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# Introspective Peacebuilding in Eastern Europe?

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Cooperating with local actors on the ground

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Panel: EU Governance and its External Dimensions

## **1. Cooperating with local actors in the context of EU peacebuilding missions: Relevance and preliminaries**

The last two decades have seen momentous progress in the development of the European Union's (EU) foreign policy. The EU has evolved tremendously as an international actor, from an entity with only a loose mechanism of coordinating national foreign policy to an actor able to perform activities across a wide range of foreign policy areas, including diplomatic mediation, civilian and military missions, trade and association agreements of various kinds, development aid, etc. The EU's recently acquired importance in international politics is most visible in the rising number and scope of operations under its Common Security and Defence Policy (CSDP) which is an integral part of the Union's Common Foreign and Security Policy (CFSP) (Adebahr, 2009, 4). Civilian missions under the CSDP are generally considered among the main tools the EU has at its disposal to engage in peacebuilding and conflict resolution and enhance its role in these particular issue areas.

The common sense wisdom that any peace process not embraced by those who have to live with it is likely to fail is very much at the heart of peacebuilding accounts (Donais, 2009, 3). Scholars unanimously acknowledge the importance of local actors being actively involved in international efforts and developing cooperative relations with external actors if long-term sustainability of international projects is to be achieved (Barnett and Zürcher, 2009; Donais, 2009; Reich, 2006; Pietz and von Carlowitz, 2007). Nonetheless, reality seems to indicate that effective cooperation between international and local actors is broadly accepted at the rhetorical level but seldom practiced, which makes peacebuilding resemble 'an externally driven exercise in both state building and social engineering' (Donais, 2009, 4). Instead of the local actors being in the driver's seat, it is foreign actors who direct reconstruction processes by taking the lead at every stage: they design the strategies, establish priorities and manage implementation. Their 'clear, hold, build, transfer' approach reflects external visions of how a democratic and prosperous social order can be cultivated rather than fostering local preferences (Phillips, 2010, 62).

As far as the EU is concerned, its peacebuilding efforts often seem to be somewhat dislocated from what local circumstances would require. There is a significant body of literature underlining the link between the Union's foreign policy weaknesses and its failure to act according to the needs and aspirations of partner countries (Hill, 1993; Smith, 2003; Bicchi,

2007). Most notably, Hill identifies a 'capability-expectations gap' between what the EU can deliver as an international actor and what outsiders expect of it. This discrepancy between internal capabilities and external expectations, it is argued, 'is presenting the EU with difficult choices and experiences' (Hill, 1993). If CSDP operations deployed on the ground fail to respond to the expectations and preferences of partner countries, the missions are likely to face significant obstacles. The literature concurs on the fact that, apart from good planning and appropriate resources, the effectiveness of CSDP operations is a function of how they 'connect with local leaders and public opinion in the field...the 'narrative' associated with each mission is a critical dimension of its political profile and visibility in the eyes of local interlocutors, potential spoilers and other crisis management partners' (Grevi, Helly and Keohane, 2009, 411). More broadly, there is a general consensus that third actors' perceptions and expectations of the EU play an important role in the development of EU foreign policy. Thus, it is argued that 'the state of the EU's role in the world depends not only on its own desires, willingness and capability, but also on how it is perceived outside the Union' (Tsuruoka, 2008, 5). Bretherton and Vogler posit that 'the relationship between internal coherence/consistency...and perceptions of the EC's presence...is of central importance' (Bretherton and Vogler, 1999, 45). Laffan et al, for their part, hold that 'the Union forms a highly significant presence in the perceptions and actions both of its members and of outsiders' (Laffan et al, 2000, 171). The EU's official documents, too, affirm the need for future EU operations to be 'adaptive to the needs of specific situations' and 'to respond with the expertise required to meet the challenge of each unique crisis situation' (Nowak, 2006, 29).

Despite the acknowledgement on the part of both the academic community and the EU itself of the importance of the missions' external environment, the topic is scarcely explored when it comes to accounts of interactions between EU actors on the ground and local actors. With very few exceptions, the European foreign policy literature is essentially EU-centric, investigating the foreign policy-making process from within the EU and concerning itself with questions such as: what kind of international actor is the EU?; what is its role in world affairs?; how can its instruments be improved and enhanced? (Tsuruoka, 2008, 1). This is a regrettable omission which fails to consider an important aspect of the EU's effectiveness and legitimacy as an international actor and which this paper aims to address. Exploring aspects of cooperation between EU actors on the ground and local actors is of utmost importance. As Chaban et al point out, investigating what the others think and expect of the EU is significant for several reasons: firstly, external perceptions and expectations are a valuable source of knowledge for EU foreign

policy; secondly, they shape EU identity and roles; thirdly, they influence the impact of EU foreign policy performance (Chaban et al, 2006, 247-48). Some scholars go even further in considering external expectations and demands as one of the most important stimuli for the EU's external relations (Tsuruoka, 2008, 8). One of the earliest contributions to take into account the views of outsiders is Hill's thesis on the 'capability-expectations gap' (Hill, 1993). According to Hill, it is important to examine whether such a gap between internal capabilities and external expectations exists since 'too great a divergence between the two...can have pathological, dysfunctional consequences' (Hill, 1998). Moreover, he argues that the capability-expectations gap is one of the most important factors which has undermined the EU's role as an international actor.

For all these reasons, it is imperative to inquire into the circumstances which facilitate and/or inhibit the development of effective cooperation between external (EU) and local actors. This paper aims to shed light on the conditions under which such cooperative relations develop (or not) with respect to two EU civilian missions: the EUJUST *Themis* rule of law mission in Georgia and the EU Border Assistance Mission to Moldova and Ukraine (EUBAM). The cases of EUJUST *Themis* and EUBAM are particularly appropriate for an examination of external-local interactions. Firstly, civilian missions are, among the EU's foreign policy instruments, most likely to be successful. The importance of the civilian dimension of the EU's crisis management portfolio cannot be overestimated. Despite their "soft" approach and long-term character, and thus failure to produce immediately tangible results, civilian instruments are vital in all stages of the conflict resolution process and contribute to the sustainability of the progress achieved between conflict parties. Secondly, in an area such as the Eastern neighbourhood, where the EU adopts a so-called 'everything but institutions' approach, by withholding its most valuable foreign policy instrument - membership - the role of local actors and their expectations comes to the fore. In this sense, Gordon, Peen Rodt and Wolff (2008) claim that the EU's chances for success in managing, resolving and preventing further conflict in its Eastern neighbourhood largely depends on the cooperation of the respective governments in these countries.<sup>1</sup> The investigation of the dynamics between EU and local actors thus becomes crucial for a better understanding of the EU's performance as a peacebuilder in the Eastern neighbourhood. A clarification about what is understood by 'cooperation' between EU and local actors is necessary at this point. As the academic literature offers scarce guidance as to how the notion of

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<sup>1</sup> The authors identify two factors which influence the EU's ability to act effectively as a conflict manager in the Eastern neighbourhood: the cooperation of local governments and the role of Russia (Gordon, Peen Rodt and Wolff, 2008).

'cooperation' could be unpacked and explored analytically to account for the relations between various actors (sub-state, national, regional, international), I turn to semantics. According to the Oxford Dictionary, the verb 'to cooperate' means: 1. To work jointly towards the same end; 2. To assist someone or comply with their requests. This definition provides a good starting point for developing a theoretical understanding of the idea of 'cooperation' between EU and local actors. It points out to two essential dimensions of an effective interaction between actors: the necessity to share the final goal of their common endeavour and the need to be responsive to the needs and demands of each other.

In what follows this paper aims to investigate the interactions between EU actors on the ground and local actors in the context of two civilian missions – EUJUST *Themis* Georgia and EUBAM Moldova-Ukraine. The purpose is to identify the factors which facilitate and/or inhibit good cooperation between external (EU) and local actors. The paper takes the insights advanced by the peacebuilding literature as a starting point and proposes two types of factors that can account for the dynamics of external (EU)-local interactions within the context of the two peacebuilding operations: local factors and international factors. The following section discusses these explanatory variables and illustrates them with examples from the UN's peacebuilding experience. By using literature on UN peacebuilding missions, this paper hopes to draw some relevant conclusions that can subsequently provide guidance in exploring external-local interactions in the context of EU civilian missions. Unfortunately the literature that looks at the local dimension of EU missions is scant and thus it is necessary to turn to the broader peacebuilding literature (where the UN is incontestably the main international actor) for guidance. Building on the insights offered by the UN's peacebuilding record, the last two sections investigate the relevance of local and international factors in explaining EU-local cooperation in the context of the two civilian missions.

## **2. Explaining the dynamics of external-local interactions**

### **2.a. Local factors**

This assumption argues that aspects related to the host country, such as the poor state of the administration, corruption, governmental policies etc, affect the potential for cooperation between EU and local actors.

#### **➤ Local capacity - Availability of local actors and infrastructure**

The lack of qualified local personnel at civil society level, but most importantly, at governmental level, is one of the main factors undermining cooperation of international missions with local actors. In highly polarised societies which have been subject to extensive violence and destruction this problem is particularly salient as more often than not the basic local structures required to foster such a relationship of cooperation are weak or missing altogether. In East Timor, following the results of the referendum which expressed the population's preference for an independent state, most of the law enforcement personnel (judges, prosecutors, lawyers, judicial support staff) associated with the Indonesian regime had fled the country. As the UN prepared to establish a transitional administration – the UN Transitional Administration in East Timor (UNTAET) – it found itself in the situation of not having a network of local actors to cooperate with. The destitute condition of the East Timorese civil service and, in particular, the judicial sector, closely resembles Kosovo's situation. Here too, as a result of the government's discriminatory policy, Kosovar Albanians were largely excluded from judicial positions. Coupled with the mass exodus of Kosovo's non-Albanian population in the wake of the UN's Mission in Kosovo (UNMIK) deployment, this generated a disintegrating judicial system whereby the only remaining officials were thought to be cronies of the previous regime (Strohmeier, 2001, 49-50). Identifying suitably qualified legal personnel proved to be a tedious and time-consuming task which has surely delayed UN efforts to cooperate with local actors and establish local ownership of the judicial system.

The absence of appropriate infrastructure can sometimes mean that some of the most basic peacebuilding tasks cannot be performed. The UN's experience with building the judiciary in Kosovo and East Timor illustrates how daunting the challenge of building a judiciary from scratch can be. It is not uncommon for territories which have experienced powerful waves of

violence to find themselves literally in ruins at the end of hostilities. In Kosovo most of the courtroom buildings had been devastated by Serb forces as they were withdrawing, while court records were destroyed and office equipment stolen (Caplan, 2005, 61). In East Timor the extent of the devastation was even worse: 70% of all administrative buildings had been torched and looted and virtually all court equipment, records and archives had been lost; in practice this meant that the first judges to return to courtrooms had to work in derelict buildings where the rooms still bore smoke traces on the walls, they had no furniture, computers or even basic legal texts (Caplan, 2005, 61; Chesterman, 2007, 206). Clearly such circumstances are less than favourable for establishing effective cooperation with the locals; in fact, they challenge the mere possibility of such processes taking place at all.

#### ➤ **Local capacity - Suitability of local actors**

When qualified local personnel is available, external-local interactions have a fertile environment to develop; however, this is hardly sufficient for their optimal development. It might be the case that local actors, although present in sufficient numbers and possessing appropriate qualifications, are unsuitable in other respects: they can be unrepresentative, biased towards a specific social group, or otherwise simply perceived as inappropriate by international actors.

One particularly problematic situation emerges when local actors are not eager to become involved in reforms because these would weaken their grip on power by creating opportunities for a plurality of voices to make themselves heard on the political arena. By resisting international attempts to regulate the rule of law framework or backing approaches to reform which in fact break with international standards these actors foster the existence of an unstable and non-functional system. This, in turn, makes the presence of international actors even more necessary and may postpone indefinitely the moment when local ownership can be effectively addressed (Hansen, Wiharta et al, 2007, 7). One of the reasons local ownership of rule of law projects in Sudan was rather weak is the fact that local elites had been reluctant to address priority issues or to involve other local actors in the reform process (El Nagar and Sørbo, 2010, 34). In the North of Sudan, although police forces and judges had benefited from international training, exclusionary and discriminatory practices continued to be the norm. The government exercised an extensive degree of control over local communities by means of its police and

security forces which practically restricted access to justice.<sup>2</sup>

Beyond the issue of the actual appropriateness of local actors for the tasks required by reconstruction and reform processes, there is yet another overarching aspect which bears importance and this is the perceived appropriateness of these actors by the international community. Thus, the two oversight bodies created in Bosnia and Herzegovina - the Public Complaints Bureau (PCB) and the Independent Selection and Review Boards (ISRB) – and whose members should have been Bosnians from the beginning, remained poorly staffed because the United Mission in Bosnia and Herzegovina (UNMIBH) deemed most of the professionals wishing to sit on these bodies unsuitably qualified. Arguably this owed much to the ‘ideal qualifications’ required by the mission (Hansen, Wiharta et al, 2007, 54).

➤ **The local environment (political, social, economic)**

Political, social and economic conditions on the ground, such as governance practices, the state of the public administration, the social composition of the host country, corruption and economic constraints, impact significantly on a community’s ability to engage in effective cooperation with international actors.

The efforts of the international community to involve local actors in the administration of their own state may seem misguided when there is no national consensus over fundamental issues such as the applicable law in the respective territories. The debates surrounding this issue in Kosovo are a good case in point. In its drive to avoid the complications of a legal vacuum and the burden of local lawyers having to become familiar with a foreign legal system, UNMIK decided that the applicable law in Kosovo would be the same that had operated before Security Council Resolution 1244. However, this decision sparked heated controversies among local politicians and legal professionals who regarded the legal framework used between 1989 and 1999 as one of the instruments for discriminating against Kosovar Albanians. As such, not only that the Kosovar Albanian representatives threatened to end cooperation with the UN, but the newly appointed judges and prosecutors resigned, asking a return to the legal framework applicable in Kosovo before its autonomous status had been withdrawn within Serbia. These steps were surely of a nature to destabilise any efforts by the UN to cooperate with local actors.

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<sup>2</sup> In this sense, a statement by the chief of Al Atmur Village east of Kadugli, in South Kordofan State is illustrative: ‘A group from UNDP visited the village some time ago and gave orientation on the opportunities for the legal aid services, but we have no legal problems because the native administration deals with the small problems and we have police station to deal with big ones.’ Thus, the locals are discouraged from resorting to legal aid services and emboldened to rely on traditional administrative structures or the local police station (El Nagar and Sørnbø, 2010, 33)

Although UNMIK ultimately promulgated a regulation that complied with the requests of the Kosovar Albanian community, the strong contestation that its initial decision met resulted in its plans for legal training courses and creating a judicial training centre being seriously obstructed (Strohmeier, 2001, 56-59).

A further obstacle in the development of local ownership is the instability of political regimes that often characterises countries which are just emerging from conflicts or undergoing fundamental structural changes. External actors are thus in the inconvenient position of having to work with sometimes rapidly changing governments which can greatly complicate the implementation of ownership. The United Nations Stabilization Mission in Haiti (MINUSTAH) had to cope with the country's government falling twice within the space of three years and the replacement of the Minister of Justice who had closely cooperated with the mission on legislation meant to guarantee the independence of the justice system. This situation raised the question of how MINUSTAH will succeed in cooperating with the new government over objectives that had been established under the previous one. Balancing the need to secure the support of local political actors for reform programmes with the equally vital need to ensure sustainability of reform efforts has indeed proved to be an enormous challenge for the UN mission (Gauthier and Moita, 2010, 21).

Good cooperation is put in motion by the bond of trust that must necessarily develop between international and local actors. Corruption subverts precisely this vital bond by making it difficult to know who of the local actors can be trusted. As corruption was a major and seemingly justified concern in Liberia, the UNDP directly administered all UN funds, contrary to the requirements of local ownership which would have recommended that these funds be transferred to the national authorities which would distribute them according to their priorities. The UN's fiduciary concerns may have been warranted, however, this approach undermines the scope for local ownership (Andersen and Sending, 2010, 25).

## **2.b. International factors**

Cooperation between international operations and local actors is also affected by international aspects such as the mission's resources, its strategic choices and institutional constraints.

### **➤ International capacity - Availability and suitability of international personnel**

It is easy to understand how insufficient and inappropriate international capacity can

negatively impact the potential for good cooperation between international and local actors. In East Timor the UN encountered serious difficulties in recruiting a sufficient number of experienced trainers and mentors with a background in civil law. This has resulted in newly appointed East Timorese judges, prosecutors, and public defenders not being able to benefit from sufficient legal training and assistance and hence taking very little ownership of the justice system (Strohmeyer, 2001, 55-56). The experience in Kosovo also shows that, while international experts can play a crucial role in transferring much needed skills and knowledge at the local level, numbers are important: unless international judges and prosecutors are deployed in generous numbers, it is likely that they will be too preoccupied with their own tasks to be able and willing to provide training to others (Caplan, 2005, 63).

Apart from the availability of international experts in sufficient numbers, their skills and expertise, or rather lack of, is also at the basis of many external-local cooperation problems. Both in East Timor and Kosovo the internationals were often not in a position to train and mentor the locals because they too lacked the necessary expertise or were limited by language problems (Caplan, 2005, 63; 100). In addition, training and mentoring activities were often carried out without proper previous organisation so that most of those undertaking these tasks lacked suitable training as instructors. This was a major shortfall in training the East Timor police forces, an initiative which proved insufficient and uncoordinated, despite the sound logic underlining it (Hansen, Wiharta et al, 2007, 51). The lack of local knowledge – be it of the language, historical traditions, politics or cultural specificities of the host countries – can be a considerable obstacle preventing international operations from conducting effective policies and cooperating with local actors. The UN was to a large extent ignorant of traditional socio-political structures in East Timor and consequently treated the country's institutional set up as a *tabula rasa* (Caplan, 2005, 119). This attitude on the part of international officials working for the UNTAET, but also members of international NGOs, had detrimental effects on the first major civic education initiative proposed by the UN which ended up being rejected by the East Timorese. Local ownership was clearly undermined in this situation as local actors felt their willingness and ability to play an active role had been sidelined by internationals (Chesterman, 2007, 199-200).

### ➤ **Strategic errors**

International organisations often display a flagrant lack of strategic vision in the way they approach peacebuilding objectives. This may be caused by the lack of experience in conducting

certain types of operations, an erroneous application of 'lessons learned' or other types of mistakenly designed and implemented policies that do not take the local context enough into account.

In the context of peacebuilding missions it is vital for international actors to have a good understanding of conditions on the ground and particularly of the local actors they will need to cooperate with. This is where fact-finding missions come in – their role is to compile information about the nature and extent of the conflict, the most pressing needs of the affected country, local administrative and institutional capacity, and to recommend the most appropriate course of action. Fact-finding missions can impact external-local interactions in two principal ways: on one hand, they can establish the extent to which local ownership is feasible in a particular society and, on the other hand, by making use of local input, they can ensure that subsequent international interventions will be better tailored to local needs (Hansen, Wiharta et al, 2007, 19). However, international missions that have been based on inaccurate or insufficient data are not uncommon and here one of the most illustrative cases in point is the rule of law programme in Afghanistan. Initial fact-finding efforts failed to identify clearly the causes of conflict, the plurality of stakeholders with diverse interests and were limited to the capital. Consequently, a number of local actors have felt disconnected and only marginally involved in these processes and have criticised them for being 'Kabul-led' (Hansen, Wiharta et al, 2007, 21).

### ➤ **Structural constraints**

International organisations rely on intricate bureaucratic networks which function according to what are sometimes inflexible and constraining rules. The system of governance that guides the operation of UN peacebuilding missions is extensively UN-oriented, placing the authority to establish priorities and make and implement decisions with the UN (either at country level or in New York) (Andersen and Sending, 2010, 28). Moreover, the UN's vast system of regulations and routines often proves overwhelming for local actors who are not familiar with such 'working styles' and who end up being relegated to the sidelines, while the UN takes over all the work (Andersen and Sending, 2010, 26-27).

As some of the interviewees expressing opinions on MINUSTAH's performance pointed out, in Haiti 'ownership has been "sacrificed" for the sake of results.' The pressure from donors to achieve immediately noticeable and quantifiable outcomes contradicts the slow pace and sustainable nature of reform efforts which are required in order to establish ownership (Gauthier and Moita, 2010, 21). In Afghanistan, too, the Transitional Administration followed a

strict timeframe which some claim has compromised local legitimacy by failing to include all interested local parties in peacebuilding efforts (Hansen, Wiharta et al, 2007, 32). Indeed, involving local actors may cause delays and incur higher costs but, in order to achieve genuine local ownership, timeframes should be adjusted to allow for local preferences to crystallise and manifest. Although more costly (both in terms of time and financially) in the short-term, this approach will pay off in the long-term because the reforms will have broad local support and are likely to be more sustainable.

### **3. External-local interactions in the context of EUJUST *Themis* Rule of Law Mission in Georgia**

#### **3.a. EUJUST *Themis* – a background to the mission**

Prior to the 2003 Rose Revolution, the EU's engagement in Georgia was essentially technical and economic, lacking completely a CFSP dimension which was felt would have clashed with Russia's influence which loomed large over the region (Merlingen and Ostrauskaite, 2009, 11). However, in the wake of the positive developments triggered by the Rose Revolution and as a result of the EU Security Strategy which called for a more active interest in the South Caucasus, an EU Special Representative for the South Caucasus was appointed in 2003. The following years saw the development of a more prominent role of the EU in Georgia through the deployment of the first ever rule of law mission in the CSDP framework, EUJUST *Themis*, and the progressive expansion of the EUSR's mandate.

EUJUST *Themis* represented a premiere in the EU's conflict resolution repertoire from several points of view: it was the first rule-of-law mission deployed by the EU under CSDP and the first ever CSDP operation in the post-Soviet space (Kurowska, 2009, 202). Its rationale can be understood as responding to both external and internal imperatives of the EU. On one hand, it was meant to show the Union's support for Georgia's recently embarked upon path of reform and democratisation in the aftermath of the Rose Revolution. On the other hand, it was considered a good test case for the EU's civilian crisis capabilities in the area of rule of law and it was expected that the lessons learned during the mission would be 'developed and implemented in other possible future ESDP (sic!) operations' (EU Council Secretariat, 2005). On 28 June 2004 the Council adopted Joint Action 2004/523/CFSP which

officially established the EU Rule of Law Mission in Georgia, EUJUST *Themis*, expected to begin on 1 July 2004. The role of EUJUST *Themis* was 'to contribute to Georgia's stability and transition by supporting overall coordination of the relevant Georgian authorities in the field of criminal justice reform' (Helly, 2006, 87). The mission's mandate was generous and provided for assistance to the Georgian government in reforming the criminal justice sector, particularly: guidance for the new criminal justice reform strategy, support for the Georgian authorities in their efforts towards judicial reform and anti-corruption, support for the planning of new legislation, support for international and regional cooperation in the area of criminal justice (EU Council, 2004b).

### **3.b. Local factors**

#### **➤ Local capacity - Suitability of local actors**

The one factor which is most commonly identified as having negatively affected the potential for cooperation between EU and Georgian actors is the unwillingness of the latter to effectively engage in the work of EUJUST *Themis*. It has been argued that the mission was from the very beginning handicapped by the half-hearted support of the Georgian authorities. The eight senior European experts co-located by *Themis* in Georgian institutions and tasked with offering assistance and consultation on a daily basis encountered difficulties and had to face the lack of confidence of their counterparts. EUJUST *Themis* lacked solid credentials as a reliable EU actor among Georgian elites and had to work hard to gain access to high-level Georgian experts in the institutions where its members had been co-located (Kurowska, 2009, 205).

In accordance with the objectives set out in the OPLAN, a high-level group was established by the decree of the President of Georgia No 914 of October 19, 2004 in order to develop a reform strategy for the Georgian criminal justice system. The working group was headed by the Minister of Justice of Georgia Mr Kemularia and, apart from *Themis* experts, it included the Secretary of the National Security Council, the Secretary of the High Council of Justice, the Minister of Finance, the Chairman of the Supreme Court, the General Prosecutor, the Public Defender, the Head of the Legal Affairs Committee of the Parliament, two Members of Parliament, a Member of the working group on the Criminal Procedure Code, a representative of the Liberty Institute and the NGO "IRIS Georgia" (EU Council Secretariat, 2005). The reform strategy would

focus on aspects such as: necessary changes in the legislation, including the Code of Criminal Procedure; changes in the competences and organisation of key institutions; and changes in the education and training of legal professionals. To this end, nine subgroups were created to cover relevant areas: 1) Police authorities and crime prevention; 2) the Prosecution; 3) the Bar and Advancement of the Legal Aid System; 4) the Judiciary; 5) Reforms of the Criminal and Administrative Violations' Codes; 6) Execution of Penalties; 7) the Criminal Procedure Code; 8) Reform of the Public Defender's Institute; 9) Reform of the Education of Lawyers (Working Group, 2005, 2). Unfortunately, both the high-level working group meant to design the judicial reform strategy and the sub-groups in charge with specific issues hardly ever met (Kurowska, 2009, 206).

As a result of these challenges Georgian authorities failed to meet the April 2005 deadline for their contribution to the draft strategy. This led EUJUST *Themis*, 'in a clear violation of the principle of local ownership', to go ahead with drafting the police part of the strategy without the participation of the Georgian side, which the latter accepted (Kurowska, 2008, 103). Following the invitation of the Minister of Justice Konstantine Kemularia to the PSC in Brussels, in mid-May the Georgian authorities submitted their contribution to the reform strategy (Kurowska, 2009, 206). On 20 May 2005 the government issued order No 195 which endorsed the criminal justice strategy and established a Steering Group for the development of the implementation plan (Briefing EU Council, THE/03 update 3, 22 July 2005). The revised draft – the National Strategy for Criminal Justice Reform - was adopted by President Saakashvili by decree in July 2005, without having previously consulted the Parliament (Kurowska, 2008, 104).

Overall, the political and administrative involvement of Georgia's authorities in the reform of the criminal justice system, which represented no less than the cornerstone of EUJUST *Themis*'s mandate, was weak and inconsistent. Civil servants were barely aware of the mission's existence and, although the role of young Georgian legal experts who cooperated with *Themis* has been highly praised, they were but a handful of dedicated individuals, which resulted in the reform strategy being drafted by a few individuals rather than large constituencies (Helly, 2006, 96). The fulfilment of the mission's mandate, as well as the reform strategy drafting process itself, were from the very beginning hampered by the lack of commitment, vision and consensus amongst Georgian elites.

➤ **The local environment (political, social, economic)**

Georgian authorities were not eager to push ahead with the reform strategy not least because the new government of Mikhail Saakashvili was dedicated to replacing the supporters of the old administration with its own cronies, mostly inexperienced professionals drawn from non-governmental organisations (Kurowska, 2008, 102). This meant constant staff reshuffles in the judicial system which, apart from failing to nurture reform efforts, also made *Themis* members question the independence of the judiciary (Helly, 2006, 97). This was symptomatic of the state of disarray in which the Georgian domestic political landscape, in general, and the criminal justice system, in particular, found themselves.

There was also a sense of diverging legal visions between the mission and its Georgian counterparts which led *Themis* to oppose some legislative proposals by the Georgian administration which were thought to create loopholes for corruption. Specifically, these legislative proposals involved plea bargaining, jury trials and the creation of an ombudsman with prosecutor-like prerogatives, the first two of which were considered by the EU operation as American-inspired and unsuitable for an unconsolidated justice system (Kurowska, 2008, 103). The prosecutor profile of the ombudsman was deemed to be equally inappropriate but for different reasons: the far-reaching competences that this position implied were reminiscent of Soviet-era traditions (Kurowska, 2009, 206). It was becoming evident that Georgian policy-makers had been wavering between two legal philosophies and there was little agreement over which one would inspire the emerging reform strategy. The first school of thought was essentially European, having been heavily influenced by European law and was promoted by the Georgian Young Lawyers' Association which collaborated with German experts from GTZ. The second one drew on the Anglo-American system and was supported by the Liberty Institute, an NGO with ties with the American Bar Association (Helly, 2006, 96). The mission was also highly critical of the amendment of the constitution which did little in the way of reinforcing checks and balances but, on the contrary, merely strengthened the executive branch (Kurowska, 2008, 103). Thus, the lack of national consensus over the direction of Georgia's nascent rule of law reforms not only limited the scope for effective cooperation with EUJUST *Themis* experts, but created friction between EU and Georgian actors.

### **3.c. International factors**

### ➤ **International capacity - Availability and suitability of international personnel**

*Themis's* structure comprised the Head Office in Tbilisi, composed of the Head of the Mission and staff, and senior legal experts co-located in various rule of law institutions and assisted by Georgian legal assistants. The Head of the Mission was nominated on 30 June in the person of the French judge Sylvie Pantz, whose international field experience included being a member of the High Judicial and Prosecutorial Council in Bosnia and Herzegovina, acting as Director of Judicial Affairs and Co-Minister of Justice in UNMIK Kosovo and being the Investigations Commander at the Office of the Prosecutor of the International Criminal Tribunal for Former Yugoslavia (Ruiz Campillo, 2005, 9). Her duty was to see to the day-to-day management of the mission's activities and be responsible for staff and disciplinary matters. The Head of the Mission reported to SG/HR Javier Solana through the EU Special Representative for the Southern Caucasus, Heikki Talvitie (EU Council, 2004a, 2). As far as mission experts are concerned, they remained under the authority of the member states by which they were seconded.<sup>3</sup> A total of eight European rule of law experts were co-located with Georgian authorities and were given a one-year mandate to assist their local counterparts in evaluating the justice system, drafting a criminal justice reform strategy and elaborating an implementation plan (Merlingen and Ostrauskaite, 2009, 22). The European experts were co-located at the following key positions within the Georgian authorities: the Ministry of Justice, the Ministry of Interior, the General Prosecutor's Office, the Supreme Court of Georgia, the High Council of Justice, the Public Defender's Office, the Court of Appeal Tbilisi and the City Prosecutor's Office Tbilisi (EU Council, 2004a, 3). The practice of co-location has allowed for highly skilled European experts to contribute to the formulation of a national criminal reform strategy (Kurowska, 2009, 208). The effectiveness of this process has been hampered, however, by insufficient local knowledge and lack of familiarity with conditions on the ground. In order for co-location to enable the development of trust-based relations with local actors and to foster home-grown solutions, national seconded staff should receive training on local specificities (Helly, 2006, 101).

### ➤ **Strategic errors**

The Council decided in March 2004 to send an exploratory mission to Georgia to identify potential problems in the Georgian justice system and assess the need for a rule of law mission. The exploratory team found that Georgia's justice system was in need of international assistance and recommended the deployment of a rule of law mission which would focus on reforms

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<sup>3</sup> Denmark, Germany, Italy, Latvia, Lithuania, the Netherlands, Poland, Sweden.

targeted at rendering the system more coherent and effective, including the reform of the penitentiary system (Kurowska, 2009, 204). Next, at the advice of CIVCOM to the Political and Security Committee (PSC), a proper Council fact-finding mission was sent to Georgia between 10 and 21 May 2004. In particular, the mission was to pay special attention to: the added value of a rule of law mission to the reform of the justice system in Georgia; the need to ensure coherence and complementarity with other EU instruments and international actors on the ground; the adequacy of the EU's capabilities for such a mission; the financing procedures; and the security of personnel (CIVCOM, 2004). Although the recommendations made by both the exploratory and the fact-finding missions identified the major problems in Georgia's criminal justice system, the fact that they were exclusively staffed with EU experts limited the local adequacy of the proposed solutions and offered an EU-centred perspective on Georgia's needs. It would have been preferable that these preparatory missions include country and sectoral experts from outside the EU and that the final design of EUJUST *Themis* incorporated their recommendations (Helly, 2006, 101).

➤ **Structural constraints**

EUJUST *Themis* was deployed to Georgia on 16 July 2004 but the start-up of the mission proved problematic. One issue which raised difficulties had to do with the Commission's procurement rules, notorious for being cumbersome and slow. As civilian CSDP missions are financed through the CFSP budget, which is managed by the European Commission, *Themis* had to comply with these highly inconvenient procedures. The delays resulted in the mission not having computers for the first three months of its activity. In addition to this, EUJUST experts were initially not allocated desks in the institutions where they were co-located (Kurowska, 2008, 102). These logistical shortcomings contributed to a delay in finalising the reform strategy and thus achieving the end goal of the mission (Kurowska, 2009, 207).

## **4. External-local interactions in the context of EU Border Assistance Mission to Moldova-Ukraine (EUBAM)**

### **4.a. EUBAM – A background to the mission**

The EU's involvement in the Transnistrian conflict since 2003 and the progressive stepping up of its interest and actions have been triggered by the enlargement process which would bring Moldova at the EU's borders, the EU's increased capability to contribute to stabilisation through the CFSP and CSDP and the Orange revolution in Ukraine which encouraged more EU involvement (Popescu, 2005, 33). Following the inclusion of Moldova in the ENP in 2004 and the signing of the Action Plan in February 2005, the EU sought to increase its profile in the conflict and enhance the coherence of its policy through the appointment of an EU Special Representative to Moldova with a mandate for conflict resolution and the opening of a European Commission delegation in Chisinau. At the end of 2005 the EU decided to launch EUBAM, a mission which, although not undertaken in the context of CSDP, was meant to 'play an important role in building preconditions for seeking a peaceful settlement of the Transnistrian conflict' by 'reducing the risk of criminal activities such as trafficking in persons, smuggling, proliferation of weapons and customs fraud' (European Commission, 2005b). EUBAM, similarly to EUJUST *Themis*, is to be regarded as a novelty in the EU's civilian crisis management toolbox. At the time of its deployment it not only had an innovative mandate merging border monitoring and capacity-building, but represented a unique case of a mission which was neither a distinct CSDP mission (although the EU Council exercises political oversight), nor an exclusively EC-managed operation (due to the participation of EU Member States) (Dura, 2009, 282).

On 2 June 2005 the Presidents of Moldova and Ukraine addressed a joint letter to High Representative Javier Solana and President of the EC Jose Manuel Barroso requesting assistance in capacity building for border management on the entire Moldovan-Ukrainian border. Specifically, assistance was requested in order to establish an 'international customs control arrangement and an effective border monitoring mechanism on the Transnistrian segment of the Moldovan-Ukrainian State border' (EUBAM Progress Report 2005-2010, 5). According to the MoU, the overall objectives of the mission were: contributing to the implementation of the EU ENP Plans with Moldova and Ukraine and the Council decisions on Moldova and Ukraine; developing appropriate operational and institutional capacity in both countries in order to provide for effective border control and surveillance; contributing

to the resolution of the Transnistria conflict by reducing the risk of illicit activities and security threats; improve transnational cooperation on border management. (MoU, 2005, 7-8).

#### **4.b. Local factors**

##### **➤ Local capacity - Suitability of local actors**

If the unwillingness of the Georgians to work with *Themis* experts towards achieving the agreed reform goals is deemed to be the one factor that mostly hindered external-local cooperation, in the case of EUBAM it was precisely the eagerness of Ukrainian and Moldovan actors to support the mission's actions which decisively contributed to effective cooperation between the parties. In addition to performing targeted border monitoring tasks, EUBAM has proved capable of accommodating itself to the local context, identifying particular needs within individual partner services and using this knowledge to formulate recommendations for future activity (Kurowska and Tallis, 2009, 61). EUBAM technical assistance and advice has contributed to a number of impressive captures involving large-scale meat-smuggling, but also the smuggling of cigarettes and alcohol and the dismantling of human trafficking networks (Dura, 2009, 283). Moreover, the mission succeeded in building trust-based relationships with national counterparts and to acquire much valued understanding of local circumstances, which lay the foundations of a fruitful cooperation (Kurowska and Tallis, 2009, 62).

It is the political will in Chisinau and Kiev which is credited for playing a decisive role in ensuring the success of the mission (Dura, 2009, 284). Despite initial reticence among some of Moldova and Ukraine's business and political elites with economic interests in the region, the political leaders in both countries proved able to overcome this impediment and ensure a smooth cooperation with EUBAM (Dura, 283). At present EUBAM has come to be seen as a success story and a model to be replicated if the EU wants to continue its constructive engagement with its Eastern neighbours.

##### **➤ The local environment (political, social, economic)**

A major issue which had the potential to undermine effective cooperation between Ukrainian, Moldovan and EU actors was corruption. Deeply engrained in border patrolling practices, the phenomenon seems to extend over an intricate network leading to Kiev: it is assumed that the headquarters in Kiev, which are informed in advance of border patrols

operation plans, pass on the information to smugglers who can subsequently plan their activities accordingly (Isachenko, 2010, 14). The challenge of poor inter-agency and cross-border cooperation is one more factor that contributes to creating a facilitating environment for corruption. Nonetheless, EUBAM can be said to have managed the situation in exemplary fashion. Not only that it hasn't allowed for corruption to weaken the potential for cooperation, but it has used the fight against corruption as a cause around which both Ukrainian and Moldovan actors rallied. The mission identified joint operations between customs, border guards and police as 'an opportunity to reinforce the anti-corruption message through the promotion of peer accountability' (EUBAM Annual Report 2005/2006, 13). Moreover, all the partner services introduced a range of preventive measures meant to reduce corruption: a rotation system of personnel, regular training events, usage of CCTV monitoring, psychological tests, creation of databases for individuals involved in corruption cases, 'undercover' officers to detect such cases and a new remuneration system to encourage professional behaviour (EUBAM Progress Report 2005-2010, 14).

#### **4.c. International factors**

##### **➤ International capacity - Availability and suitability of international personnel**

A particular issue that initially emerged as an obstacle for the mission's effectiveness and the potential for cooperation with local actors was the lack of cross-border cooperation between the Moldovan and Ukrainian border guard and customs services, but also the poor inter-agency cooperation within partner states (Kurowska and Tallis, 2009, 55). The problem was acknowledged early on by EUBAM which observed that 'the top-down, centralised structures and organizational cultures that exist in counterpart services mean that agency co-operation is still largely the preserve of the central level of each agency' which is likely to cause 'a residual hesitance at the local level where it seems that a fear of overstepping competence often overweighs perceived potential benefits' (EUBAM Annual Report, 2005/2006, 15). As far as cross-border cooperation is concerned, the poor record is partly explained by the perception of 'unequal access' to resources, with Ukraine possessing a relatively sophisticated border control system as opposed to Moldova's impoverished services (Kurowska and Tallis, 2009, 54). Having duly taken account of this challenge, EUBAM set out to enhance the level of cross-border and inter-agency cooperation considering as it did that 'an integrated approach to justice, law enforcement and border management is the best way to overcome the multi-faceted challenges

of modern border management' (EUBAM Annual Report 2005/2006, 15). As part of an Integrated Border Management (IBM) strategy, EUBAM organised joint border control operations, common border security assessments, joint working groups, joint public information activities, exchange of customs pre-arrival information and exchange of information between the Border Guard Services (EUBAM Progress Report 2005-2010, 5). Joint border control operations such as FOCUS and FOCUS 2 have allowed Moldovan and Ukrainian border guards to acquire new skills and techniques from EU colleagues and have contributed to the development of a data exchange system between Moldova's and Ukraine's customs services which resulted in a 85-90% level of shared data (Dura, 2009, 283). This is significant as data-sharing has not only improved operational coordination, but has also enhanced trust-based relations between services and has helped curb corruption (Dura, 2009, 283). Thus, EUBAM has succeeded in bringing together relevant Moldovan and Ukrainian actors and instilling them with discipline and a much needed spirit of cooperation (Kurowska and Tallis, 2009, 54-55).

Another instance which highlighted the professionalism of EUBAM staff was revealed in the early stages of the mission. The Ukrainian side had initially been suspicious of the EU operation and reluctant to cooperate with the mission staff. This was arguably due to the fact that Ukraine has a fairly sophisticated border control system and was weary of the EU encroaching on its national prerogatives. Aware of their position, Ukrainian border guards were not comfortable taking advice from EU experts from the Baltic states, who had been their colleagues in the former Soviet Union. On the other hand, Moldova had completely different expectation from EUBAM from the very beginning. The country's poor state of the border guards services and the desire to re-integrate Transnistria had generated favourable attitudes towards the mission. Eventually, the relationship with the Ukrainian side also improved, developing into a partnership based on mutual confidence (Dura, 2009, 284). EUBAM proved to be extremely skillful at managing these initial negative expectations by making good use of the instruments deployed on the ground. It was the diversity of the personnel, their competences and willingness to engage the Ukrainians, which led to a fruitful cooperation between the two sides.

### ➤ **Strategic errors**

Following the Moldovan-Ukrainian requests for assistance, there was agreement at the Commission's level and among the member states to respond positively to what was considered a 'unique request'. As a consequence, a joint EU Council Secretariat/Commission

Fact-Finding Mission was sent to Moldova and Ukraine between 23 and 29 August 2005 (European Commission, 2005c, 2). The mission found that accounts of arms trafficking and major illegal migration routes were most likely overstated but that vehicle trafficking and smuggling of goods were overwhelmingly present (Kurowska and Tallis, 2009, 49). It recommended that the EUSR's team be enhanced with border control experts and strongly supported the Commission's earlier proposal to establish a border assistance mission as an EC project. Although this fact-finding mission suffered from the same shortcomings as the one which predated EUJUST *Themis* in Georgia, being solely staffed with EU experts (albeit both Commission and Council experts), here the lack of local input at the pre-deployment stage had less severe consequences than in the Georgian case. This initial limitation was compensated by the ability of EUBAM's personnel to quickly adapt to local circumstances and by its 'learning by doing' approach. The mission was exceptionally apt at rapidly gaining understanding of the local context and building trust-based relations with the locals, which went a long way towards enhancing its work.

➤ **Structural constraints**

Unlike EUJUST *Themis*, EUBAM did not have to deal with the difficulties that stem from CFSP funding procedures. In order to get the mission deployed as fast as possible, due to a number of political factors offering a brief window of opportunity for action, the EU Commission made use of the EU's Rapid Reaction Mechanism (RRM) established by Council Regulation (EC) No 381/2001 which allowed it to respond rapidly and efficiently to crisis situations. As such the Commission proposed €4 million to be committed to EUBAM under the RRM, which allowed the mission a smooth deployment (European Commission, 2005c, 2-3). Nonetheless, EUBAM confronted its own structural constraints, benefiting from little institutional capacity initially invested in the headquarters in Odessa. Once again, the mission's staff proved that their 'can do' attitude has the potential of making a difference where unfavourable objective conditions seem to prevail. It has been argued that 'the handful of people launching the operation met for the first time on the day of the official inauguration and...got down to working out what their task was about' (Kurowska and Tallis, 2009, 56).

## 5. Conclusion

The analysis of the local and international factors which can potentially affect the chances for good cooperation between EU and local actors in the context of civilian missions offers important insights into when and under what circumstances effective interaction can be expected. The case studies of EUJUST *Themis* and EUBAM reveal an interesting dynamics of the external-local relationship, emphasising the delicate balance of this interaction and its susceptibility to both international and domestic factors. The main aspect which appears to have undermined cooperation between *Themis* experts and their Georgian counterparts is the latter's unwillingness to actively engage in the development of the criminal justice system reform. Another local factor which limited the scope for cooperation with the EU mission was the state of disarray in which the Georgian political establishment found itself at the moment. The political situation was characterised by a certain degree of instability following the change in government brought about by the Rose Revolution which also implied a lack of national consensus over the proposed reforms. On the international side, it can be argued that the EU's approach to managing EUJUST *Themis* is also partly responsible for the difficult cooperation with the Georgian authorities. The mission's staff displayed insufficient local knowledge and was slow to adapt to local circumstances, the role of local actors was largely dismissed in the preparatory stages of the operation and rigid funding procedures delayed the actual commencement of the mission's work and, thus, its opportunity to forge good relations with Georgian actors. EUBAM presents a considerably distinct record of cooperation with local actors. Unlike EUJUST *Themis*, the border assistance mission to Moldova-Ukraine developed commendable relations with local counterparts. In this case as well, the suitability of local actors proved paramount and was the factor which defined the subsequent external-local interactions. If Georgian actors were reluctant to offer their support to the EU mission, Moldovan and Ukrainian authorities acted in a laudable spirit of cooperation and demonstrated eagerness to contribute to the successful completion of EUBAM's mandate. There were, however, local factors which challenged this promising relationship between EU, Moldovan and Ukrainian actors, such as the pervasive corruption in the customs and border guards services, as well as the lack of inter and intra-service cooperation across and between Moldova and Ukraine. Nevertheless, the potential damaging effects of this situation were countered by the professionalism with which EUBAM staff acted. The suitability of international personnel emerges here as an equally important factor as the appropriateness of local actors. Not only that EUBAM designed an anti-corruption strategy which brought Moldovan

and Ukrainian actors working together, but the staff's ability to understand local specificities and their determined, but cooperative, attitude was able to counter some of the strategic errors and structural constraints of the mission.

What this analysis seems to indicate is that none of the factors enumerated as being relevant for the way in which external-local interactions develop operate in isolation. There are complex ways in which the local and international realms combine to produce more or less cooperative relations between local and external actors. It is possible that similar local factors such as the disorderly state of the political environment have different effects on external-local interactions: while in Georgia the constant staff reshuffles impacted negatively on *Themis's* cooperation with local actors, in Moldova and Ukraine the instability brought about by changes in government was offset both by the support of the local parties for the proposed reforms and the pro-active and collaborative attitude of the mission's personnel. Clearly the two factors which emerge as most important for the relationship between EU and local actors are the suitability of domestic actors at the local level and the suitability of EU actors at the international level. If the relevant EU and local actors are not well trained, do not possess the appropriate skills for the task at hand and are not willing and eager to participate in a given common project, the prospects for good cooperation between the two parties is slim and so are the chances for the overall success of an international mission. The EU should thus invest more in providing its mission experts with appropriate training and, crucially, with local knowledge and understanding of political and cultural specificities. This might prove helpful in gaining the hearts and minds of seemingly uncooperative local actors. This being said, the aptitudes and inclinations of EU and local actors are highly subjective factors and sometimes even the best trained and well-intentioned of them will fail to forge the much-desired effective cooperation with their counterparts. Individual personalities play a crucial role here and this is an aspect which can hardly be controlled for. This is why the EU should strive to ensure the best possible objective conditions for the deployment of the mission, learning from previous strategic errors and attempting to alleviate structural constraints.

This paper has offered some insights into how cooperation between EU and local actors works in the context of the Union's civilian missions in its Eastern neighbourhood. Its conclusions, however, should not be unquestionably extended to other cases of civilian missions in distinct areas, where different dynamics might be at play. The findings are a long way from providing a solid and coherent framework for the study of external-local dynamics in the context

of EU CSDP missions, but it opens up an area of investigation which is likely to offer interesting perspectives on the EU's role as an international actor.

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