU Member States', as they expedite the return of irregular migrants.³⁵

The European Commission launched a Visa Liberalisation Dialogue with Kosovo on 19 January 2012, and in June 2012, the Commission published its 'roadmap on visa liberalisation' addressed to Pristina, which included the identified legislation and institutional measures that Kosovo needed to undertake in order to obtain visa liberalisation for its citizens. On 8 February 2013, 24 July 2014, 18 December 2015 and 4 May 2016, the Commission adopted reports assessing the progress made by Kosovo in this respect, and providing the Kosovo government with recommendations on the expected migratory and security impacts of the visa-free regime. Finally, on 4 May 2016, the European Commission proposed to the Council of the EU and the European Parliament to lift the visa requirements for Kosovo's citizens, by including Kosovo in

²⁹ Ibid.

³⁰ Ibid

³¹ European Council (2003) doc. 10369/03 (Presse 166), available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/76201.pdf

³² IP/15/6368, Brussels, 18 December 2015.

³³ 'Enlargement - Stabilization and Association Process and Visa liberalisation with the Western Balkans', *European Commission*, retrieved from: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/enlargement/index_en.htm

³⁴ 'Readmission Agreements with the Countries of the Western Balkans', *EUR-Lex*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:114562>.

³⁵ European Commission (2011) 'Communication from the Commission to the European Parliament and the Council: Evaluation of EU Readmission Agreements', Brussels, 23 February, Com (2011) 76 final, p 2.

the visa-free list for short stays in the Schengen area. It was something the Kosovars had been waiting on for a long time – the fact that all countries in the region except Kosovo were able to travel freely to the European Union was perceived as a great injustice.³⁶ According to Hopkins, visa liberalization is one of the most tangible things for the people in Kosovo.³⁷ This proposal was presented in conjunction with ‘the Commission's positive assessment confirming that Kosovo ha[d] fulfilled all requirements of its visa liberalisation roadmap.’ The Council of the EU will take a decision on the proposal by a qualified majority.³⁸ However, by June 2016 the EU seemed to have become more cautious about the visa liberalisation process.³⁹

2.7 Conclusion

Over the past decades the relations between the EU and Kosovo have become closer. The EU made large financial commitments to Kosovo, and despite the disagreement between EU members about the status of Kosovo, the SAA entered into force in April 2016. In the post-independence period the EU stepped up its presence in Kosovo by deploying EULEX, the largest CSDP mission. Furthermore, the EU took the lead in a new dialogue process between Kosovo and Serbia. Arguably, there is no other country where the EU plays a more important role than Kosovo. However, the disagreement about the status of Kosovo hampers decision making in the Balkans and the ambiguity of UNSCR 1244, adopted in June 1999 after the international bombing campaign, about Kosovo’s status still affects the room to maneuver for the EU.

³⁶ Author's interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), 27 June 2016, Pristina, Kosovo.

³⁷ Author's interview with Valerie Hopkins, journalist for the Balkan Investigative Reporting Network, 30 June 2016, Pristina, Kosovo.

³⁸ 'European Commission Proposes Visa-Free Travel for the People of Kosovo' (2016, May 4) *European Union Office in Kosovo*, retrieved from: http://eeas.europa.eu/delegations/kosovo/press_corner/all_news/news/2016/20160504_01_en.htm

³⁹ 'EU puts break on visa liberalisation for now amid immigration fears', <http://www.reuters.com/article/us-europe-migrants-eu-visas-idUSKCN0YN56F>

3. EULEX

3.1 Introduction

With an annual budget of around 76 million Euros⁴⁰, financed by the EU's Common Foreign and Security Policy budget, EULEX is the most expensive mission ever executed by the European Union (Laudes and Sánchez 2015). On top of that, its partly executive mandate also sets this EU mission apart from other civilian mission deployed under the CSDP in the Western Balkans (Spornbauer 2010a). So from the very start the stakes of this mission were high. Greicevci argues that 'a EULEX failure in Kosovo would be a failure of the European project in Kosovo, and potentially in the entire region of the western Balkans' (Greicevici 2011; in Cierco and Reis 2014, 652).

This chapter reviews the EULEX in Kosovo. In the first section, some basic information about the mandates, objectives and structure of EULEX is provided. The next and main section discusses the mission's development over the past eight years. It reviews the main activities deployed during the different mandates, while paying particular attention to the ways in which EULEX was confronted with and responded to challenges and changes taking place at the national and international level. This is important, since the EULEX mission deployed in a volatile national and international context and was put to the test from the very start of its deployment. A series of pressures and changes in the national and international context led to challenges, adaptations, critiques and reviews of the EULEX mission. The chapter continues with a section discussing the different assessments and evaluations of EULEX.

3.2 Mandate, staff and objectives

The Joint Action 2008/124/CFSP established the European Union Rule of Law Mission in Kosovo: EULEX Kosovo. EULEX' mission statement in article 2 reads as follows:

'EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized 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.'

One could argue that the objective of the mission is broad, as its activities include the support of the police and judiciary, border management, and tackling of corruption and organized crime (ECA, 2012: 11).

EULEX has two tools had at its disposition. EULEX's executive function consists of 'delivering law services until the progress of local authorities allows a complete transition of

⁴⁰ EULEX (n.d.) 'Basic Facts', online available at: http://www.eulex-kosovo.eu/eul/repository/docs/AE20160531_Fact_Sheet_1.2.pdf [Accessed 2 June 2016].

executive functions to them'.⁴¹ The strengthening division supports Kosovo's rule of law institutions in their progress towards sustainability and accountability, by monitoring, mentoring and advising (MMA) at a senior management level.

The mandates of EULEX have to be renewed every two years and these have to be endorsed by the government of Kosovo. Resulting from discussions both within the EU and between Kosovo and the EU, the mandates were extended in 2010, 2012, 2014 and, most recently in 2016. Whereas the Kosovar government has a strong preference to decrease the international presence in Kosovo⁴², the EU Member States already stressed the importance of a continued EU presence in the country (Laudes and Sánchez 2015). Especially those Member States with Kosovar minorities have pointed out the need to guarantee that Kosovo's institutions will be untainted by corruption once the Mission would be concluded (Laudes and Sánchez 2015).

EULEX' staff consists of policemen, judges, prosecutors and customs officials that are seconded by the member states of the European Union or third countries, as well as local staff (Tolksdorf 2013). In December 2009, there were 2700 staff members working for EULEX: 1650 international and 1050 local staff.⁴³ In 2016 the total authorized strength of the mission was 1600 staff members (see annex 1). The Mission is managed by the Civilian Operations commander, who is the director of the Civilian Planning and Conduct Capability. The latter is based in Brussels and forms part of the European External Action Service. The Political and Security Committee (PSC) of the provides strategic direction to the Mission.

In article 8 of the Joint Action 2008/124/CFSP it was also established that the Head of Mission 'shall assume responsibility and exercise command and control of EULEX KOSOVO at theatre level'. Article 11 sets out that 'EULEX KOSOVO shall have a unified chain of command, as a crisis management operation', and that 'under the responsibility of the Council, the PSC shall exercise political control and strategic direction of EULEX KOSOVO'. Furthermore, 'the Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the SG/HR, shall be the commander of EULEX KOSOVO at strategic level and, as such, shall issue the Head of Mission with instructions and provide him with advice and technical support.' Finally, it was stated that 'the Civilian Operation Commander shall report to the Council through the SG/HR'.

Article 12 Joint Action 2008/124/CFSP furthermore details that 'The PSC shall report to the Council at regular intervals', and that 'the PSC shall receive, on a regular basis and as required, reports by the Civilian Operation Commander and the Head of Mission on issues within their areas of responsibility. Planning for specific areas may be reviewed by the PSC on a regular basis'.

In article 16 of the Joint Action 2008/124/CFSP it was stated that the financial reference amount intended to cover the expenditure related to a period of 16 months starting from the approval of the Operational Plan shall be 205 000 000 euro. On 9 June 2009, the Council adopted Joint Action 2009/445/CFSP which increased the financial reference amount to cover the Mission's expenditure until the expiry of Joint Action 2008/124/CFSP to 265 million euro.

⁴¹ European External Action Service (n.d.) 'Executive Division', online available at: <http://www.eulex-kosovo.eu/?page=2,2> [Accessed 20 July 2016].

⁴² Author's interview with diplomat in Pristina, June 2016.

⁴³ EU Council Secretariat (2009) 'EULEX KOSOVO EU Rule of Law Mission in Kosovo' for the numbers of 2009.

3.3 Starting EULEX

3.3.1 A rocky start – EULEX and the status of Kosovo

From the very start, the deployment of EULEX was hampered by the ongoing disagreements about Kosovo's status, which had serious consequences on the efforts to change the responsibilities of international actors. The CSP, commonly known as the Ahtisaari plan, was built on the assumption that the UN Security Council would accept the independence of Kosovo, approve the plan, and then restructure the international presence in Kosovo. However, with Serbia's ally Russia blocking the adoption of the Ahtisaari plan by the UN Security Council, the international actors had to make a revised, less straightforward agreement that was based on a coalition of the willing (Weber 2015: 3). And while Kosovo declared independence and adopted the CSP into its newly-adopted constitution, 5 of the 27 EU member states⁴⁴ did not recognize Kosovo's independence – thus EULEX' mandate could not solely be justified based on the constitution of Kosovo (Radin 2014, 183).⁴⁵ Next to that, the Secretary General of the UN could not reconfigure UNMIK without the agreement of the Security Council, as UNMIK was launched in accordance with the UN Security Council Resolution 1244 (Greicevici 2011, 292). And UNMIK, tasked with the responsibility for rule of law issues, could not hand over its responsibilities to EULEX without a decision from the UN Security Council – which further complicated the situation.

Negotiations between Serbia and the international community on the deployment of EULEX slowed the deployment of the Mission (Radin 2014: 183). According to Greicevci (2011, 289-292), the internal division between EU member states on Kosovo's status and the EU's 'inability to act as a unified entity in the matter of recognition' motivated Serbia and Russia to 'consistently pursue their negative course of events'. Finally, however, after 'protracted negotiations' (Radin 2014, 183) and an 'intense dialogue' (Greicevici 2011, 293), in which e.g. an agreement was reached on the so-called 'Six-point Plan' between the United Nations and Serbia (Spernbauer 2010b, 781) that underlined several of Belgrade's conditions to support of EULEX (Greicevici 2011, 293), the international community and Serbia reached a plan that did enable EULEX to deploy (Radin 2014, 183). It would take until December 2008 before EULEX began to operate, as also EU member states took ample time to bring the promised capacities into the field.⁴⁶ In the new plan, EULEX was deployed as part of UNMIK and within the status-neutral framework of the United Nations, under the UN Security Council resolution 1244 (Spernbauer 2010b, 782). UNMIK itself was reconfigured so that it no longer administered Kosovo, but it retained limited authority over six issues of particular concern to Serbia, such as border control and issues concerning customs.⁴⁷ EULEX accepted status neutrality, at least *de facto*. As Radin (2014, 183) puts it, EULEX was now 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'. Also, Greicevci (2011, 290-294) points

⁴⁴ Spain, Cyprus, Greece, Romania, and Slovakia.

⁴⁵ Spernbauer (2010a) stresses that it was no coincidence that the Council Joint Action establishing EULEX Kosovo was adopted before the declaration of independence – on 4 February 2008.

⁴⁶ Author's interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

⁴⁷ Ibid.

at the fact that the EULEX mission was supposed to be a status-committed mission, as was set out in Ahtisaari's proposal, and not a neutral-oriented mission, as it became. The author therefore speaks of a 'compromised founding approach' on which EULEX was built – it had a 'shaky foundation' which turned out to have negative implications for the contribution of the mission in terms of its recognition but also for EULEX' daily work (Greicevici 2011, 290-294).

According to Greicevici (2011, 292), this delay created a 'real stalemate' for the deployment of EULEX. 'The start of EULEX was a tough one', Pieter Feith, who was appointed as the International Civilian Representative and the EU Special Representative, indeed remembers.⁴⁸ The EU's internal divide about the recognition of Kosovo resulted in paralysing the International Civilian Representative (ICR), who was double-hatted as the European Union Special Representative (EUSR). On the 4th of February 2008, the Council of the European Union appointed Mr. Pieter Feith as the EUSR in Kosovo.⁴⁹ Two weeks later, the International Steering Group, a group of states that recognized Kosovo's independence and supported the full implementation of the Ahtisaari Plan, appointed Mr. Feith as the first International Civilian Representative in Kosovo (Greicevici 2011, 291). So 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 European Union – of which five countries did not recognize Kosovo's independence.⁵⁰ It clearly weakened his position⁵¹, and it's one of the issues, according to Greicevici, that has led to a 'handicapped capacity' of EULEX to act as a consistent actor in Kosovo (Greicevici 2011: 297). The director of a Pristina-based research centre even refers to this as the EU's 'schizophrenic approach'.⁵² What is clear is that the fact that not all countries recognized Kosovo made it difficult to draft planning documents for EULEX, as for example the Greeks and Cypriots stipulated that there could be no reference to specific Kosovar Ministries as a counterpart to EULEX in any of the documents, since that would entail the independence of Kosovo.⁵³

The ambiguity of EULEX about Kosovo's status affected its popularity in Kosovo. According to the International Crisis Group, Kosovo felt 'cheated' after EULEX deployed as a status-neutral mission. At the time of negotiations on the Mission, Kosovo expected to become independent with the blessing of the Security Council and in return invited the EU to deploy. Yet while the government of Kosovo transferred some of its sovereign powers to EULEX, the UN and EU both failed to reach internal consensus and EULEX deployed status-neutrally under the authority of the UN (ICG 2010: 3). And as UNMIK had not enjoyed much support from the

⁴⁸ Ibid.

⁴⁹ Council of the European Union (2008) 'Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo. Online available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0123> [Accessed 20 July 2016].

⁵⁰ Author's Interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

⁵¹ Ibid.

⁵² Author's interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), 27 June 2016.

⁵³ Author's interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague. In correspondence of the EU about EULEX and Kosovo it was normally stated that 'The designation Kosovo is without prejudice to positions on status, and is in line with UNSCR 122 (1999) and the ICJ Opinion on the Kosovo declaration of independence'. (See e.g. the text of the last extension of the Council of the European Union, <http://www.eulex-kosovo.eu/eul/repository/docs/COUNCIL%20DECISION%20CFSP%202016947.pdf>

citizens in Kosovo, from the start it was a challenge for EULEX to gain public trust (Bytici and Emini 2012, 15). Only 21-22% of the Kosovar public was satisfied with or supported the Mission in October 2008 (Greicevci 2011, 295). 'The last thing people in Kosovo wanted was a large EU mission that did not acknowledge that they were in a country called Kosovo'.⁵⁴ EULEX' 'ambiguous recognition' (Greicevci 2011, 294) of Kosovo is further illustrated by the fact that in the first years of the Mission, in the eyes of Pristina, EULEX was working 'in line with its March 2008 mandate to work towards the Ahtisaari plan, respecting Kosovo's constitution', whereas for Belgrade, the deployment was made possible by a reconfiguration of UNMIK', and Serbia perceived EULEX as 'status-neutral, deployed under UN auspices and not entitled to implement the Ahtisaari plan' (Shepherd 2009, 526-527).

3.3.2 Coordination with national and international actors

According to Greicevci, it can be stated that UNMIK formed an obstacle for the EULEX mission before its deployment. There were practical issues that complicated the first year of the Mission's deployment, such as questions about when the UN would hand over its vehicles to EULEX and when EULEX could make use of the UN's offices.⁵⁵ Yet at the time of actual deployment of EULEX in December UNMIK did not hinder attempts to the transfer of power (Greicevci 2011, 296). The process of transferring case files from UNMIK to EULEX was perceived as 'cooperative and smooth', Greicevci said.⁵⁶ EULEX judges accepted 185 (complex) criminal cases from UNMIK (Bytici and Emini 2012, 12). The handover of case files started on the initial operational day of EULEX, 9 December 2008, and was finished on 17 June 2009.⁵⁷ Cases that were transferred to EULEX judges were mainly related to war crimes against the civilian population committed during the 1998-1999 war in Kosovo, and crimes committed during the unrest in Kosovo in 2004 (Spernbauer 2010a, 24). According to others, however, the case files that UNMIK handed over to the EU were not organized at all, papers were missing, and boxes were not in order, which made it an 'awful start' for EULEX (Spernbauer 2010b, 799).

When EULEX started operating, cooperation between the Mission, specifically the EULEX Special Police Units, and KFOR remained significant (Spernbauer 2010b, 799). In order to facilitate the cooperation between them, four 'technical arrangements' concerning the response to civil disturbance situations, military support to police operations, and exchange of information, between EULEX and KFOR entered into force.⁵⁸ For example in December 2008, KFOR supported the EULEX Special Police when it helped the Kosovo Police to restore order when unrest broke out in the northern parts of Mitrovica.⁵⁹

Meanwhile, the United States decided to intervene more and more unilaterally through its embassy (Weber 2015, 4). In October 2008, the EU and the US signed an agreement in

⁵⁴ Author's interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands

⁵⁵ Author's interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

⁵⁶ Interviews with EULEX officials, conducted by Greicevci, L, see: Greicevci, L. (2011, 296).

⁵⁷ EULEX (2009) 'EULEX Report to the UN', 17 June 2009, in: Greicevci, L. (2011, 296).

⁵⁸ Interview with an involved NATO official in October 2008, by M. Spernbauer, in: Spernbauer, M. (2010b, 799).

⁵⁹ United Nations Security Council (2009) 'Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo', 17 March 2009, S/2009/149, in: Spernbauer, M. (2010b, 799).

which both parties declared their 'shared desire [...] to collaborate closely in supporting the development of Kosovo's democratic standards, in particular those relating to the Rule of Law'.⁶⁰ The US participated and contributed to the EULEX mission, as it still does, but there were also other forums in which EU- and US officials met on a regular basis (Tolksdorf 2013, 11). One of them was the International Civilian Office that functioned from 2008 to 2012 and that supervised the Government of Kosovo's implementation of the Ahtisaari Plan.⁶¹ The ICO also assisted in the establishment of many rule of law related institutions in Kosovo, and in formulating legislation. Also the main international organizations working in Kosovo met, and up until now still meet every Monday morning at the United Nation office in Pristina.⁶² The meeting is chaired by the special representative of the secretary-general of the United Nations and involves e.g. the OSCE, the EU Office, EULEX, EUSR, the Consulate of Europe, KFOR, the UN country team, and UNMIK⁶³, who all gather for information sharing.

Tolksdorf (2013, 11) states that the US government had been the strongest supporter of Kosovo's independence and its state building process, and therefore the US influence in the country was and still is very high. Many political observers, he states, consider the US embassy in Pristina as the most influential international actor in Kosovo, which makes it an important ally for the European Union (ibid). During public holidays, Pristina is coloured mainly with US-flags.⁶⁴ Yet, as he also rightly points out, the EU membership perspective is a very strong 'carrot' that is in the hands of the European Union. Related to that are also other short- and mid-term incentives in the pre-accession process, to which the EU applies conditionality in return for the implementation of reforms. One of the most important examples of this is the visa liberalization (Tolksdorf 2013: 10). Other important actors in Kosovo were, and still are, the embassies of the United Kingdom, France, Germany and Italy, as well as NGO's from these countries, such as USAID and GIZ.⁶⁵ Also embassies from countries such as Norway, Sweden and the Netherlands are said to have 'a good reputation' in Kosovo, for several reasons.⁶⁶

In its first year of existence, EULEX also established a 'Joint Rule of Law Coordination Board' (JRCB) with the Kosovo authorities, co-chaired by the EULEX Head of Mission and the Deputy Prime Minister of Kosovo (ECA 2012, 28). The board was brought to life to ensure solid strategic planning and close coordination with the local authorities on all different levels of hierarchy and at all different stages during the planning process (Serpnbauer 2010a, 18). Thereby it was EULEX' aim to leave the local authorities 'in the driver's seat' (Keukeleire et al. 2011, 193).

⁶⁰ Government of the United States of America and the European Union (2008) Agreement between the United States of America and the European Union on the Participation of the United States of America in the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, online available at:

<http://www.state.gov/documents/organization/120992.pdf> [Accessed 14 July 2016], in: Tolksdorf, D. (2013, 13)

⁶¹ US Department of State (n.d.) 'International Support for Kosovo', online available at:

<http://www.state.gov/p/eur/ci/kv/c27789.htm> [Accessed 21 July 2016].

⁶² Author's interview with James Wilson, political officer at the Organization for Security and Co-operation in Europe, 28 June 2016, Pristina, Kosovo.

⁶³ Author's interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo.

⁶⁴ Author's interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

⁶⁵ Author's interview with James Wilson, political officer at the Organization for Security and Co-operation in Europe, 28 June 2016, Pristina, Kosovo.

⁶⁶ Author's interview with diplomat, Pristina, Kosovo, June 2016.

3.4 EULEX in action

When EULEX eventually reached its initial operational capability in December 2008, the number of staff members was much higher than was initially foreseen. Throughout the preparatory phase, the amount of staff had been revised upwards again and again, to eventually reach a similar level as UNMIK (Koeth 2010, 14). By the end of January 2009, 2364 staff members were working for EULEX, consisting of 1642 international staff members and 722 local staff members allocated with the police, justice, and customs.⁶⁷

EULEX initiated its operations on the ground with a six-month evaluation phase that started in December 2008 (Spernbauer 2010a, 22). By analyzing 2500 individual records, the strengths and weaknesses of the justice, police and customs sector were assessed. In this way, EULEX aimed to 'take stock' of Kosovo's performance and the capabilities of the local law enforcement institutions (Spernbauer 2010a, 19), and at the same established a baseline for further monitoring of progress during the operational phases that would follow (Spernbauer 2010a, 22). With regard to the Kosovar police sector, EULEX was positive about the legal structure of the Kosovo Police (KP), as well as about its skilled and trained staff, budget, and equipment. EULEX' main concerns with regard to this sector revolved around the quality of the KP's leadership and the capacity of the (senior) KP for strategic direction. Recommendations focused mostly on these issues (EULEX 2009, 12).

EULEX however found the criminal justice system and the judiciary in Kosovo to be 'considerably weaker in their ability to uphold an independent and effective prosecution and adjudication of cases' compared to the KP. EULEX identified serious shortcomings with regard to e.g. the accountability and independence of the Kosovo Judiciary, as well as to performance evaluation, access to justice, security and protection of judges and witnesses, and more (ibid 14-16).

While EULEX first set foot on the ground in Kosovo, new primary legislation with regard to the customs sector entered into force at the end of 2008. The then-new Law of Customs and Excise Code of Kosovo was inspired by the European Community Customs Code and thus compliant with EU standard (ibid 16). At the time of the EULEX evaluation, secondary legislation was still to be issued. Among other things, EULEX considered the selection and promotion process of customs staff transparent and fair, complaints and appeals procedures were well in place and duties were well understood by all staff. But there were also gaps identified in areas such as the sharing of information and cooperation with other law enforcement agencies, and premises at customs station and terminals were 'not always at a satisfactory level' (ibid 16-17). The more than 70 recommendations that flowed from the evaluation phase formed the beginning of an eighteen-month strategic planning period starting in July 2009 (Spernbauer 2010b, 788).

Whereas the first 'programming cycle' in December 2008 focused on taking stock of Kosovo's current performance and capabilities with regard to the rule of law, the subsequent cycles that started in November 2009 focused on the actual implementation of the Mission mandate (Spernbauer 2010b, 790). 'Co-location' was put into practice to strengthen the local institutions while at the same time supporting local ownership. EULEX staff members were, for

⁶⁷ United Nations Security Council (2009) 'Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo', 17 March 2009, S/2009/149, p. 11. Online available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2009/149 [Accessed 20 July 2016].

example, linked to and collaborated directly with their Kosovo counterparts in a similar function (Spernbauer 2010b, 790). Interesting to note is that EULEX, from July 2009 onwards, has participated in drafting and reviewing several laws in the rule of law area prior to their submission to the Assembly of Kosovo. This has led Spernbauer to conclude that EULEX has, at least indirectly, engaged in 'fairly classic institution-building' activities (Spernbauer 2010b, 796). Among other issues, these laws focused on weapons, public peace and order, and private security companies (UNSC 2009, 11).

According to Bytyci and Emini, researchers working for the Balkan Policy Institute, satisfaction with the work of EULEX grew significantly in 2009 and the Mission was able to overcome the initial scepticism among citizens. Especially the public appearances, in which promises were made to arrest the so-called 'big fish', led citizens to believe in the work of EULEX (Bytyci and Emini 2012, 15). The Mission was not popular with all political parties, however. The leftist nationalist party Vetëvendosje connected EULEX to the UNMIK police, who had been in discredit after UNMIK police fired rubber bullets and killed two unarmed protestors in February 2007, and engaged in attacks against EULEX vehicles in August 2009 (Radin 2014, 186).

3.4.1 2010 – EULEX' first mandate renewal

In 2010, the Council of the European Union decided to extend the mandate of EULEX for the first time.⁶⁸ Mission planners argued that the resources that up until then had been used for the well-functioning police⁶⁹ could be better used for the judiciary and for the fight against organized crime.⁷⁰ EULEX became more active in its executive mandate. According to Bytyci and Emini, citizens started to feel like EULEX began to perform 'the work for which it had been invited to Kosovo' (Bytyci and Emini 2012, 15). From September 2009 until September 2010, EULEX completed five war crime cases, with eight more ongoing and 27 in pretrial stages. EULEX furthermore completed eight cases related to the March 2004 riots during the same year (Human Rights Watch 2011).

The creation of political conditions that could serve multi-ethnicity and reconciliation in the North of Kosovo was and remained a key challenge for EULEX during the period of the second mandate. Immediately after the declaration of independence, a group of Serbs for example had torched the two border crossings that serve as entry points for the goods in Kosovo; gates 1 and 31 in Leposavic and Zubin Potok (Bytyci and Emini 2012, 23). Kosovo customs officials were removed from these parts of Kosovo, and EULEX customs officials were located in the area to register vehicles, drivers and goods. The Serbs in the northern parts of Kosovo had, for quite a long time, refused to recognize EULEX, which downgraded the capacity

⁶⁸ Council of the European Union (2010) Council decision 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124/CFSP on the European Rule of Law Mission in Kosovo, EULEX Kosovo, <http://www.eulex-kosovo.eu/eul/repository/docs/WE20100608councildecision.pdf>

⁶⁹ According to some, including Florian Qehaja, Executive director of the Kosovar Center for Security Studies, EULEX has been sending more police officers than necessary to a police that was already performing well.

⁷⁰ Author's interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

of EULEX in the North. Eventually, however, around 2010 a municipal office was set up in the North that would form the first thin life-line between Mitrovica and Pristina.⁷¹

As part of its goal to further establish the rule of law, from the start EULEX' focus was on combating corruption and on cooperating with local institutions in order to promote stability in the area. Once the Mission started running, it was 'with great fanfare' that EULEX in 2008 promised to stamp out corruption (Bajrami 2011, 1). In the spring of 2010 it started to take a more pro-active stance with regard to the fight against corruption under the new chief prosecutor Johannes van Vreeswijk (Tolksdorf 2013, 15).

The European Commission reported that in 2010, a comprehensive legal framework was adopted that included laws on the courts, the Kosovo Prosecutorial Council, the Kosovo Judicial Council and the Prosecution (EC 2012a, 8-9). The full implementation of these laws, which constitutes a major judicial and prosecutorial reform, was supposed to lead to the introduction of a new court system with seven Basic Courts and one Appeal Court on the first of January 2013 (ibid, 8). In the new framework, judicial independence is enshrined in Kosovo's legislation, which requires the judiciary to act in an independent and impartial manner.

However, EULEX faced a number of new challenges in this period. One of them was the continuing critique or sepsis towards the Mission (see next section). Moreover, in December 2010, the Swiss politician Dick Marty – who was earlier appointed as special rapporteur by the Parliamentary Assembly of the Council of Europe – offered the Council of Europe a report that showed links of president of Kosovo, Hashim Thaci, as well as other members of the former Kosovo Liberation Army with the criminal 'Drenica group'. This group was allegedly involved in human trafficking in 1999.⁷² In his report, Marty also argues that Thaci's political power to a large extent depended on the support of the EU and the US, who by them is seen as 'the preferred domestic partner in their foreign policy project in Kosovo' (Tolksdorf 2013, 17). In January 2011, shortly after the publication of Dick Marty's report, the Parliamentary Assembly of the Council of Europe called for further investigations into the case (Tolksdorf 2013, 17). EULEX promised to start investigating the so-called case of the 'Yellow House', including claimed transfers by the KLA in 1999 of about 400 Serbian prisoners and others in detention facilities in Albania (Bytyci and Emini 2012, 13). In May 2011, a EULEX Special Investigate Task Force (SITF) was set up to investigate the allegations of the 'Marty Report' (Tolksdorf 2013, 17).⁷³

While the dialogue between Kosovo and Serbia had started in March 2011, EULEX was confronted with new violent clashes taking place in the North during the summer of 2011. The government of Kosovo sought to deploy police officials to two border customs posts between Kosovo and Serbia, after which local Serbs attacked the Kosovo Albanian and EULEX special police. EULEX officials faced frequent roadblocks and threats (Radin 2014, 186). KFOR had to be deployed to re-establish security (Radin 2014, 185). An agreement between Kosovo and Serbia on the integrated management of borders eventually mitigated the situation, although

⁷¹ Ibid.

⁷² 'Marty Report Is 'Challenge' for Kosovo, Albania', Balkan Insight, online available at: <http://www.balkaninsight.com/en/article/marty-s-report-immense-challenges-for-kosovo-and-albania> [Accessed 14 July 2016]; Tolksdorf, D. (2013, 17) '

⁷³ As will be discussed further on, this eventually resulted in the decision to establish of a new international court in The Hague.

the agreed plan of December 2011 was only implemented in December 2012 (Radin 2014, 185).

Bytyci and Emini (2012: 13) from the Kosovo-based Balkan Policy Institute state that these events, especially attacks on officials in the northern part of Kosovo, influenced EULEX to be more active and more involved in a variety of issues related to the northern question. The clashes were, however, important for the EU as a whole. Weber points to this particular event as a key moment for the EU, under German leadership and with support of the UK and the US, of becoming a serious policy actor in the region. In a final attempt to solve or at least improve the status dispute between Kosovo and Serbia and to integrate Serbs in the North of Kosovo, the German Chancellor Angela Merkel turned this into a key condition for Serbia's accession to the European Union (Weber 2015, i).

3.4.2 2012 – EULEX' second mandate renewal

Right after that in mid-2012, when EULEX' mandate was again renewed, EULEX conducted a programmatic restructuring by which the police, justice and customs components were rearranged into executive departments. The Mission also decreased the number of its international staff by about 25%, mainly amongst police officers (Cierco and Reis 2015, 656). Cierco and Reis (2015, 656) point out that there was no corresponding increase of personnel in the justice sector, stating that there is still an average of only one judge sitting in each of the regular courts that deals with criminal proceedings.

On 10 September 2012, Kosovo's supervised independence came to an end. Also the ICR's mandate terminated, and the ICO was closed (Weber 2015, 5). This led some member states to insist that although, initially, the Mission's presence was due to the UN Resolution 1244, it was now directly justified by the Pristina government (Laudes and Sánchez 2015). According to Laudes and Sanchez (2015), others still perceived the relationship between the UN Resolution and EULEX as a clearly hierarchical one.

Cierco and Reis (2014, 653) point at the continuing challenges that EULEX faced after the supervised independence of Kosovo came to an end. For example, EULEX and the Kosovo Police still faced difficulties in traveling freely throughout the north of the country, which 'prevented EULEX from making meaningful advancements' in this area. Also the political connections with criminality remained an obstacle for the work of EULEX; political parties allegedly made use of their connections with criminal actors to maintain their power in Kosovo (Radin 2014, 186). Another constraint, for which EULEX had been criticized earlier, was the fact that EULEX' staff had poor local knowledge. As its staff was seconded, there was a continuously high staff turnover (Radin 2014, 186). It was also perceived that member states never sent their best prosecutors, judges, and police officers to Kosovo.⁷⁴

Also striking is that, even though EULEX claimed to aim for a 'locally owned' rule of law mission, the Kosovar civil society was never consulted until 2012. Florian Qehaja, director of the Kosovar Center for Security Studies, states that when a consultancy process finally did take place, EULEX was even *preventing* them from offering Brussels their opinions and perspectives. When an EU delegation was visiting Kosovo in 2012 to meet with the government and civil

⁷⁴ Author's interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), Pristina, Kosovo, 27 June 2016.

society of Kosovo to discuss EULEX, staff members of EULEX invited Qehaja and others an hour before the meeting to explain that 'it would be good to say that it is really necessary that EULEX stays in customs'. 'So we would be in the same line with EULEX', Qehaja laughs.⁷⁵ But it did change something, he argues. Since 2012, the EU seems to have been more open to people from the Kosovar civil society.⁷⁶

A major challenge to the EU (if not a blow) was the report of the European Court of Auditors (ECA), published in October 2012. As will be discussed in more detail in the next section (evaluation and assessment), the report found that EU rule of law assistance to Kosovo (of EULEX and IPA) had not been sufficiently effective. EULEX had, among other things, difficulties with collaborating with and transferring expertise and capacity to local institutions – it was even stated that it did its work without engendering a sense of local ownership.⁷⁷

Especially in the North the rule of law remained a challenge, also after the supervised independence had come to an end. In 2012 Bytyci and Emini (2012, 6) from the Balkan Policy Institute reported that the 'lack of a functioning court in the northern part of Mitrovica symbolized lawlessness and a lack of political will to ensure justice in the North. Although the earlier mentioned Joint Rule of Law Coordination Board had continued meeting, Bytyci and Emini (2012, 19) could not find any published document of the Joint Rule of Law Coordination Board that revealed any common strategy of the government of Kosovo and EULEX to improve the situation with regards to rule of law in this region. What these authors did find, however, was that the chairman of the Board in 2012 constantly verbally attacked EULEX, especially because of the situation in northern Kosovo.

EULEX did become more actively involved in the area of the judiciary and with a stronger presence of a new special police unit in the region (Cierco and Reis 2014, 653). In the judiciary sphere EULEX did make some progress with regard to its justice component by increasing the number of investigations and trials for politicized crime through its executive mandate. In November 2013, EULEX stated to have 270 ongoing criminal investigations, 370 completed judgments in criminal cases, and more than 140 decisions in civil cases. It also claimed to have issued 90 verdicts 'in the sensitive, difficult and time consuming areas of war crime, organized crime, and corruption'.⁷⁸ However, as Radin (2014, 184) puts forward, EULEX still failed to address politicized or serious crime.

Efforts in the field of customs were reported to have resulted in a 'significant decrease in contraband and saved [...] about 43 million Euros a year', thereby reducing smuggling by 60% (Bytyci and Emini 2012, 24). Taking into account that it is estimated that mafia groups in the North were causing a loss of 25 to 30 million Euros of the annual Kosovar budget, this indeed is a significant result.⁷⁹

⁷⁵ Author's interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), 27 June 2016.

⁷⁶ Author's interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), 27 June 2016.

⁷⁷ European Court of Auditors (2012) in: Cierco, T. and L. Reis (2014, 654) See also press release of the European court of Auditors on 30 October 2012, Press Release, Rule of Law Assistance to Kosovo not sufficiently effective, ECA / 12 / 41, online available at http://europa.eu/rapid/press-release_ECA-12-41_en.htm?locale=en

⁷⁸ EULEX email of November 2013, reported in: Radin, A. (2014, 184).

⁷⁹ Interview with Huruglica Naim, director of the Kosovo Customs, 15 April 2011, in: Bytyci, S. and D. Emini (2012, 24).

For EULEX, 2013 marked the beginning of a period of new leadership. Up until then the Mission had been headed by two different French military generals – Mr Yves de Kermabom and, succeeding him, Mr Xavier Bout de Marnhac. From 2013 onwards, it was led by a civilian from Germany: Bernd Borchard, who was appointed in December 2012.⁸⁰ EULEX was conceived as a military structure, whereas its goal and process did not have anything to do with military processes.⁸¹ So the change in leadership was perceived as a positive one.⁸² The importance of leadership was stressed by Korenica, who argued that it is very important for the head of EULEX to actively force ties with the Kosovar government if it wants to make impact.⁸³ It is a difficulty for EULEX' heads of Mission to manage the diverse interests among the 28 member states – as EULEX is still accountable to the political and security committee. Feith recognizes this. For him the different priorities and the different degrees in 'activism' among the different states involved meant that a big part of his job consisted of 'compromising, compromising, compromising'.⁸⁴

The Brussels agreement of April 2013 and the ensuing political developments were of major importance to the EULEX mission, as well as the interventions of other programmes of the EU, since they led to a new relationship between Serbian political parties in Kosovo and Belgrade. The agreement also led to a stronger grip of Belgrade on the Kosovo Serbian population. The agreement prescribed municipal elections in the four majority-Serb municipalities in the North of Kosovo. Therefore, during the local Kosovar elections of November 2013 a special focus was on North Mitrovica, Zubin Potok, Leposavic, and Zvecan.⁸⁵ The elections were part of the Agreement's goal of bringing an end to the parallel structures of the Serbian state in Kosovo.

Belgrade seized a dominant role in these elections. It first removed the mayors of the four northern municipalities, since their resistance to the April Agreements would endanger a continuation of Serbia's path towards the EU – and at the same time informed the citizens that the Serb institutions they would be voting for would gain international recognition. During this period, Belgrade furthermore put together and backed a 'Srpska Lista'. This was a joint Serb candidate list, a *de facto* one-party Serb ethnic system (Weber 2015, 13), which served as a tool for Belgrade to come back into the six southern Serb municipalities. Over time the citizens in the municipalities in the Southern enclaves had gotten used to the reality of an independent Kosovo, although they still relied on a parallel system in the health and education sector that offered them jobs. In the North, the more radical local leaders had built a more autonomous power position, and rejected the April agreement. Srpska Lista brought together lots of Kosovo-Serb people that were aligned to different Serbian parties – they would never cooperate in Serbian politics due to their diversity of ideas – but in Kosovo, they were in one

⁸⁰ 'New head of Mission to start work February 2013', EEAS, <http://www.eulex-kosovo.eu/en/news/000398.php> [Accessed 22 July 2016].

⁸¹ Author's interview with Valerie Hopkins, journalist for the Balkan Investigative Reporting Network, 30 June 2016, Pristina, Kosovo.

⁸² Author's interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), 27 June 2016.

⁸³ Author's interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

⁸⁴ Author's interview with Pieter Feith, Dutch diplomat and former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague

⁸⁵ Author's interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo.

list now.⁸⁶ Also, in the Kosovar parliamentary elections of 8 June 2014, the majority-Serb municipalities both north and south of the Ibar river voted in great majority for the Srpska Lista. In the North, this party won in all four municipalities, and in the South it won in five out of six municipalities. Up until now, Srpska lista controls the Serb-majority municipalities in Kosovo (Weber 2015: 19). The elections are said to have been marred by massive manipulation to secure victory for the earlier discussed Belgrade backed Srpska Lista (Weber 2015, i).

3.4.3 2014 – EULEX' third mandate renewal

In July 2014 EULEX' mandate got extended. To support the integration of parallel police and judicial structures, a continuation and strengthening of the executive mandate in northern Kosovo were proposed.⁸⁷ In the rest of the country, EULEX was phased out by limiting the work of international judges and prosecutors to ongoing cases only. EULEX seemed to move towards closure and gradually became less active and less engaged in the rule of law in general.⁸⁸ Also, parts of EULEX were to support the implementation of the April Agreement (Weber 2015, 7). EULEX judges and prosecutors warned that their Kosovar colleagues were not ready to try and initiate high-profile, sensitive cases. One of them said that 'if we don't initiate any new cases, no high-profile persons will ever be prosecuted again. The policy of no new cases is a total win for the government of Kosovo. All the senior guys can now feel safe' (Weber 2015, 8).

EULEX' presence and involvement in police, judiciary and custom tasks steadily decreased and by 2015 focused almost exclusively on the most strategic levels (Laudes and Sánchez 2015). However, EULEX still faced a large number of challenges. In 2015 there was still a lack of progress with regard to the 'executive' objective of EULEX. EULEX choose to continue focussing on heading investigations and to process and adjudicate criminal cases, of which most deal with organised crime, war crimes, corruption and human trafficking (Laudes and Sánchez 2015). But even in 2015, mission personnel still lacked sufficient knowledge of the local law codes.

While EULEX was phasing out, the European Union was negotiating over the establishment of a Special Court. The final report of the Chief Prosecutor of the Special Investigative Task Force, a committee that had been established by the EU in 2011 to investigate allegations compiled in the Marty report, was almost finished. After strong pressure from the EU and the US – as the government of Pristina grew more and more reluctant to support the Court – the ruling coalition on the 24th of April 2014 ratified the agreement with the EU to set up the Special Court. According to Weber (2015: i), 'the very decision to establish a new, separate court is an implicit recognition of the failure of both UNMIK and EULEX to

⁸⁶ Author's interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

⁸⁷ For example, from October 2014 until January 2015 EULEX provided support to the training of the Kosovo Border Police in respect to the problem of irregular emigration, on counselling the Kosovo Police for improving control over the north following the events at the October 2014 football match between Serbia and Albania, and on enhancing surveillance and control during the Serbian Prime Minister Aleksander Vucic's visit to Kosovo on January 14, 2015. See: Laudes, S. and F. Sánchez Andrada (2015).

⁸⁸ Author's interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

investigate and try such sensitive cases', and according to him it illustrates 'the EU's inconsistent approach to the rule of law'.

In January 2016, the governments of Kosovo and the Netherlands signed an agreement that enabled the Kosovo War Court's chambers and prosecutor's office to be located in The Hague. The court will try fighters of the Kosovo Liberation Army (KLA) for crimes allegedly committed from 1998 to 2000, and will operate under Kosovo's laws. The court was established after the EU's Special Investigative Task Force conducted a three-year investigation into the allegations that KLA members committed a series of crimes between 1998 and 2000. In an article of May 2016 in the *Balkan Insight*, it was stated that this court is much needed because the EU and US believe that 'the Kosovo judiciary would be unable or unwilling to properly prosecute high-ranking former KLA figures, and [...] EULEX does not have the capacity to do so'.⁸⁹ It is no surprise that in Kosovo itself, the new court is widely perceived as an insult to the 'heroes of the Kosovo Liberation Army' and their war for freedom from Serbian rule.

In October 2014, the integrity of specific EULEX members was seriously questioned. In the daily newspaper *Koha Ditore*, a series of internal EULEX reports were published that showed how Mission personnel had accepted Mafia bribes in order to block proceedings against defendants and even to eliminate proof. As Laudes and Sanchez (2015) wrote, 'it was a direct attack against one of the EULEX Mission's priority objectives'. Also taking into account the corruption allegations against EULEX members in 2012, the European External Action Service started to take action in November 2014. The EU's High Representative for Foreign Affairs and Security Policy, Federica Mogherini, appointed the French lawyer Jean-Paul Jacqu  as an independent member in charge of examining the EULEX mission's accusations of corruption' (Laudes and S nchez 2015). The Jacqu  report rejected that there had been a corruption cover-up, but as will be discussed further on, it pointed at endemic problems of the mission (Jacqu  2015).

3.4.4 2016 – The final EULEX mandate?

Shortly before the extension date of the EULEX' mandate, the Mission 'seemed to have woken up'. Finally, a huge campaign was conducted against an allegedly hugely corrupt member of parliament, Azem Sula the head of the PDK. People in Kosovo were 'thrilled' – this is what they wanted EULEX to do.⁹⁰ Furthermore, in May 2016, EULEX issued its biggest sentence so far – 37 years in jail for Enver Sekiraga.⁹¹ Some observers argue that it simply took time for EULEX to get the space it needed to perform; both its policy making and the cooperation with Kosovar authorities limited EULEX' possibilities for quite some time.⁹² Also, EULEX now has most of the cases in its archives; the information is gathered, so now is the time to start following the cases and issue indictments or not.⁹³

⁸⁹ 'New Kosovo War Court Awaits Dutch MPs' Approval', *Balkan Insight*, 17 May 2016, Belgrade, online available at: <http://www.balkaninsight.com/en/article/kosovo-special-court-still-pending-budget-ratification-05-17-2016>

⁹⁰ Author's interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

⁹¹ Author's interview with Valerie Hopkins, journalist for the Balkan Investigative Reporting Network, 30 June 2016, Pristina, Kosovo.

⁹² Author's interview with diplomat Pristina, Kosovo, 28 June 2016.

⁹³ Author's interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

Yet while the previous mandate passed on 14 June 2016, it took some days for EULEX to get their new mandate through the Assembly of Kosovo.⁹⁴ On the 28th of June 2016, EULEX' spokespersons said that they were still waiting for the signature of Kosovo.⁹⁵ The mandate renewal was characterized by difficult negotiations among the different parties involved.⁹⁶ On the Kosovar side, the negotiations were defined by different opinions about EULEX. In the eyes of a lot of government officials, EULEX was still considered 'a necessary evil'. To the opposition parties the Mission was considered 'completely unnecessary and unwanted'. The Srpska Lista argued that although the mission is ineffective, it's still necessary for EULEX to be involved in Kosovo.⁹⁷ Eventually, however, the Council extended the Mission's mandate until 14 June 2018. The Council also approved a combined budget for the Mission of 63.6 million euros to provide for the period 15 June 2016 - 14 December 2016 for its operations in Kosovo and until 14 June 2017 for the specialist chambers and the specialist prosecutor office.

The main difference from EULEX' previous mandate is that the old one knew two more operational objectives: a 'North objective' that aimed to restore the rule of law specifically in the North of Kosovo, and a 'support to dialogue implementation' objective. The technical support to the implementation of rule of law related agreements reached in the EU-facilitated dialogue between Pristina and Belgrade is now conducted by the strengthening- and executive divisions. In practice, this does not make a big difference - EULEX still works in accordance with the dialogue when, for example, building up civil registry in the North so people can properly register marriages, births, or even just their vehicle.⁹⁸ And as the situation in the North has 'considerably improved', EULEX no longer deems it necessary to explicitly make its support in the northern region a separate pillar or objective.⁹⁹ Although there will still be some staff members working in the North, albeit with a decreased capacity, their work is currently conducted under the first two operational objectives.¹⁰⁰ EULEX will no longer execute its executive objective around gates 1 and 31; there, it will only work in accordance with MMA – a change based on the improvements in the northern parts of Kosovo.¹⁰¹

However, EULEX spokespersons admit, 'although we hope to integrate the north into the Kosovo judicial system, it's difficult. It goes slow'.¹⁰² So far, judges are said to have processed something like 90 to 100 verdicts for high crimes, organized crimes and war crimes, but EULEX admits that 'there are still lots and lots of unsolved cases that we don't have the capacity to deal with. There are 1000's of cases that are waiting for judges to start dealing with'.¹⁰³ Some even say that the EU will not end the Mission until the Court in The Hague will

⁹⁴ See Council Decision (CFSP) 2016/947 of 14 June 2016, <http://www.eulex-kosovo.eu/eul/repository/docs/COUNCIL%20DECISION%20CFSP%202016947.pdf>

⁹⁵ Author's interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo.

⁹⁶ Author's interview with James Wilson, political officer at the Organization for Security and Co-operation in Europe, 28 June 2016, Pristina, Kosovo.

⁹⁷ Author's interview with James Wilson, political officer at the Organization for Security and Co-operation in Europe, 28 June 2016, Pristina, Kosovo.

⁹⁸ Interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

start functioning – and only after the Mission has ‘showed some concrete results in order to call EULEX a successful Mission’.¹⁰⁴

EULEX’ spokespersons in 2016 also point at an interesting yet difficult dichotomy inside its mission, thereby referring to the fact that EULEX involves both *independent* judges and prosecutors, but at the same time is also a crisis management mission. ‘Sometimes when someone goes to jail and we, as the spokespersons from EULEX, speak on behalf of the judiciary, the public thinks it’s the head of mission sending that person to jail’.¹⁰⁵

3.5 EULEX – Evaluations and assessments

In this section different assessments and evaluations of EULEX policies are discussed. It starts with evaluations and briefings of EU agencies, moves on with an overview of assessments in policy reports and academic literature, and finishes with a discussion of the views of Kosovar society.

3.5.1 EU evaluations and assessments

EULEX reported monthly and six-monthly to the PSC in Brussels. However, these reports are classified. Furthermore, EULEX produces yearly reports about its activities. A study of these reports was not part of this study. Based on informal conversations with staff involved in the EULEX mission and interviews conducted for this study, it is fair to say that EULEX has at best partly contributed to the strengthening of the rule of law, but that in many areas – such as the fight against corruption – progress has been weak. In an attempt to make up the balance, the head of the fiscal affairs at the International Civilian Office in Kosovo even stated that the Kosovar judiciary had not improved, and that corruption even grew from 2008 until 2011 (Bajrami 2011, 1). Others argued that the mission statement of EULEX was too broad and ambitious, creating expectations that could not be met, but that many interventions and policies had contributed to smaller objectives.

Some staff emphasised that the task at hand was more complex than initially expected. Johannes Vreeswijk, chief prosecutor at EULEX until the summer of 2010 and well-known for his promises about ‘catching the big fish’¹⁰⁶, told the Pristina-based journalist Bajrami in November 2011 that he was ‘a bit disappointed’, stating that his “expectations were that [the prosecutions] could have been done faster. This is simply not as easy as I thought it would be [...] the pace of everything was slower than I would have liked to see” (Bajrami 2011, 2-3). International actors seemed to have largely underestimated how persistent and how deeply rooted the phenomenon of organized crime is in Kosovo.¹⁰⁷

¹⁰⁴ Interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

¹⁰⁵ Interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo.

¹⁰⁶ Author’s interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo; interview with Florian Qehaja, Executive director of the Kosovar Center for Security Studies (QKSS), 27 June 2016.

¹⁰⁷ Author’s interview with Pieter Feith, former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

In 2012, the European Court of Auditors presented a comprehensive assessment of the European Union Assistance to Kosovo related to the rule of law (ECA 2012).¹⁰⁸ The report assessed a sample of 17 EU interventions in Kosovo, both of the EULEX mission, as well as rule of law projects funded from the Instrument for Pre-Accession Assistance (IPA). It is one of the few, if not the only systematic analysis of a large sample of interventions, and thus the conclusions are particularly relevant. The main findings of the report were that although some of the objectives of interventions had been achieved 'EU assistance to Kosovo in the field of the rule of law has not been sufficiently effective' (ibid, 6). Moreover, it concluded that 'overall progress in improving the rule of law is slow, particularly with regard to the fight against organised crime and corruption, above all in the North of Kosovo (ibid, 6). With regard to the reasons for these disappointing results, ECA pointed at the 'specific circumstances' of Kosovo, but also emphasised that better management could have made assistance more effective (ibid, 7). The Court also argued that generally project objectives were not clearly defined, that coordination between EULEX and the Commission was flawed, and that EULEX suffered from staffing constraints (ibid, 7).

The ECA report was particularly critical about the fight against corruption, quoting OSCE studies about the high risk of Kosovo becoming (or even of actually already being) a 'captured State' (ibid, 22). The report also noted that 'the Kosovo authorities have given a low priority to anti-corruption activities' and explicitly questions the political will of the political elites to implement new reforms (ibid, 23-24). Furthermore, the report mentions the problems of EULEX to work in the North of Kosovo, and states that EULEX impact (through MMA actions) in the North is negligible, which remains 'a safe haven for organized crime (ibid).

Some of the concerns expressed by ECA in the 2012 report were also mentioned in the 'Jacqué Report', published in 2015 and discussing the implementation of the EULEX mandate (after and) with a particular focus on the handling of allegations corruption of EULEX' staff (Jacqué 2015). While the focus of this report is on the allegations of corruption within EULEX and the treatment of alleged whistleblowers, part of the report discusses the more general implementation of the mandate by EULEX. The lawyer's report referred to the 2013 initiative to investigate internal corruption in EULEX – which failed to reach either Brussels or Pristina (Laudes and Sánchez 2015). However, Jacqué eventually rejected that there had been a corruption cover-up. The report pointed at a number of 'endemic problems as regards bad administration and a disastrous communications policy' of the EULEX mission (Laudes and Sánchez 2015). According to Laudes and Sánchez (2015), Jacqué's conclusions on the Mission's lack of transparency and poor management damaged the legitimacy of the Mission's members 'after years of shepherding local institutions and imposing its principles to combat corruption'.

On the future of the mission the report says that 'it is up to the authorities to decide what will become of the Mission, bearing in mind that in its current state Kosovo's judicial system does not seem to be capable of meeting the challenges of corruption and the organized crime associated with it' (Jacqué 2015, 12). With regard to the internal organization of EULEX it is stated that 'continued presence of EULEX is only feasible if comprehensive reforms are made to improve its effectiveness and thus its credibility. There is no point staying just to keep doing the same thing' (ibid). The report mentions some interesting points with regard to the exercise of justice by EULEX: the fact that justice is executed by prosecutors and judges from

¹⁰⁸ ECA was established to audit the EU's finances. See <http://www.eca.europa.eu/en/Pages/ECAWork.aspx>

outside Kosovo who all bring their own traditions and have not received any training, the short duration of postings of staff, differences between staff contracted by the mission and staff seconded by members states, and the poor oversight mechanisms (ibid, 18-19).

3.5.2 Assessments in policy and academic literature

The assessments in policy reports and academic literature are generally critical about the achievements of EULEX. Below a number of critiques are addressed: the internal problems of EULEX, the problems to address corruption and organised crime, the problems of the executive mandate, and the consequences of the dialogue between Kosovo and Serbia that had started in 2011.

After the first few years of the Mission, it became clear that the Mission suffered from a range of logistical problems, such as the high staff turnover and the poor knowledge among the international staff of EULEX of local conditions. Also, the staff was perceived as being highly 'overpaid' (Bajrami 2011, 3). From the outside, EULEX continued to be criticized. For example, in 2013 the Group for Legal and Political Studies reported that EULEX failed to act in close communication with KFOR to identify and arrest smugglers and traffickers using alternative routes across the border in the North of Kosovo (GLPS 2013, 13). EULEX was also criticized for still devoting more resources to the police sector than to the judicial institutions, despite the relative strength of the first one compared to the latter.¹⁰⁹

A major critique on EULEX has been its performance in the judiciary sector. Those cases of corruption and organized crime that EULEX did deal with were 'not impressive' according to Gashi, director of the Kosovar Institute for Policy Research and Development. According to him, EULEX judges have 'on average resolved 0.17 cases a year of corruption and 0.07 cases of organized crime', which is 'way below what is expected of them' (Bajrami 2011: 2). By October 2011, 202 verdicts had been issued for serious criminal cases, with 14 cases related to organized crime and 30 related to major corruption (GLPS 2013, 660). In the same period it was stated that EULEX did not properly protect the witnesses that were willing to testify. An example of this is, according to Bajrami (2011, 3), the death of Agim Zogaj. He had testified against Fatmir Limaj, former Kosovo Liberation Army commander who turned politician.

The European Court of Auditors (as discussed above) also found that there was insufficient transparency in the allocation of cases among judges and prosecutors, which allowed for [continued] political interference (ECA, 2012). Although EULEX was able to remove some level of political interference in the courts, it had not been able to provide the courts in Kosovo with the tools to develop a sustainable capacity to act free from interference (Cierco and Reis 2014, 657). Furthermore, through the seconding of staff, EU member states exercised influence over the operational practices and standards of EULEX. All in all, this continued to prevent the formation of trust between staff of local institutions and EULEX (Cierco and Reis 2014, 654).

According to Laudes and Sanchez (2015) EULEX' presence and involvement in police, judiciary and custom tasks steadily decreased and by 2015 focused almost exclusively on the most strategic levels. The authors argue that EULEX' 'empowerment branch' – training,

¹⁰⁹ KIPRED (2013), p. 12 in: Radin, A. (2014, 189) ; Author's interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

monitoring and providing support of all kinds to members of the court and customs officials – has been successful in carrying out most of its core competences (Laudes and Sánchez 2015). Others state that the Kosovo police never really needed ‘mentoring, monitoring and advising’, as their work had always been of quite a high level.¹¹⁰

The assessments of the judiciary sector are generally quite negative. Radin (2014: 184) puts forward, EULEX still fails in addressing politicized or serious crime. Albano-Kosovar judges still found it hard to try Serb-Kosovar defendants fairly, and vice versa, which considerably complicated the process (Laudes and Sánchez 2015). Weber (2015) agrees that as of 2015, local judges still had not been able to develop a culture of independence that would shield them from political influence. Also witness protection was still almost impossible in Kosovo, while they were severely threatened¹¹¹, which makes people unwilling to provide evidence out of fear (Cierco and Reis 2014, 661). Furthermore, detained politicians were said to be ‘able to create their own rules in Kosovo’s detention system’ (Weber 2015, 17). High ranking prisoners were able to walk in and out when they ‘suffered from headaches’ – off to their own, small office in the hospital from where they could continue their business.¹¹² It took a lot of pressure from the European Union to get the minister take its responsibilities and exempt the director of the prison system.¹¹³

The EU-brokered April 2013 agreement between Kosovo and Serbia has received attention from several authors, since, as Weber (2015: 5) argues, it changed the entire posture of international actors and institutions in Kosovo in a fundamental way. The success of the Agreement turned the Dialogue into the top priority of the Kosovo policy of the European Union. Also activities of other organizations in the North, such as the Organization for Security and Cooperation in Europe that has been working in Kosovo since 1999, were put in line with the dialogue.¹¹⁴ Bajrami (2011, 1), and Bytyci and Emini (2012, 13) already warned for this in 2011 and 2012, and according to Weber (2015, i) this was the point at which the EU ‘turned questions of democracy and the rule of law in Kosovo into secondary matters’.

Some perceived the events following the April Agreement as the start of a ‘trade off’ in which the international community traded democracy in return for solving the status dispute in Kosovo. Others say that the EU ‘has turned a blind eye’ to actions of the leaders of Kosovo and Serbia as long as they are willing to participate in the dialogue.¹¹⁵ According to some the EU is afraid that with other political leaders the dialogue might be endangered¹¹⁶ and that, therefore, ‘they are nervous to see anyone else in power, both in Kosovo and in Serbia’.¹¹⁷ Fisnik, executive director of the Kosovar Group for Legal and Political Studies, also points at the

¹¹⁰ Author’s interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

¹¹¹ Author’s interview with Pieter Feith, Dutch diplomat and former EU Special Representative and International Civilian Representative in Kosovo, 20 June 2016, The Hague.

¹¹² Author’s interview with diplomat in Pristina, Kosovo, June 2016.

¹¹³ Ibid.

¹¹⁴ Author’s interview with James Wilson, political officer at the Organization for Security and Co-operation in Europe, 28 June 2016, Pristina, Kosovo.

¹¹⁵ Author’s interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

¹¹⁶ Author’s interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

¹¹⁷ Author’s interview with Valerie Hopkins, journalist for the Balkan Investigative Reporting Network, 30 June 2016, Pristina, Kosovo.

conflict of interest over the priorities of the EU in Kosovo. He states that being under the control of the European External Action Service, EULEX is not allowed to destabilize the bigger leads through its rule of law related actions because that would ruin the EEAS' intentions of engaging in the dialogue with Serbia.¹¹⁸ He even argues that EULEX now forms 'a shield for the main leaders that Brussels is using for the dialogue', something these leaders obviously are aware of.¹¹⁹ Laudes and Sánchez (2015) furthermore carefully put forward that the agreement could have practical consequences for the development of the EULEX at the political level, as it 'could imply the beginning of the break-up of the status quo, affecting the balance of power in Kosovar regions with Serbian majorities [...] and in the position of member States which do not recognize Kosovo as an independent state'.

3.5.3 Perceptions matter

Finally, the importance of perceptions and opinions about the EULEX mission should not be underestimated. It cannot come as a surprise that different stakeholders and beneficiaries view the mission differently, while this has real consequences on the work and future of EULEX. Cierco and Reis (2014, 652), in an article dating back to 2014, argued that there are 'almost completely' contrasting perceptions regarding the work of EULEX amongst the local populations and institutions in Kosovo, the institutions in Brussels that are not directly involved with the Mission but who do bear the costs, and those who are directly engaged with EULEX in Kosovo and Brussels on the other hand. Whereas in Brussels policy makers perceived that 70 percent of the Kosovars wanted EULEX' presence, the actual public satisfaction with its work in Kosovo was standing at 22 percent (Cierco and Reis 2014, 652).

Over the past eight years, the satisfaction of the Kosovar people has generally been low. According to Bytyci and Emini (2012, 16), the year 2011 was marked by a decrease in the level of satisfaction about the EULEX mission among Kosovar citizens. According to the researchers from the Balkan Policy Institute, the percentage of satisfaction with EULEX fell to 14% – the same level as it had started from when EULEX deployed in 2008. Also, a press release from the Kosova Democratic Institute showed that in 2013 66% of the respondents in Kosovo believed that levels of corruption had increased greatly, mainly in the public sector. The judiciary was even considered one of the most corrupt sectors in Kosovo¹²⁰, while the Kosovo Police was the most trusted institute in Kosovo.¹²¹

According to Bytyci and Emini (2012: 16) the unpopularity of EULEX was caused by the 'war of words' and irritation between local politicians and EULEX. Also, the investigation against the former KLA members for war crimes and their arrests boosted dissatisfaction among the public in Kosovo (Bytyci and Emini 2012: 16). While the Kosovo Albanian population was

¹¹⁸ Author's interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

¹¹⁹ Author's interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

¹²⁰ This was measured by the Global Corruption Barometer by the NGO Transparency International, see: Kosova Democratic Institute (2013) 'Kosovars ready to protest against corruption', Press release, 9/07/2013, online available at: http://www.transparency.org/news/pressrelease/kosovars_ready_to_protest_against_corruption [Accessed 14 July 2016].

¹²¹ Author's interview with two spokespersons and a political advisor at the EULEX Office, 28 June 2016, Pristina, Kosovo.

largely opposing its leaders' involvement in corruption – EULEX was seen as the only chance to uproot some of the key people involved in corruption¹²² as locals themselves could not do so¹²³ – the public was generally supportive of individuals who had fought in the war to gain independence (Radin 2014, 186). According to Bytyci and Emini (2012, 16), EULEX' unclear mandate and its failure to punish the people involved in high level corruption resulted in a general lack of confidence in the Mission.

Yet after the promises made by high-level EULEX staff, many Kosovars had high expectations from the Mission. And as Maja Kocijancic, spokesperson for Ashton at the time, states, “with such high expectations it is very difficult to make people happy” (Bajrami 2011: 3) – EULEX was perceived as having failed to fulfil the indeed high expectations it had raised (Bytyci and Emini 2012, 16). Capusella, a former employee of ICO who spoke to Bajrami (2011, 4), also referred to the statement of Vreeswijk when claiming that ‘no one will have any faith in EULEX until it really does start to ‘catch the big fish.’ Citizens felt like EULEX was just there ‘to punish its [war] heroes’.¹²⁴ Next to the high expectations EULEX had raised with its statements, the large number of staff members and EULEX' overall budget had raised the expectations of both the Kosovar population as well as policy makers to heights EULEX could not live up to (Cierco and Reis 2014, 652). People did not see the capacity building – they saw huge numbers of very well earning expatriates drinking coffee in cafés.¹²⁵

3.6 Conclusion

The EULEX mission is the largest CSDP mission to date, and the only one with an executive mandate. The mandate and objectives of the mission were broad, including judicial reform, police reform, border management, as well as the fight against corruption and the arrest of former war criminals. Clearly, the mission could not live up to the high expectations of the EU. Even before it was deployed, Kosovar political leaders found out that EULEX was not the guardian of newly claimed independence, but had to operate as status neutral. Being the most visible mission of the much broader international presence in Kosovo, EULEX thus risked becoming a sitting target for a multiplicity of criticisms.

The Mission has been extensively criticized, in academic and policy literatures, formal evaluations, and by political leaders in Kosovo and Serbia (albeit for different reasons). There are only few studies that systematically assess the effectiveness of the policies of EULEX – the ECA (2012) report being one of the few. However, the articles discussed in this chapter all point at difficulties of EULEX to implement its policies. And while an independent assessment of EULEX' contribution to different sectors (border, police, judiciary) is missing, from these articles it becomes clear that the objectives to reform the judicial sector and to ‘stamp out’ corruption proved particularly difficult.

¹²² Author's interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

¹²³ Author's interview with Fisnik Korenica, executive director of the Group for Legal and Politics Studies (GLPS), 27 June 2016, Pristina, Kosovo.

¹²⁴ Author's interview with James Wilson, political officer at the Organization for Security and Co-operation in Europe, 28 June 2016, Pristina, Kosovo.

¹²⁵ Author's interview with Michael Warren, Kosovo programme manager at PAX, 26 May 2016, Utrecht, the Netherlands.

A number of reasons can be given for the limitations that EULEX experienced in this regard. Firstly, it proved difficult to build a mission infrastructure, contract staff and develop interventions that would contribute to these objectives. Inter alia, the management culture (with a military as head of the mission), the staff's lack of training and limited knowledge of local conditions, and the oversight mechanisms were seen as insufficient. The ECA (2012) also pointed at the lack of coordination with other EU agencies.

Secondly, the lack of consensus about Kosovo's status deeply affected the deployment of EULEX. In the international arena, Russia and China were not willing to accept the Athisaari plan and to change UNSCR 1244, which was ambiguous about the status of Kosovo. The negotiations about the international presence after Kosovo's declaration of independence thus led to a 'handicapped capacity' of EULEX (Greicevici, 2011). This was compounded by the fact that five member states do not recognize Kosovo. During the first years of its intervention EULEX was hardly able to intervene in the Serb-majority northern part of Kosovo, where resistance against Kosovo's independence and EULEX was strong.

Thirdly, the local Kosovar political and judicial system suffered from high levels of corruption. While this was indeed one of the very reasons for the EU to deploy EULEX, it proved much more difficult to 'fight' corruption, and break the linkages between criminals and politicians. While these difficulties were recognized by several staff members, the Marty Report (2010) touched a raw nerve, claiming that the political power of the president of Kosovo, Hacem Thaci – who was accused of being involved in criminal activities – largely depended on the support of the EU and the US, who saw him as the 'preferred domestic partner in their foreign policy project in Kosovo (Tolksdorf, 2013: 19). This critique of the de facto dependence on local leaders that might be involved in criminal activities was repeated in the period when dialogue started and when the rule of law objectives were allegedly traded in for the objective to 'normalize' the relations between Serbia and Kosovo (Weber, 2015).

4. The EU-facilitated Belgrade – Pristina Dialogue

4.1 Introduction

This chapter discusses the background, development and assessments of the EU-led dialogue between Kosovo and Serbia. The case is interesting because it not only provides information about the capacity of the EU to lead a dialogue between parties that have diametrically opposed views about the status of Kosovo, but it also shows how the EU used its leverage – carrot and stick – to induce Serbia and Kosovo to start a dialogue that would normalize their relations. The EU made use of the wishes of Serbia and Kosovo to join the EU. However, Kosovo's desire to join the EU was hampered by two factors: the non-recognition of Kosovo by five EU Member States, and the resistance of Serbia to recognize Kosovo as a state, while Serbia also continued to support and fund government structures in the Serb majority areas of Kosovo.

While the relations of Kosovo with the EU were already discussed in chapter 2, this chapter starts with a discussion of the relations between Serbia and EU in order to explain the way in which Serbia was brought into the dialogue. In the following section the process of the dialogue is addressed, and the three rounds of the dialogue (of EU facilitators Cooper, Ashton and Mogherini) are discussed, whilst focussing in particular on the ways the EU managed the dialogue, and how the SAP was used as a strategic tool during the process of dialogue. Finally, this chapter provides a reflection on the different assessments and evaluations of the dialogue.

4.2 Serbia and the EU

There were many hurdles that had to be tackled before the EU – Serbia Stabilisation and Association Agreement entered into force on 1 September 2013. On the one hand, Serbia was to comply with a series of requirements related to the role that it played during the Yugoslav wars and with regard to the status of Kosovo. On the other hand, the relations between the EU and Serbia were dependent on the Serbian government's view on the desirability of EU accession, and the 'price' it would be willing to pay for it. The EU was well aware of this and at different moments in time the EU used the Stabilisation and Association Process to force Serbia to comply with international or EU requirements, while it also used it in support of pro-EU forces in Serbia at key political junctures.

The early involvement of the EU in Serbia was related to the efforts of the Contact Group in pressuring FRY and the government in Belgrade to end the violent conflict and negotiate a political resolution. When this failed, several EU Member States collaborated in NATO's military campaign against Serbia, effectively ending the Kosovo War (Economides and Key-Lindsay 2015; Tierney 2011). However, the 'ousting of Slobodan Milošević, in October 2000, led to the rapid rapprochement between Serbia and the EU' (Economides and Key-Lindsay 2015, 1031), and the EU facilitated negotiations between Serbia and Montenegro, which resulted in the establishment of a new state – the State Union of Serbia and Montenegro – that came into being on 4 February 2003. After only three years, the State Union dissolved again with the successful referendum on independence in Montenegro in May

2006 (Bieber 2016). The State Union's dissolution, which happened under the auspices of the EU, allowed Serbia to pursue its European perspective separately.

The negotiations on the Stabilization and Association Agreement (SAA) with the country had already been suspended before the State Union's dissolution because of Serbia's lack of co-operation with the International Criminal Court for the former Yugoslavia (ICTY).¹²⁶ The Chief Prosecutor of the ICTY argued Serbia had not adequately cooperated with the international tribunal, particularly in failing to arrest and extradite Ratko Mladic, and the Court expressed concern about Mladic having received a military pension until November 2005. Yet, fearing that any further delay in Serbia's road to EU membership would fuel nationalism before the forthcoming elections in Serbia, the SAA negotiations were reopened on 13 June 2007 (Tannam 2013). During the interval in these negotiations, the EU started a Visa Liberalisation Dialogue and negotiations on an EU Readmission Agreement with the country, allegedly to keep Serbia motivated to join the Union (Kostovicova 2014).

Kosovo's unilateral declaration of independence of 17 February 2008, and its subsequent recognition by the United States and several European states, resulted in a political crisis in Serbia. Although the EU Member States were themselves divided on the issue, Serbia's Prime Minister Vojislav Kostunica, the leader of the Democratic Party of Serbia (DSS), opposed any further 'deepening of relations with the EU' unless the Union would recognize Serbian sovereignty over Kosovo.¹²⁷ On the ground, Serbs rioted, attacked nine Western embassies, destroyed foreign property and started looting. Split over whether Serbia should pursue a nationalist or a European path, the government fell on 10 March 2008 (ICG 2008).

Following new elections were organised and in an attempt to entice popular support for Serbian EU integration and a victory for the pro-EU Democratic Party (DS) of Boris Tadic, the SAA and the Interim Agreement on trade and trade-related issues (IA) were signed on 29 April 2008 (Kostovicova 2014). Yet, the Netherlands and Belgium had only agreed to sign these agreements under the condition they would be suspended until full cooperation with the ICTY had been achieved. Therefore, the signing of the SAA was rather a gesture of goodwill, and as soon as the agreements were signed, they were frozen again (Lasas 2013).

A new pro-EU government was formed in July 2008 after Tadic's Democratic Party received a majority of the vote, and shortly after, one of the most wanted war criminals, Radovan Karadzic, was arrested and brought to The Hague (Tannam 2013). 'Following the arrest, almost all EU leaders were eager to reward Serbia by unfreezing the SAA or at least the accompanying trade agreement' (Lasas 2013, 904), and in mid-September the Foreign Affairs Council met to discuss the issue, yet failed to reach consensus because the Netherlands demanded the arrest and extradition of Mladic before it would vote in favour of unfreezing the agreements. Subsequently, the European Commission recommended Serbia to unilaterally implement the agreements (Lasas 2013), resulting in the Serbian Parliament ratifying the SAA on 9 September 2008 (Tannam 2013). On 7 December 2009, after a rather positive report was published by the Chief Prosecutor of the ICTY, the Netherlands agreed to unfreeze the Interim Trade Agreement.

¹²⁶ 'Timeline: Serbia-EU Negotiations', *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/timeline-serbia-eu-negotiations>

¹²⁷ 'Radical Shift: Fresh Elections in Serbia Could Favour the Nationalists' (2008, March 11), *The Economist*, retrieved from: <http://www.economist.com/node/10835389>

Even though the government, following President Tadic' lead, worked towards EU integration, Serbia's foreign minister, Vuk Jeremic, devoted himself to limiting and reversing Kosovo's international recognition. Jeremic's 'belligerent engagement with Kosovo worsened relations with the EU' (Bieber 2016). With the support of China and Russia, Serbia succeeded in preventing Kosovo from joining important international organizations, and in 2008, the country was successful in convincing the UN General Assembly to request an advisory opinion of the International Court of Justice (ICJ) on whether Kosovo's declaration of independence violated international law and was in line with the 1999 UN Security Council Resolution 1244, which established Kosovo's international administration (Bieber 2016).

On 22 July 2010, the ICJ delivered its opinion, and taking a very narrow view by focusing solely on the legality of the declaration rather than the legality of Kosovo's statehood, the ICJ found that Kosovo's declaration of independence 'did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework imposed by the United Nations Interim Administrative Mission in Kosovo (UNMIK)' (ICG 2010). On the same day, High Representative Catherine Ashton responded to the ICJ opinion with a press release arguing that the future of Kosovo and Serbia lied in the European Union, and therefore a dialogue between the two countries should be initiated. Ashton stated:

The advisory opinion opens up a new phase. The focus should now be on the future. The future of Serbia lies in the European Union. The future of Kosovo also lies in the European Union. [...] The EU is therefore ready to facilitate a process of dialogue between Pristina and Belgrade. This dialogue would be to promote cooperation, achieve progress on the path to Europe and improve the lives of the people. The process of dialogue in itself would be a factor for peace, security and stability in the region.¹²⁸

However, ignoring the EU's call for a dialogue with Kosovo, on 28 July, Serbia submitted a draft resolution to the UN General Assembly, calling for new talks on Kosovo's status (Economides and Key-Lindsay 2015). Unsurprisingly, Serbia's move was met with strong opposition from all EU Member States, as it had not been coordinated with Brussels. That same month, the Political Security Committee (PSC), comprising of national diplomats, representatives of the European Commission and Catherine Ashton, held negotiations with the aim to establish an alternative draft resolution. By the end of July, a resolution was agreed upon, and Serbia, under considerable pressure and 'co-sponsored' by the 27 Member States of the EU, submitted this new draft resolution to the UN General Assembly in September 2010. One of the main additions to Serbia's resolution was that in the adapted text the country expressed its readiness to welcome an EU-facilitated dialogue between Belgrade and Pristina (Tannam 2013). On 9 September 2010, the UN General Assembly adopted the consensus resolution, and welcomed the EU's readiness to facilitate a dialogue between Serbia and Kosovo that "would help promote cooperation, achieve progress on the path to the European Union and improve the lives of the people (UNGA 2010).

Thus, Serbia only accepted to engage in an EU facilitated dialogue with Kosovo after the EU Member States exerted pressure on the Serbian government, who was subsequently rewarded with the Council of the EU's decision to request the European Commission to start the procedure for issuing an Opinion on Serbia's membership application (submitted on 22

¹²⁸ 'Declaration by High Representative Catherine Ashton on behalf of the European Union on the ICJ advisory opinion', press release, EU, 22 July 2010, retrieved from: http://europa.eu/rapid/press-release_PESC-10-213_en.htm

December 2009) in October 2010 (Tannam 2013). The Commission advised the Council of the EU to grant Serbia the status of candidate country and to open accession negotiations with Serbia if the country would continue the process of normalizing its relationship with Kosovo.¹²⁹ Effectively, the EU added the Belgrade-Pristina Dialogue to its list of conditions Serbia had to meet in order to be granted EU membership. The Commission also recommended that these negotiations should commence as soon as Serbia would achieve 'further significant progress' in the 'key priority' of taking:

Further steps to normalize relations with Kosovo in line with the conditions of the Stabilization and Association Process by: fully respecting the principles of inclusive regional cooperation; fully respecting the provisions of the Energy Community Treaty; finding solutions for telecommunications and mutual acceptance of diplomas; by continuing to implement in good faith all agreements reached; and by cooperating actively with EULEX in order for it to exercise its functions in all parts of Kosovo (EC 2011, 11).

This meant the European Commission created the condition of Serbia cooperating with the EU with regard to the Belgrade-Pristina Dialogue, which had started on 7 March 2011, in order for the country to become an EU Member State.

4.3 The Dialogue

The United Nations General Assembly Resolution 64/298 was brief. The two points in it cover less than half a page. Firstly, it acknowledges the advisory opinion of the ICJ on Kosovo, and secondly it mentions the EU's willingness to facilitate the dialogue, stating:

'[The General Assembly] Welcomes the readiness of the European Union to facilitate a process of dialogue between the parties; the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.¹³⁰

The aim of this mediation effort was to normalize relations between Belgrade and Pristina, promote cooperation between the two sides, to help them achieve progress on their path to EU membership, and to improve the lives of the people of Serbia and Kosovo.¹³¹ The issue of Kosovo's status was thus not articulated as the dialogue's objective. This resolution was the result of negotiations in the Political and Security Committee of the EEAS, which had lasted for approximately eight hours in total, and this mandate was what was left of the initial ambitious objectives of the EU. However, with five Member States refusing to recognize Kosovo, this mandate was what all Member States could agree on, and, according to Cooper (2015) himself, it 'was a straightforward and truthful way of explaining what we were doing and why' and reflects well the 'European method' of seeking peace through practical cooperation rather than through grand rhetoric about the brotherhood of mankind. Following this 'European method', the question of recognition was put aside, even though "both Serbia and Kosovo were obsessed with [it]'. For Serbia, the EU envisaged the country would achieve good, or at least

¹²⁹ 'Serbia is Granted EU Candidate Status', Brussels, 1 March, EUCO 35/12 presse 84.

¹³⁰ General Assembly resolution 64/298, p.2, <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/ROL%20A%20RES64%20298.pdf>

¹³¹ 'EU facilitated dialogue for the normalization of relations between Belgrade and Pristina', EEAS, http://www.eeas.europa.eu/dialogue-pristina-belgrade/index_en.htm

better, neighbourly relations with Kosovo, and for Kosovo, the dialogue meant the country could, and had to, learn to act like a mature state. As Cooper (2015) put it, 'that means giving the welfare of the people more importance than the symbols of the state'.

While the objective of the dialogue was framed in positive and pro-EU terms, and portraying it as a merely technical endeavour, it was clear the dialogue would become a political and painful process, since it would be impossible to discuss these relations without touching upon the key bone of contention, the status of Kosovo. In the words of Bajrami (2013, 5)

'Initially, the EU-mediated Kosovo–Serbia dialogue was labelled as 'technical' because of insistence on the part of the Kosovo government that there are to be no political discussions with Serbia, and that 'political dialogue is not on the table' in Pristina, Brussels and Washington. This position has changed with time, reflecting the content of the dialogue, which, in reality, was entirely political since its inception.'

The above was actually recognized by Cooper – the first EU facilitator of the dialogue as he argued 'All issues have both political and technical aspects' (Cooper 2015).

In the next section the contradictory positions of Kosovo and Serbia prior to the dialogue will be discussed. Then a detailed discussion of the different rounds of the dialogue will be given, which will include an analysis of the main points of contention, and the ways in which the EU tried to use the SAP to move the process further.

4.3.1 The positions of Belgrade and Pristina

With regard to the position Belgrade held before the start of the dialogue, according to the International Crisis Group in 2010, it was 'based on two axioms: non-recognition of Kosovo's declaration of independence, which Serbs call the 'UDI' (unilateral declaration of independence), and reaching a compromise without absolute winners and losers' (ICG 2010) Although Belgrade's position was often interpreted as utterly unwilling to let go of Kosovo as part of Serbia, the ICG (2010, 4) argued, Serbia was rather looking for an 'honourable way to consent to the permanent loss of Kosovo', whilst hoping to force Pristina to give up its claim of authority over the Serb-majority North of Kosovo, and to grant several Orthodox monasteries in Kosovo an extraterritorial status (ICG 2010).

It is, however, not surprising Belgrade's position was understood as being steadfast against awarding Kosovo anything more than autonomy within Serbia, as its 2006 constitution states: 'Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia'.¹³² After Kosovo's declaration of independence, fearing it would lose control over the northern municipalities in Kosovo, Belgrade offered Pristina a 'functional division' of Kosovo. Even though Pristina declined, Belgrade went ahead with the organization of municipal elections in northern Kosovo (Hamilton 2012).

Nonetheless, the political landscape in Belgrade was favourable to making compromises between Serbia and Kosovo, as the parties that were strongly opposed to any concession made by Serbia on the issue – the Democratic Party of Serbia (DSS) and the Serbian Radical Party (SRS) – lacked popular support. Even the strongest opposition party, the Serbian Progressive

¹³² 'Constitution of the Republic of Serbia', Republic of Serbia, http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php

Party (SNS), was open to finding a solution on the issue, which gave Tadic' Democratic Party (DS) quite some leeway to start a dialogue with Kosovo. Additionally, the newly elected Patriarch of the Serbian Orthodox Church signalled a more moderate tone than his predecessor, and called for a compromise whilst noting Kosovo belongs to both Albanians and Serbs (ICG 2010). Still, when commenting on the third anniversary of Kosovo's 'UDI' on 17 February 2011, state secretary of Serbia's Ministry for Kosovo, Oliver Ivanovic, said: 'Kosovo is not a state, and as far as Serbia is concerned, it never will be'.¹³³

Kosovo was less keen on starting a dialogue with Serbia, but the government understood it could not decline the invitation of the EU. Already before the ICJ ruling, Prime Minister Thaçi stated he would welcome negotiations on technical issues, including finding solutions to problems caused by the Kosovo War, regional cooperation, and economic development, but he ruled out a dialogue on Kosovo's political status, territorial integrity or 'issues inconsistent with the Ahtisaari plan' (ICG 2010). The Kosovo political elites insisted a 'political dialogue is not on the table', and refused to discuss what it considered "internal issues", which meant that the Kosovo government refused discussing anything related to the Serb-majority northern municipalities (Hamilton 2012). Furthermore, the Kosovo authorities were more sceptical of the EU's credibility, considering the fact that not all EU Member States had recognized Kosovo as an independent state, EULEX was deployed as a 'status-neutral' mission, and Kosovo's European future remained a vague and distant reward (Bieber 2016).

Kosovo was, however, dealing with several issues for which a dialogue with Serbia could offer solutions. Firstly, Kosovo Albanians experienced a lot of difficulties travelling to Serbia or even third countries. Secondly, Kosovo's economy was negatively affected by Serbia's trade embargo on all products stemming from Kosovo, and thirdly, Kosovo's telecommunications and energy distribution system remained under Serbia's control (Hopkins 2014). However, in the period leading up to the Belgrade-Pristina Dialogue, Kosovo experienced quite some political turmoil. In September 2010, the Constitutional Court of Kosovo ruled that the President of Kosovo, Fatmir Sejdiu, breached the constitution by holding both the position of President as well as the party leader of the Democratic League of Kosovo (LDK). Sejdiu resigned as President (Ejupi and Qavdarbasha 2011), and a subsequent breakdown in relations between the Democratic Party of Kosovo (PDK) and the LDK, which formed the government, resulted in the LDK to leave the coalition on 16 October (Ejupi and Qavdarbasha 2011).

Following these events, the New Kosovo Alliance (AKR) issued a motion of no confidence in the PDK leading the government. The motion was approved on 2 November, and elections were held on 12 December 2010, marking the first parliamentary elections after Kosovo's declaration of independence. Following widespread allegations of voter fraud, re-elections were held in three municipalities, at two voting stations in two other municipalities, and in the city of Mitrovica. After a recount, the PDK won the elections; the LDK came second, and Vetëvendosje, a social movement which had recently become a political party, followed (Ejupi and Qavdarbasha 2011). In February 2011, the new Kosovo government was formed with a coalition between the PDK and the New Kosovo Alliance (AKR). Hashim Thaçi (PDK)

¹³³ 'Serbian Official: Kosovo is Not a State' (2011, February 11), *Balkan Insight*, <http://www.balkaninsight.com/en/article/serbian-official-kosovo-is-not-a-state>

became Kosovo's Prime Minister and Behgjet Pacolli (AKR) fulfilled the position of President.¹³⁴ At the end of February, Prime Minister Hashim Thaçi stated that Pristina and Belgrade would talk as "two independent states" and would focus on "matters that will ease the lives of citizens of both countries, such as freedom of movement, trade exchange and regional cooperation." Thaçi appointed Edita Tahiri, the Deputy Prime Minister, to lead Kosovo's delegation in the dialogue with Serbia. Tahiri said Kosovo's final status, its territorial integrity, and the future of the Serb-run north of Kosovo would not be on the agenda of the dialogue.¹³⁵

4.3.2 Cooper's round

One day before the start of the dialogue, on 7 March 2011, a heated political debate in Kosovo's Assembly resulted in the postponing of the vote on two resolutions on "acceptable content of talks with Serbia", one of which was proposed by the ruling Democratic Party (PDK), and the other by the opposition party Vetëvendosje. The Assembly speaker and member of PDK, Jakup Krasniqi, who proposed to postpone the vote, argued that 'We should ask for more clarity in the policy level that Brussels has towards Kosovo, as the clarity of this policy has not been up to a proper level'. Prime Minister Thaçi stated that 'the dialogue will speed up the visa liberalisation process and Kosovo's integration into NATO and the EU', and that 'Kosovo's Government, based on the country's constitution, is responsible for leading the dialogue.'¹³⁶

Nonetheless, the dialogue commenced on 8 March 2011, for which the opposition heavily criticized the Kosovo's ruling parties.¹³⁷ One day after the first round of the dialogue, on 10 March, Kosovo's Assembly approved the PDK resolution with 63 votes in favour, 48 against, and one abstention. Notably, the three opposition parties – Vetëvendosje, the LDK and the Alliance for the Future of Kosovo (AAK) – did not sign the resolution.¹³⁸ The resolution affirmed that the Assembly of Kosovo supported the dialogue between "two independent and sovereign states, Kosovo and Serbia, on practical issues." Furthermore, the resolution explicitly stated that the '[d]ialogue's agenda shall include only technical issues of a common interest, without touching at any moment the Kosovo sovereignty, subjectivity, territorial integrity and internal constitutional arrangements of Kosovo'.¹³⁹ Therefore, when the dialogue started in the second week of March 2011, it was named a 'technical dialogue'.

Robert Cooper, the EEAS Councillor, mediated the dialogue, and whereas the Serbian side was represented by the political director of Serbia's foreign ministry, Borko Stefanovic, Kosovo's negotiating team was headed by Kosovo's Deputy Prime Minister, Edita Tahiri

¹³⁴ 'Kosovo's New Coalition has no Stable Foundation', (2011, March 8) *Balkan Insight*, 8

<http://www.balkaninsight.com/en/article/kosovo-s-new-coalition-has-no-stable-foundation>

¹³⁵ 'Kosovo: Serbia Talks will Focus on Practicalities' (2011, February 26), *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-dialogue-with-serbia-on-practicalities>

¹³⁶ 'Kosovo MPs Postpone Vote on Talks Resolution', (2011, March 7) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-mps-postpone-vote-on-talks-resolution>

¹³⁷ 'Kosovo-Serbia Talks Begin With Practical Issues', (2011, March 9) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-serbia-talks-begin-with-practical-issues1>

¹³⁸ 'Disputed Talks Resolution Approved by Kosovo MPs', (2011, March 10) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/resolution-on-talks-approved-by-assembly>

¹³⁹ Republic of Kosovo (2011), 'Resolution for dialogue between Republic of Kosovo and Republic of Serbia', Pristina, 10 March, retrieved from:

http://www.kuvendikosoves.org/common/docs/Resolution_for_dialogue_between_R.Kosovo_and_R.Serbia.pdf

(Hopkins 2014). Notably, the Serbs living in northern Kosovo were not included in the Serbian negotiation team, and the Serbs from southern Kosovo were not included in the negotiating team of Kosovo. These moves were justified with the argument the dialogue was of a purely technical nature, and therefore 'ethnic criteria need not apply' (Bieber 2016). However, their insufficient representation, made the dialogue widely unpopular amongst Kosovo Serbs (Bieber 2016).

Between March 2011 and May 2012, nine meetings were organized and seven so-called technical agreements were reached encompassing a variety of issues that affect people's lives in Serbia and Kosovo (Bieber 2016). After the first gathering, which took place on 8 and 9 March, Cooper said the talks had opened in 'a good atmosphere' and that the two sides discussed improving the legal certainty of people living in Kosovo by way of recovering civil and cadastral registers, and increasing economic cooperation in the region. Furthermore, he explained the dialogue touched on issues that would be discussed in greater detail later on, such as air traffic, telecommunications and customs stamps. Stefanovic, being less positive than Cooper, said Kosovo's delegation had 'attempted to impose terminological and narrative differences', and 'their own interpretation of history'. Finally, Tahiri once more stressed that 'Kosovo's independence must not be brought into question at any cost during the dialogue with Belgrade'.¹⁴⁰ After the second gathering, which took place on 28 March, Stefanovic confirmed a statement made by Tahiri, saying the negotiating parties had agreed that Serbia would provide Kosovo with copies of registers and cadastres.¹⁴¹ Other topics of debate concerned electricity and telecommunication, and free trade (Bieber et al. 2012). Following the third gathering of 15 April, during which the freedom of movement, mutual recognition of diplomas and all topics of the first two rounds were discussed (Bieber et al. 2012), Stefanovic made a controversial statement saying Belgrade was open to the possibility of discussing a partition of Kosovo as a solution to Kosovo's status issue, similar to the 'functional division' of Kosovo that Belgrade had proposed to Pristina after the declaration of independence. In response to Stefanovic's statement, Tahiri told Belgrade Daily Blic, the idea of dividing Kosovo was 'promoted by Slobodan Milosevic's politicians, and such ideas are a true danger to peace and stability in the region'. She continued: 'The Serbs living in Northern Kosovo are merely a part of the Kosovo Serb population', and 'the problem is that the Serbs in the North are under too much influence from Belgrade, [...] once Serbia stops exerting negative influence on them, they will quickly realize they have a future in Kosovo'.¹⁴² Although an indirect discussion, that is, a discussion being held via the media, it illustrated the continuous antagonism between the negotiating parties, and their division over the main issue underlying all other issues, which was not articulated as an objective of the Belgrade-Pristina Dialogue, namely, that of Kosovo's status. This hostility became all the more clear when on 12 May, Stefanovic made a symbolic visit to Pristina – the first meeting of a Serbian official to Pristina since NATO's bombing campaign of 1999 – and was faced with demonstrating activists of Vetëvendosje. Interestingly, Kosovo's Prime Minister Hashim explained Stefanovic's visit as a 'de facto [...] recognition of

¹⁴⁰ 'Serbia, Kosovo Wrap Up First Round of Talks' (2011, march 10), *Balkan Insight*, <http://www.balkaninsight.com/en/article/serbia-kosovo-wrap-up-first-round-of-talks>

¹⁴¹ 'Progress Made' in Second Round of Kosovo Talks' (2011, March 29)

¹⁴² 'Pristina 'will not Discuss Division of Kosovo' (2011, April 26), *Balkan Insight*, <http://www.balkaninsight.com/en/article/pristina-will-not-discuss-division-of-kosovo>

Kosovo's independence by Serbia.¹⁴³ A couple of days later, the fourth gathering took place on 17 and 18 May, during which the issues of missing persons, cultural heritage and the mutual recognition of diplomas were discussed, yet, no agreements were reached (Bieber et al. 2012).

The fifth round of the dialogue, which was scheduled for 14 and 15 June, was postponed due to 'procedural issues' after the Serbian negotiating team asked for time to think about the planned agreements. The EEAS patiently agreed to the postponement of the negotiations, but Kosovo's delegation reacted disappointed, and Tahiri claimed, 'Whenever we get close to signing an agreement, Serbia retreats'.¹⁴⁴ Finally, on 2 July 2011, the fifth gathering of the dialogue was held, and the agreements on the 'Freedom of Movement', and on 'Civil Registry' were reached. With the former agreement, both parties agreed that residents of Serbia and Kosovo should be allowed to travel freely within and throughout the territory of the other country, which would be simplified by an ID card system for 'cross border/boundary' travel of residents from either party, and the use of entry/exit documents. Furthermore, the negotiating parties agreed on interim solutions for the purchasing of temporary insurance for travelling in the other party's territory, as long as a commercial arrangement for mutual vehicle insurance was not established yet. With regard to the latter agreement on Civil Registry, the parties agreed that a tripartite committee, that is, a committee consisting of civil registry experts from Serbia and Kosovo chaired by EULEX, would start the process of identifying gaps in pre-1999 civil registry books of Kosovo, which would be filled by copies of the original registries provided for by Serbia and certified by EULEX (Hopkins 2014). Additionally, the parties agreed to commit to searching for a solution concerning the mutual recognition of university diplomas, based on European practices (Bieber et al. 2012).

Back in Belgrade, the Serbian opposition parties expressed their disapproval of the agreements, arguing the deals represented a step towards Serbia's recognition of Kosovo's independence, and the leader of the Democratic Party of Serbia (DSS), Vojislav Kostunica, said this was 'the first time that the government declared capitulation a success and thus directly deceived its own people'.¹⁴⁵ In Pristina the opposition parties criticized the Kosovo government for failing to make public the exact details of the agreements.¹⁴⁶

4.3.2.1 *The late July crisis*

Although in total three agreements were reached during the fifth gathering of the dialogue, Stefanovic and Tahiri were unable to strike a deal on customs that would allow for Kosovo goods to enter Serbia. Since the declaration of independence, Serbia upheld a trade embargo on all products stemming from Kosovo, whereas Kosovo continued to depend on the import of Serbian goods (Bieber et al. 2012). The government of Kosovo was under considerable economic pressure to act, and according to Tahiri, the Kosovo delegation insisted upon resolving the issue during the dialogue, rather than having to take reciprocal measures.

¹⁴³ 'Clashes in Pristina as Serbian Negotiator Visits', (2011, May 12) <http://www.balkaninsight.com/en/article/serbia-negotiator-to-meet-kosovo-officials-in-pristina>

¹⁴⁴ 'Kosovo-Serbia Talks put on Hold', (2011, June 15) *Balkan Insight*, <http://www.balkaninsight.com/en/article/shuttle-diplomacy-prepares-ground-for-next-round-of-kosovo-talks>

¹⁴⁵ 'Kosovo-Serbia Deals Rile Serbian Opposition', (2011, July 5) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/belgrade-pristina-agreements-stir-serbian-opposition>

¹⁴⁶ 'Kosovo Opposition Query 'Secret' Serbia Deal', (2011, July 7) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbia-agreement-held-secretly-opposition-parties-claim>

However, on 19 July Belgrade's negotiating team did not show up in Brussels, whereas the sixth round of the dialogue was foreseen for the next day. Tahiri explained Stefanovic' team's absence as an indication of its lacking willingness to accept Kosovo customs stamps (Hamilton 2012). In a press statement of 19 July, Robert Cooper argued it had been his decision to postpone the meeting, and said: 'I took this decision as it became clear that no agreement would be reached tomorrow. [...] This does not mean that the process is stopped. The dialogue will continue in September'.¹⁴⁷

Regardless of Cooper's pacifying attempt, the Kosovo government issued an immediate embargo on Serbian products. However, because EULEX guarded the northern borders and was unable to make the trade embargo effective, Serbian goods continued to enter into northern Kosovo. On the evening of Monday 25 July 2011, the Kosovo government sent special police units to gain control over border points at Jarinje and Brnjak (Hamilton 2012). Serbian President Tadic condemned the move, and argued that "unilateralism of any kind" threatened to 'completely derail the process of the dialogue between Belgrade and Pristina'.¹⁴⁸ Prime Minister Thaçi justified it by saying 'the action taken last night in no way should be seen as an action to prompt provocation, in fact, the purpose of the action was to establish law and order across the whole territory of the Republic of Kosovo', and 'we cannot allow one part of our homeland being used as a walkway for smuggled goods'.¹⁴⁹

The move, however, triggered a domino effect and set off a chain of events that meant a setback not only for the progress of the dialogue, but also the relations between Belgrade and Pristina, and resulted in a crisis in northern Kosovo. Kosovo Serbs, angered by the Kosovo Albanian police presence, rapidly mobilized to block the main roads leading to the two border crossings (Hamilton 2012). On Tuesday 26 July, following an agreement between Belgrade, Pristina and KFOR, the Kosovo police units withdrew, but came under attack of local Serbs as they reached the northern part of Mitrovica, resulting in the death of one member of the Kosovo special police force.¹⁵⁰ The next day, Thaçi declared there was no going back' on the police operation. Stefanovic claimed Kosovo officials 'had been brought to the two checkpoints', which went against the agreement of Tuesday, and which led local Serbs to believe KFOR had used its helicopters to transport Kosovo Albanian officials. They therefore continued to barricade the border crossings at Brnjak and the main road nearby Mitrovica, whilst another group of Kosovo Serbs set the border crossing of Jarinje on fire.¹⁵¹ On Thursday 28 July, KFOR gained control over the two border checkpoints, which were declared military zones, and Serbia's Minister for Kosovo, Bogdanovic, Stefanovic and KFOR started negotiations to find a lasting solution to the issue. However, no agreement was reached and Stefanovic argued this was 'because KFOR forces are supporting the decisions of the Kosovo

¹⁴⁷ 'EU facilitated dialogue: next round of talks postponed', EU Press Statement 256 (2011, July 19), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/123964.pdf

¹⁴⁸ 'Serbia's Tadic Pledges 'No War' Over North Kosovo', (2011, July 26) *Balkan Insight*, <http://www.balkaninsight.com/en/article/serbia-strongly-condemns-kosovo-s-border-crossings-take-over>

¹⁴⁹ 'Kosovo Police Pull Back from Serb Border', (2011, July 26) *Balkan Insight*, <http://www.balkaninsight.com/en/article/kosovo-police-pull-back-from-border>

¹⁵⁰ *Ibid.*

¹⁵¹ 'Thaci: 'No Going Back' on Kosovo Border Action', (2011, July 27) *Balkan Insight*, <http://www.balkaninsight.com/en/article/tensions-over-kosovo-serbia-border-rise-again>

government'.¹⁵² This interpretation proved not wholly erroneous, considering that on 5 August, KFOR and the Kosovo government agreed KFOR – rather than Kosovo police or officials – would be responsible for the guarding of the border crossings, but would enforce Kosovo's trade ban on goods stemming from Serbia. The agreement effectively put an end to the crisis.¹⁵³

The crisis in northern Kosovo worried the international community. Already on 28 July, the UN Security Council met in New York to discuss the situation,¹⁵⁴ and in a report by UN Secretary General Ban Ki-moon, presented to the Security Council on 29 August, he called for the continuation of the dialogue between Serbia and Kosovo, and stated that 'the growing tensions [in northern Kosovo] remain a cause for concern', whilst emphasizing that 'sensitive issues relating to northern Kosovo can only be resolved through peaceful means'.¹⁵⁵ Also the EU High Representative, Catherine Ashton, issued multiple statements during the crisis, expressing her concern about the violence and rising tensions, and encouraged Pristina and Belgrade to return to the dialogue (Hamilton 2012).

4.3.2.2 *The Dialogue continues*

Finally, on 2 September 2011, after a break of one and a half months, the dialogue resumed with the sixth round of talks in Brussels. Ahead of the dialogue, Cooper had visited both governments in Belgrade and Pristina and the parties agreed to leave the topic of northern Kosovo aside.¹⁵⁶ At the end of the day, the parties reached an agreement on Cadastre, which was similar to the agreement on Civil Registry: a complete cadastral record would be established for Kosovo, through the creation of tripartite teams, chaired by the EU, which would scan and verify the pre-1999 documents. These documents would be 'compared by a technical agency within Kosovo, and in cases of disparity, handled by an adjudication mechanism, with the Kosovo Supreme Court hearing appeals' (Hopkins 2014). Moreover, Stefanovic and Tahiri signed an agreement on Custom Stamps, in which both parties agreed to accept each other's stamps, enabling free trade and the movement of products between Serbia and Kosovo. The products stemming from Kosovo would be labelled 'Kosovo Stamps', without state emblems, a flag or the word 'republic'. This allowed Kosovo to interpret the label as custom stamps of the independent republic of Kosovo, whilst Serbia could interpret it as a provincial stamp.¹⁵⁷

However, because no clear arrangements were made for the implementation of the agreement, the late-July crisis revived. As soon as the sixth round of the dialogue ended, it

¹⁵² 'North Kosovo Deal Eludes KFOR and Serbia', (2011, July 28) *Balkan Insight*,

<http://www.balkaninsight.com/en/article/kfor-belgrade-officials-fail-to-reach-deal>

¹⁵³ 'Kosovo Northern Border Crisis Resolved', (2011, August 5) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-kfor-reached-agreement-over-the-disputed-north>

¹⁵⁴ 'North Kosovo Calmer, UN Discusses Tensions', (2011, July 29) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/un-security-council-discussed-kosovo-tensions>

¹⁵⁵ 'UN Urges Serbia and Kosovo to Enhance Dialogue', (2011, August 16) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/un-northern-kosovo-issue-to-be-resolved-through-peace>

¹⁵⁶ 'Kosovo-Serbia Talks May end Customs Row', (2011, September 11) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/fresh-kosovo-talks-expected-to-resolve-custom-stamps>

¹⁵⁷ 'Kosovo, Serbia Reach Customs Deal', (2011, September 3) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-serbia-reach-customs-deal>

became clear Tahiri and Stefanovic interpreted the agreement in differing ways: whereas Tahiri argued that 'with this agreement, mutual recognition has occurred between the Republic of Kosovo and Serbia in the field of customs', Stefanovic maintained the agreement was 'neutral' on Kosovo's status.¹⁵⁸ On 15 September, Taçi reiterated the Kosovo government would implement the Custom Stamps agreement by sending Kosovo customs and police officers, together with EULEX officials, to northern Kosovo.¹⁵⁹

The next day, they arrived at the two border crossings by helicopter. Anticipating their arrival, the local Serbs had blocked several roads and the main bridge over the Ibar River in Mitrovica. Serbian President Tadic proclaimed the placement of Kosovo officials at the border crossings had not been part of the agreement reached in Brussels two weeks before, and said 'The unilateral [...] attempt of Pristina with EULEX to impose customs control on the administrative line in North Kosovo will seriously endanger the peace and stability of the whole region'.¹⁶⁰ At the end of September, the Serbian delegation refused to resume the dialogue with Kosovo, which was scheduled to continue on 27 September, after sixteen Serbs in northern Kosovo were hurt in clashes with KFOR peacekeepers.¹⁶¹ Throughout October, around a dozen roadblocks were maintained, and the EEAS received increasing criticism regarding its inability to solve the crisis (Hamilton 2012).

After many attempts of the EEAS to end the standstill of the dialogue, finally on 21 and 22 November, the seventh round of talks was organized. Stefanovic and Tahiri reached an agreement on the Mutual Acceptance of Diplomas, in which they agreed to request the European University Association to certify the university diplomas in order for them to be recognized by both sides. Despite of heightened tensions in northern Kosovo, with local Serbs trying to prevent KFOR troops from dismantling a barricade at Jagnjenica, resulting in the injury of around 50 civilians and 30 KFOR guards, on 30 November the eighth gathering of the dialogue was organized.¹⁶²

Notably, after three days, Cooper managed to broker an agreement on 'Integrated Border Management' (IBM). Serbia, however, considered the agreement to be on 'Integrated Boundary Management', as a border would imply recognition of Kosovo's independence. To avoid bickering, the abbreviation IBM was used during the negotiations. The parties agreed to gradually establish joint border/boundary crossings, with a balanced presence of each side's officials, and to refrain from showing state symbols. Additionally, EULEX officials would be present at all six borders/boundaries. Next to the IBM agreement, Stefanovic and Tahiri reached an agreement on the Mutual Acceptance of Diplomas, in which they agreed to request the European University Association to certify the university diplomas in order for them to be recognized by both sides (Hopkins 2014). After the round of talks, Tahiri, like she had done before, explained the agreement as Serbia's recognition of Kosovo's independence as she

¹⁵⁸ 'Tahiri: Customs Deal Confirms Kosovo Independence', (2011, September 6) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/edita-serbia-recognised-kosovo-s-independence>

¹⁵⁹ 'NATO Leader Pledges to Preserve Peace in Kosovo', (2011, September 15) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/rasmussen-kfor-will-provide-safe-and-secure-environment-in-kosovo>

¹⁶⁰ 'Kosovo Serbs Hold Fire Over Border Takeover', (2011, September 16) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/taugh-night-ahead-in-north-kosovo>

¹⁶¹ 'Kosovo-Serbia Talks off After Renewed Clashes' (2011, September 28), *BBC News*, retrieved from: <http://www.bbc.com/news/world-europe-15091857>

¹⁶² 'Kosovo, Serbia Resume Talks Against Tense Backdrop', (2011, November 11) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/eighth-round-of-kosovo-talks-begins>

argued that 'Serbia's signature on the protocol represents a recognition of Kosovo's border', and 'IBM can only be implemented between states', but Stefanovic dismissed such claims.¹⁶³

4.3.2.3 *The Asterisk agreement*

During the eighth round of talks, the negotiating parties failed to reach an agreement on Kosovo's participation in regional forums and initiatives. Since Kosovo's declaration of independence, Serbia had refused to participate in conferences at which Kosovo was represented with its own state symbols. However, such an agreement was one of the conditions that the EU demanded of Serbia in order for the country to obtain the status of candidate country. On Monday 5 December 2011, just days before the expected decision on Serbia's candidacy, the EU Foreign Affairs Council called on Serbia to address the question of regional cooperation; however, no such agreement was reached.¹⁶⁴ On 9 December, rather than deciding on Serbia's candidacy, the European Council tasked the Council of the EU to examine and confirm whether Serbia had achieved sufficient progress in implementing the agreements reached in the Belgrade-Pristina Dialogue. The Council of the EU's decision was set for February 2012, to be confirmed by the European Council the following month.

The Serbian government responded indignantly. On 13 December, President Tadic said Brussels had implicitly asked Belgrade to recognize Kosovo's independence, and said, 'No one can convince me to give up UN Resolution 1244 and I will do everything to convince my EU colleagues that the resolution is a model we should apply'.¹⁶⁵ The EU's Enlargement Commissioner, Stefan Fule, dismissed the claim that Brussels had pressured Serbia to recognize Kosovo's independence, and stressed that the EU is neither in the position to nor intends to impose recognition on Serbia. He furthermore claimed that the EU's postponement of deciding on Serbia's candidacy status until March 2012 was not a sign of 'enlargement fatigue', and argued that 'the fact that Serbia and Montenegro were at the top of the summit agenda, in the midst of the worst financial crisis the EU has faced since its inception, testifies that the enlargement process is moving forward'.¹⁶⁶

Mid-February, despite of several video and telephone conferences, and meetings between Cooper and Stefanovic and Tahiri individually, still no agreement was reached. Whereas the Pristina delegation continued to insist Kosovo should be able to represent itself as 'The Republic of Kosovo', Belgrade's negotiating team argued Kosovo's representation was only acceptable when accompanied by a reference to the UN Security Council Resolution 1244.¹⁶⁷ In the meantime, Vetëvendosje started a graffiti campaign throughout Pristina, marking the words 'Kosova Republikë' (Republic of Kosovo), around the city. The campaign was in vain, as Prime Minister Hashim Thaçi, after a visit of the United States to Pristina during which he was

¹⁶³ 'Kosovo and Serbia Both Claim Victory in Border Deal', (2011, December 6) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/tahiri-serbia-recognizes-kosovo-through-the-ibm-deal>

¹⁶⁴ 'Kosovo, Serbia Fail to Agree on Regional Forums', (2011, December 11) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/no-deal-on-kosovo-participation-in-regional-forums>

¹⁶⁵ 'Tadic: EU Conditioned Serbian Candidacy on Kosovo' (2011, December 14), *Balkan Insight*, retrieved from: www.balkaninsight.com/en/article/eu-conditions-serbian-candidacy-bid-on-kosovo-recognition

¹⁶⁶ 'EU Not Demanding from Serbia to Recognize Kosovo' (2011, December 11), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/eu-not-demanding-from-serbia-to-recognise-kosovo>

¹⁶⁷ 'Kosovo and Serbia Far From Agreement', (2012, February 12) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/time-runs-out-for-serbia-to-fulfil-eu-conditions>

urged to make a compromise,¹⁶⁸ said Kosovo would agree to its representation with a reference to Resolution 1244 on 21 February.¹⁶⁹

Already the next day, on 22 February, the ninth round of the Belgrade-Pristina Dialogue was organized,¹⁷⁰ and on 24 February, Tahiri and Stefanovic reached an agreement on Regional Representation and Cooperation, with which the parties agreed that Kosovo would be regionally represented under the name 'Kosovo', with an asterisk referencing to the UN Resolution 1244, and the ICJ's opinion on the Kosovo declaration of independence (Hopkins 2014). Additionally, the parties concluded a technical protocol on the implementation of the IBM agreement of 2 December 2011.¹⁷¹ The agreement, which is referred to as the 'asterisk agreement' or 'footnote agreement', allowed Kosovo to take part in regional conferences, sign agreements on its own account, and represent itself at regional meetings, including those with EU institutions, whilst no longer being represented by UNMIK (Lepore 2012).

That same day, at a press conference in Pristina, Thaçi said he was "aware that this footnote or formula in the footnote is not the ideal one, but it is the most acceptable one at the moment," and argued, "the deal does not weaken Kosovo but strengthens it."¹⁷² Shortly after, between 800 and one thousand opposition activists of Vetëvendosje organized a demonstration in Pristina demanding the government's resignation after it struck the agreement on Kosovo's representation, arguing it threatened Kosovo's independence.¹⁷³

4.3.3 Ashton's round

4.3.3.1 *The start*

After the dialogue had stalled in 2012, the political landscapes in Serbia and Kosovo underwent quite some change. Serbia's governing party, DS, did not do well in the May elections, and President Tadic lost in his re-election bid to Tomislav Nikolić of the centre-right Serbian Progressive Party (SNS). Because no political party won an outright majority, the formation of a new coalition took months. In July 2012, Ivica Dačić, leader of the Socialist Party of Serbia (SPS) became Serbia's Prime Minister, heading a coalition with the SNS and several smaller parties. In Kosovo, supervision by the ICO, which was established by the Ahtisaari plan, ended on 10 September, making Kosovo responsible for its own governance. The government headed by Prime Minister Thaçi, however, dealt with several issues. Firstly, talks on possible amendments to Kosovo's constitution designed to introduce a popularly elected President

¹⁶⁸ 'US Nudges Kosovo Towards Deal With Serbia', (2012, February 20) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/us-calls-for-a-compromise-in-pristina-belgrade-talks>

¹⁶⁹ 'Kosovo Gives Way to Serbia on Representation', (2012, February 21) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-makes-concessions-to-serbia>

¹⁷⁰ 'Kosovo and Serbia Resume Brussels Talks', (2012, February 22) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/pristina-belgrade-talks-resume>

¹⁷¹ 'Kosovo, Serbia Reach Deal on Regional Representation', (2012, February 24) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbia-reach-deal-on-regional-representation>

¹⁷² 'Thaci Hails Serbia Deal as Triumph for Kosovo', (2012, February 24) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/thaci-the-deal-with-serbia-not-ideal-but-its-temporary>

¹⁷³ 'Kosovo Nationalists Rally Against Serbian Deal', (2012, February 28) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kurti-the-kosovo-spring-is-coming>

stalled due to increased tensions between the governing coalition and the opposition parties. Secondly, Taçi encountered factional conflict within his own party, the PDK, and finally, Vetëvendosje organized several demonstrations against the dialogue with Serbia, making it difficult for Taçi to commit to another round of negotiations (ICG 2013).

Next to these changed political realities, tensions between Serbia and Kosovo rose, which meant another obstacle to establishing a new round of the Belgrade-Pristina Dialogue. Particularly the Kosovo government refused to engage in further talks with Belgrade, and accused Serbia of delaying the implementation of the agreements reached during Cooper's round.¹⁷⁴ On 21 August 2012, at a UN Security Council meeting in New York, Dačić rejected this claim and vowed Serbia would implement all agreements reached. Once more, the Prime Minister affirmed 'Serbia will never, under any circumstances, implicitly or explicitly, recognize the unilateral declaration of independence by Kosovo's ethnic Albanian authorities, because it was not the result of mutual agreement'. Notably, he argued, 'Negotiations on all outstanding issues cannot be avoided', and expressed Serbia's readiness for 'high-level talks' (UNSC 2012, 4). Taçi responded by stating, 'The status of Kosovo has been determined; it was decided on in February 2011' and by critiquing Serbia for failing to sign the technical protocol regarding the agreement on integrated border management, and for refusing to implement the agreement on regional cooperation. Taçi argued, '[t]he credibility of the technical dialogue is at stake, and we call on Serbia to deliver on what was agreed during this process'. Despite of these critiques and Taçi's earlier rejection of continuing the negotiations with Serbia, Taçi now argued Kosovo was dedicated to the normalization of relations with Serbia through dialogue (ibid, 7-10). This renewed dedication could be ascribed to the fact that Pristina was expecting the publication of the feasibility study for Kosovo's Stabilisation and Association Agreement by the European Commission, which was due on 10 October 2012.¹⁷⁵

Overall, 'it took several months over the summer and early fall for the EU to develop a concept [that was able to] revive the Kosovo-Serbia discussions' (ICG 2013). Ashton wished to make use of the last months that the US Secretary of State Hillary Clinton – who strongly supported the EU's efforts to facilitate compromises between Serbia and Kosovo – was in office (ICG 2013). The EEAS was eager to organize a new round of the dialogue that would deal with the problem of northern Kosovo, which was, according to Cooper (2014), a topic that 'provoke[d] strong emotions on both sides,' and therefore had to 'be handled at a political level'. Ashton hoped enough confidence was built by tackling the less sensitive issues during the technical dialogue to establish such a political dialogue.

Stefan Lehne (2012) also argued that if the dialogue's objective was the actual normalization of relations between Serbia and Kosovo, a more ambitious and comprehensive approach that "tackles the thorniest issue" – the situation in northern Kosovo – was necessary. In January 2012, the former Serbian President, Tadić, had presented a 'four-point proposal' for the future of Kosovo, which confirmed Belgrade's policy of non-recognition of Kosovo's declaration of independence, yet, advocated a solution for northern Kosovo within Kosovo's

¹⁷⁴ 'Tahiri: no Talks Until Agreements Implemented', (2012, August 13) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-no-deals-no-talks>

¹⁷⁵ 'Statement by the Spokesperson of EU High Representative Catherine Ashton following the meeting with Prime Minister of Kosovo Hashim Taçi', EU Press Statement 420 (2012, September 25), http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132557.pdf

existing boundaries.¹⁷⁶ Tadic' point plan abandoned the idea of Kosovo's functional division, and instead proposed to create a "region in North Kosovo with special rights". Pristina rejected the plan because it ruled out Serbia's recognition of Kosovo as an independent state, and continued to hold on to the full implementation of the Ahtisaari plan as the solution for northern Kosovo. Nonetheless, both Belgrade and Pristina became increasingly aware that 'their unresolved relationship and in particular the frozen conflict in the North of Kosovo represent[ed] a great handicap for their future' (Lehne 2012). It remained to be seen how aware Serbia's new government and President was of this handicap, and how willing Belgrade was to find a compromise. Mid-July 2012, President Nikolić said 'I don't think I will ever be President in Pristina, but the President of the interim authorities in Pristina will also never be president in Mitrovica',¹⁷⁷ with which he expressed his reluctance to give up northern Kosovo, yet also his understanding Belgrade would never govern the whole of Kosovo again.

At the end of September 2012, at the UN General Assembly in New York, Ashton proposed an agenda for the continuation of the Belgrade-Pristina Dialogue to the Serbian President Nikolić and Kosovo's Prime Minister Thaçi. It reportedly included several issues for Serbia to tackle, and a smaller number of demands from Kosovo; however, the exact details regarding Ashton's initial proposal are unknown. Serbia rejected the offer, but after Ashton set aside the proposal, the High Representative managed to convince both sides to commit to high-level talks that would address issues the Council [of the EU] had first defined in December 2011, which were fine-tuned in December 2012 (ICG 2013). What is interesting about this development is that following her failure to get Serbia to commit to a political dialogue based on her initial proposal, the High Representative chose to base the dialogue's agenda on key documents of Serbia's road to EU membership. Such an offer was hard to decline for Belgrade, since rejecting it would result in a setback in Serbia's progress on its road to EU membership.

Finally, on 19 October 2012, the first gathering of the political dialogue was established, and the Prime Ministers of Serbia and Kosovo, Ivica Dačić and Hashim Thaçi, met in Brussels. 'Owing to the perceived sensitivity of the two old foes meeting for the first time, journalists were kept at a distance, there was no joint press conference after the meeting, and the only photo made available was the official one taken and distributed by the EU High Representative office' (Bajrami 2013). The controlling of the release of information regarding the meetings was maintained throughout the political dialogue (Bajrami 2013). After the meeting, Ashton issued a statement, which explained she had first met with Dačić and Thaçi separately, and subsequently a joint meeting took place, 'which was conducted in a good and constructive atmosphere'. The Prime Ministers 'agreed to continue the dialogue for the normalization of relations between the two sides', and Ashton emphasized they would meet again soon.¹⁷⁸

According to Thaçi several issues were discussed, including the implementation of the agreements reached during the technical dialogue, the finding of answers regarding persons who went missing during the Kosovo War, the dissolution of the parallel governance structures in northern Kosovo, the protection of Serbian heritage in Kosovo, the holding of elections and

¹⁷⁶ 'North Kosovo Serbs Dismiss Tadic Plan', (2012, January 26) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/tadic-s-plan-similar-to-ahtisaari-s>

¹⁷⁷ 'Serbia's Nikolić Gives Some Ground on Kosovo' (2012, July 11), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/serbia-s-nikolic-gives-some-ground-on-kosovo/1589/46>

¹⁷⁸ 'Statement by High Representative Catherine Ashton on the continuation of the EU-facilitated dialogue', EU Press Statement 462 (2012, October 19) http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133036.pdf

the establishment of a new municipality in northern Mitrovica, possible agreements in the field of telecommunication and energy, and finally, the possibility of opening Liaison offices in each other's capital cities.¹⁷⁹ Next to the political dialogue, the technical dialogue was also reopened. Outside of the limelight, negotiations were held at the official level in Brussels, with the aim to resolve remaining issues, such as in the field of energy and telecommunications (Bajrami 2013).

In Pristina, Vetëvendosje organized a protest against the dialogue, calling Dačić 'the political heir of the butcher of the Balkans, Slobodan Milošević' and critiquing Thaçi for being too willing 'for any form of meeting with Dačić and Nikolić, regardless of Serbia's century long criminal past and regardless of Serbia's concrete efforts to destroy Kosovo's independence and statehood through the financing and administration of its criminal structures within our state'.¹⁸⁰ The protest, which was denounced as illegal by the Kosovo police, finally turned violent and reportedly eighteen police officers and ten activists were injured.¹⁸¹

Surprisingly, Vetëvendosje was the only opposition party denouncing the political dialogue. Because the talks with Serbia were met with suspicion and apprehension from the general public in Kosovo, the EU and United States attempted to foster support through US diplomats backing the dialogue during public displays. Furthermore, support was sought among the opposition parties, and finally, the LDK and AAK voted in favour of a parliamentary resolution calling for the political dialogue. Additionally, the AAK Vice President, Blerim Shala, was appointed 'political coordinator' of the dialogue. With the AAK in the Kosovo delegation, and the LDK supporting it in parliament, Vetëvendosje stood alone in its opposition to the EU-mediated negotiations with Serbia (Bajrami 2013).

4.3.3.2 The IBM agreement

On 30 October, Hillary Clinton and Catherine Ashton visited Belgrade to meet with President Nikolić and Prime Minister Dačić to 'support Serbia on its EU path' and to motivate Serbia to remain engaged in the political dialogue with Kosovo.¹⁸² The next day, Clinton and Ashton visited Pristina, to likewise urge Kosovo to resolve the remaining issues with Serbia through engaging in the dialogue. Notably, after the meeting, Clinton said, 'We object to any kind of talks about Kosovo's borders, Kosovo's borders are set forever and they will not change'.¹⁸³ Clinton's visits resulted in an acceleration in the dialogue's process.

Soon after, on 7 November, Dačić and Thaçi met for the second gathering of the dialogue, discussing the results of a joint working group on 5 and 6 November on the 'integrated crossing management', that is, the IBM agreement. If implemented, customs officials and police officers of Serbia and Kosovo would have to work together at the border crossings.

¹⁷⁹ 'Prime Minister Thaçi: Kosovo is gradually becoming factor contributing to security and stability' (2012, February 28), *The Republic of Kosovo: The Office of the Prime Minister*, retrieved from: <http://www.kryeministri-ks.net/?page=2,9,3388>

¹⁸⁰ 'Prime Minister of Kosovo meets Milosevic' spokesman' (2012, October 19), *Vetëvendosje*, retrieved from: http://www.vetevendosje.org/en/news_post/prime-minister-of-kosovo-meets-milosevics-spokesman-4/

¹⁸¹ 'Kosovo Police Clashes With Protesters', (2012, October 22) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-police-clashes-with-protesters>

¹⁸² 'Clinton, Ashton Urge Serbia to Continue Kosovo Talks', (2012, October 30) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/clinton-ashton-urge-serbia-to-continue-kosovo-talks>

¹⁸³ 'Clinton Rules out Changes to Kosovo Border', (2012, October 31) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/clinton-rules-out-changes-to-kosovo-border>

During the meeting, the negotiating parties agreed to establish a joint technical working group that would prepare a feasibility study for the construction of a highway from Nisin in Serbia to the Pristina. Next to this, the talks focused on the Serb-majority northern municipalities in Kosovo. Taçi said he had insisted that Serbia would make public the financing of the parallel institutions, to which Dačić responded this would not be a problem, as 'Serbia has nothing to hide'. According to Ashton, these talks were 'open and honest'.¹⁸⁴

On 4 December, the third meeting of the political dialogue was held. Before heading to Brussels, Dačić said he would try 'to save what can be saved'.¹⁸⁵ Following four hours of negotiations, the Prime Ministers finally confirmed the conclusions of the IBM working group, and agreed to commence with the implementation of the IBM agreement at two border crossings on 10 December, and two other crossings on 31 December. Furthermore, they agreed to both appoint a liaison officer, and Kosovo Prime Minister Taçi confirmed he had established a multi-ethnic special police unit that would be tasked with the protection of Serbian religious and cultural heritage in Kosovo. Additionally, the Prime Ministers agreed to the continuation of negotiations on energy and telecommunication at the level of experts, and finally, 'agreed to look into ways to ensure a transparent flow of money in support of the Serb community in Kosovo'.¹⁸⁶

The Serbian government was highly critiqued for the agreement. That same day, up to a hundred Kosovo Serbs staged a protest at the Jarinje border crossing – also on Serbian territory – against the implementation of the IBM agreement,¹⁸⁷ which illustrated the controversiality of the agreement. Serbian Prime Minister Dačić responded to the protest by saying, 'There are no reasons [for Kosovo Serbs] to protest. Serbia will remove those who protest on our side of administrative crossing as such protests need to be in line with state policy and not against the state', and 'I urge everyone not to start any battles that we cannot win'.¹⁸⁸ However, also the Serbian Orthodox Church denounced the IBM agreement and in a letter sent to the Serbian President Nikolić, Prime Minister Dačić, First Deputy Prime Minister Vučić, and to opposition leaders, the Church demanded the Serbian authorities to stop partaking in what it called 'the country's suicide' and to reconsider 'accepting the [EU-brokered] 'integrated border management' agreement'.¹⁸⁹ Belgrade managed to at least solve the tensions in northern Kosovo and put an end to the protest by promising the Kosovo Serbs it would suspend the IBM agreement 'if Kosovo Albanian authorities [would] abuse it'.¹⁹⁰

On 10 December 2012, a year after Stefanovic and Tahiri had reached the IBM agreement, the implementation of the agreement commenced at the Merdare and Jarinje

¹⁸⁴ 'Brussels Lauds 'Honest' Kosovo-Serbia Talks', (2012, November 12) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-pms-agree-on-implementation-of-deals>

¹⁸⁵ 'Kosovo, Serbia Leaders Set for Third Meeting', (2012, December 4) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbia-leaders-set-for-third-meeting>

¹⁸⁶ 'Third Meeting in the Framework of the EU-Facilitated Dialogue' (2012, December 4), *European External Action Service*, http://eeas.europa.eu/top_stories/2012/041212_eu_facilitated_dialogue_en.htm

¹⁸⁷ 'Kosovo Serbs Protest Again Over Border Deal', (2012, December 4) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbs-protest-again-over-border-deal>

¹⁸⁸ 'Serbia PM Pledges Kosovo Solution in 2013', (2012, December 6) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/solution-for-kosovo-in-2013-dacic-says>

¹⁸⁹ 'Serbian Church Accuses Government of 'Suicide' on Kosovo', (2012, December 6) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/serbian-orthodox-church-criticizes-state-on-kosovo-policy>

¹⁹⁰ 'Kosovo Serbs and Belgrade Solve Border Deal Row', (2012, December 7) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/north-kosovo-serbs-accept-belgrade-policy-on-kosovo>

border crossing.¹⁹¹ Nonetheless, following two working groups headed by Serbia's Dejan Pavicevic and Edita Tahiri during mid-January, disagreement arose on whether products stemming from Serbia and indented for northern Kosovo should be duty-free or not, with Pristina arguing taxes must be paid on all products entering Kosovo's territory, and Belgrade and the Kosovo Serbs opposing this.¹⁹² Finally, during the fourth round of the political dialogue on 17 January 2013, Dačić and Thaçi reached 'a provisional understanding on the collection of customs duties, levies and VAT'. According to Dačić, they 'agreed that customs paid on administrative crossings [would] go to a special fund under EU auspices, aimed at [the] development of the municipalities in North Kosovo'.¹⁹³

4.3.3.3 *The bumpy road towards the Brussels Agreements*

Whereas further agreements were said to have been reached during January and February 2013, the EEAS did not issue any conclusions or statements following the meetings. Officials from both sides made contradicting statements, for example, the Kosovar officials claimed that the Serbian government had agreed to dissolve its security structures in northern Kosovo, yet Serbian officials denied any such agreement was reached. The EEAS remained silent, and refused to confirm what had and what had not been agreed on (Bajrami 2013). On 6 February, the Presidents of Serbia and Kosovo, Nikolić and Jahjaga, met in Brussels for a symbolic meeting in support of the Belgrade-Pristina Dialogue.¹⁹⁴ Despite of the symbolic backing of the countries' highest authorities, the fifth gathering on 20 and 21 February, and the sixth meeting on 4 March proved fruitless, even though it had been Ashton's explicit intention to broker a deal with regard to northern Kosovo.

The diplomatic pressure on both sides was sharpened, and Ashton visited Belgrade and Pristina to individually negotiate with the Serb and Kosovar leadership. The seventh round of talks held on 20 March lasted for 12 hours, yet again, Dačić and Thaçi failed to reach an agreement (Bajrami 2013). In the meantime, several German officials and politicians put pressure on Serbia to allow Kosovo to become a member to the United Nations, and even to recognize Kosovo's independence. Hans-Joachim Falenski, advisor to Germany's ruling Christian Democratic Union-Christian Social Union of Bavaria coalition, said: 'The most important thing is to have normalization of relations between Belgrade and Pristina, which would make way for mutual respect and later include Serbia's consent to Kosovo having a UN seat', and that, in return, the German parliament would possibly relieve some of the current conditions that it had set for Serbia's accession talks.¹⁹⁵ Also, the German chair of the European Parliament's Committee on Foreign Affairs, Elmar Brok, argued that 'two countries that do not

¹⁹¹ 'Kosovo, Serbia Put Border Deal in Action', (2012, December 10) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbia-put-border-deal-in-action>

¹⁹² 'Kosovo-Serbia Border Talks in Stalemate', (2013, January 16) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbia-border-deal-implementation-without-progress>

¹⁹³ 'Dacic, Thaci Agree Customs for North Kosovo', (2013, January 18) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/dacic-thaci-agreed-on-customs-for-north-kosovo> See Chapter 2 of this report for a short discussion of the fund.

¹⁹⁴ 'Kosovo and Serbia Presidents Due for Historic Meet', (2013, February 13) *Balkan Insight*, <http://www.balkaninsight.com/en/article/kosovo-and-serbian-presidents-to-make-history>

¹⁹⁵ 'Germany Urges Serbia to Allow Kosovo UN Seat' (2013, March 25), *Balkan Insight*, <http://www.balkaninsight.com/en/article/germany-may-ease-on-serbia-if-kosovo-gets-un-seat>

recognize each other" [could not] join the 27-nation club, as it would be "impossible from the legal and political standpoint', concurring with his fellow German Member of the European Parliament, Doris Pack, who said, 'Kosovo and Serbia should join the EU at the same time' so that Serbia would not be given the opportunity to 'use the veto to obstruct Kosovo's membership in the Union'.¹⁹⁶

On 2 April 2013, the eighth round of talks was held in Brussels, and over the course of twelve hours, the Prime Ministers of Serbia and Kosovo, both supported by their Deputy Prime Ministers, Aleksandar Vučić and Hajredin Kuçi, met with Ashton in separate and joint meetings in an attempt to reach an agreement on an association in northern Kosovo. Ahead of the meeting, the High Representative argued that a deal was within reach, 'though it will not be easy'. The proposal presented by Ashton included the creation of an Association of Serbian Municipalities in Kosovo, four in northern Kosovo and six in the rest of the country, which would involve the dismantling of the Serbian governance structures in the north, as demanded by Pristina, and would give the Kosovo Serbs the autonomy that Belgrade insisted upon.¹⁹⁷

The eighth round of the political dialogue was crucial for Serbia's path to EU membership because a positive outcome would be awarded with a starting date for its accession negotiations. Nonetheless, the negotiating teams failed to agree on the executive and legislative powers of the Association.¹⁹⁸ Whereas Dačić and his delegation had reportedly insisted on Serb-run courts of first and second instance in the Association, which would operate under the jurisdiction of the Kosovo Supreme Court, Taçi and his negotiating team refused to let go of their demand of the creation of regular Kosovo courts with mixed panels of judges based on ethnic quotas. Additionally, Belgrade opposed the proposal of Kosovo military being stationed in the Serb-majority municipalities.¹⁹⁹ In a press conference in Brussels, Catherine Ashton said, 'This is the last time we'll meet formally. A number of proposals were put on the table, and the gap between [Belgrade and Pristina] is very narrow, but deep. They will now both go back and consult with their colleagues and their capitals, and will let me know in the next few days their decision'.²⁰⁰

Back in Pristina, Prime Minister Taçi said: 'It now depends on Belgrade whether it accepts the document on normalizing relations with Kosovo', and he called on Serbia to 'look into the future [with] rationalism and courage'. Furthermore, he claimed that 'despite current difficulties, the process cannot be declared closed or failed'.²⁰¹ One day before 9 April, which was the deadline Ashton had set for Belgrade and Pristina to let her know their decisions, Belgrade, however, rejected the deal arguing the proposed deal did not provide basic rights and security for the Kosovo Serbs. Ashton continued to mediate between the two parties, and a

¹⁹⁶ 'Serbia Must Recognize Kosovo, German MEP Says' (2013, March 28), *Balkan Insight*, <http://www.balkaninsight.com/en/article/german-mep-reveals-last-condition-for-serbia>

¹⁹⁷ 'Kosovo and Serbia Meet for 'Historic' Talks', (2013, April 2) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-set-for-historic-round>

¹⁹⁸ 'Kosovo and Serbia Fail to Reach Deal', (2013, April 3) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-fail-to-reach-deal>

¹⁹⁹ 'Judges and Military Hold up Kosovo-Serbia Deal' (2012, April 3), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-still-at-odds-over-judges-and-army>

²⁰⁰ 'Statement by EU HR Ashton' [video file], European Council, Council of the European Union (2013, April 2), <http://tvnewsroom.consilium.europa.eu/event/belgrade-pristina-dialogue/statement3>

²⁰¹ 'Kosovo Says Deal's Fate is in Serbian Hands', (2013, April 4) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/belgrade-to-move-forward-kosovo-thaci-says>

senior EU official said: 'She is in constant telephone conversations with both the Kosovo and Serbia prime ministers, trying to persuade both sides to make a compromise and find a solution that would be acceptable', preferably before European Council meeting scheduled for 22 April.²⁰² Furthermore, the High Representative invited the Prime Ministers Dačić and Thaçi for the ninth round of the political dialogue on 17 April, and asked of them 'to come in a constructive spirit, ready to explore different options and agree to a mutual compromise'.²⁰³ After almost fourteen hours of negotiations both parties accused one another of blocking the agreement. Nonetheless, Ashton said: 'I can say with real confidence today that the differences are narrow and very shallow. As we prepare for the General Affairs Council on Monday [22 April] where I will make my report; we have some hours left'.²⁰⁴

4.3.3.4 *The Brussels Agreement*

Two days later, on 19 April 2013, the tenth round of negotiations of the political dialogue was held, and the two Prime Ministers finally reached the long-awaited agreement concerning northern Kosovo,²⁰⁵ which was presented as 'The First Agreement of Principles Governing the Normalization of Relations', commonly referred to as the 'April Agreement' or 'the Brussels Agreement'. In fifteen points, the agreement covered the governance of the Serb-majority northern Kosovo, including Zvečan, Mitrovica North, Leposaviq, and Zubin Potok, where the Kosovo Serbs had continuously refused to accept Pristina's authority. Following the agreement, these municipalities were now to be integrated in the institutional framework of Kosovo (Beha 2015).

Dačić and Thaçi agreed that municipal elections would be organized in these four municipalities in 2013, with the facilitation by the OSCE. After these elections were completed, an Association/Community of the ten Serb-majority municipalities in Kosovo would be established, which were to have 'full overview of the areas of economic development, education, health, urban and rural planning'. Any other municipality would be able to join with the agreement of all members. The Association/Community was to be established by statute similar to that of the already existing Association of Kosovo municipalities. The participating municipalities 'shall be entitled to cooperate in exercising their powers through the Community/Association collectively', and the Association/Community was to have a representative role to the central authorities in Pristina, and therefore have a seat in the communities' consultative council.

With regard to security, Dačić and Thaçi agreed that the Kosovo Police (KP) would be the only police force operating in Kosovo and the Serb police would be fully integrated into – and offered a similar position in – the KP. However, one Serb commander, nominated by Kosovo's Ministry of Internal Affairs and picked from a list with candidates as provided for by the four mayors of the northern municipalities, would oversee the region of northern Kosovo,

²⁰² 'EU Still Working on Serbia-Kosovo Deal', (2013, April 12) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/eu-hopes-for-belgrade-pristina-deal>

²⁰³ 'Belgrade-Pristina Dialogue Continues in Brussels', (2013, April 16) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/belgrade-pristina-dialogue-continues-in-brussels>

²⁰⁴ 'Serbia and Kosovo Haggles Over EU Deal', (2013, April 18) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/serbia-kosovo-fail-to-reach-agreement>

²⁰⁵ 'Kosovo and Serbia Reach Historic Deal in Brussels', (2013, April 13) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-may-seal-eu-deal>

and cooperate with other regional commanders. Furthermore, the makeup of the KP would reflect the ethnic composition of the population of the northern municipalities. With regard to the judiciary, the Prime Ministers agreed that existing judicial authorities in northern Kosovo would likewise become part of the central Kosovo legal framework, however, the Appellate Court in Pristina were to establish a panel with a majority of Kosovo Serb judges that would deal with all Kosovo Serb-majority municipalities. Also, a division of the Appellate Court, composed by administrative staff and judges, would permanently sit in northern Mitrovica, and the panels of this division would include a majority of Kosovo Serb judges. Additionally, Dačić and Thaçi agreed to establish an implementation plan by 26 April, in which 'the principle of transparent funding [would] be addressed', and the parties agreed to establish an implementation committee with the facilitation of the EU. The Prime Ministers vouched to reach an agreement on Energy and Telecom by 15 June, and finally, the parties once more 'agreed that neither side [would] block, or encourage others to block, the other side's progress in their respective EU paths'.²⁰⁶

The EU Enlargement Commissioner, Štefan Füle, praised the agreement for being historic for Serbia-Kosovo relations, the region of the Western Balkans, and the EU, whilst adding: 'It is in the interests of all concerned; of the people living in Kosovo, those living in Serbia and the region as a whole'.²⁰⁷ In addressing the press, High Representative Ashton said: 'The text has been initialled by both Prime Ministers. I want to congratulate them for their determination over these months and for the courage that they have. It's very important that now what we're seeing is a step away from the past, and for both of them a step closer to Europe'.²⁰⁸ Notably, Prime Minister Thaçi said: 'The signing of this agreement is the recognition of Kosovo, which is in line with how Thaçi and Tahiri explained several agreements reached during the technical dialogue'. Additionally, he said: 'We are fully aware that there will be people in both of our countries that are not going to be very happy with this solution, but this is the best possible solution for our country, also for Serbia, for the region and for the European Union'.²⁰⁹

Particularly Vetëvendosje opposed the agreement. 'Kosovo is turning into a Bosnia... the north of Mitrovica is becoming like [the capital of Serb-run Bosnian entity Republika Srpska] Banja Luka', said the party's leader, Albin Kurti. Although at an extraordinary session of Kosovo's parliament on 22 April the agreement was approved, with 89 MPs voting in favour, five against and one abstention, the session was twice interrupted by protests of Vetëvendosje MPs, and outside of the building more than 100 Vetëvendosje activists protested against the agreement.²¹⁰ Also in Serbia the agreement sparked anger among the opposition. That same day, the opposition party, the Democratic Party of Serbia (DSS), led by the former Yugoslav

²⁰⁶ 'First Agreement of Principles Governing the Normalization of Relations' (2013, April 19), available at: <http://www.rts.rs/upload/storyBoxFileData/2013/04/20/3224318/Originalni%20tekst%20Predloga%20sporazu%20ma.pdf>

²⁰⁷ 'Kosovo and Serbia Reach Historic Deal in Brussels', (2013, April 19) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-may-seal-eu-deal>

²⁰⁸ 'Statement by EU HR Ashton' [video file], European Council, Council of the European Union (2013, April 19), <http://tvnewsroom.consilium.europa.eu/event/belgrade-pristina-dialogue/statement-by-eu-hr-ashton21>

²⁰⁹ 'Statement by Hashim Thaçi' [video file], European Council, Council of the European Union (2013, April 19), <http://tvnewsroom.consilium.europa.eu/event/belgrade-pristina-dialogue/statement-by-hashim-thai-part-1#/event-media>

²¹⁰ 'Kosovo Parliament Approves Agreement With Serbia', (2013, April 22) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-approves-resolution-on-agreement-with-serbia>

President Vojislav Kostunica, organized a protest march through the streets of Belgrade, demanding the Serbian government to resign.²¹¹ The protest was in vain, as on 26 April a majority of the Serbian parliament, 173 of the 250 MPs, voted in favour of the agreement. In addressing the parliament, Prime Minister Dačić said: 'We had an historic responsibility and we could not run away from it. I am convinced that we could not get a better deal. We know this is too little, we know that we do not have Kosovo for a long time now, but we have one small part of it and we preserved that part', adding that the Brussels Agreement does not constitute a Serbian recognition of Kosovo's independence.²¹²

Three days after the Brussels Agreement was reached, on 22 April 2013, the European Commission, in a joint report with the High Representative to the European Parliament and the Council of the EU, recommended that negotiations for accession to the EU should be opened with Serbia (ECHR 2013). That same day, the Commission submitted its proposal for a Council decision authorising the opening of negotiations on a Stabilisation and Association Agreement (SAA) between the EU and Kosovo (EC 2013). High Representative Ashton explained that the Commission's recommendations – to open accession negotiations with Serbia and to open SAA negotiations with Kosovo – 'marked a common step towards a European future'.²¹³

One month later, on 21 and 22 May 2013, the eleventh meeting of the political dialogue was held,²¹⁴ and Dačić and Thaçi agreed on a text concerning the implementation of the Brussels Agreement, and Ashton confirmed the Prime Ministers would 'be in touch with [her] by the end of the week'.²¹⁵ On 27 May, Ashton issued a statement welcoming 'the decision of both sides to adopt the implementation plan which translates into practice the provisions of the April Agreement. [...] The implementation plan is designed to solve problems on the ground and to ensure rapid progress of both Serbia and Kosovo towards the European Union. It represents a further step forward in the EU-facilitated dialogue and it is without prejudice to the positions of the two sides on the Kosovo status'.²¹⁶ With the plan, Dačić and Thaçi agreed to several implementation steps, including adjustments of the legal frameworks of Serbia and Kosovo, the creation of a 'Management Team' of representatives of the four northern municipalities of Kosovo, which would be tasked with the overseeing of the establishment of the Association/Community, and which in turn would be monitored by an Implementation Committee.

Furthermore, the two parties agreed to establish a working group that would develop detailed plans and timelines for the integration of Serbian security personnel in Kosovo's structures, and Serbia would commence with the closure of its security structures in northern Kosovo. Additionally, the parties agreed to create another working group for the

²¹¹ 'Opposition Protest in Belgrade over Kosovo Deal' (2013, April 22), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/opposition-to-protest-in-belgrade-over-kosovo-deal>

²¹² 'Serbian Parliament Approves Belgrade, Pristina Deal', (2013, April 27) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/serbian-parliament-approves-belgrade-pristina-deal>

²¹³ 'European Leaders Great EU's Green Light to Serbia' (2013, April 23), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/eu-officials-welcome-brussels-report-on-serbia>

²¹⁴ 'Statement by EU HR Ashton' [video file], European Council, Council of the European Union (2013, May 21), <http://tvnewsroom.consilium.europa.eu/event/belgrade-pristina-dialogue/statement4>

²¹⁵ 'Kosovo, Serbia Agree EU Deal Action Plan', (2013, May 23), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-and-serbia-agree-on-eu-deal-implementation>

²¹⁶ 'Statement by High Representative Catherine Ashton on the Implementation Plan for the April Agreement', EU Press Statement 267 (2013, May 27) http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137291.pdf

implementation of the integration of Serbian judicial authorities into Kosovo's judicial structure, and to the establishment of new structures, including courts and public prosecutors' offices with the assistance of EULEX. Also, municipal elections will be held by the end of October, and Serbia agreed to provide a detailed overview of its funding of institutions in Kosovo by the end of May. On a final note, Dačić and Thaçi agreed to continue with the political dialogue.²¹⁷

4.3.3.5 Resisting the Brussels Agreement

The leaders of the four municipalities in northern Kosovo soon condemned the Brussels Agreement, and on 8 May drafted a letter to Russian officials, writing: 'We address you with a request to help us [against...] the unilateral action of Washington, Brussels and Pristina', arguing the agreement was 'a political, forced agreement that is not based on Serbia's constitutional and legal order and ... should not be implemented, especially not until the Constitutional Court [of Serbia] gives its opinion'.²¹⁸ However, after negotiating for several weeks, in the middle of May, it seemed as if the Kosovo Serb leadership finally agreed to work together with Belgrade to implement the Brussels Agreement.²¹⁹

However, on 10 September, the Serbian government dismissed the mayors and assemblies of the northern municipalities, replacing them with interim councils, because of their continued resistance against the agreement, and their efforts to mobilize the general public against elections. Next to this, Belgrade brought the Management Team for the Community/Association under its control, even though the implementation plan foresaw an equal role for Pristina. The Serbian government's campaign to promote voter turnout in the local elections in northern Kosovo, with the aim to achieve legitimate municipal elections, was watched with suspicion by the Kosovo government, and when Belgrade 'assembled a Serb candidate list for Serb municipalities in the north and south, mostly from members of Serb parallel institutions in Kosovo', it faced 'widespread resistance – from other Serb parties and lists in Kosovo, from leading EU Member States including Germany, and from the Kosovo government' (Bassuener and Weber 2013, 3).

Belgrade's campaign resulted in a lot of confusion among the Kosovo Serbs in both northern and southern Kosovo about whether the elections would mean their integration into the institutional framework of Kosovo, or would result in a 'return of Belgrade' (Bassuener and Weber 2013). The municipal elections were finally held on 3 November 2013, however, 'the elections were marred by violence and intimidation by some alleged Serb extremist groups'. Under considerable pressure from the EEAS, Kosovo's electoral commission annulled the results of three polling stations in northern Mitrovica, and the elections were rescheduled for 17 November, with a second round on 1 December 2013. Because of increased international supervision and security presence, these elections ran smoothly (Guzina and Marijan 2014). An unintended effect of Belgrade's involvement in the elections, however, was that the newly elected authorities were even more tightly bound to Serbia's government than the former

²¹⁷ 'Implementation Plan' (2013, April 22) available at: <https://s3.eu-central-1.amazonaws.com/euobs-media/0807580ad8281aefa2a89e38c49689f9.pdf>

²¹⁸ 'Kosovo Serbs Seek Russian aid Against EU Deal' (2013, May 8), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-serbs-demand-russian-help-on-kosovo>

²¹⁹ 'Belgrade and Kosovo Serbs Agree on EU-Deal' (2013, May 13), *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/belgrade-and-kosovo-serbs-agree-on-eu-deal>

Kosovo Serb leaders had been, as Belgrade handpicked them, arranged their elections and called on the Kosovo Serbs to vote for these candidates (Prelec and Rashiti 2015, 2).

Another implementation step Belgrade and Pristina had agreed upon, was Kosovo's adoption of an amnesty law for the Kosovo Serbs, particularly of the northern municipalities, who had continuously resisted the Albanian authorities in Pristina. By awarding them amnesty, the Kosovo government hoped they would feel encouraged to integrate into Kosovo, and according to Thaçi the law was 'a political act which leads to the reconciliation of people'. Besides, it had been a condition the Serbian Prime Minister Dačić had insisted on. The Kosovo parliament, however, rejected the legislation in the beginning of July because it contained a clause that envisaged the reduction of the punishments of those convicted of serious crimes such as murder and manslaughter.²²⁰

Vetëvendosje, the most active opponent of the dialogue with Belgrade and the agreements, brought the draft of the amnesty law to the Constitutional Court in an attempt to have it declared unconstitutional. The Court ruled on 3 September that several parts of the law had to be changed, and the above-mentioned clause had to be cut out completely.²²¹ After this section was removed from the draft, and a new article was added, which stated that 'all criminal offences which resulted in bodily harm and murder will not be amnestied', Catherine Ashton urged the Kosovo parliament to adopt the amnesty law, saying: 'My interest is to make sure that what is agreed is implemented'.²²² On 17 September 2013, months after the deadline as stipulated in the Implementation Plan, Kosovo President, Atifete Jahjaga, signed the amnesty law, ensuring the Kosovo Serbs would not be 'prosecuted for resistance to the Pristina authorities in the past'.²²³

Furthermore, as stipulated by the Brussels Agreement, Belgrade and Pristina attempted to strike a deal on energy and telecommunication by 15 June (Hopkins 2014). However, when the negotiating parties met in Brussels on 12 June, headed by Serbia's Telecommunications Minister, Rasim Ljajic, Kosovo's deputy Prime Minister, Edita Tahiri, they failed to agree on landline and mobile phone services for Kosovo, with Pristina demanding a personal international calling code, and Serbia rejecting the idea. The meeting was facilitated by the European Commission's director for the Western Balkans, Pierre Mirel, who asked both parties to return home to consult with their governments and to think of new proposals.²²⁴ On 21 June, the twelfth round of the political dialogue was held, and Prime Ministers Dačić and Thaçi met in Brussels with High Representative Ashton to discuss progress in the implementation of the Brussels Agreement. After the meeting, Ashton said: "We reviewed the work done by the working parties over several weeks on all the main elements of the Implementation Plan for the April Agreement." Although the High Representative claimed "concrete progress" had been achieved, she failed to specify what exactly had been done.²²⁵

²²⁰ 'EU Urges Kosovo to Pass Amnesty Law', (2013, July 10) *Balkan Insight*,

<http://www.balkaninsight.com/en/article/ashton-urges-kosovo-parliament-to-approve-amnesty-law>

²²¹ 'Kosovo President Approves Controversial Amnesty Law', (2013, September 13) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-president-decrees-amnesty-law>

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ 'Serbia-Kosovo Talks Stall Over Dialling Code' (2013, June 12), *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-talks-reach-standstill-over-calling-code>

²²⁵ 'Statement by EU HR Ashton' [video file], European Council, Council of the European Union (2013, June 21),

<http://tvnewsroom.consilium.europa.eu/event/belgrade-pristina-dialogue/statement41>

4.3.3.6 The final stages of Ashton's round

Over the course of the next months, meetings were held on 21 June, 8 and 24 July, 27 August, 8 September, 6 November, 5 and 13 December 2013, and on 27 January, 12 February, and lastly the 22nd and very last meeting of Ashton's round on 31 March 2014.²²⁶ On 8 September, the Prime Ministers Dačić and Thaçi finalized two agreements on telecommunications and on energy. With regard to the former, the parties agreed that the EU and International Telecommunications Union would allocate Kosovo's own three-digit dialling code, and annul the three dialling codes of Serbia's and Slovenia's for land-lines, and Slovenia's and Monaco's for mobile phones by January 2015. Furthermore, the Prime Ministers agreed to harmonize the spectrum for Global System for Mobile Communications and Television Signals, with both parties agreeing to refrain from intentionally infringing the "border/boundary" of the other. With the latter agreement Belgrade and Pristina 'agreed that their energy transmission bodies, KOSTT, of Kosovo, and EMS, of Serbia, would sign a bilateral agreement within three months, establishing and regulating relations between the two transmission system operators. Both regulators were to issue licenses for trade (import, export, transit) and supply to their respective distribution companies' (Hopkins 2014).

Additionally, the parties agreed to establish a new energy company under Kosovo law, which would provide energy to the northern municipalities, and finally, Belgrade and Pristina committed to finding a common method for settling claims held against one another for the use of transmission lines in the near future, and to seek international mediation if no solution was agreed in the next half a year. Other than that, no new topics were opened during Ashton's round (Hopkins 2014: 18). Ashton's round of the Belgrade-Pristina effectively came to an end with the Serbian parliamentary elections in Serbia of March, and its resumption was further hindered by the European Parliament elections in May and the Kosovo parliamentary elections of June 2014 (Dordevic et al. 2014). Besides a meeting of a working group on 4 September, at which the negotiating teams agreed to build permanent facilities at the border crossings, financed by the EU, and on 16 September 2014, at which the parties agreed to allow citizens of Kosovo to travel through Serbia to newly established transit points in Bulgaria and Macedonia, in addition to the already existing points in Croatia and Hungary, the Belgrade-Pristina was paused indefinitely (Hopkins 2014).

4.3.4 Mogherini's round

On 1 November 2014, Federica Mogherini succeeded Catherine Ashton as the European Union's High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, after being appointed by the 28 EU Member States in August.²²⁷ The succession came at a time when Europe was still suffering from the currency crisis, after Russia invaded Ukraine twice, and at the height of the war south of Europe: in Syria and Iraq. According to Shapiro and Alcaro (2014), rather than on work experience and qualifications for

²²⁶ European Council, Council of the European Union, [video files], available at:

<http://tvnewsroom.consilium.europa.eu/search#/?channel=event,video,photogallery&keyword=belgrade-pristina%20dialogue>

²²⁷ 'Federica Mogherini, EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission' (2014, November) *European External Action Service*, retrieved from: http://eeas.europa.eu/top_stories/2014/011114_hr-vp_federica-mogherini_en.htm

the job, Mogherini's appointment was, rather, based on her gender, party affiliation and nationality. Notably, "Mogherini emerged from obscurity just a few months ago to become Italy's foreign minister." Nonetheless, the authors argued, being unlikely to be able to challenge the Member States' principal role in the EU foreign policy, Mogherini was the High Representative the EU leaders wished for. Moreover, if Mogherini would come to understand the subtleties of her role, she could steer the EU in the right direction (Shapiro and Alcaro 2014). With regard to the Belgrade-Pristina Dialogue, Dordevic et al. argued that 'Mogherini's five-year term could realistically resolve most of the issues that [continued to] poison relations between Serbia and Kosovo', although she inherited a challenging task, to pick up the pieces of the Brussels Agreement, but with a more established EEAS at her disposal, it could be rewarding in the end. However, Mogherini's round of the Belgrade-Pristina Dialogue also came at a time that the EU's leverage over Belgrade and Pristina was reduced after Serbia had already received its main award, namely the start of accession negotiations between the country and the EU. With regard to Kosovo, the EU's credibility remained challenged by the lack of Kosovo's independence by five of its Member States, making EU membership for Kosovo an unrealistic and distant destination. Therefore, a dialogue with Belgrade and resolution of the outstanding issues with Serbia 'represents a necessity primarily for the purpose of consolidating its sovereignty, and less for its accession process' (Dordevic et al. 2014).

After the Belgrade-Pristina Dialogue came to an end with Serbia's parliamentary elections where Aleksandar Vučić, leader of the Serbian Progressive Party (SNS), won an overwhelming electoral victory on 16 March 2014. Following Serbia's parliament's approval of the cabinet, Vučić became Serbia's new Prime Minister, and Ivica Dačić of the Socialist Party of Serbia (SPS) fulfilled the position of Foreign Minister. Vučić declared that Serbia's path to EU membership would be the government's priority, and said: 'The European Union might not be an ideal community, [...] it is the best community we could join and I hope that Serbia will become its member of the end of this decade'.²²⁸ Notably, all members of the cabinet took an oath of office, stating: 'I pledge to be loyal to the Republic of Serbia and promise with my honour to obey the constitution and laws, [...] committed to preserving Kosovo and Metohija within the Republic of Serbia'.²²⁹

4.3.4.1 *The start of Mogherini's round*

Having to prioritize the conflict in Ukraine and refugee crisis in particularly Greece, it took several months before the High Representative Mogherini initiated a resumption of the high level dialogue with the Prime Ministers of Serbia and Kosovo. Finally, after a 10 months pause, the first meeting of Mogherini's round was organized on 9 and 10 February 2015 in Brussels (Hopkins 2014). With only four out of sixteen agreements fully implemented, including the agreements on customs stamps, civil registry exchange, municipal elections in northern Kosovo, and the establishment of an implementation committee, the focus of this round was expected to be on the implementation of the other twelve agreements (Hopkins 2014).

²²⁸ 'Serbia's new PM Pledges Painful Reforms with Eyes on EU', (2014, April 27) *Reuters*, <http://www.reuters.com/article/us-serbia-government-idUSBREA3Q0J820140427>

²²⁹ 'New Serbian PM Pledges Economic Recovery' (2014, April 28) *Balkan Insight*, <http://www.balkaninsight.com/en/article/serbia-new-pm-pledges-economy-recovery>

Already during their first meeting, Aleksandar Vučić and Isa Mustafa reached an agreement on the integration of the courts of northern Kosovo into Kosovo's judicial system, and their ethnic composition.²³⁰ With the agreement, the parties decided that the President of the Court in northern Mitrovica would be a Kosovo Serb, and a significant part of the judges and prosecutors in the courts in the four municipalities in northern Kosovo, and in Zubin Potok and Leposavić would likewise be ethnic-Serb. Additionally, in Southern Mitrovica, fourteen Kosovo Albanian judges were to work along with nine Kosovo Serb judges.²³¹

According to Mogherini, the two Prime Ministers closed 'a critical chapter of the implementation of the Brussels Agreement that will substantially improve lives of people on the ground', and Vučić and Mustafa had a 'comprehensive discussion on the full spectrum of issues in the dialogue and assessed the remaining work'.²³² After the meeting, Vučić said: 'The talks were tough, but I think we got the maximum in the given circumstances', and Mustafa said it was now Pristina's priority to remove the 'parallel structures in the north'.²³³ Considering almost all Serbian structures were still in place, Serbia continued to pay for more than 5,100 personnel fulfilling posts in temporary councils in Kosovo, and those elected in the elections in northern Kosovo in November 2013 now held positions in both the Kosovo and Serbian state structures. A lot of work remained to be done (Hopkins 2015b).

At the end of March, High Representative Mogherini visited Pristina and Belgrade, marking her first visit to Kosovo and Serbia. Ahead of her visit, she said: 'Both Serbia and Kosovo, after the elections of last year, are faced with important challenges, in particular when it comes to economic, social and political reforms that respond to the expectations of their people, as well as in the context of further steps towards comprehensive normalisation of relations'. On 26 March Mogherini met with Kosovo President Jahjaga, Prime Minister Mustafa and Foreign Minister Thaçi as well as with several representatives of the Kosovo Serb community, and on 27 March the High Representative visited Belgrade to meet with Serbian President Nikolić, Prime Minister Vučić and Foreign Minister Dačić.²³⁴ During her visit to Kosovo, Mogherini announced that both parties had agreed to the dismantling of the Civil Protection Corps (CPC), which used to be part of the military in Yugoslavia and despised by the Kosovo government, who considered it to be an illegal paramilitary body. Following the agreement, the members of the CPC were to integrate into Kosovo's institutions, such as the Agency for Emergency Management.²³⁵

On 21 April 2015, the second meeting of Mogherini's round was organized. According to a statement by Mogherini, the Prime Ministers Vučić and Mustafa 'took stock of the progress in the implementation of the agreements reached in the dialogue, in particular the

²³⁰ 'Kosovo and Serbia Reach Key Deal on Judiciary', (2015, February 10) *Balkan Insight*, <http://www.balkaninsight.com/en/article/belgrade-pristina-reach-deal-on-judiciary>

²³¹ 'Belgrade-Pristina Dialogue Resumes' (2015, February 12), *EurActiv*,: <http://www.euractiv.com/section/enlargement/news/belgrade-pri-tina-dialogue-resumes/>

²³² 'Statement by High Representative/Vice-President Federica Mogherini following the resumption of the EU-facilitated dialogue between Belgrade and Pristina' (2015, February 10), *European External Action Service*, retrieved from: http://eeas.europa.eu/statements-eeas/2015/150210_01_en.htm

²³³ 'Kosovo and Serbia Reach Key Deal on Judiciary', (2015, February 10) *Balkan Insight*, <http://www.balkaninsight.com/en/article/belgrade-pristina-reach-deal-on-judiciary>

²³⁴ 'High Representative/Vice-President Federica Mogherini to visit Belgrade and Pristina' (2015, March 20), *European External Action Service*, retrieved from: http://eeas.europa.eu/statements-eeas/2015/150320_01_en.htm

²³⁵ Hopkins, *supra* note 284.

implementation of the Justice Agreement and the beginning of implementation of the Civil Protection arrangements', and they exchanged their views on the outstanding implementation issues of the agreements on energy, telecoms and the establishment of the Association/Community in Kosovo. Furthermore, 'they agreed on concrete steps to be taken in the period until the next meeting', however, Mogherini failed to explain what these concrete steps entailed.²³⁶ According to Balkan Insight, Vučić and Mustafa agreed that Pristina would bring a halt to the privatizing of companies in northern Kosovo, and that in the future Kosovo Serbs would be involved in such processes.²³⁷

In the meantime, working groups with officials from Serbia and Kosovo headed by the European Union Special Representative, Samuel Žbogar, continued to be organized in Brussels 'to discuss the freedom of movement and a way forward for the bridge in Mitrovica', and to work towards 'an agreement that would envisage the revitalisation of the bridge in the coming period'.²³⁸ On 23 June, the third meeting of the high level dialogue was held, and Vučić and Mustafa met in Brussels. Yet, besides that the Prime Ministers planned on discussing the implementation of the agreements on energy, telecoms, the Association/Community, the bridge connecting the divided north and south of Mitrovica, and other implementation issues, nothing is known about this meeting.²³⁹ Also, on 29 June Mogherini's round continued with a fourth round of talks, and in a statement Mogherini announced that 'after 16 hours of work [the Prime Ministers] finalized the text of two agreements – on principles of the establishment of the Association/Community of Serb majority municipalities in Kosovo and on the implementation arrangements in the field of telecoms'. However, 'final political agreement' was not reached.²⁴⁰

4.3.4.2 The August Agreements

When the Prime Ministers Vučić and Mustafa met again in Brussels on 25 August 2015 for the fifth gathering of Mogherini's round, four agreements were finalized with regard to energy, telecommunications, the Community/Association of the Serb-majority municipalities in Kosovo, and on the Freedom of Movement concerning the Ibar river bridge in Mitrovica. In a statement, Mogherini wrote: 'The Prime Ministers of Serbia and Kosovo marked a turning point in taking forward the Dialogue agenda. They agreed on the general principles and the main elements of the Association/Community of Serb majority municipalities, which paves the way for its establishment', adding that: 'Today's outcome represents landmark achievements in the

²³⁶ 'Statement by High Representative/Vice-President Federica Mogherini after today's meeting in the framework of the EU-facilitated dialogue' (2015, April 21), *European External Action Service*, retrieved from: http://www.eeas.europa.eu/statements-eeas/2015/150421_09_en.htm

²³⁷ 'Kosovo Agrees Halt to Disputed Privatizations', (2015, April 22) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/belgrade-pristina-talks-yield-few-results>

²³⁸ 'Statement by the Spokesperson on the work of the working groups in the context of the Belgrade-Pristina dialogue' (2015, June 17), *European External Action Service*, retrieved from: http://www.eeas.europa.eu/statements-eeas/2015/150617_09_en.htm

²³⁹ 'A new meeting in the framework of the EU-facilitated dialogue between Belgrade and Pristina scheduled for 23 June' (2015, June 19), *European External Action Service*, retrieved from: http://eeas.europa.eu/statements-eeas/2015/150619_01_en.htm

²⁴⁰ 'Statement by High Representative/Vice-President Federica Mogherini following a meeting in the framework of the EU-facilitated dialogue' (2015, June 30), *European External Action Service*, retrieved from: http://eeas.europa.eu/statements-eeas/2015/150630_01_en.htm

normalisation process'.²⁴¹ As opposed to former High Representative Ashton leaving it up to the governments of Serbia and Kosovo to publish the agreements reached during the Belgrade-Pristina Dialogue, the EEAS published the 25 August agreement on the principles and main elements of the Association/Community on their website. Notably, in the agreement it is stipulated that the Statute of the Association/Community of Serb majority municipalities in Kosovo '[is to] be adopted by a constituent assembly composed of the voted members of the assemblies of the participating municipalities', and thus bringing more clarity to the Brussels Agreement.

Regarding the objectives of the Association/Community as laid down in the agreement the words 'exercise full overview of' were often repeated, indicating the body was given considerable autonomy and the ability to self-govern the Serb-majority municipalities. Concerning its budget, the agreement explains the Association/Community would be funded from contributions from its members, the income from services that the body provides, funds from Pristina, but also from 'the Republic of Serbia'. With regard to the body's relation to the central authorities, the August agreement stipulated that the Association/Community would work with Pristina 'on the basis of mutual cooperation and information sharing', to promote the interests of Kosovo Serbs in its communication with Pristina, and would be entitled to propose amendments to the legislation or regulations, in accordance with Kosovo law, relevant for its activities. A final important point was that the Prime Ministers agreed to have the Management Team draft the statute and have it presented to them within four months, which will then be agreed upon in the Belgrade-Pristina Dialogue.²⁴² As for the agreements on energy and telecommunications, Vučić and Mustafa agreed that Kosovo Serbs would have their own supplier and vendor of energy, namely, the daughter company of Serbia's state-owned Electric Power Industry, and the parties agreed that Kosovo would obtain its own country calling code, whilst Serbia's state-owned company Telekom would be permitted to work inside of Kosovo's territory.

Although both the Prime Minister of Serbia and Kosovo said they were satisfied with the agreement on the Association/Community, they explained it in differing ways, as has been the general trend with all the agreements reached in the EU-facilitated dialogue. According to Vučić, the 'Community' of Serb-majority municipalities would have broad powers, and would 'decide on all four questions, from healthcare, education, urban and rural planning and economic development, to financing it from Serbia'. The Kosovo Prime Minister Mustafa, however, emphasized that the 'Association' would merely 'help municipalities with Serbian majorities in Kosovo'.²⁴³

In Pristina, the agreements were met with massive resistance from the opposition parties, who accused Mustafa of national treason, an allegation the Prime Minister himself denied. Mustafa and Taçi furthermore defended the agreement by arguing it empowers the territorial integrity of Kosovo, and implicitly precipitates the country's independence.

²⁴¹ 'Statement by High Representative/Vice-President Federica Mogherini following the meeting of the EU-facilitated dialogue' (2015, August 25), *European External Action Service*, retrieved from: http://www.eeas.europa.eu/statements-eeas/2015/150825_02_en.htm

²⁴² 'Association/Community of Serb majority municipalities in Kosovo – general principles/main elements' (2015, August 25), available at: http://eeas.europa.eu/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf

²⁴³ 'Serbia and Kosovo Reach Four Key Agreements', (2015, August 26) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/serbia-kosovo-reach-four-key-agreements-08-26-2015>

Vetëvendosje, however, claimed the August agreement would engender the 'Bosnification of Kosovo', referring to the Association of Serbian Municipalities of Bosnia, which was founded in April 1991, declared itself autonomous in January 1992, and was de jure recognized as 'Republika Srpska' in the Dayton agreement. After the agreement was reached, activists of Vetëvendosje organized numerous protests against the Kosovo government, which often resulted in violent confrontations with the police. The opposition parties Alliance for the Future of Kosovo (AAK) and The Initiative for the Future of Kosovo (Nisma) also condemned the agreement and argued the Thaçi–Mustafa coalition was dangerous for the country.²⁴⁴

What followed were months of political turmoil in Kosovo. In several actions, MPs from Vetëvendosje obstructed parliamentary sessions by throwing eggs at Prime Minister Mustafa when he was defending the August agreements;²⁴⁵ Vetëvendosje, the AAK and Nisma blocked the speaker's pulpit, demanding the annulment of the agreements;²⁴⁶ and in the months of October, November and December the MPs of Vetëvendosje set off tear gas canisters in parliament several times, after which the parliamentary sessions had to be called off.²⁴⁷ The tensions between Pristina and Belgrade, and within Pristina, further rose as a result of the failed campaign for Kosovo's membership of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in November (Hopkins 2015a).

In a response to the political unrest, EU Enlargement Commissioner Johannes Hahn paid a visit to Pristina on 6 November, where he met with President Jahjaga and Prime Minister Mustafa, and gave a speech in Kosovo's parliament, saying: 'Obstructive violence has no place in a democratic system. Those who obstruct free exchange have lost the arguments before the debate has even started,' after which he continued to defend the August agreements. During his speech, however, opposition MPs held up banners with the texts: 'Is ethnic segregation an EU value?' and 'Unjust agreements shall not pass!'²⁴⁸ Furthermore, because of the continued disruption of Kosovo's Parliament, President Jahjaga already brought the August agreement to Kosovo's Constitutional Court at the end of October,²⁴⁹ and in mid-November the Court suspended the implementation of the agreement, which led to the deterioration of Kosovo-Serbia relations.²⁵⁰

On 18 November, High Representative Mogherini – undoubtedly worried – met with Mustafa in Brussels, to discuss the difficult political reality in Kosovo. During the meeting, Mogherini 'expressed her support to the Prime Minister and Deputy Prime Minister for their efforts to restore normal parliamentary work'. Furthermore, a statement issued by Mogherini condemned

²⁴⁴ 'The Association that Dissociates: on the Kosovo-Serbia Agreement', *Left East*, retrieved from: <http://www.criticatac.ro/lefteast/the-association-that-dissociates-on-the-kosovo-serbia-agreement/>

²⁴⁵ 'Kosovo Opposition MPs Hurl Eggs at PM', (2015, September 22) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-pm-hurled-with-eggs-by-opposition-09-22-2015>

²⁴⁶ 'Kosovo Opposition MPs Block Parliament's Work', (2015, October 1) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/opposition-mps-block-the-parliament-session-10-01-2015>

²⁴⁷ 'Kosovo Parliament Hit by Fresh Tear-Gas Protest' (2015, December 14), *BBC News*, retrieved from:

<http://www.bbc.com/news/world-europe-35096489>

²⁴⁸ 'Hahn: Kosovo Opposition Must not Block Parliament', (2015, November 6) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/hahn-msa-will-not-solve-kosovo-s-internal-problems-11-06-2015>

²⁴⁹ 'Kosovo Court Defers Serb-Majority Governance Deal', (2015, November 10) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/kosovo-court-defers-serb-majority-governance-deal-11-10-2015>

²⁵⁰ 'Serbia Accuses Kosovo of Mocking Brussels Deal', (2015, November 15) *Balkan Insight*, retrieved from:

<http://www.balkaninsight.com/en/article/belgrade-pristina-row-over-brussels-agreement-suspension-11-11-2015>

the 'recent incidents of violence and obstruction in the working of the Parliament,' and emphasizing 'the need for democratic processes to be respected'.²⁵¹ The Kosovo opposition parties, unimpressed by Hahn's speech and Mogherini's online statement, however, continued with their actions, further fuelled by the Constitutional Court's ruling on 23 December, which declared some parts of the August agreement's principles 'do not entirely meet the constitutional standards' or 'raise concern' (Weber 2016, 12).

On 9 January 2016, up to 60,000 people joined a protest against the Association/Community Agreement and a border demarcation deal the Kosovo government had signed with Montenegro before the turn of the year.²⁵² In February 2016, Kosovo's parliament voted on Thaçi's presidency, and with 71 votes in favour it was decided the former Prime Minister, Deputy Prime Minister and Foreign Minister would become Kosovo's fourth President. Again, MPs from the opposition set off tear gas canisters out of protest.²⁵³

In these months it became clear that the Belgrade-Pristina Dialogue and the agreements reached therein created so much division within Kosovo, that many Kosovo citizens started to worry about whether the dialogue was and is 'worth it' or not (Hopkinds, 2014).

4.3.4.3 Mogherini's round – the end of 2015

After the August agreements were reached, only two more meetings of the high-level political dialogue were held. In the middle of Kosovo's political turmoil, on 16 October 2015, Prime Minister Mustafa and Prime Minister Vučić met with Mogherini in Brussels for 'an informal dinner to review the progress of the dialogue and the way forward',²⁵⁴ but what was discussed remains unknown as no statement was issued after the meeting. On 27 October 2015, Kosovo and the EU signed a Stabilization and Association Agreement (SAA) despite of the hampering of the political dialogue with Serbia and the political turmoil in Kosovo, although one could reasonably expect the move to be strategic, with the EU hoping to entice stability and pro-EU sentiment in Kosovo.

The last meeting of Mogherini's round so far has been on 27 January 2016. Following the meeting, Mogherini issued a very positive statement, which stated that 'The talks were held in a very good atmosphere,' and that the agreements on the mutual acceptance of educational and professional diplomas are 'becoming a reality'. Notably, Mogherini also declared that 'The discussion furthermore focused on the commitment of both sides to work on the implementation of the agreement for the establishment of the Association/Community of Serb majority municipalities, based on already signed agreements',²⁵⁵ ignoring Kosovo's

²⁵¹ 'Federica Mogherini met with Prime Minister Isa Mustafa of Kosovo' (2015, November 18), *European External Action Service*, retrieved from: http://eeas.europa.eu/statements-eeas/2015/151118_02_en.htm

²⁵² 'Kosovo Opposition Builds Resistance to Brussels Agreements', (2016, January 12) *Balkan Insight*, retrieved from: <http://www.balkaninsight.com/en/article/kosovo-opposition-swell-ranks-against-brussels-agreements-01-12-2016>

²⁵³ 'Kosovo's parliament elects president; protesters throw teargas, petrol bombs', (2016, February 26) *Reuters*, retrieved from: <http://www.reuters.com/article/us-kosovo-parliament-idUSKCN0VZ26F>

²⁵⁴ 'Next meeting in the framework of the EU-facilitated dialogue on 13 October' (2015, October 9), *European External Action Service*, retrieved from: http://www.eeas.europa.eu/statements-eeas/2015/151009_04_en.htm

²⁵⁵ Statement by High Representative/Vice-President Federica Mogherini following the meeting of the EU-facilitated dialogue' (2016, January 27), *European External Action Service*, retrieved from: http://www.eeas.europa.eu/statements-eeas/2016/160127_02_en.htm

Constitutional Court's ruling and the general resistance against the agreement challenging the agreements' legitimacy.

According to an interview with a member of Mogherini's team as quoted in a 'Big Deal' report, the negotiating parties and Mogherini herself assessed the next months as a time for implementation, although Pristina would still like to discuss the issue of missing persons, and Belgrade would like to discuss the protection of cultural and religious heritage in Kosovo's territory (Hopkins 2015b). One could however also argue that Kosovo's political climate prevented the Belgrade-Pristina Dialogue from continuing, as new agreements were likely to be received with increasing frustration and anger among the opposition parties and their followers.

How the EEAS intends to deal with Kosovo's Constitutional Court's ruling of 23 December 2015 remains unclear, and there have been virtually no official or unofficial responses from the EEAS. What is clear, however, is that the continuation of the dialogue will most likely be affected by the Court's ruling in that the August agreement in its current form will have to be changed before it can be implemented. This is not wholly unproblematic considering Serbia would be confronted with a ruling of the Constitutional Court of a country that it continues to consider a province of Serbia (Weber 2016).

4.4 Assessments and evaluations of the Dialogue

There has been ample debate about the EU facilitated dialogue between Serbia and Kosovo. This section first discusses assessments of the outcome efforts of the EEAS (in particular the April agreement and its implementation), and moves on with an assessment of the role played by the EU in the process.

4.4.1 The outcome: success or fog?

One of the most important questions is whether the dialogue, and in particular the Brussels Agreement implies Serbia's recognition of Kosovo's independence, or not. According to Prelec (2013), Belgrade implicitly recognized Kosovo as an independent state with the agreement. This was however rejected by Robert Cooper (2015) – the EU facilitator during the first round of negotiations – who claimed that 'the most important principle on which the Dialogue was conducted was that it was without prejudice to the question of recognition'.

Prelec (2013) also criticised the agreement for not being implementable because of several reasons. Firstly, Prelec argued that the agreement's title, 'The First Agreement of Principles Governing the Normalization of Relations', was misleading considering only one clause addresses the topic of bilateral relations, which is Belgrade and Pristina's promise to refrain from blocking the other party's progress towards the EU. Secondly, he argued that the double naming of the Community/Association was ambiguous, and serves to allow both countries to interpret the entity in differing ways: Serbia could continue to insist upon the entity to be a community, and Kosovo was allowed to maintain it was merely an inter-municipal association. According to Prelec, this double naming demonstrated no actual agreement was reached, making it difficult to implement anything.

Moreover, the Brussels Agreement was silent as to who is tasked with the legislation of the statute: the Kosovo parliament, the municipalities of northern Kosovo that operate under

Serbian law, or the newly elected municipal bodies, which operate under Kosovo law? 'Most of the other points are as diaphanous as this one, amendable to different readings and needing a lot of follow-up work to give them life' (Prelec 2013). According to Prelec, this ambiguity is now known as 'the Brussels house style', which involves getting adversaries to commit publicly to an empty agreement, 'whose content is to be filled in later, often by EU officials, out of the spotlight'. Although Prelec makes a valid point, one could argue a less ambiguous agreement would have been impossible to reach, and maybe, having an ambiguous agreement like the Brussels Agreement, is the first step in a long road to actually normalizing Serbia-Kosovo relations.

4.4.2 The mediator – whose success?

According to EU High Representative Catherine Ashton, Serbia's Prime Minister Ivica Dačić and Kosovo Prime Minister Hashim Thaçi had reached a 'historic [...] landmark agreement'.²⁵⁶ Valerie Hopkins (2014, 13), has stated that with the Brussels Agreement that was signed in April 2013, the European External Action Service 'won the right to claim a foreign policy success, a feather in the cap of its Common Security and Defence Policy (CSDP)' (Hopkins 2014, 13). Also Stefan Lehne (2012), a former senior EU official, argued that the dialogue was one of the most successful mediation efforts between Serbia and Kosovo in two decades, especially when considering the previous attempts at Rambouillet, and later in Vienna. Given the huge complexity of the process of negotiations – as discussed in the previous sections – this is a fair assessment.

While the evidence presented in this chapter indicates that the process of the dialogue was closely connected to the SAP and that the EU was able to 'reward' moves of the two parts into the direction of stabilisation of their relations, little is known about the details of which persons and agencies took the lead in different phases of the process. This makes it difficult to assess the actual skills of EU staff and agencies to mediate. In this regard, the role of Catherine Ashton in the Belgrade-Pristina Dialogue was critiqued, particularly by Rettman (2014), who argued that 'the real architects of the [Brussels Agreement] are German chancellor Angela Merkel and an unsung EEAS official – Fernando Gentilini, an Italian in charge of Ashton's Western Balkans department,' and '[f]or all of her skill in creating a pleasant and practical atmosphere"', it was Gentilini who hammered out the details of the final compromise'.

Robert Cooper (2014) – the EU facilitator during the first round of negotiations – responded to Rettman's article, arguing he made an unfair critique of Ashton as '[n]o diplomatic success or failure is the work of one person only. This is the case for the Serbia-Kosovo negotiation'. According to Cooper, the support from EU Member States was vital throughout the process of the dialogue, such as a visit from Merkel to Belgrade before the start of the dialogue, support by foreign ministers visiting, the daily conversation by ambassadors with the leadership of Belgrade and Pristina, notably also by non-recognizers of Kosovo, 'all contributed to a continuous, collective effort' (ibid, 2014).

Cooper admitted Rettman is right in mentioning Gentilini's outstanding role in Ashton's Balkans team, but he refuted that this supposedly reduced the importance of Ashton's role. Cooper: 'It is simply not true that 'the real architects of the deal were German chancellor

²⁵⁶ 'Serbia and Kosovo reach landmark deal', European External Action Service (2013-4-19).

Angela Merkel and [...] Fernando Gentilini,' adding that 'the real architects were in fact the two Prime Ministers, Ivica Dačić and Hashim Thaçi'. Besides, as Cooper argued, creating a pleasant and practical atmosphere should not be underestimated, considering this is an extraordinary achievement between a former spokesman of Milošević (Dačić) and the former leader of the KLA (Thaçi), requiring 'unusual talents' (ibid). This was also emphasised by Hopkins (2015b) who argued that whatever your take is on Ashton's achievements regarding the Belgrade-Pristina Dialogue, early 2015, Dačić, now the Foreign Minister of Serbia, met Thaçi in Pristina and the two politicians had coffee together, something that would have been unimaginable before Ashton's round of the dialogue'.

4.4.3 Transparency and inclusion

A major critique of the dialogue has been that, as Hopkins argues, the agreements were reached behind closed doors in Brussels, and complete information about the meetings and even the agreements was not made available to the wider public. Although several agreements were published by the governments of Serbia and Kosovo, they fail to explain in full detail how they are to be implemented. Moreover, the agreements' wording is sometimes ambiguous, which is particularly evident in the border/boundary management agreement (Hopkins 2015b).

Bassuener and Weber (2013, 5) are similarly critical of the process of the Belgrade-Pristina Dialogue. They argue that the EEAS was not transparent enough and failed to publicize the agreements, which are now available to the wider public only because they were leaked to the press. 'Despite the amount of political capital invested in the Pristina-Belgrade dialogue, or perhaps because of it, the April agreement and the May implementation plan, as well as subsequent agreements between the parties, have not been published for public inspection' (ibid).

Also, all other agreements of the Belgrade-Pristina Dialogue have only reached the public by contradicting statements of members of the negotiating teams, which resulted in the increased confusion and antagonism of citizens, journalists and opposition parties in both Serbia and Kosovo (Bassuener and Weber 2013). Especially after the Brussels Agreement and the Implementation Plan were reached, Prime Ministers Dačić and Thaçi met with High Representative Ashton for another eleven times, but the press was kept at a distance and little is known about what was discussed and decided during these negotiations.

Indeed, the dialogue focused on the elite level with no to very limited involvement of other stakeholders from society. Since the governance of the North of Kosovo was one of the key topics in the dialogue, the lack of information to Kosovo Serbs was criticised in particular. An NGO worker in the North of Kosovo argued that:

'This is negotiations of political elites of the EU and Belgrade, rather than a genuine community-based dialogue. Northern Kosovars in most of the cases are not familiar with what has been negotiated there, nor included in the process'.²⁵⁷

Moreover, the EU did leave most of the explanation of the outcomes of the dialogue to the leaders from Kosovo and Serbia. In particular for the Kosovo Serbs in the North this implied a lot of uncertainty. After all, the politicians in Serbia and Kosovo made very different

²⁵⁷ Author's interviews with NGO staff in North Mitrovica, June 2016.

statements about the April Agreement. 'In Pristina they keep saying that this Association will have no executive power, while Serbian politicians keep trying to persuade us that they will have executive power.'²⁵⁸

Moreover, the messages of the Serbian leadership were not always trusted in the North. The old leadership in the North had pitted itself squarely against the dialogue and the April Agreement and was replaced by the Serbian government. The new leaders – most of them of the Sprska List – accepted the new deal and counted on the support of Belgrade, but their support in the local communities was generally very thin.²⁵⁹

4.5 Conclusion

This chapter discussed the EU-led dialogue between Serbia and Kosovo. This dialogue was the result of the leverage of the EU, which made normalisation of relations between Kosovo and Serbia a condition in the stabilisation and association process in both countries. While both Serbian and Kosovar leaders were not keen to start a new round of dialogue and kept on emphasising that they were not willing to change their positions about the status of Kosovo, it is fair to say that the EU pushed, if not forced, the two countries to join the dialogue. The EU was quite successful in using the 'momentum' (the ICJ's opinion regarding Kosovo's independence) to start a dialogue between the two countries. Not only did the EU manage to change a draft resolution that Serbia had submitted to the UN to renegotiate Kosovo's status, turning it into an invitation to the EU to facilitate a dialogue, but it also managed to reach internal consensus about this dialogue with the five EU members that did not recognize Kosovo.

Indeed, this led to another 'status neutral' effort to 'normalize relations' between the countries. Thus, the language used in resolution GA 64/298 simply did not mention the status, but talked about fostering peace, security and stability in the region, and the need to achieve progress on the path to the European Union. The dialogue was portrayed as a technical process, where it was clear to scholars, politicians and EU facilitators that a discussion about such different things as borders, political arrangements and trade would all touch upon the status question in one way or another. This 'hiding' of the political dimension was seen as a strength by EU facilitator Cooper, who – reflecting on the dialogue process – called this the 'European method' of seeking peace through practical cooperation. Others, like Prelec (2013) mockingly refer to the 'Brussels house style' of getting adversaries to commit publicly to an empty agreement 'whose content is to be filled in later, often by EU officials, out of the spotlight'.

The detailed review of the dialogue process in this chapter shows the sensitivity of the topics under discussion, and the difficulties to reach agreement between the countries. The dialogue seemed to run aground on various occasions when the differences appeared to be insurmountable. The EU played a very active role in bringing the parties back to the table, suggesting new ways forward, while seemingly never losing its patience. While for both sides the agreements signed were not easy to defend 'at home', it is fair to say that it was the carrot of EU accession that kept the dialogue going and eventually led to acceptance of both sides.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

Moreover, the EEAS managed to mobilize international political support for the process. For example, when the talks had to be revived at the end of 2012, Catherine Ashton and Hillary Clinton visited Belgrade and Pristina together, expressing 'the support for Serbia on its EU path', and 'the objection of any kind of talks about Kosovo's borders'.

While the agreements reached through the dialogue between Serbia and Kosovo are quite an achievement of the EEAS, and therefore can be called a 'success', both the process and the outcome had several flaws. Arguably, these flaws were all part of the difficult game of reaching agreements in a complex and volatile environment, and may be seen as a 'price' that had to be paid. However, while agreements in protracted conflicts come at a price, the different stakeholders involved may have different views about the achievement and the price paid for it. This is exactly what happened in Kosovo, where key actors argued that the price paid was too high. The dialogue process led to new fault lines in Kosovo between political parties that either resisted or supported the process and agreements. And when the Kosovo Serb leaders in the north of Kosovo disagreed with the deal, the government of Serbia decided to change it and to put together a political party 'Srpska Lista' that operated in line with Belgrade's political stance.

In this regard, the dialogue was an elite process 'par excellence', with very little involvement of relevant stakeholders from Serbian and Kosovar society. The communication from the side of the EU was minimal and the political leaders in Kosovo and Serbia were expected to communicate progress and results with their constituencies. The political elites in Serbia, and particularly in Kosovo, had to 'sell' the deal at home. This led to contradictory messages sent out by political elites in Serbia and Kosovo on key issues (such as the nature of the future association in northern Kosovo) and to uncertainty about future developments, especially in the North of Kosovo.

The fact that the dialogue was held at the elite level and led to agreements that are in a number of cases ambiguous and open to interpretation, meant both a strength and a weakness. Given the limited room for manoeuvre and the need for tangible results, the process and outcomes are an important achievement. However, they are far from a perfect achievement, and the implementation and further negotiation may well lead to new resistance and tensions. It also shows that the EU was not just the facilitator of the dialogue, but the EU (as idea and actor) was the 'glue' in the process of normalisation of relations between Kosovo and Serbia. It is very likely that more glue will be needed in the near future, implying an ongoing involvement of the EU, while questions remain whether the glue will hold, and what its drying time will be.

5. Preliminary reflections on EU capabilities

Over the past twenty years, the EU transformed from an actor with limited leverage to a major player in Kosovo. The EU made large financial commitments to Kosovo, and despite the disagreement between EU members about the status of Kosovo, the SAA entered into force in April 2016. In the post-independence period the EU stepped up its presence in Kosovo by deploying EULEX, the largest CSDP mission. Furthermore, the EU took the lead in a new dialogue process between Kosovo and Serbia. Arguably, there is no other country where the EU plays a more central role in the processes of state building and stabilization than in Kosovo.

This section reflects on the relevance of the cases discussed in this report to the WOSCAP project. The interventions discussed in this report relate to two of the three areas of intervention that are the focus of the WOSCAP project (Martin et al, 2016, 11). The EULEX Mission is a case of governance reform, while the EU facilitated Dialogue is a case of EU diplomacy. Of the cross-cutting themes local ownership and multi-stakeholder coherence are particularly relevant. Below we reflect on EU capabilities in each of the two interventions.

In the Methodological and Theoretical Framework (MTF) of the WOSCAP program, capabilities are defined as the 'ability and capacity to achieve objectives in relation to the overall mission [and] have to be understood in relation to expectations and ambitions with regard to stated (policy) goals' (Martin et al, 2016, 17). 'The higher expectations and ambitions with regard to these goals are, the greater the capabilities needed to realize these' (ibid). Whitman and Wolff (in Martin et al, 2016, 17-18) distinguish between the capabilities to act, to fund, and to coordinate/cooperate.

The EULEX mission had a broad mandate (including a strengthening and executive mandate) and it is fair to say that it faced serious challenges in terms of its capability to act.²⁶⁰ It proved difficult to build an organization that was able to implement such a broad mandate. There were problems to contract capable staff and EULEX experienced serious problems in terms of its administration and its communication strategy. Furthermore, the fact that a civilian mission was initially led by a military staff member was questioned by several (former) staff members of EULEX.

While improvements with regard to the capability to act were necessary and feasible according to several external evaluations, it is still questionable whether the broad objective of EULEX to address the rule of law in almost all its dimensions was realistic. In this regard, there is a need to take into account the limitations and challenges of the context in which a mission deploys. In its report about rule of law interventions, ECA (2012) recognized that the 'specific circumstances' of Kosovo were partly responsible for the disappointing results of the EULEX mission so far and that more could have been done. However, even when EULEX would have performed better, the question emerges what realistic ambitions are, what the opportunities for reform are, which sectors are resistant to change, etc. This is not a plea for the EU to lower the standards for rule of law reform as a requisite for EU accession, but there is a need to be more realistic in what a mission like EULEX will be able to reach, and what not.

The EULEX mission deployed not only in a complex environment, but also in a changing national and international environment. When the EU started to develop EULEX, it assumed

²⁶⁰ The capability to act is both about 'the availability of personnel and hardware [...] and the ability to back intentions with concrete actions' (ibid, 17).

that it would work under a different mandate than UNSCR 1244, while eventually the mission was supposed to be 'status neutral'. The continuing ambiguity and controversy about the status of Kosovo, both at the international level and within the EU, led to renegotiations about the deployment of EULEX and eventually to a 'handicapped' EULEX mission. These early years of the EULEX mission show that a lack of international consensus seriously hampers the capacity to act. While the EU proved a certain degree of flexibility in adapting to the new situation, the capacity to adapt a mission like EULEX to changing circumstances, new insights, and backlashes appears to be a major challenge.

These adaptations also negatively affected the legitimacy of EULEX in Kosovo. EULEX became a 'status neutral' mission – something that was not appreciated by Kosovo's political leadership and population. This shows that not only the expectations of the EU are relevant to assessing its capabilities, but the expectations and perceptions of local leaders and people also have an impact. National political leaders generally had to accept the EULEX mission, but it is fair to say that they were more interested in support for Kosovo's independence and prospects of EU accession. Many Kosovar citizens were skeptical about EULEX's capacity to fight corruption and to 'catch the big fish', and generally not happy with EULEX punishing its 'war heroes'.

This ties in with the problems of local ownership. EULEX both aimed at strengthening the Kosovar judicial sector, while at the same time taking the necessary measures (among others through its executive mandate) to stop corruption. It was not always easy to reconcile these objectives. While EULEX did cooperate with the police, custom agencies and judicial sector, the ECA report (2012) emphasized that Kosovo was becoming a 'captured state', and pointed at the unwillingness of political elites in Kosovo to implement the necessary reforms. The Marty Report (2010) even claimed that the political power of these very Kosovar elites that allegedly had connections with organized crime, counted on the support of the EU and the US. This points at two fundamental problems of the idea of ownership that are relevant to cases of governance reform in weak states. Firstly, the counterparts of governance programs may not have a genuine interest in the proposed reforms. Secondly, external actors (like the EU and the US) have to match their 'governance agenda' with other policy agendas and interests (stability) for which they may need to cooperate with these same political elites.

While the EULEX mission has been heavily criticised for being ineffective, the dialogue was hailed as a success. The EU portrayed the dialogue as an example of the 'European method' of seeking peace through practical cooperation. The dialogue shows that the EU is able to facilitate negotiations, leading to increased cooperation between Kosovo and Serbia, but it is fair to say that the practical cooperation was primarily a result of the effectiveness of political pressure of the EU. In this regard the EU showed its ability to play a 'political role' in managing to bring parties to the negotiation table that were not really willing to start a dialogue about the normalization of their relations and the EU strategically used its leverage by linking the dialogue to its other instruments (most notably the SAA).

The EEAS also showed a capability to coordinate with international actors – in particular the US – at the moment that the dialogue reached its most difficult moments, but the dialogue process came at the price of excluding large sections of Kosovar and Serbian society. Given the contrasting views and positions about the status of Kosovo at all levels (from the local to the international) a more inclusive dialogue process may sound like a mission impossible, but it seems that the EEAS did not even try to develop more inclusive processes of multi-track

diplomacy, and seemed to believe that an elite pact was the only viable option. The choice to focus on an elite pact did come at the price of a lack of transparency. The political leaders from Serbia and Kosovo sent out different messages to their constituencies, and after signing the Brussels Agreement in April 2013, politicians in Belgrade increased their grip on the North of Kosovo.

The dialogue between Kosovo and Serbia has further been criticized for a de facto change of strategy of international actors that placed less emphasis on rule of law reform (as promoted by EULEX) and more on hammering out a political deal. Bodo Weber (2015, i) noted that while there was indeed a need 'to put the Dialogue first' in order to secure Kosovo's territorial integrity and sovereignty, the EU and the US 'have underperformed in furthering democratization and the rule of law [and] have been consistently trading democracy and the rule of law to concentrate their efforts on solving the status dispute conflict'. While this view is not shared by all EU officials, few doubt that tensions exist between different EU interventions and that 'the capability to work in and across different policy domains' (Whitman & Wolf, in Martin et al, 2016, 17) was put to the test in the case of Kosovo. It is equally clear that the view of *how* to work across different policy domains, how to sequence interventions, and what a priority is and why, will often be contested.

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ANNEX 1 - EULEX BASICS 2016

Current number of EULEX staff:

Authorized strength: 1600 staff members.

Current budget:

63.6 million euro, providing for the period 15 June 2016 - 14 December 2016 for EULEX operations in Kosovo and until 14 June 2017 for the specialist chambers and the specialist prosecutor office.

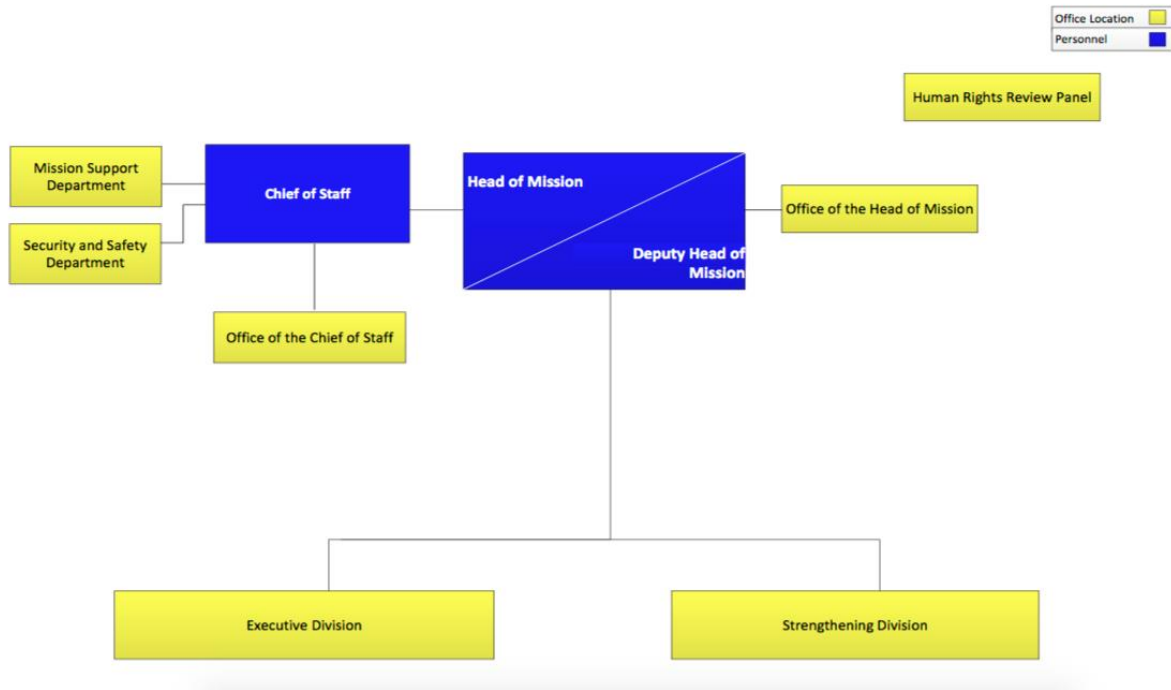
Current Head of Mission:

Since 15 October 2014 Gabriele Meucci has been the official Head of the European Union Rule of Law Mission in Kosovo, but currently the Acting Head of Mission is Bernd Thran. On 1 September 2016, Alexandra Papadopoulou will become the Head of Mission.

Mandate extensions:

The Council Joint Action of February 2008 provided the legal basis for the first mandate of the Mission. Council Decisions of June 2010, June 2012, June 2014 and June 2016 provided the extensions for following mandates. EULEX works within the framework of UN Security Council Resolution 1244.

ANNEX 2 - Organizational Chart EULEX²⁶¹



²⁶¹ Taken from European External Action Service (n.d.) 'New EULEX Organizational Chart', online available at: <http://www.eulex-kosovo.eu/eul/repository/docs/WEEULEXBasicOrgCharts2.pdf> [Accessed 21 August 2016]. More organizational charts of EULEX can be found at: <http://www.eulex-kosovo.eu/eul/repository/docs/WEEULEXBasicOrgCharts2.pdf>