

*Paper prepared for the Second Euroacademia Global  
Conference*

*Europe Inside-Out: Europe and Europeaness Exposed to Plural  
Observers,*

*Paris, 27 – 27 April 2012*

*This paper is a draft*

*Please do not cite*

# The European Union Common Security and Defence Policy *Re-visited*. EULEX-Kosovo a Test for a Common Peace Educational Policy

Nicasia Picciano

University of Flensburg (Germany)

## Abstract

Northern Kosovo will challenge the European Union Common Security and Defence Policy when this is committed into a high ethno-political environment, while dealing with rule of law and multi-ethnicity. More than three years of deployment of the European Union Rule of Law (EULEX) in Kosovo have neither provided the rule of law nor multi-ethnicity as per its own mandate there. Far from being something marginal this part of the country is crucial so that the EU becomes aware that when deploying a civilian mission, with the characteristics of EULEX, there is the need from one hand of a re-conceptualization of the rule of law, in so far it is not possible to reduce it to a *legal maxim* with the conviction that it may lead *per se* both to the rule of law and multi-ethnicity, and from the other hand of a new operational practice for a civilian mission with the same characteristics as EULEX. The suggestion is the inclusion of a *Common Peace Educational Policy* (CPEP) into the wider Common Security and Defence Policy (CSDP). A CPEP is not to be limited to EULEX-Kosovo but to other civilian missions which share similarities (in terms of mandate and place of deployment) with it. It will not ask for a change of the Lisbon Treaty but it will be sufficient to reach an agreement among the Member States. A CPEP is not to be intended as to solve all problems but it is a good start for change.

**Keywords:** northern Kosovo, European Union Common Security and Defence Policy, Common Peace Educational Policy, Rule of Law, Multi-ethnicity

## 1 EULEX-Kosovo: Background for A European Union Common Security And Defence Policy *Re-visited*.

### 1.1 Northern Kosovo: the European Union Achilles' heel

“[T]he war which torments our society and divides it on a binary track is [...] the war of the races [...]. The social *corpus* itself is based on two races.” Thus, “[...] what is the triumph of someone is the submission of someone else.”

Northern Kosovo offers a realistic portrait, current and past, of the dichotomy submission *versus* triumph. It remains a contended area between Belgrade and the Kosovo authorities so far. It belongs *de jure* to the rest of Kosovo, while *de facto* keeps escaping Priština/Prishtinë's control. Neither almost ten years of international administration under the United Nations, nor almost three years of *supervision* under the European Union have helped shaping a *multi-ethnic society* there. The situation in Kosovo is far from being set up until today and various factors are illustrative of this gloomy scenario (as they have been portrayed by Cyrill Stieger, *Fussnotenland und Buchstabenstaat*, Neue Zürcher Zeitung, March 24, 2012, 1). Kosovo is independent but not all the EU Member States recognize it; the government does not control the whole country, namely it does not control northern Kosovo; it is the only country in the Balkans whose citizens, who wish to travel in the Schengen area, need a visa; it does not have an appropriate name. At regional conferences it has the right to present itself under the label Kosovo\*, and not Republic of Kosovo, so that the new identification with a star

and an explicative footnote does not prejudice the status issue.

If the EU is going to play a key role and provided that for the years to come, it will be involved in the rule of law endeavour, the main suggestion is that the EU Common Security and Defence Policy (CSDP) is to be re-visited. The EU's policy of circumventing complexity by recognizing it, thus allowing for a *lowering of the bar* is a *myopic* approach. If this scenario materializes is not to be welcomed because of the intrinsic problems it brings with it. Whether the EU integration is to play a key role while helping overcome the concept ethnicity *versus* territoriality, the main assumption is that Brussels should be committed at this end since its deployment *via* a civilian mission while re-adjusting its structure and targeted policies on an *ad hoc* basis.

As theoretical approach the Complexity theory will be considered. It is intended not as a scientific revolution but as genuine epistemological revolution in the Foucauldian sense, as a framework of thought through which conflicts are framed, understood or resolved. The point of departure is that our current understanding of conflict is characterized by epistemic constraints that condition the generation and deployment of knowledge and consequently of action. In brief, Complexity represents an alternative understanding of time and history. This paper would depart from the Complexity theory to show that the multi-ethnicity and the rule of law concepts, as they have been framed by the European Union Rule of Law (EULEX), did not help shaping neither a truly multi-ethnic society nor the rule of law in northern Kosovo. The suggestion is a re-conceptualization of both. This is a must when the rule of law is to be applied into a high ethno-political environment characterized by *mental irredentism* as it is the case of Kosovo and the Balkans as a whole (for the concept of mental irredentism see Ekkehard Kraft, *Mentale Abschottung auf dem westlichen Balkan*, Neue Zürcher Zeitung, October 6, 2009. Accessed October 6, 2009. [http://www.nzz.ch/nachrichten/politik/international/mentale\\_abschottung\\_auf\\_dem\\_westlichen\\_balkan\\_1.3799533.html](http://www.nzz.ch/nachrichten/politik/international/mentale_abschottung_auf_dem_westlichen_balkan_1.3799533.html)).

## 1.2 The European Union Rule of Law in Kosovo: Challenges Ahead

The European Union Rule of Law (EULEX) is a civilian mission and is part of that realm of peace-operations which proliferated consistently right after the end of the Cold war. It is also embedded in that emerging *technology of peace*, as this term has been used in the literature, whereas wars are looked at as having an inner cause to be solved by bringing with them the paradox of exacerbating division instead of providing room for reconciliation. Whether this is the reality in Kosovo or not, what could EULEX do for helping to solve this paradox?

A Common Security and Defence Policy mission for Kosovo had already been foreseen by the Comprehensive Proposal for the Kosovo's Future Status of Mr. Martti Ahtisaari, whereas under the letter of para. 12 it is explicitly stated that "The European Security and Defence Policy Mission shall monitor, mentor and advice on all areas related to the rule of law in Kosovo. It shall have the right to investigate and prosecute independently sensitive crimes, such as organized crime, inter-ethnic crime, financial crime, and war crimes. In addition, it shall have limited executive authority to ensure Kosovo's rule of law institutions are effective and functional, such as in the areas of border control and crowd and riot control.". One day after the Kosovo's declaration of independence, the Council of the European Union clearly stated the EU's readiness to play a leading role in strengthening stability in the region, together with its commitment to fully and effectively support the European perspective for the Western Balkans. The EU was active since the end of the 1999 war under the United Nations Interim Administration in Kosovo (UNMIK)'s pillar structure being its fourth pillar (economic reconstruction). After a re-configuration of the United Nations Interim Administration Mission in Kosovo, following the declaration of independence and the changed circumstances on the ground, a transfer of powers has taken place in favour of the European Union. This latter is active there since December 2008 *via* its largest civilian mission deployed so far that is EULEX. Following its deployment EULEX declared itself *status-neutral* which is something absurd considering that 22 out of 27 EU member States recognize Kosovo's independence. But this is only one paradox of EULEX's performance.

In the forward to the EULEX Programme Report 2011 the Head of Mission, Mr. Xavier Bout de Marnhac, clearly states "EULEX is a CSDP mission characterized by a combination of executive and non-executive mandate. The Mission uses its executive mandate in order to arrest, investigate, prosecute, sentence suspects and conduct operations in the area of forensic medicine and witness protection. In addition to the executive mandate the Mission is also tasked to foster and assist the Kosovo justice system as it strives to an end-state of being sustainable, transparent, accountable,

*multiethnic* and free from any political interference, all in accordance with European best practices and standards.(...)” EULEX is a Common Security and Defence Policy (CSDP) operation which as *per mandate* is deemed “to monitor, mentor and advice the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities”. 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 strenghtening an independent multi-ethnic justice system and multi-ethnic police and customs service* [...]”. Two points are to be made here: first the reference to *further developing and strenghtening an independent multi-ethnic justice system and multi-ethnic police and customs service*. This statement makes believe of a narrow concept of the rule of law which assumes that to develop *multi-ethnicity* Kosovo-wide is enough to do so in the three main areas of involvement briefly listed above. The rule of law implies two main components which are the law of the rules and equity. These two terms of reference may be in tension in so far the former is a generalized prescription of what is right or wrong, while the latter is the practice of departing from the rules in specific circumstances with a view at filling the gaps in the law. It is only to mention here that perfect equitable system asks for a case-by-case assessment, as well as the fact that a legal system does not operate into a political *vacuum* and thus it is not solely the result of judges. Rather additional virtues play a role as well (i.e. legislators, executives and citizens). This is the point of departure to argue that the concept of rule of law has to be *operationally* re-conceptualized by the EU, when this is deemed to be applied by a civilian mission, as the case of EULEX, which is operating into a high ethno-political environment characterized by *mental irredentism*, as briefly referred to above. This latter is a cultural concept and it is part of the fixation to the national identity which is in all the countries in South-eastern Europe, and not only in Kosovo and Serbia but also in Greece.

This aspect is, however, under-valued by the European Union and this is the case of EULEX as well. The Report of the Special Envoy of the Secretary-General, Mr. Martti Ahtisaari, referred to, under the letter of para. 11, that at that time (2007) Kosovo was unable to deal with, among other things (i.e. minority protection, democratic development, economic recovery), *social reconciliation* on its own. This asked the international supervisors to help doing so. But the situation in northern Kosovo does not seem to provide that much of social reconciliation has taken place after all. EULEX should become aware of the complex *societal humus* which characterizes Kosovo and which can not be reduced at a *unicum*. Two different people (Albanians and Serbs) have looked at each other as enemies for long. The 1998/99 war did strenghten their mutual negative stereotypes. In this framework stepped in an impressive international *engagement*, which is still far from being ended, to deal – or try to do so – with the management of this intense mutual incomprehension. Civic *nationbuilding* is hindered in Kosovo because of the co-existence of various elements which have been strumentalized over time. Kosovo-Albanians and Kosovo-Serbs speak two different languages. Since 1999 no bilingual education has been provided on both sides of the Ibar river with the consequence that Albanians and Serbs communicate in English. But elder people do not master Albanian, as their kin living in the south, as well. Of course, the fact of not speaking the same language should not *per se* lead to the emergence of hatred and mutual mistrust. But in the Balkans, and not less in Kosovo, even the speaking of two different languages could be strumentalized in the name of the dichotomical relationship ethnicity *versus* territoriality which is in the culture of this region. It is a fact that Serbs and Albanians have developed negative stereotypes one against the other. Kosovo, and the north *in primis*, is the land of dichotomic antagonized relations. Serbs and Albanians have (are still doing so) fought each other. For the former, Kosovo is “an area that sublimes the collective identity of the Serbian people just as Jerusalem does [...] or the Jewish nation.” Albanians by their side claim to be the descendants of the Illyrians and to be the indigenous inhabitants of Kosovo while Serbians do argue that, in fact, Albanians comprised the remnant population of the Illyrians but also other people who inhabited the Western Balkans during the classical and medieval times. Apart from ancestral claims, Serbs and Albanians do profess different religions as well. The former are Orthodox and the latter Muslim (converted to Islam by the Ottomans) and Catholic. Serbs and Albanians have also two different national interpretations/convictions and two different national festivities. The issue complicates further when all these aspects are strumentalized.

Only if EULEX takes into duly consideration all the aspects, briefly aforementioned, there is room for a possible change. After more than three years of deployment, the *multi-ethnicity* concept EULEX aims at further strenghtening and developing is far to be reached in the north, as well as the rule of law. This scenario implies a *re-visiting* of the Common Security and Defence Policy concept which, as it is structured, can not be sufficient at effeciently and effectively tackling more complex issues. The main assumption is that the rule of law when is part of the integral mandate of a EU civilian mission should be re-conceptualized. This implies that this is not solely to be circumscribed to a legal maxim which

suggests that governmental decisions are to be taken by applying known legal principles. This is a far narrow conception which is unlikely to work into a context, such as Kosovo, where the *societal humus* is far complex. What is needed is the inclusion of a *Common Peace Educational Policy* (CPEP) into the wider CSDP.

### 1.3 EULEX Monitoring, Mentoring and Advising. Work in practise

EULEX has been deployed on the ground as of December 2008 but it became fully operational as of April 2009. In terms of structure, it has a unified chain of Command with its main headquarter in Priština/Priştinë and regional and local offices throughout Kosovo. Command and control of the operations at strategic/Brussels level are carried out by the Civilian Operation Commander (Director of the Civilian Planning and Conduct Capability – CPPC), who acts under the political control and strategic direction of the Political and Security Committee (PSC), which by its side shall report regularly to the Council, and the overall authority of the High Representative of the Union for Foreign Affairs and Security Policy. The COC has to act so as to guarantee an effective implementation of the Council's decisions as well as the PSC's decisions, and he/she may issue instructions to the Head of Mission, whenever it is deemed so necessary. The COC has also to consult with the European Union Special Representative (EUSR).

EULEX is deemed to monitor, mentor and advice (MMA) the local authorities and law enforcement agencies in the wider rule of law, while exercising some executive responsibilities. The first document assessing the strenghts and weaknesses of the Kosovo authorities, thus paving the way for suggestions *via* its MMA action is provided by the first EULEX Programme Report of 2009. Among various indicators the gender/ethnic mix was detected as the poorest one in all the sectors. Concerning the police component in various departments the performance of the ethnic indicator was poor. It was good only in the Forensics Directorate Crime; Community Policing (Operations); Traffic Directorate (Operations); Regional HQ East (Border); and it was satisfactory as per target in the Regional HQ West (Border). The starting point of EULEX activity did highlight that the *ethnicity* component was the major issue to be dealt with.

The second EULEX Programme Report 2010 concerning the police component does mainly refer to problems of re-organization and structure which, as of July 2010, is still in the making. The only mention, which could be linked somehow to the ethnicity component, is that EULEX Human Rights and Gender Office (HRGO) found that the Kosovo Police was (as of July 2010) not maintaining combined statistics which would compare, for instance, categories of victims, perpetrators, and crimes according to parameters such as gender, *ethnicity* or sub-categories of crimes. Concerning the justice system we do find reference over the need for the Kosovo Judicial Council (KJC), which has a pivotal role in ensuring the independence and efficiency of the justice system, to be a fully independent institution which guarantees the independence of the courts, their professional and impartial role, and fully reflect the *multi-ethnic* nature of Kosovo. In this specific case, we do find mention over the re-entering of Kosovo-serbs professionals into the Kosovo judicial system, but no specification is given over the actions undertaken for that end. In addition, as of July 2010 the situation in Mitrovicë/Mitrovica is not satisfying to the extent that Kosovo-albanians judges are located, for security reasons, in the premises of the Municipal Court (MC) of Vushrri/Vučitrn, where they deal with pre-trial issues exclusively. Furthermore, as of July 2010 it was not possible to get two Serbian judges assigned to the District Court (DC) Mitrovicë/Mitrovica in order to reach balance amongst the judges. These examples clearly show the challenges local judges, prosecutors and defence councillors working in the judiciary are facing in a high-ethno politicized environment. In the same Mitrovicë/Mitrovica the justice system does not properly work because of the specific situation. This is a clear demonstration of the fact that from one hand the concept of the rule of law, as narrowly intended by EULEX does not work in such a context, as *multi-ethnicity* does since it is limited to its three main areas of intervention namely police, justice and customs. All these factors, as briefly aforementioned, shed the light over the need from one hand of a re-conceptualization of the rule of law and multi-ethnicity, and from the other hand of a new operational practice to be set up when a civilian mission, as EULEX, is deemed to be deployed into a high-ethno political environment with a rule of law mandate, while committed to further develop and strenghten multi-ethnicity. The same July 2010 EULEX Programme Report further refers to multi-ethnicity with reference to the customs component, to the extent that at that time ethnic minority (12%) representation in Kosovo Customs Human Resources remained fairly stable. Promising signs, as of July 2010, over the re-integration of Kosovo Serbs in the rule of law system concern, during the reporting period, their increasing participation in

the work of Municipal Community Safety Councils (MSCSs), as indicated in the opening of a MCSC in the municipality of Kllokot-Vërboc/Klokot-Vrbovac, a majority Kosovo Serb area. The set-up of MCSCs in all Kosovo municipalities is required by law and they should hold discussions among municipal authorities, Kosovo Police and civil society stakeholders on security issues. They foresee the inclusion of representatives of all ethnic communities living in a municipal territory.

The last Programme Report so far, EULEX Programme Report 2011, makes reference to the fact that Kosovo Police Crime has improved the desired state of accountability and multi-ethnicity *via* the draft and implementation of a Standing Operating Procedure (SOP) for the recording, the collection and the collating of data on the ethnicity of victims of crime and instances of crime which are likely to be ethnically motivated. Furthermore, a training programme for all relevant KP staff referring to the collection, collation, retrieval and analysis of police incident data has been completed under the leadership and guidance of the KP Training Department. However, *multi-ethnicity* is here intended *only* to allow for a clear detection of ethnically motivated crime. But is this enough for *further developing and strengthening multi-ethnicity* as per EULEX mandate (CJA/124/2008)? Concerning the Kosovo judiciary, as of 2011, only one-third of the judicial positions for non-majority communities have been filled.

EULEX MMA activities in the field of *further strengthening and develop multi-ethnicity* concern the action termed as *Victim-ethnicity crime statistics*. As of February 2011 this MMA action was progressing together with the EULEX Correctional Unit's MMA action at mentoring Kosovo Correctional Service (KCS) on its long-term strategy work including support for integrating ethnic minority staff and prisoners (progressing). As of June 2011 the *Victim-ethnicity crime statistics* was accomplished. The MMA Tracking Mechanism of December 2011 considers the Victim ethnicity-crime statistics as accomplished as well, together with the challenge in the Kosovo Prosecutorial Council (progressing) to fill the reserved places for prosecutors from minorities, as very few candidates for these position appear and in the justice sector (Judges Civil and Criminal) (progressing) whereas the main issue is that District Court of Mitrovicë/Mitrovica lacks adequate number of copies of the official gazette. This scenario clearly makes it evident that to reach the rule of law into a high-ethno political environment, is not enough via the sole sending of experts who dictate how to rule. The argument is that this very *scheletric* concept/action of the multi-ethnicity, as it has been operationalized by EULEX, does not help in practise at establishing a truly multi-ethnic society.

## 2 Northern Kosovo: A Challenge for the CSDP

### 2.1 Northern Kosovo: the *State of the Arts*. Where is EULEX?

Northern Kosovo "remains a kind of unclear condominium between Belgrade, UNMIK and EULEX which benefits the criminal organization" and the situation seems far from being settled down so far. Belgrade's influence over northern Kosovo seems never ending. It keeps considering Kosovo as its own province. On the 6<sup>th</sup> May 2012 parliamentary elections, together with municipal and provincial ones will take place in Belgrade (see Michael Martens, *Kosovarische Hebelwirkung*, Frankfurter Allgemeine Zeitung, (Politik) March 14, 2012, 6). The Serbian government recognized upon the Serbian northern communities in Kosovo the possibility to take part in the elections. The EU contested this position, as the government in Priština/Prishtinë did. The main argument is that the EU *via* its ever largest civilian mission EULEX should have *prioritized* northern Kosovo for evident reasons, to anyone who is familiar with its *ethno*-biography, since the very beginning. The result is that after almost three years of its deployment on the ground EULEX is still rejected from the Serbian communities and its visibility there has been very low.

Whether various scenarios over a possible solution for northern Kosovo have been referred to in the literature, and whatever the final settlement will be, it is a fact that EULEX's presence in the north is still very limited for the time being. EULEX's convoys directed at the border crossing Brnjak have been recently blocked. Demonstrators pushed them back to Zubin Potok (a northern Serb-community). Since 2011 the Serbian minorities keep blocking EULEX convoys because they consider the EU mission as supporting Priština/Prishtinë's government which they do not recognize (as it has been reported in the article *Serben im Kosovo. Konvoi der Eulex erneut blockiert*, Die Tageszeitung, (Ausland), March 7, 2012, 10). This scenario is a clear demonstration that the situation in the north is not calm, quite the contrary. Albin Kurti, the leader of the opposition movement *Vetëvendosje* explicitly stated that the European Union Rule of Law has worked just against corruption and to discipline politicians, in order to maintain stability so far (as reported by Barbara Oertel (Interview

with Albin Kurti). *Unsere Regierung ist korrupt*, Die Tageszeitung (Ausland), February 16, 2012 available at <http://www.taz.de/Opinion-im-Kosovo/!87811/>, last accessed February 16, 2012.). This is a way to work for a short-term stability, which means that in so far the situation is calm, this sign is looked at as success. But speaking of rule of law, he says, is to look at stability and security. In his view, EULEX should not leave the country but it should be re-structured. There is the need, for instance, of foreign experts in the agriculture not more policemen to set discipline. The argument of this paper is that there is the need of educational experts (i.e. educators, pedagogues and mediators) to be co-located together with the specific per mission's mandate officials as well.

In northern Kosovo it is a fact that Serbs and Albanians still experience animosities one against the other. This conflictual relationship is part of the cultural background of the former Yugoslavia since the late 1980s, which remains unresolved until today. But whether the conflicts erupted in the former Yugoslavia are depicted as ethnic conflict *tout court*, in fact, some scholars point out that this is a myopic vision and they argue that behind the collapse of the former Yugoslavia and the consequent wave of nationalism there were economic, social and political dissatisfaction that the *vacuum* of power, because of Tito's death, did refurbish in a consistent way. To be said differently, *ethnicity* is the consequence not the main cause. It remains, however, that a civic common sense of belonging is still far away from being achieved and this is true above all in the north. The EU through EULEX is expected to draw a more pro-active approach so as to counterbalance that Western Balkan policy which relied for long on reaction, caution and improvisation rather than prevention, determination and programming. Two scenarios are possible either Kosovo is brought within the mainstream of Europe or it will fall in despair by sending more than a negative message on the EU's (in-) ability to deal with the post-reconstruction process and multi-ethnicity.

## 2.2 Serbs and Albanians at the *fore-front*: EU *ex post*

The European Union's main mistake is to look at things always in purely technical terms (over this issue see Andrea Ernst, *Fünf Fiktionen rund um Kosovo*, Neue Zürcher Zeitung (Internationale Ausgabe), January 20, 2012, 2). But for a conflict to be *ended* there is the need of understanding it. So far the EU CSDP seems unlikely to have done that. The international community's and the EU's influence in the north is limited. Northern Kosovo is a *relict* of Milošević's Yugoslavia where parallel Serbian structures and criminal networks proliferate and policemen and unknown service providers earn from corruption as well. A trade dispute between Serbia and Kosovo broke out at the end of July 2011 (as reported by Reuters Bloomberg, *Kosovars seize border post from EU mission*, The International Herald Tribune, July 27, 2011, 4) in the northern part, where the European Union Rule of Law Mission in Kosovo (EULEX) maintains the three border crossings along the frontier between Serbia and Kosovo. It is a fact, however that the "customs conflict" between Serbia and Kosovo is the *Wartezimmer* of a wider conflict (as reported by Michael Martens, *Der Vertrag von Mitrovica*, Frankfurter Allgemeine Zeitung, August 24, 1) It is not a question of customs stamps and customs tariffs. Rather the issue is *who controls politically northern Kosovo?* Mr. Farid Zarid, the UN acting envoy to Kosovo, depicted the situation in the north, one month later after the end of July 2011 clashes at the two northern crossing points, as tense and unpredictable (as reported in the article *U.N. Envoy: Situation in Kosovo Is Still Tense*, The Wall Street Journal Europe (Europe News) 31 August 31, 2011, 6). The same Serbian President Mr. Boris Tadić declared the peace in Kosovo as fragile (as reported in the article *Belgrade: Serbia warns against action by Kosovo affecting its Serbs*, The International Herald Tribune (World News – Europe), September 14, 2011, 4). The European Union had tried to mediate between the two parts, even before the clashes, but it did so on technical issues such as car-licence plates.

At the end of October 2011 the situation has worsened further. Serbs erected barricades (as reported in the article *Northern Kosovo Blocked – An impasse that could turn nasty*, The Economist, October 29<sup>th</sup> – November 4<sup>th</sup> 2011, 33) at the two northern border crossings which have *de facto* impeded the free movement of goods and persons. Serbs have acted in consideration of their refusal over Kosovo police and customs officers stationed there and which would imply, in practise, the recognition of Kosovo's independence and authority over this part of the country. In this gloomy scenario and in sign of protest over a non-recognition of Priština/Prishtinë's control, local Serbs living in northern Kosovo turned to Moscow for help in mid-December 2011 (as reported in the article *Russian aid convoy to Kosovo is center of dispute at border*, The International Herald Tribune, (World News Europe), December 15, 2011, 4). Clashes broke out again in North-eastern Kosovo, near Podujevo, on 14<sup>th</sup> of January 2012 (as reported by Michael Martens, *Klimawandel im Kosovo. Die Lage ist seit der Unabhängigkeitserklärung 2008 recht stabil, doch im serbisch-Kosovarischen Grenzgebiet wächst die*

*Spannung*, Frankfurter Allgemeine Zeitung, (Politik), January 16, 2012, 3). This time the protagonists were not the Serbian communities rather the Kosovo-Albanians followers of the main Kosovo's opposition movement *Vetëvendosje* led by Albin Kurti. Brussels intervened by condemning the action of *Vetëvendosje* (as reported in the article *L'UE condamne les heurtés à la frontière serbe*, Le Figaro, en bref (Europe), January 17, 2012, 7). Once again it did so *ex post*.

Last but not least, few days after four years from the Kosovo declaration of independence, a referendum legally meaningless took place in the north of Kosovo. Over the *meaninglessness* the EU expressed *in primis* via a spokesperson of the EU High Representative who made it clear that the only solution is dialogue (as reported in the article *99,7 Prozent gegen Prishtina. Ergebnis des Referendums der Kosovo-Serben*, Frankfurter Allgemeine Zeitung, (Politik), February, 17, 2012, 5). *Why has not the EU via its CSDP intervened previously, that is via targeted policies, for avoiding such scenario?* Whether referred to as legally meaningless, it is a fact that it represented a strong opposition to the government in Priština/Prishtinë from the northern Serbian communities. The referendum took place on the 14<sup>th</sup> and 15<sup>th</sup> of February 2012 in the four Serb-majority municipalities in the north of Kosovo (as reported by Thomas Fuster. *Machtprobe in Nordkosovo. Volksbefragung der Kosovo-serben*, Neue Zürcher Zeitung, (International), February 14, 2012, 3. See also the article *Les Serbes du Kosovo maintiennent leur référendum*, Le Figaro, (International – en bref), February 14, 2012, 6; See also the article *Kosovar Serbs vote on Albanian rule*, The International Herald Tribune. (Europe briefly), February 15, 2012, 4). As expected 99,7% (of 35 500 Serbs with the right to vote, 75% voted for the referendum) of the Serbs living in northern Kosovo voted 'no' to the government in Priština/Prishtinë (as reported in the article *Serben in Kosovo stimmen ab. Nein zu Pristina*, Die Tageszeitung, (Ausland), February 16, 2012 at <http://www.taz.de/Serben-im-Kosovo-stimmen-ab/!87821/>, last accessed February 16, 2012), while 60% of Kosovo-Serbs who live southern to the Ibar River did not take part to the vote (as reported in the article *Klares Nein an Pristina. Erwartetes Resultat beim Referendum von Nordkosovos Serben*, Neue Zürcher Zeitung, (International), February 17, 2012, 5). This scenario sheds the light on the even more complicated situation in the northern municipalities. Serb leaders in north of Kosovo accuse Belgrade to buy their future EU integration from Priština/Prishtinë. The ballot paper's central question was "Do you accept the institutions of the so-called Republic of Kosovo"? (as reported in the article *La minorité serbe annonce un référendum contre Pristina*, Le Monde, (Europe), December 30, 2011, 6). With the "no" to the recognition of the government in Priština/Prishtinë, 99.7% of Serbs who voted on the 14<sup>th</sup> and 15<sup>th</sup> of February 2012 made it clear that they feel to be part of Serbia. Whether the result of the referendum was something to be expected, and notwithstanding the EU and the western diplomacy's consideration over its legal meaninglessness, it is a fact that the referendum is more than a local Balkan *Petitesse* (as reported by Michael Martens, *Sogenannte Republik. Volksabstimmung bei den Kosovo-Serben*, Frankfurter Allgemeine Zeitung, (Politik), February 16, 2012, 5).

Despite all these events Brussels showed its willingness towards Priština/Prishtinë. The EU Commissioner for Enlargement, Stefan Füle, announced on 27<sup>th</sup> March 2012 over the set-up of a feasibility study concerning the possibility for Kosovo to sign a Stabilisation and Association Agreement (SAA). The issue is legally delicate because five EU Member States have not recognized Kosovo so far (as reported by Marjiana Miljkovic, *Kosovos erste Erfolge bei EU-Annäherung*, Wirtschaftsblatt, March 28, 2012, accessed March 28, 2012, <http://www.wirtschaftsblatt.at/archiv/512498/index.do>). The problem is, however, that the EU intervenes in purely technical terms. Such agreements do already exist with Bosnia Herzegovina and Albania where the situation seems far from being improved. Why should it be so with Kosovo?

## 3 Common Security and Defence Policy *Re-Visted*

### 3.1 Where is *multi-ethnicity* and where is the *rule of law*?

In consideration of the events, briefly aforementioned, the argument is that the European Union *via* its CSDP has done very little or a few to develop the *multi-ethnicity* concept which is at the basis of its own mandate after all. It remains, however, that if *multi-ethnicity* was not possible in Mitrovica/Mitrovicë, that is in the confidence area, then it was to be condemned elsewhere in Kosovo. UNMIK lost this opportunity to the extent that eighteen months after the 1999 war, there was not so much room for progress in the *multi-ethnic* endeavour as for segregation. The European Union has the duty, moral and institutional, not to repeat the mistake of the UNMIK administration: loose the chance of a *multi-ethnic* Mitrovica. So far the scenario is not encouraging at all. It is a fact that the north is still



contented and it keeps rejecting Priština/Prishtinë's control, while the south seems to have accepted it, although the situation is far more complicated. EULEX has missed to proactively move in the north where, for evident *ethno-biographical* reasons, the situation was and is more sensitive. The result of its inaction is a *de facto* apartheid regime. Serbs and Albanians barely communicate with each other and parallel structures, being erected by Belgrade before the 1999 war, are still there.

Despite this gloomy scenario, a new agreement, between Serbia and Kosovo, concerning the freedom of movement (as reported by Andreas Ernst, *Belgrad gegen Referendum in Nordkosovo. Ratlosigkeit über die Zielsetzungen der serbischen Kosovopolitik*, Neue Zürcher Zeitung, (International), January 3, 2012, 3) has been achieved but it is evident that this is not enough for multi-ethnicity and the rule of law. The EU CSDP has the chance to win the challenge in northern Kosovo where absolute visions still make victims today. The European Union is called to take into due consideration the existence of different and still opposing "truths". It is here to be agreed with Julie Mertus, when she states that in order to properly understand the reason why wars start, there is the need to examine not solely the factual truth (which is important for court law and legal aspects) rather of what she labels the "more or less truths" as well. The reason lies in the fact that to get acquainted with the truth(s), there is the need to understand the social and political relationships where these truths originate. On the same line she argues that the existence of different truths is not *per se* the cause of a conflict. Rather this latter is likely to occur in so far one's own truth is used in such a way to diminish or denigrate the other. By getting aware of "the more or less truths" will enable to address the conflict in its complexity. But this is what EULEX has failed to do in the north of Kosovo so far.

Under the EU leadership a new dialogue between Belgrade and Priština/Prishtinë started on the 22<sup>nd</sup> of February 2012 (as reported in the article *Serbien geht auf Distanz zur EU*, Frankfurter Allgemeine Zeitung (Politik), February 24, 2012, 6). On the occasion of the meeting the main issue on the desk was whether Priština/Prishtinë could take part in the regional cooperation in the Balkans, and how the agreement for a common border control could be implemented. After three days of EU-led negotiations, Serbia and Kosovo reached *last minute* agreements on two main points (as reported in the article *Serbien und Kosovo einig. Vereinbarung in Brüssel über künftige Zusammenarbeit*, Frankfurter Allgemeine Zeitung (Politik), February 25, 2012, 5) : (1) Kosovo will be able to represent himself at regional conferences and to sign agreements on his own behalf; (2) each side, separately, will exercise control according to its own rights at the northern border crossings of Kosovo. EULEX will be involved at this respect too. In addition, the imposition on Serbia is that EULEX is free to move without difficulties in the north as well. The EU-chief diplomat, Mrs. Catherine Ashton, welcomed the agreements as a good step forward, as well as the sign of Kosovo's future EU perspective (as reported by Ruth Reichstein, *Serbien und Kosovo finden einen Kompromiss. EU-Beitritt. Kosovo darf zukünftig auf Regionalkonferenzen als Staat auftreten. Dafür dürfte Serbien jetzt den Status eines EU-Beitrittskandidaten erhalten*, Die Tageszeitung (Ausland), February 25/26, 2012, 8). *What about Kosovo(s)?* It is far complicated to trace the whole position of the country. But it is sufficient to say that in Priština/Prishtinë's government circles too they have not been welcomed, rather the impression it that they have been imposed by the EU (as reported by Erich Rathfelder, *Kosovaren praktisch über den Tisch gezogen. EU-Beitritt Serbien ist der Status eines Beitrittskandidaten zur EU de facto in die Hand versprochen. Das sorgt im Kosovo für Proteste, die sich in erster Linie gegen die Unfähigkeit der eigenen Regierung richten*, Die Tageszeitung (Ausland), February 28, 2012, 11). Kosovo's main opposition movement *Vetëvendosje* protested as well, and it accused the government of Hashim Thaçi to give away sovereignty to Serbia (as reported by Michael Martens, *Argumentative Winkelzüge. Serbien will in die EU – am besten mit dem Norden des Kosovo*, Frankfurter Allgemeine Zeitung (Zeitgeschehen), February 29, 2012, 10). From Belgrade's perspective, the two agreements are positive but it will not get a date for the start of the negotiation process until Northern Kosovo's issue will remain unresolved (as reported by Michael Martens, *Argumentative Winkelzüge. Serbien will in die EU – am besten mit dem Norden des Kosovo*, Frankfurter Allgemeine Zeitung, (Zeitgeschehen), February 29, 2012, 10). However, the situation remains tense. Six Serbian policemen have been arrested in the south-western Serbian enclave in Kosovo because they were deemed, under Belgrade's pressure, to force the inhabitants not to recognize the institutions in Priština/Prishtinë (as reported by Erich Rathfelder, *Kosovaren praktisch über den Tisch gezogen. EU-Beitritt Serbien ist der Status eines Beitrittskandidaten zur EU de facto in die Hand versprochen. Das sorgt im Kosovo für Proteste, die sich in erster Linie gegen die Unfähigkeit der eigenen Regierung richten*, Die Tageszeitung (Ausland), February 28, 2012, 11). The more two Kosovo police officers who crossed into southern Serbia at the end of March and beginning of April 2012 have been arrested as well (as reported in the article *Serbia holds 2 police officers, but kidnapping is asserted*, The International Herald Tribune (World News Europe), April 2, 2012, 4). The episode contributed to deteriorate the already tense relations between Belgrade and Priština/Prishtinë. They were arrest the

article *Serbia frees two police officers who were accused as spies*, International Herald Tribune (World News Europe), April 3, 2012, 4). On the whole the situation in northern Kosovo is delicate. *Last but not least* the Public Prosecutor Nazmi Mustafi has been arrested in his office and his residence has been searched. The police confirmed investigation against bribery during his office when two suspects have been arrested and brought under custody. The investigations against abuse of office for the Public Prosecutor are grounded on the fact that he has taken bribery from one of the suspects. Mr. Mustafi had taken office as of 2010 (as reported in the article *Ermittler in Kosovo festgenommen*, Neue Zürcher Zeitung, April 4, 2012, 2). After more than three years of EULEX's deployment where is *multi-ethnicity* and where is the *rule of law*?

### 3.2 Suggestion: A *Common Peace Educational Policy*

“Since wars begin in the minds of men, it is in the minds of men that the foundations of peace must be constructed”  
[Preamble of the UNESCO] - United Nations Educational, Social, and Cultural Organization]

The scenario depicted in the previous pages is a proof that EULEX, being a CSDP mission, as it is structured has neither provided the rule of law nor multi-ethnicity in the north so far. This is far from being something minimal because, as previously stated above, if multi-ethnicity is not to be achieved in this contended area, then the risk is that it is difficult to be reached elsewhere. The suggestion would be the inclusion of what I label *Common Peace Educational Policy* (CPEP) which would not substitute but complement the mission's mandate. The set-up of a CPEP is to be intended as a *new operational practice* to be applied not only to EULEX-Kosovo but to other civilian missions which are deemed to be deployed to similar scenarios as well. It would not imply a change of the Lisbon Treaty rather it will be sufficient to reach an agreement at the CivCom level between all Member States, and possibly endorsed by the Political and Security Committee (PSC) (in a text message to an unknown EU official of the European External Action Service (EEAS), Brussels, on January 13, 2012). Starting from the violence broke out since July 2011 onwards the gap between Serbs and Albanians has never been so evident: mistrust, fear, different languages. It is possible to remove blockades from the street but what to do with a lot of incomprehension? The European Union has the chance to manage it effectively. *How?* By revisiting its CSDP *via* the inclusion of a CPEP. In terms of structure it will be under Brussels's guidance and financial support. A specific roster of educators, pedagogues and mediators familiar with the culture and language of the place of deployment will be set-up and implemented at Brussels-level. A maximum of five-years deployment is required. It is a fact that so far many peace operations have been characterized by a high turnover which, of course, hinders continuity of work and relations. I personally had an interview over this issue with a historian of South-eastern Europe, Dr. Ekkehard Kraft, who said that “the main problem with the peace operations is that you send on the ground very professional people but who do not know the country or the region where they are to be deployed. That's the greatest problem, it is a problem of language. Of course, there are people in Kosovo who speak English or German, they can service translators and so on, but you have not direct contact with the population. It is a issue which is very difficult to solve but the EU could be much more better prepared to the region's specificities. Furthermore, it is also very important to know the mentality and the communication because in every country you have a different kind of communication, and if you do not know this then there will be many misunderstandings. Especially for the Balkans you need much more time, you have to get accustomed to the people and their cultural mind-set. Communication is a very important issue. It needs time but it is not a question of money. In addition, people who are selected for these jobs should spend much more time to be there. It would be a mistake to put them there only for one year and then to another conflict region but they have to be there for some years for four, five years or six years. The European Union has to be aware that there will be no immediate solution but with the time it will come. Things are changing also in Serbia not at once but are moving forward”.

The CPEP here referred to is not to be intended only to actions/activities at the school level but society-wide. The more concerning the school system, the suggestion is far away from that backed by the Organization for Security and Cooperation in Europe (OSCE) in BiH organized on ethnic lines and different curricula which did everything but not reconciliation (as reported by Erich Rathfelder, *Europas Unreife. Bosnien und Herzegovina. Bis heute gibt die EU dem Land keine Perspektive. Die Opfer des letzten Krieges in Europa werden weiter abgestraft*, Die Tageszeitung, April 5/6, 2012, 12). As a matter of fact this system has paradoxically sharpened division among the Bosnian population to

the extent that it has enabled for a discriminatory scenario. The challenge for the EU CPEP would be that of enabling Serbs and Albanians with positive *stereotyping* that is to identify what others may like about your cultural identity. The EU CPEP should help establishing a *co-intentional* living together far from a kind of *Common Banking Educational Policy*. Attempts in this direction exist and one example is *The Joint History Project* launched by the *Center for Democracy and Reconciliation in South-eastern Europe*. However, the idea behind the set-up of a CPEP is that first of all it will be specific per mission mandate and included within the CSDP, provided that this is a civilian mission and that it is to be deployed into a high-ethno political environment, thus tailored-oriented to the area of deployment; secondly it will intervene, as already briefly aforementioned, not only at the school-level by society-wide; thirdly feedbacks and implementation mechanisms will help measuring improvements. Further research is needed so as to help better conceiving, in terms of structure and functioning, the set-up of a CPEP. It will not be a solution to all problems neither in Kosovo nor in any other country with a similar ethno-biography, but it will be a good start for change.

## References

### Books

Finlay, Andrew. *Governing Ethnic Conflict. Consociation, identity and the price of peace*, 2 Park Square, Milton Park, Abingdon, Oxon and New York: Routledge Studies in Peace and Conflict Resolution, 2011

Foucault, Michel. *Bisogna Difendere la Società*. Torino: Beppe Grande, 2002

Freire, Paulo. *Pedagogy of the Oppressed* (Translated by Myra Bergman Ramos), London: Penguin Books, 1996

King, Ian and Mason. Whit. *Peace at any Price*, London: Hurst, ed. Ian King and Whit Mason, 2006

König, Matthias. *The situation of minorities in the Federal Republic of Yugoslavia. Towards an Implementation of the Framework Convention for the Protection on National Minorities*, (Flensburg: ECMI - European Center for Minority Issues, Working Paper 11, June 2011. Accessed July 30, 2011.

[http://www.ecmi.de/uploads/tx\\_lfpubdb/working\\_paper\\_11.pdf](http://www.ecmi.de/uploads/tx_lfpubdb/working_paper_11.pdf)

Mertus, Julie, A. *Kosovo: How Myths and Truths Started A War*, Berkeley, California: University of California Press, 1999

Popolo, Damian. *A New Science of International Relations. Modernity, Complexity and the Kosovo Conflict*, Ashgate Publishing, Farnham – Surrey (UK) and Burlington (USA), 2011

Reardon, Betty, A. *Comprehensive Peace Education. Educating for Global Responsibility*, Teachers College, Columbia University: New York, 1988

Solum, Laurence B., Macedo, Stephen, Burton, Steven J. *The Rule of Law*, Edited by Ian Shapiro, New York and London: New York University Press, Nomos XXXVI Yearbook of the American Society for Political and Legal Philosophy, 1994

Schoch, Bruno. *Demokratisierung im ungeklärten Staat? Das UN-Protectorat im Kosovo – eine Bilanz*, Frankfurt am Main: HSFK, Hessische Stiftung Friedens- und Konfliktforschung, Report N.13/2010

Vickers, Miranda. *Between Serb and Albanian: A History of Kosovo*, London: C. Hurst & Co, 1998

The Independent International Commission on Kosovo. *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford University Press, 2000

### Online Journals

Surroi, Veton. *The Western Balkans and the EU: 'The Hour of Europe'* edited by Jacques Rupnik, Chaillot Paper Nr. 126, June 2011. Accessed July 30, 2011. [http://www.iss.europa.eu/uploads/media/cp126-The\\_Western\\_Balkans\\_and\\_the\\_EU.pdf](http://www.iss.europa.eu/uploads/media/cp126-The_Western_Balkans_and_the_EU.pdf).

## Reviews

Gitti, Angelo. *L'indipendenza del Kosovo tra realtà e finzione*. Università di Pavia, Italy: Il Politico, (2009): 123 – 146

Iannuzzi, Luigi. *La Corte Internazionale di Giustizia si esprime sull'annosa questione del Kosovo?*, in *La Comunità internazionale* (Trimestrale Della Società Italiana Per l'Organizzazione Internazionale), Vol. LXVI, 1 (2011): 113 – 128

Ker – Lindsay, James. *Analysis of Current Events - Not such a „sui generis“ case after all: assessing the ICJ opinion on Kosovo*, in *Nationalities Papers The Journal of Nationalism and Ethnicity*, Volume 39 Number 1, Routledge Taylor & Francis Group, (January 2011) :1 – 2

Zürcher, Christoph. *Building Democracy While Building Peace*, Volume 22, Number 1, *Journal of Democracy*, (January 2011): 81

## Website

European Union Rule of Law Kosovo. Monitoring, Mentoring and Advising, Tracking Mechanism, December 2011. Accessed December 30, 2011 <http://www.eulex-kosovo.eu/docs/tracking/DRAFT-MMA-TM-Website-2011-12.pdf>

European Union Rule of Law. Monitoring, Mentoring and Advising Tracking Mechanism, June 2011 available at <http://www.eulex-kosovo.eu/docs/MMA-TM-Website-june-2011.pdf>, Accessed July 15, 2011.

European Union Rule of Law Mission in Kosovo, Monitoring, Mentoring and Advising. Tracking Mechanism February 2011, available at <http://www.eulex-kosovo.eu/docs/MMA-TrackingMechanism2011-february.pdf>. Accessed February, 21 2011

European Union Rule of Law Mission in Kosovo, EULEX Programme Report 2011. *Bolstering the Rule of Law in Kosovo: A Stock Take*, 2011. Accessed July 15, 2011. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20ProgrammeReport%202011.pdf>

Crisis Group Europe Report (N. 211). *North Kosovo: Dual Sovereignty in Practise*, International Crisis Group, Working To Prevent Conflict Worldwide, March 11 – 14, 2011. Accessed June 30, 2011. <http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/211%20North%20Kosovo%20--%20Dual%20Sovereignty%20in%20Practice.pdf>.

International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo*, General List, No. 141, 22 July 2010. Accessed July 30, 2010. <http://www.icj-cij.org/docket/files/141/15987.pdf>

EULEX, European Union Rule of Law Mission Kosovo. *Building Sustainable Change Together*. Accessed July 31, 2010. <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

EULEX Programme Report, July 2009. Accessed July 31, 2009. <http://www.eulex-kosovo.eu/docs/Accountability/EULEX-PROGRAMME-REPORT-July-2009-new.pdf>

Press Release, *Council of the European Union (2051<sup>st</sup> Council meeting)*, General Affairs and External Relations, 6496/08 (Presse 41), p.7, February 18, 2008. Accessed April 17, 2009. [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/gena/98818.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98818.pdf)

Kosovo Declaration of Independence. Accessed April 17, 2009. [http://www.assembly-kosova.org/common/docs/Dek\\_Pav\\_e.pdf](http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf)

Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law in Kosovo, EULEX Kosovo, L 42/92, 16.2.2008. Accessed April 16, 2009. [http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX\\_EN.pdf](http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf)

United Nations General Assembly. *Resolution adopted by the General Assembly*, 63/3. Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law, A/RES/63/3, 8 October 2008. Accessed July 30, 2010. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/470/97/PDF/N0847097.pdf?OpenElement>

United Nations Security Council. *Letter dated 26 March 2007 from Secretary-General addressed to the Presidency of the Security Council*, S/2007/168, 26 March 2007. Accessed April, 18, 2009. <http://www.unosek.org/docref/report-english.pdf>, last accessed April 2009.

International Crisis Group (ICG), *After Milosevic. A Practical Agenda for Lasting Balkans Peace*, 2. Common Problems, A. *Unsatisfied Nationalism*, Brussels: Balkans Report No. 108, April 2001. Accessed April 20, 2009. [http://www.essex.ac.uk/armedcon/world/europe/south\\_east\\_europe/croatia/CroatiaAfterMilosevic.pdf](http://www.essex.ac.uk/armedcon/world/europe/south_east_europe/croatia/CroatiaAfterMilosevic.pdf)

United Nations Security Council S/RES/1244 (1999) 10 June 1999. Accessed April 16, 2009. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

#### **Treaties**

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Lisbon, December 13, 2007, Official Journal of the European Union, 2007/C 306/01.

#### **Bio-note**

Nicasia Picciano is a PhD student at the University of Flensburg (Germany). She is writing her doctoral thesis on the *Common Security and Defence Policy: EULEX-Kosovo as a case-study*. She has also worked for the project “Stability and Growth Pact” at the University of Flensburg. She holds a BA in international and diplomatic Sciences at the University L’Orientale (Naples) and a MA in Peacekeeping and Security Studies at the University degli Studi di Roma Tre (Rome). Her main interest is the EU post-conflict management.

