Under Construction: ESDP and the 'Fight Against Organised Crime'

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Abstract

This paper discusses the phenomenon of 'organised crime' as a matter for EU foreign and security policy. Primarily aimed at searching for conceptual guidance, the first part draws on literature on criminology and policing, presenting two different theoretical perspectives for analyzing the phenomenon of 'organized-crime fighting', a utilitarian and a social constructivist one.

Thus, organized crime did not appear to fall under the job description of CFSP/ESDP, an institution which appeared to be both a paper tiger (compared to NATO) and an unidentifiable research object (compared to everything else). This

important lines of argumentation, strongly influenced by the writings of Michel Foucault.

> serious crimes or offences...in order to obtain, directly or indirectly, a financial or other material benefit (United Nations, 2000: Art. 2)

The document goes on defining a 'structured group' rather loosely as "a group that is not randomly formed…and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure" (Ibid.). It is not difficult to see how this definition is rather all-encompassing (Levi, 2002).[7] The same can be said for the various academic attempts to grasp 'organized crime' through concepts such as 'system' (Armao 2003) or 'network' (Castells 2000). While these different conceptualizations of organized crime tend to grasp it as a structural phenomenon, as mentioned above the actorness of crime is defined first and foremost through a practice. This is also reflected in the UN definition when it defines 'serious crime' as a conduct constituting an offence punishable by at least four years of prison (United Nations, 2000). Of course, this begets the question: who decides on this threshhold (and whose prison)?

Finding an answer is not made any easier by the fact that the practice of organized crime is generally seen as be a *transnational* or *cross-border* phenomenon. Thus article 3(2) of the UN convention defines an offence as transnational if it is (i) committed in more than one state, (ii) committed in one state but prepared/planned/directed/controlled in another state, (iii) committed in one state but involves an organized criminal group that engaenon.

'offenses', and thus responsibilities are connected (or planned) in space and, thus, to what extent the members of the group must actually be 'structured' (Levi 2002: 886). At the same time, second, globalization as a phenomenon of complex interdependence that emphasizes an intimate connection between the local and the global ('glocalization') makes it difficult to exclude any 'local' activity from the list. Thus, transnationa

offering such a service well qualify for committing crim

measures to combat criminal groups (Allum and Siebert 2003; Rees 2003). Another group of countries considered attractive hosts for organized crime are states experiencing significant political and/or economic transition. As Wyn Rees argues, such weak or 'failed' states are "potentially subject to a sustained assault from organized crime groups" in which the three stages described above conflate (Rees, 2003: 117).

There are some problems with conceptualizing criminal organizations as 'predators' attacking societies and spreading like a cancer until (presumably) destroying social order. To begin with, as pointed out before 'organized crime' is better seen as a practice rather than an actor, and as cross-border phenomena practices cannot be externalized, that is, seen as alien or foreign attacking and conquering a

on practices endogenous to society with, for instance, the Sicilian Mafia taking on functions such as policing because official state institutions are deemed inadequate and untrustworthy (Levi 2002: 893; Rees 2003: 116). Furthermore, from a neoliberal perspective the notion of organized crime as a market phenomenon following the logic of supply and demand cannot be seen as 'violating' anything. For business to be 'illegal' it requires agreement that either the goods/services dealt with are 'bad' (such as drugs or prostitution) or that the practices (such as tax evasion) violate political regulations of the market. Thus, the threat of organized crime, from prostitution to money laundering, is framed in violation/subversion of moral conventions and is thus inherently political. In the end, one can only speak of society as a victim and, thus, invoke an image of collective victimhood, by assume,nli   -0idd

fighting organised crime must begin by fostering a common understanding or, at the very least, solidarity regarding the phenomenon.

In some aspects of international criminal law there appears to be a growing consensus as to when rights are violated, as in the case of 'genocide', 'war crimes', or other 'crimes against humanity', symbolized by the establishment of the International Criminal Court (Deitelhoff and Burkard 2005). Yet when it comes to organized crime, understood as an illegal market activity, the definitions provided by the UN (or the EU, for that matter) are not much more than sufficiently vague frames for starting the debate. Ironically, this debate is not facilitated by globalization. Because organized crime is generally seen as riding on the wave of globalization, the threat of organised crime is fuelled by the uncertainties affiliated with the latter – a loss of control, the increase of 'risk', the unraveling of identities. It invites conflating *unfamiliar* behavior with criminality, exacerbating the unease with strangers, in consequence often 'ethnicizing' organized crime as 'Italian', 'Albanian', or 'Russian' to name those prominent within the European discourse (Loader and Sparks 2002). From the 'radical' perspective, such stereotyping turns these groups into victims – not of organized crime but of a discourse that imposes upon them the label of being 'criminal'.

Instruments to address 'Organized Crime'

The two conceptual perspectives (utilitarianism and constructivism) also underwrite different views of which instrum

use of force, are the police and the judicial system (to which one could add institutions of punishment, such as prisons). Yet these two are not neutral actors merely 'enforcing' or 'applying' law. Certainly, the judicial system in its authority to confirm or disconfirm status of victims and criminals by interpreting law partakes in its (re-)creation. And the police, being situated at the gateway to the criminal justice process, has been shown to have "a major impact on what becomes defined as crime, which offences are prioritized, and which sections of the community are portrayed as 'dangerous'" (Bowling and Foster, 2002: 980; Ericson 1982).[9]

Following the two camps outlined earlier, the role of police and judicial institutions as agents of domestic order can be seen as either forming an exclusionary regime limiting personal freedoms, or as an inclusionary system in the service of protecting society.[10] The 'control' theory approach assumes that criminal energy is part of human nature that must be prevented from taking the upper hand. Its utilitarian underbelly focuses on reducing the economic incentives or 'opportunities' by increasing the costs of committing crimes. This is achieved by establishing a structure of deterrence through preventive measures ('target hardening', 'access control', 'surveillance' and 'screening'), a militaristic style of high profile policing with a show of strength, and (the threat) of severe punishment. Because this approach aims at establishing indicators for conditions most likely leading to criminal behavior, it easily slips into a pathological/essentialist approach which targets specific segments of society and attempts to separate the good from the bad apples. Thus, while this approach may also contain educational measures aimed at teaching appropriate behavior to potential deviants, it tends towards an exclusionary strategy and the creation of a divided society.

This contrasts with the inclusionary approach found most explicitly in the 'liberal' or 'communal' model of polic2Tc 0.14391 Tw 12 sui1rp90 0 12 275.6886r7iltheo6.813

is not necessarily based on the utopia of a crime-free society but on the recognition that "it is 'policing' rather than 'police' that is vital to social order" (Bowling and Forster 2002: 981). With 'policing' assumed to be present in one way or another in every (part of) society, the approach focuses on the fact that legitimacy and effectiveness of the institution of the police relies on it being trusted by society. For instance, as Michael Ignatieff observes in the case of the establishment of the London Metropolitan Police, central to its acceptance by the people was a 'tacit contract' between normal neighborhood activities and police objectives (Ignatieff, 2005 (1979): 26). In other words, its effectiveness relied on its ability to work *with* society, thus police and citizens are seen as partners in defining and fighting crime. Effective policing then requires a shared or at least complementary sense of order and, thus, some kind of imagined community between police and society.

It is not difficult to see the challenges arising when applying either view to the fight against organized crime as a foreign policy issue, meaning inter-state cooperation in police and judicial realms. Turning instruments and strategies of domestic law enforcement, whether of the control/exclusionary or the liberal/inclusionary kind, into instruments of foreign policy involves significant adjustments. Beyond the inevitable compromise in sovereignty, how actually do police and judicial agencies perform 'domestic' activities in a 'foreign' context? To pose the question differently, to what extent must 'the foreign' be turned 'domestic' for this work to be effective, and what are the limits for doing so? Following the discussion so far, it should be clear that a shared understanding of the threat of organized crime and, thus, of order and victim(s), is a necessary condition. And one does not have to be a radical constructivist to recognize that here a functionalist approach will quickly face some non-technical problems when dealing with different police and legal 'cultures'. As The Economist recently pointed out when commenting on EU Member States' attempts to increase judicial cooperation among them, "Law is essential to national sovereignty and even identity. Arguments about logic and efficiency and logic are beside the point" (Economist, 2006).

The EU and Organized Crime

From Europol Reports to Presidency Conclusions, wherever the EU discusses security issues, the threat of organized crime is a prominent danger, an "enemy" even that must be defeated (London Statement, 2002; European Council, 2000). The two key

features of the EU's response to this threat have been to increase cooperation 'inside' the EU and to 'harden' the EU's external border(s).[11] Since the 1997 Amsterdam Treaty, Member States moved rapidly towards creating an internal EU order by developing the 'Area Of Freedom, Security and Justice' (AFSJ). Issues of asylum, immigration and external border-control were moved under the domain of Justice and Home Affairs (JHA) followed by a gradual increase of cooperation among Member States in police and judicial affairs thr

The EU's overarching theme for responding to organized crime is the creation and maintenance of a stable (multilateral) order. The 2000 Millennium Strategy recommends "closer cooperation with third states and international organizations" (European Council, 2000: Ch. 2.10) and the ESS advocates the promotion of 'good governance', emphasizing that "it is in the European interest that countries on our borders are well governed" (European Council 2003: 7).[14] While this agenda is also at the heart of what is now called the European Neighbourhood Policy (ENP),[15] the next section will look at how this agenda translates into the specific institutional design of ESDP.

ESDP as 'Civilian Crisis Management'

While the build-up of military capabilities has been the most popular feature of ESDP and was arguably at the centre of the 1998 French-British St. Malo agreement, the formal enactment of ESDP during the 1999 German EU presidency and the subsequent summits in Helsinki (1999) and Feira (2000) specified ESDP's aims and carved out an institutional vision that was different from a conventional military alliance by focusing on 'comprehensive crisis management'.[16] In essenoa

well as in operations conducted by other 'lead agencies' such as the UN or the OSCE. It was agreed that EU Member States should be able to provide up to 5000 police

countries" (Art. 6,3) and "to prepare police forces of the European Union for participation in non-military crisis management" (Art 7,f). The latest step, notably outside the EU, has been the creation of a *European Gendarmerie Force* (EGF), a paramilitary police force of about 800, signed into existence in 2004 by the defense ministers of France, Italy, Spain, Portugal, and the Netherlands, whose headquarters in Italy was opened in January 2006. Somewhat overambitious, the EFG declares itself as the missing link between military and civilian tasks, able to fulfil "all police missions" within the range of the Petersberg tasks and, among other things, capable of substituting, strengthening, training, and monitoring local police. The EU, in a more sober tone, welcomed the initiative as providing personnel "for the more demanding scenarios…to guarantee public security and public order" (European Council, 2004b: 3).

Here we return to the question: whose security and whose order are we talking about? This is a crucial question for eval

Second, the concept of 'comprehensive security' and the strategy contained therein to combine civilian and m

protecting the state against external intervention? W

for another two years. In its authorization for renewal, the EU emphasized that the mission was to be

> refocused on the fight against organized crime, through strengthening BiH operational capacity and assisting in planning and conducting of major and organized crime investigations, and the implementation of police reform, which will create a single structure of policing, improve law enforcement co-operation and reduce corruption (EuropeanCouncil, 2005b: Paragraph 8).

Specifically, EUPM's stated objectives are to establish "sustainable policing arrangements under BiH ownership" by actively supporting, advising, and guiding "where appropriate" the preparation and implementation of police restructuring. The latter is specified, importantly, as the centralization of legislative and budgetary competencies for all police on the state level, ending "political interference" with operational policing and the establishment of "technical policing criteria" on the local level (European Council, 2006). For doing so, EUPM focuses on enhancing the power of the State Investigation and Protection Agency (SIPA), to reform the Ministry of Security and the State Border Service (SBS). It has developed a Directorate for Police Restructuring Implementation (DPRI) whose Stria

Commission.[22] Under the guidance of the EU's Special Representative (EUSR) for BiH,[23] it operates alongside the EU's military mission (EUFOR-Althea) which in

by the EU and trafficking therefore a crime because it is seen as violating the individual's human dignity and its right for self-determination (Ibid, 14). To this is added the smuggling of illicit goods, in particular drugs and small arms, which are seen as destabilizing societies and official state structures in the EU's neighbourhood. A prominent example is the March 2003 assassination of Serbian Prime Minister Zoran Djindjic , who had begun reforming the law-enforcement architecture as part of a declared fight against organised crime. The causes for the rise in organised crime (the trafficking of humans, drugs, and small arms) in the Balkans are seen in the fragmentation of state authority after the violent break-up of Yugoslavia, weak government and economic underdevelopment. In the EU, the groups involved are identified along ethnic lines, with Kosovo Albanians considered the most active group and an "increasing threat" to Member States. Facilitated by their widespread Diaspora and their readiness for "extreme violence", Albanians are assumed to control trafficking routes throughout Europe, sometimes forming alliances with other ('Russian') groups (Montanaro-Jankovski 2005: 11f).

When it comes to the EU's efforts to address the problem, the analytical verdict is one of EU inefficiency. A scan of reports from Europol, credible NGO's, or the International Migration Organisation show no indicators for a reduction in trafficking, nor a decrease in the perceived threat of organised crime to EU societies. There are two basic criticisms of ESDP activities in BiH. First, EU programs aimed at addressing problems of trafficking (of humans, drugs, small arms) are considered too broad to tackle the causes and consequences of those crimes directly. Besides EUPM, other EU initiatives like the *Community Assistance for Reconstruction, Development and Stabilisation* programme (CARDS) are seen as too focused on institution-building while lacking "sufficient operational mechanisms" (Montanaro-Jankovski 2005, 22). Second, missions are seen as partly in conflict with each other and without clear oversight: "there is limited coordination at all levels: on the ground in the region, between EU capitals, between EU institutions and EU capitals, and within the EU institutions in Brussels" (Ibid). Among such disconnects, the missing operational link between EUPM and Europol is maybe the most apparent one. And the parallel presence of EUPM and EUFOR in Bosnia has created frictions regarding mandate and strategy to fight organized crime. As Ana Juncos (2006) has pointed out, EUPM officials were irritated by EUFOR personnel repeatedly engaging in operations against traffickers, which EUPM officials saw as undermining the effort of

developing a 'homegrown' police force. The coordination problem between the two missions was addressed in late 2005 by an agreement that EUPM was to take the lead, at least on paper, under the coordination of the EUSR. Furthermore, institutional developments in Brussels, such as a Civilian-Military Planning Cell, have had little impact on the actual operation and invited institutional turf wars between directorates (Juncos, 2006).

Thus, despite the EU's "clear determination" to fight organized crime, the finding is that its measures are "diluted in uncoordinated efforts" (Montanaro-Jankovski 2005, 21). What remains is a familiar narrative: the threat is grave, the EU is incompetent, and the list of recommendations emphasizes more money, more personnel, better coordination, mo

Although it is acknowledged, somewhat half-heartedly, that organized crime "hampers" the (re)construction of state institutions in Bosnia, the aim of this analytical perspective is to problematize the view that organised crim

institutional efficiency fails to take into account the insight that a (foreign) policy of fighting organized crime is inhere

EUPM's reform proposals.[26] From the EU's point of view, the reason is corruption: the existing police structure in BiH is fragmented into over 15 police agencies which are over-funded, over-staffed, and intertwined with political structures said to be benefiting from trafficking activities. In other words, the EU appears to face an environment where organized crime has entered, to use Lupsha's terminology, the 'symbiotic stage'. While reports from NGO's such as the IGC are quite blunt in identifying a strong link between politicians and organized crime, EU representatives address this problem between the lines. Thus EUPM Commi

the EU is not unaware of the problem. It entertains both 'militaristic' and 'communal' policing styles in trying to win over the trust of Bosnian society: The EUPM website, for instance, features reports of arrests of drug dealers and human smugglers, intimidating images of police officers storming houses and declaring 'showdown with organized crime' as well as reports about reduced number of road accidents and police officers helping repair a school or organising a childrens' festival.

However, the question that needs to be explored is whether with these initiatives the EU has succeeded in disseminating 'its' threat image of organized crime into Bosnian society and politics by combining it with 'local' concerns. That it is here where EUPM may fall short emerges in an interview given by Coppola to a local newspaper in March 2006.

When asked about his opinion of the biggest threat to the internal security in BiH, Coppola (2006a) begins by noting that the level of petty crime in BiH is comparable to that in other countries. He goes on to say that organized crime is "the biggest concern *for all of us* and what I mean here is drugs, human trafficking, illegal migration, etc" (emphasis added). Coppola quickly adds a "third level" of organized crime "which affects the country and its integrity, and what I mean here is the presence of a strong level of corruption and money laundering, which affects the economy and financial institutions of the country". The newspaper goes on to ask concretely how to curb human trafficking and the "flourishing of night bars throughout BiH, in which those women are prostituting themselves". Here, Coppola's answer remains very vague, merely noting the absence of an "appropriate law" and the lack of "initiative… [to] fight constantly against this kind of problem". When asked whether the approach chosen in some EU countries to legalize prostitution and soft drugs would also be a solution for BiH, Coppola again does not give a clear answer but replies that legalization would not be possible "in Italy" and "other countries" and that "in our opinion that is not a good solution because there is this philosophical approach to the problem". The interview then proceeds b

Although this interview provides just a sma

consequences of the EU's swift appropriation of police and judicial personnel under a foreign policy agenda, and the more general agenda of merging security and development policy and blending civilian and military tools, are fundamental: these moves blur the separation of domestic and foreign, of internal and external security institutions, and the location of political authority. While coming to terms with such an agenda is already tricky within a traditional political entity like the state, how the EU will manage the overlap of competencies, mandates, and initiatives within and across institutions, particularly the link between JHA and ESDP, will be interesting to watch.

Third, the political nature of 'fighting organized crime' and its prominence on the EU's security agenda means that ESDP missions pursuing this aim have important consequences for how to think about the EU as a 'foreign policy actor'. The aim of expanding the EU's idea of order under the label of 'best practices' certainly resonates with the notion of the EU as a normative power, and it is difficult to deny the ring of a *mission civilisatrice* to it. Yet if the success of international cooperation on organized crime requires a shared (or complementary) understanding of the phenomenon, then a strategy of persuasion or, better, dialogue should indeed be at the core of ESDP's work. EUPM's limited success to date in implementing 'European' policing into a society situated in the middle of Europe, despite the carrot of membership at its disposal, suggests either that threat images are difficult to transport across borders, or that the EU has not paid enough attention to this dimension (or both). Certainly, the political baseline of fighting organized crime can be seen as both helping and hindering ESDP in its double purpose of securing the EU and turning it into a credible international actor.

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