

## European union mission for the rule of law in kosovo

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### **Abstract**

*Here we have studied the international circumstances that have affected the deployment of the EULEX Mission in Kosovo. The EULEX mission is the European Union Mission for the Rule of Law in Kosovo. Its main goal is to advise, assist and support the Kosovo authorities in issues of the rule of law, especially in the field of police, judiciary and customs performance. Also this mission has the responsibility to develop and further strengthen the independent multi-ethnic justice system in Kosovo, by ensuring that the rule of law institutions are not politically influenced and that they meet the known international standards and best European practices. This mission was foreseen to be deployed to Kosovo, based on the Ahtissari Comprehensive Status Proposal for Kosovo, but due to its non-approval by the UN Security Council, its full implementation was delayed until December 2008. EULEX acts within the framework of Resolution 1244 of the UN Security Council and under a single chain of command in Brussels. EULEX officials have supported Kosovo Police, the Judiciary system and Kosovo Customs, through MMA actions for achieving objectives and goals that are foreseen by the program strategy of EULEX. But in terms of efficiency, EULEX has only achieved modest results. In the northern part of Kosovo, EULEX has failed, as a result of its ambivalent mandate and incoherence of EU Foreign and Security Policy.*

**Key words:** EULEX mission, security, state security, collective security, human security, EULEX Police, Kosovo Police, Judiciary, Kosovo Customs.

## EU position on Kosovo Independence

In the case of Kosovo's independence, the EU once again showed, that in matters of foreign policies, it couldn't speak unanimously. Despite the fact that the main countries and most of the EU member states - 22 states, have recognized Kosovo's independence, while 5 other countries, due to their national interests and alliances with Serbia, failed to do so, brought to the situation that the EU, an entity of legal power in international relations, even after the opinion of the International Court of Justice on the legitimacy of the declaration of Independence by Kosovo, still has no unanimous position.

Kosovo is, above all, a European problem and the EU has the main responsibility and interest to resolve it and stabilize the region. Unfortunately, the EU in the case of Kosovo has shown its incapability to agree on a common policy, which has weakened its role on the international scene, while this lack of unity has become a major obstacle for the designated action within Kosovo, by creating inconsistencies between the policies (ESDP and enlargement) run by different institutions of the EU (Council and the Commission)<sup>1</sup>.

The European Union, although being unable to unify its common position of all member states to recognize Kosovo's independence, the EU bodies continue to remain present and active in Kosovo, through different instruments to support Kosovo's development and political processes in its way towards European integration.

### Presence of the European Union in Kosovo

The European Union, as an actor in international relations was not able to manage to prevent or manage the crisis in Kosovo during the 90's. But the EU joined other actors in managing Kosovo crisis, and its member countries, within the frame of the North-Atlantic Treaty - NATO, took part in the bombing of Serbian military targets in Kosovo and Serbia and forced it to remove its forces from Kosovo.

After the war ended (1999) and after Kosovo was put under the administration of UNMIK, the EU played an important role in rehabilitating and reconstructing Kosovo.

In 1999, the ECHO office was opened in Kosovo, which helped people who were displaced within Kosovo, as well as refugees that returned in the country, right after KFOR entered in Kosovo.

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<sup>1</sup> See: Steven Blockmans & Ramses A. Wesesel, 2009/1 pp 19.

This office has given a valuable contribution in the humanitarian field in the first phase, just after the war, and ended its mission in 2001<sup>2</sup>.

Another activity that was undertaken by the EU to support Kosovo after the war was the establishment of the European Agency for Reconstruction (EAR) in 2000. Under the political direction of the European Commission, EAR firstly supported Kosovo's reconstruction. After that, EAR supported the construction and development of institutions in Kosovo<sup>3</sup>.

EU, within UNMIK, also known as Pillar IV, dealt with the economic reconstruction and revitalization of Kosovo, which was destroyed during the war. The fourth pillar focused its main activity in the field of construction, industry, public services and Central Fiscal Authority.

The EU has been the main donor and has supported Kosovo's society after the war, as it has contributed in the construction and development of institutions of Kosovo. At the time, the European Union is present in Kosovo with: EULEX Mission, Office of the EU Special Representative, and the European Commission Liaison Office.

By building its capacities in the field of security and defense (ESDP), the EU has expanded its interests, that apart from the economic contribution, to engage as an important actor in international relations and in the field of crisis management. With the development of new circumstances, which required the status of Kosovo to be resolved, the EU manifested its interest and willingness to contribute through the mission of EULEX in the field of Rule of Law.

#### Circumstances that affected the deployment of the EULEX Mission in Kosovo

A range of international activities preceded the deployment of the EULEX Mission in Kosovo, with many actors involved on resolving the status of Kosovo.

With the placement of Kosovo under UNMIK administration, as per Resolution 1244, it was foreseen that after some time, negotiations would be organized between the parties - Kosovo and Serbia, to achieve the resolution of Kosovo's status<sup>4</sup>.

Nevertheless, international policy actors, busy with larger international problems after the 9/11 in USA, the Iraqi war in 2003, left aside for some time the Kosovo issue and the resolution of its status.

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<sup>2</sup> See: Rama, B.Z. (2005), pg. 15.

<sup>3</sup> Ibid, pg.16.

<sup>4</sup> See: Annex 2, item 8, UNSCR Resolution 1244,

In order to keep the situation under control and to preserve the status quo, international actors, involved in the resolution of Kosovo, had conditioned the starting of negotiations with “Standards Before Status”, which the SRSG, Michael Steiner, had summarized, in cooperation with the PISG, into eight points<sup>5</sup> that were approved by the UN Security Council.

In order to evaluate the implementation of standards, after the March 2004 events, Ambassador Kei Eide was appointed. In the report prepared for the UNSC, he concluded that the implementation of standards was positive and the conditions are right for the beginning of negotiations for the resolve of the final status of Kosovo<sup>6</sup>.

The UN Secretary General, based on the report of Kei Eide, appointed former Finnish president, Marti Ahtissari to mediate negotiations between the Kosovo authorities and Serbia for the resolution of the final status of Kosovo.

The chief negotiator Marti Ahtisaari, along with his team within the Office of UNOSEC, after a year and a half of mediating negotiations between Kosovo and Serbia authorities, came to the conclusion that the further continuation of negotiations is impossible due to the diametrically different positions on the future status of Kosovo<sup>7</sup>.

The Chief negotiator Marti Ahtisaari had prepared a Report with recommendations for the future status of Kosovo. In his Recommendations, Ahtisaari emphasizes that in consideration of the new history of Kosovo, the political reality and the need for political and economical stability, for the resolution of Kosovo’s status, as following:

- a) Reintegration of Kosovo into Serbia is not a feasible option,
- b) Continuation of Kosovo’s international administration is not feasible,
- c) Independence of Kosovo, with international monitoring, is the sole feasible solution<sup>8</sup>.

Mr. Ahtissari compiled a Comprehensive Status Proposal for Kosovo, which provided on the political system in Kosovo, protection of the minorities, especially the Serb minority, the role of international presence in Kosovo, the role of ICO and EU in the field of rule of law.

Kosovo’s authorities accepted the Comprehensive Status Proposal for Kosovo, while the Serb authorities rejected it.

UN Secretary General, on March 27, 2007 had sent to the president of the SC the Report and Comprehensive Status Proposal for Kosovo, and to the Special

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<sup>5</sup> See: Standards’ Implementation Plan, 2004,

<sup>6</sup> See: Kai Eide Report, 2005,

<sup>7</sup> See: Marti Ahtisaari Report, 2007,

<sup>8</sup> See. Report of the Special Representative of the Secretary General on the Kosovo status,

Envoy, who fully supported this, and had also requested for this to be discussed and approved in the SC.

But the Report and the Comprehensive Status Proposal of the Secretary General Special Envoy, former Finnish President Marti Ahtissari, were not debated at the UNSC, since permanent members, Russia and China, did not approve of this Proposed Settlement.

Then, international efforts continued in finding a consensual solution, which would satisfy both sides. For this purpose, a Troika was formed, with representatives of the USA, EU and Russia in order to renegotiate through Kosovo and Serbia authorities to find an acceptable solution.

But even after three additional months of negotiations under the mediation of the Troika, no harmonization of very distant positions between Kosovo and Serbia was achieved.

### **Declaration of Independence**

Kosovo authorities continued their coordination of political activities with actors who supported Kosovo's independence, like USA and main states of the EU. So on February 17, 2007, the Kosovo Assembly, with the proposition of the President and Prime-minister, in a solemn hearing, declared Kosovo an independent, sovereign and democratic state<sup>9</sup>.

The Kosovo Assembly with the approval of the Declaration of Independence, invited the European Union, to send a civil Mission, within the frame of the ESDP, to support Kosovo's institutions, in the sector of Rule of Law. The Declaration provides: "We invite and welcome a civil international presence to oversee the implementation of the Ahtisaari Plan and a Rule of Law Mission run by the European Union"<sup>10</sup>.

### **Deployment of the EULEX Mission**

The whole concept of deployment of the EULEX mission was provided by the Comprehensive Status Settlement for Kosovo<sup>11</sup>, which called for a monitored independence, where EU would take the monitoring role in the field of rule of law.

The Council of the EU, in consideration of the lack of will of Member States to recognize Kosovo's independence, and using a new way of decision-making - constructive abstention (article 23 (1) TEU), where five member states of the EU (Spain, Greece, Romania, Slovakia and Cyprus) opposed Kosovo's independence, but did not obstruct the decision-making process for sending the

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<sup>9</sup> See: Declaration of Independence, 17 February 2008,

<sup>10</sup> See: Declaration of Independence of Kosovo 2008, item 5,

<sup>11</sup> See: Comprehensive Status Proposal, 2007,

EULEX mission, and on February 16, 2008, a day before the declaration of independence, had decided on sending the EULEX mission in Kosovo<sup>12</sup>, and appointed a EU Special Representative for Kosovo, Mr. Peter Feith<sup>13</sup>.

But with the deployment of EULEX in Kosovo, Russia immediately begun opposing oppose in the international plane, at the UNSC, and insisted that the engagement of EULEX should be in accordance with chapter VII of the UN Charter, namely Resolution 1244, while Serbia took action in two fronts: on the international level, it demanded that the international law be observed, Resolution 1244, and EULEX to have a neutral standing towards Kosovo's status, while within Kosovo, through parallel structures in Serb enclaves, especially in the north of Kosovo, which were run by the state structures of Serbia, opposed the settlement of EULEX. They requested that UNMIK should continue its mandate, in accordance with Resolution 1244.

Meanwhile, international actors, in order to overcome obstacles through skills and diplomatic maneuverings, made an effort to find an acceptable solution for the deployment of EULEX. During May and June 2008, Ban Ki Mun and the High Representative of EU, Javier Solana, made an effort to find some kind of compromise between Kosovo and Serbia authorities, according to which UNMIK and EULEX would function in parallel, UNMIK with a reduced staff and EULEX who would take the leading role on overseeing law enforcement.

General Secretary of the UNO, Ban Ki Mun, in the report presented to the SC, on June 12 2008<sup>14</sup>, which expressed the situation in Kosovo, where it was also included the letter, which was sent to the president of Serbia, Boris Tadiq, which also informed the President of Kosovo, Fatmir Sejdiu. With the he anticipated a new strategy from UNO for the mission of EULEX in Kosovo. Ban Ki Mun's letter, which made concessions to Serbia, contained *six points*. The new strategy, proposed by the General Secretary UNO, through these six points, foresaw the EULEX mission to have an operational role in the field of rule of law, in accordance with Resolution 1244 and would function within UNO. EULEX gradually would take operational responsibility from UNMIK in the fields of police, justice and customs<sup>15</sup>. This proposition foresaw that, within a period of time, the fields of police, customs, justice, transport, cultural and religious inheritance issues should be regulated specifically for the Serb minority living in Kosovo. Kosovo authorities opposed these six points and replied with their own proposition of *four points*.

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<sup>12</sup> See: Decision of the Council, OJ L042, 16 February 2008, pg.92.

<sup>13</sup> See: Decision of the Council, OJ L042, 16 February 2008, pg. 88.

<sup>14</sup> See: UN SRSG Report, S/2008/354.

<sup>15</sup> See: Dzihic, V. and Kramer, H. (2009), pg. 17.

Kosovo's President, Fatmir Sejdiu, during the meeting he had with Assistant Undersecretary of State, Daniel Fried, presented the institutional standing, formulated in four points, based on which the EU Mission would deploy to Kosovo, while respecting the Constitution and territorial integrity of Kosovo.<sup>16</sup>

After the UN Security Council meeting held on July 26, 2008, where the consensus regarding the restructuring of international presence in Kosovo could not be achieved, the UN General Secretary, Ban Ki Mun, took the initiative. He, with the silent approval of other international actors, ordered his Special Representative in Kosovo to gradually take actions for the gradual reconfiguration of UNMIK. Meanwhile, EULEX gradually started recruiting international and local personnel, and at the same time UNMIK personnel was being reduced.

On November 24 2008, UN Secretary General had presented the Report to the Security Council, where the issues of policy, security, rule of law, local government, return of displaced persons, cultural and religious rights, economy, UNMIK reconfiguration and EULEX settlement, dialogue with Beograd were discussed. In the report, besides the six points, which provided on protection of the Serb minority, in terms of police, justice, customs, transports and infrastructure, borders and religious Serb Orthodox inheritance, as a special Annex, it also included the standing of Kosovo's institutions, formulated in four points, which are explained above<sup>17</sup>.

The report was approved by the Security Council, where the six points of Ban Ki Mun were included, on which all international policy actors agreed on, except Kosovo institutions.

In reaction to the six points plan, under the organization of the Civil Society, in November 2008, a demonstration was held in Prishtina, where 50.000 citizens took part.

EULEX officially deployed throughout Kosovo on December 9, 2008, while it gained operational capability on April 6, 2009.

### **The ambiguous mandate of the EULEX Mission in Kosovo**

Seen from a legal aspect, the EULEX mission mandate in Kosovo is based on the Council's Common Action, February 4 2008<sup>18</sup>. According to this act, the duties of EULEX are monitoring, mentoring and advising competent

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<sup>16</sup> See: Four Points, Kosovo Authorities,

<sup>17</sup> See: UN SRSG Report, S/2008/692, 24 November 2008,

<sup>18</sup> See: COUNCIL JOINT ACTION 2008/124/CFSP, OJ L 42/92, 16.02.2008).

institutions of Kosovo in all fields of rule of law, including Customs Service, but will some executive responsibilities<sup>19</sup>.

But EULEX, besides the supporting duties to the competent institutions of Kosovo in the fields of rule of law, also holds some executive responsibilities, to ensure the upkeep and promotion of rule of law, public order and security, as needed, in consultation with the relevant international civil authorities, can overturn or annul decisions of competent authorities of Kosovo<sup>20</sup>.

The Joint Action, similar to provisions of the Ahtissari plan, defined the EULEX mandate.<sup>21</sup>

Thus, according to the Joint Action and Ahtissari Plani, EULEX has a mandate to ensure the preserve and promote rule of law, public order and security, where it may be included the turning or annulment of decisions from local authorities<sup>22</sup>.

The Policy and Security Committee decided on February 7, 2008 to appoint the French General, Yves de Kermabon as Head of EULEX Mission, who was earlier KFOR commander in Kosovo. The EU Council, on February 16<sup>th</sup>, the day it had decided to send the Mission in Kosovo, had appointed the EU Special Representative, Peter Feith<sup>23</sup>.

The Chief of EULEX acts under the political leadership of the EU Special Representative, who in the same time is an International Civil Representative and has the mandate to oversee the implementation of Ahtissari's Plan on behalf of Kosovo's institutions<sup>24</sup>.

The International Steering Group, on February 28, 2008, appointed the ICO to acts under the political leadership of this group.

The EULEX mandate would legally be very clear and in the political-practical aspect even more efficient, if it had settled according to Ahtissari's Plan and the Joint Action of the Council, dated February 4, 2008. But as it was explained earlier, after Serbia and Russia opposed, EULEX managed to "legalize", after many diplomatic actions of international actors, on December 2009, when the UN Security Council approved the Report of Secretary General, which everyone agreed upon, except Kosovo's Government, according to which EULEX is put under the UN umbrella, respectively Resolution 1244 and with a neutral mandate to Kosovo's status<sup>25</sup>.

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<sup>19</sup> See: Section 3 (a) Joint Action,

<sup>20</sup> Ibid: Section 3 (b),

<sup>21</sup> See: Annex: Main Provisions of the Comprehensive Status Proposal for Kosovo (12).

<sup>22</sup> See: Section 3 (a) and (d) of Joint Action, and Main Provisions (12).

<sup>23</sup> See: Joint Action at OJ L042, 16 February 2008, p88.

<sup>24</sup> See: Main provisions of Joint Action (11) ,

<sup>25</sup> See: UN SRSR Report, S/2008/692,



The EULEX Mandate under Resolution 1244 and with a neutral status towards Kosovo in the legal sense creates legal confusion, while in the political sense, it poses difficulties for its functioning and efficiency.

The Constitution of Kosovo, which came into force on June 15<sup>th</sup>, 2008, defines the Republic of Kosovo as an independent, sovereign, democratic, unitary and indivisible state<sup>26</sup>, while the sovereignty and integrity of Kosovo is inviolable, inalienable and is protected with all means provided by the Constitution and Law<sup>27</sup>.

The Constitution provides that the Sovereignty of the Republic of Kosovo comes from the people, belongs to the people and practiced by the elected representatives<sup>28</sup>. So the Constitution of the Republic of Kosovo does not give the right to any international organization to impinge the sovereignty of the Republic of Kosovo, or to exert supreme power on behalf of the people of Kosovo.

But the Constitution of the Republic of Kosovo, in its transitional provisions, recognizes the authority of the ICO, of other organizations and other actors, in this case EULEX as well, that have been given a mandate and set competences by the Ahtissari plan, including legal capacity, as well as privileges and immunities provided upon by it<sup>29</sup>.

The EULEX mandate is controversial due to the fact that in one hand it is based on UNSC Resolution 1244, with a status-neutral mandate, while on the other hand it acts within the judiciary system of Kosovo, set by the Constitution. The UNSC Resolution 1244 and the Constitution of the Republic of Kosovo are in contradiction with each other.

In a practical aspect, a difficulty for EULEX officials is the fact that, with mandate under Resolution 1244 and a neutral status, do their everyday job with their Kosovo counterparts, who are obliged to apply the Constitution and laws of the Republic of Kosovo.

Another difficulty for the action and efficiency of EULEX officials are the so-called Ban Ki Mun's six points.

There are other authors who consider that the controversial mandate of EULEX in Kosovo presents difficulties to be successful in practice.

In these circumstances, on the other hand, it may damage the stability of EULEX mission beyond the initial mandate, and as a consequence, complicates Kosovo's governing as a unified territory"<sup>30</sup>.

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<sup>26</sup> See: Article 1.1, of the Constitution of the Republic of Kosovo.

<sup>27</sup> Ibid: article 2.2,

<sup>28</sup> Ibid: article 2.1,

<sup>29</sup> Ibid. Article 146.1,

<sup>30</sup> See: Wel, Erika de, (2009), fq. 9,

EULEX rather than supporting local institutions on rule of law, its ambivalent approach leads to legal confusion and expectations it cannot fulfill. In a fragile environment, as is Kosovo, this may quickly turn the flow of political events against EULEX<sup>31</sup>.

### **Settlement of EULEX**

EULEX is the biggest civil mission of EU, within the ESDP, which has settled outside its territory. This mission has around 3.000 officials (1.999 internationals, 1.100 locals). Within this mission, all of the member states of EU are participating, but other states as well such as: USA, Turkey, Canada, Swiss, Norway and Croatia. The mission is opened to other states, who wish to join. It is composed of three components: The Police Component, the Judiciary Component, and Customs Component.

### **The work approach of EULEX**

The Mission of EULEX in its Declaration states six main goals in order to support Kosovo institutions, responsible for the rule of law, in order to achieve progress of: *stability, accountability, multi-ethnicity, freedom of political interventions, application of known international standards and accordance with the best European practices*<sup>32</sup>.

EULEX, in order to realize these goals, set by the Mission's Declaration, also compiled eight strategic objectives, which serve to measure the Mission's success:

- Monitoring, mentoring and counseling Kosovo Institutions regarding all fields that are related to rule of law,
- To ensure the upkeep and promotion of rule of law, public order and security,
- To help ensure all services of rule of law in Kosovo are not politically affected,
- To ensure that the cases of war crimes, terrorism, organized crime, corruption, inter-ethnic crimes, financial crimes and other serious crimes, as well as issues that are related to property, are pursued, judged and applied according to the effective laws,
- To contribute in the strengthening of cooperation and coordination in all the judiciary process,
- Especially in the field of organized crime,

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<sup>31</sup> See: Muharremi, R. (2010) fq.22.

<sup>32</sup> See: Mission Statement, as determined by Section 2, Council Joint Action, 2008/124/CFSP,

- To contribute in the fight against corruption, fraud and financial crimes,
- To contribute in the application of Kosovo Strategy against corruption and the Action Plan against corruption, and
- To ensure that all activities related to human rights and gender equality, are in accordance with the international standards<sup>33</sup>.

The submitted goals by EULEX, in fact represent the agenda of Kosovo Institutions, in the field of rule of law, for European integrations. Rule of law, human rights and protection of minorities are the main priorities of the European Parliament. Kosovo Institutions should make progress to fulfill this priority<sup>34</sup>.

Based on the goals presented above, Kosovo Police, the Judiciary and Customs, with the support of EULEX, should progress from the current state towards a future state, one in accordance with international standards and best European practices.

EULEX experts, after settling throughout Kosovo, during December 2008 and June 2009, made an assessment of the rule of law situation. The results of this assessment were presented in the Report for July programs of 2009, where recommendations for local institutions were compiled.

EULEX with its program approach is based on “**local ownership**” which means that local institutions should be responsible for fulfilling tasks that come from recommendations from the Program Report, respectively to achieve progress in fields where it was deemed necessary to improve. EULEX officials, according to this principle, support their local counterparts through monitoring, mentoring and counseling (MMK).

### **Working in partnership with local institutions**

Based on findings by the Program Report, July 2009, EULEX Police compiled a 36 point MMK Action Plan, which sought to measure the achieved progress by Kosovo Police<sup>35</sup>.

Based on the 36 MMK Action Plan, the General Directorate of KP compiled the project on the level of KP, and it also formed the Leading Committee, for the coordination of activities between EULEX Police and Kosovo Police in order to fulfill the 36 actions of MMK.

All pillars of the KP were charged based on this program, each from its own scope, to fulfill the actions of the MMK.

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<sup>33</sup> See: Section 3, Joint Action,

<sup>34</sup> See: EC Progress Report 2009, pg. 7.

<sup>35</sup> See: Catalogue of MMA activities, at <http://www.eulex-kosovo.eu/en/tracking>, accessed on 11.07.2010.

The objectives for the Crime Fighting Pillar were there to create a safe environment for Kosovo citizens, coordinating actions with other agencies responsible for law enforcement. This pillar was charged with fulfilling 11 (30%) of MMK actions.

Based on the 2010 Program Report of EULEX and the KP Report, it can be seen that five (5) actions are ongoing, one (1) is in the planning phase and five (5) actions are postponed for later.

The Operative Pillar, that holds the largest number of uniformed members of KP, was charged with fulfilling 8 (22%) of MMK actions.

Based on the EULEX Program Report of 2010 and KP Report, it can be seen that one action has been implemented, while 7 (seven) other are ongoing.

Based on analysis done by EULEX, in tight cooperation with the KP Leading Committee for implementing MMK actions, it can be concluded that progress has been made.

The objectives of the Border Police Pillar are to enable free movement of people and merchandise at border passages, preservation and control of the border and border strip, while offering quality and professional services for all local and foreign citizens that enter and exit Kosovo. This pillar was charged with fulfilling 8 (22%) of MMK actions and it has formed eight working groups, charged with duties and time limits. The fulfillment of MMK actions in the Border Police Pillar, based on the EULEX Program Report of 2010 and KP report, it can be seen that six actions are being implemented while one is in the planning phase and one is postponed for later.

The objectives of the KP Administration Pillar where the offering of effective and quality services, unbiased and professional for KP employees, in order for it to be a stable and efficient law enforcement organization for guaranteeing order and peace, security of citizens and their property, while respecting the human rights and freedoms. This Pillar was charged with fulfilling 9 (25%) of MMK Actions, for the fulfillment of which, eight working groups were formed. Based on the Reports it can be seen that seven actions are being implemented, one is in the planning phase, while one is postponed for later. The statistics from the above-mentioned reports say that progress has been made on MMK actions, which are being implemented.<sup>36</sup> In the public opinion in Kosovo exists a conviction that EULEX actions are very clumsy.

Civil Society, through NGO-s, exerted pressure on EULEX for exercising order and rule of law in the northern part of Kosovo and in fighting corruption in the highest ranks of government. Thus IPOL, which published two reports regarding EULEX, concludes: "Regarding this aspect we believe that EULEX

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<sup>36</sup> For more on progress made in the Kosovo Police, see Master Thesis of Sali Rexhepi (2011) FON, Skopje, pg. 91-105

has two options: either work seriously in finishing the pending cases and execute a range of high class cases that would touch the core of the problem without regarding state and international intervention, or the second option, to leave the possession of executive power and focus on strengthening local law enforcement institutions<sup>37</sup>. Meanwhile, the known American analyst, David Phillips, in the analysis regarding the actual situation in Kosovo, related to EULEX Mission, writes: "The European Mission for Rule of Law (EULEX) was established with executive competences to investigate, prosecute and judge specific categories of crime, including corruption. However this mission had a very slow start and until now, it did not meet its expectations. It is suffering from lack of consensus in Brussels"<sup>38</sup>.

EULEX until now experienced modest success in fulfilling its mandate. It supported local institutions on rule of law, which marked considerable progress, in three components. But what we consider to be the weak point of EULEX is the lack of support and not acting on functionalizing courts, to set order and rule of law in North Kosovo, and functionalizing border points 1 and 31.

EULEX has not supported Kosovo Governments Strategy regarding the north. Unwillingness of EULEX to set order and security and functioning of state institutions in North Kosovo, indicates that the neutral standing of this mission towards the independence of Kosovo is a liability on fulfilling the objectives that itself has set. Also another important factor for this mission's failure in North Kosovo is also the silent application of Ban Ki Mun's six points.

The Action performed by the Government of Kosovo, on July 25 2011, to take under control border passages 1 and 31, was not supported by EULEX.<sup>39</sup> Also EULEX police did not hinder Serb gangs, when on July 26 they burned border object 1 and tried to burn object 31. It was a disturbing fact, seeing images on TV of EULEX policemen fleeing cowardly towards Serb territory rather than protecting the burning of customs infrastructure.

Kosovo Government's Action was supported by KFOR forces, which later took control over these two points and declared them as military zones, until a solution between the authorities of both states is found. It is not a coincidence that KFOR and Kosovo Police, from all local and international institutions, are the most trusted by Kosovo citizens.<sup>40</sup>

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<sup>37</sup> See: IPOL Report, 2009, pg.13.

<sup>38</sup> Analysis published at World Policy Jurnal, and the "Koha Ditore" Newspaper on 21 August 2010.

<sup>39</sup> See: Kosovo Prime-minister speech in Kosovo's Assembly, August 23 2011, pg.2 [www.assembly-kosova.org](http://www.assembly-kosova.org)

<sup>40</sup> See: UNDP Report, 27 March 2010

EU High Representative, Baroness Catherine Ashton, deemed the action of the Kosovo Government of July 25 2011 to extend authority in border passages in North Kosovo, as unilateral and invites Kosovo and Serbia authorities to resume negotiations, interceded by her office, in order to solve the problems between these countries.<sup>41</sup>

Ms. Ahtifete Jahjaga, President of Kosovo, regarding EULEX inaction, declares: "Criticism towards EULEX is just, because EULEX should enforce law and order and should fight organized crime and smuggling, which in the past was not very successful".<sup>42</sup>

Kosovo Government's Action, September 16 2011, to put under control customs points 1 and 31, supported by KFOR forces, this time by EULEX as well, marks a turn in EULEX standings and actions on supporting Kosovo institutions, responsible for law enforcement. While the Government Action of September 16 2011, supported by EULEX officials as well, EU High Representative for Foreign Affairs and Security, Baroness Catherine Ashton, through a press release from the media office, concludes that EULEX and KFOR have started the implementation of the Agreement in Customs Points, which aim to normalize commercial relations between Kosovo and Serbia, interrupted two months ago. It isn't said that EULEX officials along with Kosovo policemen and Customs officials are settled on Customs Passages 1 and 31 even though such thing exists on the field. In this press release it is stated that the implementation of Customs Cachet Agreement does not prejudge the issue of Kosovo's Status.<sup>43</sup> So, despite the fact that 22 EU member states have recognized Kosovo's Independence, EU Foreign and Security still remains hostage to the five states that did not recognize Kosovo's Independence. EU engagements to intercede Kosovo-Serbia dialogue, showed its first modest results, regarding accepting customs cachets between the two countries. Other results that can be achieved in this dialogue, with the mediated through EU, lets hope that the EULEX neutral position so far will move towards full support of Kosovo Institutions, to set order and rule of law throughout Kosovo territory. But EULEX positions and actions are dependant on unification of EU Foreign and Security Policies regarding Kosovo.

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<sup>41</sup> See: Statement by Catherine Ashton, A 300/11, published on 28 July 2011, at [www.eeas.europa.eu](http://www.eeas.europa.eu).

<sup>42</sup> See: Interview of President of Kosovo, Mrs. Atifete Jahjaga, with Free Europe Radio, on 01.08.2011

<sup>43</sup> See: Statement by Catherine Ashton, A 300/11, published on 28 July 2011, at [www.eeas.europa.eu](http://www.eeas.europa.eu).

## **Conclusions**

This mission's job was favored by a large number of facilitations, such as the existing necessary legal support for settlement and exercising of activity of this mission, the existing of KFOR and KPF as security forces, the existing of a penal-judiciary legislation based on which the justice system of Kosovo operates etc. But this mission was followed by a lot of challenges, from which we can pick out: obscurity of executive functions of EULEX, existing of a non-stable security situation, the functioning of three-pieced system of power (UNMIK, EULEX, Kosovo Institutions), functioning of Serb parallel structures, social problems, missing people issue, heterogeneous composition of EULEX etc.

EULEX Mission is not settled in Kosovo according to the Comprehensive Proposition of Marti Ahtissari, due to the fact that it wasn't approved in UNO Security Council. Even though EU Council did decide on sending EULEX mission in Kosovo, its full decision was delayed until February 2008, when UNO Security Council approved the UNO General Secretary Report, which foresaw that EULEX be put under the umbrella of Resolution 1244 with a neutral status towards Kosovo Independence.

The ambivalent mandate of EULEX mission, on one hand under Resolution 1244 of SC and with a neutral status towards Kosovo Independence, and on the other hand determined to cooperate with Kosovo counterparts, within institutions of the Republic of Kosovo, who are bound to act according to the Constitution and laws of the Republic of Kosovo, presents judiciary controversies and practical obstacles to the fulfillment of objectives of this mission.

EULEX Mission, despite difficulties in the start regarding its settlement and ambivalent mandate, during this period has given modest results in the field of rule of law. Kosovo Police, the Judiciary and Kosovo Customs, based on EULEX support, have succeeded on improving their performance. The number of preventions of criminal acts has grown, some actions for persecuting organized crime and corruption have been undertaken, work methodology of police with communities has changed, and efficiency of integrated management of the border has grown, since KP has taken over from KFOR, the guarding of the bordering Green Strip with Albania, Macedonia and Montenegro. Also the number of processed cases by courts has grown, and the performance of Customs has improved significantly. EULEX, beside the clumsiness it has manifested in fulfilling objectives, it totally failed regarding law and order in North Kosovo, as well as supporting functionalizing of courts and customs at points 1 and 31.

EULEX could not be efficient enough due to its ambivalent mandate, with neutral position on Kosovo Independence. Other factors that have affected EULEX inefficiency, especially in North Kosovo, are Ban Ki Mun's six points. Also another factor that has influenced EULEX inefficiency was the lack of proper cooperation between Kosovo Government and EULEX. Also the incoherence of EU Foreign and Security Policies, respectively the position of five member states that have not recognized Kosovo's Independence, has influenced the insufficient success of EULEX.

In order for EULEX to be successful in fulfilling objectives, set by the Common Action for sending this Mission in Kosovo, it is needed that the Committee of Politics and Security, in coordination with the commander of Civil Missions of CSDP, to estimate the performance of EULEX and fulfillment of its objectives. And on this basis, we recommend to the EU Council to revise EULEX mandate in order to have a clear view regarding Kosovo independence, as well as supporting local institutions in the rule of law sector, in accordance with the Constitution of the Republic of Kosovo, known international standards and best European practices.

EU High Representative for Foreign Affairs and Security, Ms. Catherine Ashton, based on the empowering of her position by the Treaty of Lisbon, to encourage all EU member states, through EULEX Mission, to support the Republic of Kosovo in its way towards Euro-Atlantic integration.



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