

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. Against this backdrop, the second part discusses how ESDP has developed and engaged the issue of organized crime. Specifically, it outlines the character of ESDP as a mechanism for ‘civilian crisis management’ and illustrates its ‘working’ through the case of the EU’s police mission in Bosnia and Herzegovina (EUPM) by placing it in the two different theoretical frames. Deciding in favour of a constructivist approach, the paper concludes by suggesting that a successful strategy must focus on the dissemination of the EU’s understanding of ‘organized crime’ abroad.

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Introduction

With the 1992 Maastricht Treaty, EU Member States entered a phase of increasing cooperation in the realm of foreign and security policy, and since the 1998 St. Malo Summit have moved rapidly towards the establishment of a European Security and Defense Policy (ESDP).¹ Among the goals that ESDP is declared to address, the fight against organized crime has gained a prominent place in the EU’s security discourse, such as in the 2003 European Security Strategy (ESS), and has been named as an objective in a number of ESDP missions conducted in recent years.

However, the phenomenon of ESDP as an actor in the ‘fight against organized crime’ has, so far, not been given much scholarly attention. This neglect can be seen as a result of three factors. The first is a conceptual blind-spot, namely that policing is generally understood to be a domestic practice with no link to foreign policy. Although the gradual dissolution of borders among Member States and the creation of the Area of Freedom, Security and Justice (AFSJ) challenged this view, in the end this process only expanded the ‘domestic’ realm onto an EU level and moved the ‘foreign’ realm to the EU ‘outside’. Thus, research on EU activities to fight organized crime remains by and large limited to Member States’ activities to cooperate ‘inside’ the EU and to stop organized crime from ‘entering’ the EU.² Second, as a foreign policy instrument (or, rather, process), ESDP is mainly scrutinized for its lack of military capabilities as compared to NATO. The popular view, at least throughout the 1990s, was that European foreign and security policy was a failure, mainly because it could not live up to the expectations when it came to responding to events in the Balkans (Schake, 1998; Gordon 1997). The third reason is that analyzing EU foreign and security policy is notoriously difficult. Research among students of CFSP/ESDP is characterized by attempts to come to terms conceptually with what they’re actually studying, i.e. trying to grasp the notion of the EU as a foreign policy actor.³

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¹ The development of CFSP/ESDP is documented in Hill and Smith, 2000; Smith, 2003a; Smith, 2003b; Keane, 2005; House of Commons (2006); and the EU’s website.

² Monar, 2001; Rees 2003; Smith, 2003a; Kaunert, 2005; Tekofsky, 2006; Wagner, 2003a.

³ Ginsberg, 2001; White, 2001; Winn and Lord, 2001; Tonra, 2003; Webber et al., 2004; and contributions in *International Peacekeeping* 11/3, 2004.

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 paper addresses all three dimensions, with emphasis on the first. It primarily aims at shedding conceptual light on the phenomenon of organised crime to see how it becomes a concern for foreign policy and, most importantly, what kind of ‘foreign’ policy it asks for. In its search for conceptual guidance, the paper 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. Against this backdrop, the second part of this paper discusses how ESDP has developed and engaged the issue of organized crime. Specifically, it outlines the character of ESDP as a mechanism for ‘civilian crisis management’ and illustrates its ‘working’ through the case of the EU’s police mission in Bosnia and Herzegovina (EUPM). Here the aim is less to provide a detailed empirical account of ‘how’ ESDP has been involved in ‘fighting’ organized crime but to look at the consequences of placing EUPM activities in two different theoretical frames. Deciding in favour of a constructivist approach, the paper concludes by suggesting that a successful ESDP mission in ‘fighting’ organized crime must focus on the dissemination of the EU’s understanding of ‘organized crime’ abroad.

Two Perspectives on ‘Crime’

The question of ‘what is crime’ lies at the core of criminological research (Garland, 2002), and thinking about how to differentiate ‘criminal’ from ‘non-criminal’ is a precondition for any policy intending to ‘fight’ crime. In the most general sense, the intellectual engagement with the meaning of criminal behaviour can be traced back to Durkheim’s notion of anomie, or ‘normlessness’.⁴ It logically requires the existence of a norm that can be deviated from, which consequently means that a definition of crime is always made against the backdrop of a definition of order (and, as will be argued later, a victim). It is important to note here that notions of ‘crime’ or ‘the criminal’ are attributed to an *act* of deviation and, thus, hold a *practice* rather than a

⁴ According to Durkheim, anomie occurs when there is a lack of order (a ‘normless state’). More precisely, individuals are said to ‘deviate’ when they experience insufficient moral guidance, either because the existing order is morally weak and/or because it has been unsettled through rapid economic/political/social change, creating conflicting norms that leave the individual disoriented (see also Baumann 1991).

property (of certain groups or individuals) as the defining criterion, even if this distinction is often blurred. Moreover, it should also be clear that violating a norm is not automatically a crime, just as there are categories of the severity of crime. Beyond this, one can, crudely speaking, differentiate between two analytical perspectives.

The first perspective is the utilitarian model among criminologists also known as ‘control theory’ (Rock, 2002: 56f). Starting from a fixed understanding of order and crime, this model is of a ‘problem-solving’ kind and aims at designing efficient institutions to counter crime. It deliberately blocks out complex analyses of motives and meanings and assumes that individuals commit crimes because it is profitable or enjoyable for them and, thus, that they will ‘deviate’ if they can. Crime, in other words, is assumed to be a rational choice. This model is “of practical rather than of observational truths” (Rock, 2002: 56), influenced by the predictive value of operating with worst case scenarios which allow for the design of preventive measures intended to reduce or constrain incentives of the would-be-offender. Attempts to specify the causes for criminal behaviour are prone to identifying pathological conditions, such as class or ethnicity. Scholars working in this tradition tend to agree with the Durkheimian view that deviance is a symptom of weak or broken bonds between such individuals (or groups) and society at large, thus recommending better regulation of society through the strengthening of moral order.

The second approach focuses on the social construction of order and crime and, thus, on the question of who defines ‘criminal behaviour’. It analyzes discourses/practices of ‘criminalization’ and ‘victimization’ similar to the ‘securitization’ approach put forward by the Copenhagen School (Buzan et al., 1998; Williams, 2003). This is based on the pluralist assumption that (international) society is fractured into groups who disagree about the meaning of normal behaviour. In other words, this approach rejects or, rather, contextualizes the view that there is ‘one’ objective definition of order and crime, arguing that what is a criminal to one may be perfectly normal to another. Rather than conceiving of anomie as norm-less and, thus, as acting *without* norms, ‘deviance’ is seen as acting according to a *different* understanding of order. The problematization of crime as a social convention resonates with Carl Schmitt’s notion of the political as the authority of making the distinction between friend and enemy, and emphasizes that labelling something/-one ‘criminal’ (or not) is at core a *political* act. This perspective has developed two

important lines of argumentation, strongly influenced by the writings of Michel Foucault.⁵

First, in particular among scholars favouring a holistic approach such as system theory, ‘crime’ is seen not as a threat to social order but as supporting it. More precisely, notions of order and disorder are seen as mutually-constituted building blocks of a society’s collective identity, and thus the ‘criminal’ a category constructed for the cognitive necessity of identifying the ‘Other’. Understanding ‘crime’ as an intrinsic yet socially constructed component of society, the analytical focus is to scrutinize the discourse of ‘criminalization’, i.e. the practice of identifying and acting against criminals. In particular scholars falling under the label ‘radical criminology’ then, second, analyze how the imposition of a particular meaning of ‘crime’ is an expression of a power relationship. Crudely put, it follows a Marxist perspective of assuming a bourgeois trying to maintain an order in their favour through oppression of the weak. The analytical thrust is turned around and ‘criminal behaviour’ is attributed to those in power whereas ‘deviant behaviour’ by the disadvantaged is seen as legitimate resistance for the redistribution of wealth, in short, justice symbolized in the figure of Robin Hood.

Defining ‘Organized Crime’

Before seeing how the utilitarian and social constructivist perspectives frame the phenomenon of ‘*organized crime*’ it makes sense to unpack the qualifier by asking what makes crime ‘organized’. Analysts agree that, contrary to the popular image of the Italian(-American) mafia as a closely-knitted hierarchical Boss-Underboss-Soldier structure, the phenomenon of organized crime, in particular in terms of actorness, is difficult to pin down. Thus a recent EU-sponsored report on the topic begins by saying “the combined international organised crime literature reflects a profound lack of a common theoretical understanding” (van Duyne and van Dijk 2006: 2).⁶ On the political level, the 2000 UN Convention against Transnational Organized Crime, which serves as the primary reference point for the EU’s own approaches, speaks of ‘organized criminal groups’ defined as

a structured group of three or more persons, existing for a long period of time and acting in concert with the aim of committing one or more

⁵ Chambliss, 1982; Campbell, 1998; Bigo, 2001; Nader, 2003; Also Rock 2002: 65f for a discussion.

⁶ See also Levy (2002); Contributions in Allum and Siebert (2003).

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 threshold (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 engages in criminal activities in more than one state, or (iv) if it is committed in one state but has substantial effects in another state. Again, it is difficult to exclude many acts from this definition, in particular if 'organized crime' activities are assumed to be follow an economic rationale ('financial or material benefit') and thus embedded in the logic of the market (Levi 2002; Allum and Siebert, 2003). What is clear, however, is that once understood as a cross-border phenomenon, 'fighting' organized crime inevitably becomes also a foreign-policy matter.

Even more so, it is often seen as a 'global' matter, simply because with the market going 'global' so, inevitably, does organized crime. This leads to a number of problems, in particular for the utilitarian perspective: first, the neoliberal notion of the market as a self-regulating mechanism makes it difficult to determine to what extent

⁷ Levi (2002: 880) mentions trafficking of drugs and people, extortion, kidnapping for profit, environmental crime such as illegal toxic waste dumping, 'sophisticated' credit card fraud, smuggling to evade excise tax on alcohol and tobacco, intellectual copyright theft, corruption to achieve these offences, etc.

‘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, transnational or, rather, inter-local cooperation is a necessity for addressing organized crime. Yet here one cannot escape the fact that the identification of the criminal act, that is, the decision as to what constitutes an offence punishable by at least four years of prison, varies with the context of national or local cultures. In other words, the global landscape of crime cannot be read “too flatly” (Loader and Sparks, 2002: 98f). Indeed, as will be discussed in the next two sections, such cooperation cannot be successful without taking into account the political nature of defining ‘organized crime’.

Threats and Victims of ‘Organized Crime’

The utilitarian and social constructivist perspectives take somewhat different views on the threat and, thus, the victim of organized crime. Indeed, the concept of the victim is central to the analytical picture not least because it is considered a key player in the criminal justice process: “without the cooperation of the victim in reporting crime, furnishing evidence, identifying the offender, and acting as witness in court, most crime would remain unknown and unpunished” (Zedner, 2002: 435).

Generally speaking, organized crime can be seen as doing harm on two levels: the individual and the state/society (Massari 2003). On the individual level, it appears self-evident that criminal acts are dangerous to the extent that they induce suffering of individuals by exerting physical harm. However, while the exercise of physical or psychological violence is obvious in activities involving abductions or killings, in cases such as trafficking of goods or environmental pollution the identification of suffering and, thus, the designation of the ‘victim’ is less obvious.

The difficulty of identifying the victim is particularly apparent when it comes to the trafficking of human beings, the organized-crime activity most often referred to by the EU.⁸ There can be little disagreement that secretly crossing state borders bypassing the formal entry requirements is an illegal activity, and that the groups

⁸ See Europol 2003; Aradau, 2004; Saari, 2006.

offering such a service well qualify for committing criminal acts. However, the utilitarian habit of working with clear indicators runs into difficulties when it comes to the question to what extent the trafficked human are victims. On the one hand, they are likely to have willingly paid for this service and, thus, knowingly collaborated with the traffickers. Technically speaking, absent an offender, trafficked humans do not deserve the status of victims and could even be seen as part of the ‘structured group’ of the UN definition. On the other hand, if trafficked humans are being coerced into entering a slave-like relationship, as in the case of forced prostitution or other kinds of labour, then they become mere commodities which do not possess agency and, thus, cannot be held responsible. With reality presenting state authorities and concerned NGO’s with a mix of these two scenarios, the representation of trafficked humans by state as well as non-state agencies is often ambiguous and contradictory. As Claudia Aradau has pointed out, particularly trafficked women are often caught between a security and a humanitarian discourse which identifies them as both guilty criminals and innocent victims, metamorphosing “from suffering beings worthy of pity into risky beings who are to be contained” (Aradau 2004: 255; also Saari 2006).

On the state/societal level, the threat of organized crime is even more difficult to localize, exemplified by the 2003 Europol report on human trafficking beginning by noting the “difficulty in clearly identifying the threat THB [trafficking in human beings] poses to a state”. The literature generally sees the threat in a subversion of state authority and the destabilization of social order. Thus Peter Lupsha (1996) has offered a typology of three stages in which organized crime is threatening the ‘nation-state’: (i) the ‘predatory stage’ in which criminal organizations are said to move in and gradually undercut or, rather, bypass the ‘legitimate’ market structure, (ii) the ‘parasitical stage’ in which such groups infiltrate business, local and regional politics, creating shadow-markets and beginning to take over state-like tasks, and (iii) the ‘symbiotic stage’ in which criminal groups are fully integrated in economic and political institutions of the state, wielding significant political power (Lupsha, 1996). Another author even entertains an image of the mafia as a state-like actor in the Hobbesian world, conquering and colonizing territory “using armed force of diplomacy” (Armao 2003: 32f). Furthermore, it is often argued that liberal democracies are particularly vulnerable to such an ‘attack’ due to their relative economic and political openness, and their constitutional restrictions in applying

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 society from the outside (Massari 2003). Furthermore, precisely because practices are often indigenous, that is, rooted in cultural traditions, there is no intrinsic reason for seeing them as destabilizing social order. Even from a functionalist perspective, 'structured groups' generally do not pursue revolutionary objectives of rupturing and replacing existing state orders. While there may be a competition among groups for control of certain market segments, there is not reason for them to aim at changing a system they are profiting from. When or why, then, would networks intertwined with legal economic and political state structures pose a threat to society? According to David Beetham, the list is long:

privatization of the public sphere in the interest of private advantage, government by secret connivance rather than open debate, loss of accountability and responsiveness to the public, diminution of effective electoral choice, breakdown of trust in politicians and the political process (Beetham 2003: xi)

Yet reading this list as threatening only makes sense when held against a certain view of how 'the state' should be organized, that is, when held against notions of legitimacy and accountability cherished in ideal-type liberal democracies. At the very least, the harm arising through the privatization of the public sphere, commonly termed 'corruption', implies that such practices are working to the disadvantage of 'the public'. Yet what public are we talking about? At the very least, one must differentiate between state and society and to ask which segment of society and/or which level of the state is profiting from a certain practice, and which one is being put into disadvantage. There is a certain irony in the the argument that organized crime flourishes in the absence of the state and subsequently replaces the state by building

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 assuming identification with a collective good, contained in a common notion of order.

Hence, it is not sufficient to simply hold that organized crime is by itself “penetrating civil society with a pervasive climate of fear” (Beetham 2003: xi). As analysts of organized crime point out repeatedly, it is (the emergence and maintenance of) the threat image of organized crime in the popular discourse which needs to be studied (Levi 2002; Massari 2003; van Duyne and van Dijk 2006). While this favours a constructivist perspective, it does not mean that the threat of organized crime is an *arbitrary* construction by politicians, ‘security professionals’, or the media. To adapt the framework of securitization, the question of authority, that is, of being able to decide and succeed in framing some practices as ‘organized crime’ rather than others depends on the ability to convince society – the audience – that these practices are violating the order society wants (Williams, 2003; Balzacq 2005).

While such processes are managed through a political system within states, with a greater or lesser degree of transparency and participation, obvious problems arise on the international level. Here, the key question is: does the threat image of organized crime as an *international* phenomenon require the existence of an *international* order and an *international* society that understands itself as a victim? While there may be agreement on the existence of a cross-border network or, at least, of the cause-effect chain between local activities in one part of the world (such as planting poppies in Afghanistan) and the impact in another (selling or consuming heroin in London), communities may still differ in their evaluation of whether or what part of it should be considered a threat. In other words, a foreign policy that seeks ‘international’ help in

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 instruments or strategies are most appropriate to address organized crime. If crime as ‘anomie’ is seen with Durkheim as a phenomenon of dysfunctional societies, that is, occurring in societies unable to satisfy the individual’s need for moral guidance, the logical strategy to prevent crime is to establish a ‘functioning’ society by strengthening ‘order’. In short, order is seen as protecting both the individual and integrity of society at large.

For much of modernity, the institution in charge of providing order has of course been the state, vividly symbolized in Hobbes’ image of the Leviathan. In democratically organized societies such as those composing the Member States of the European Union, order is generated through a complex set of institutions, the most important ones being the popular vote, formal legislative processes, and a constitution. The two key institutions in the task of guarding and executing domestic order in the name of the state, representing the state’s monopoly over the legitimate

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 policing. It builds on the assumption that the definition of crime is socially constructed and that the police, as a key representative for state-society relations, aims at partnership rather than division in this process. This

⁹ A classic example is the debate among scholars of what led to the establishment of the London Metropolitan Police in 1829. Answerable to a government-appointed commissioner and replacing private forms of policing it signified a “significant development in central government control” (Emsley 2002: 212). Whereas the official version by the initiator, Home Secretary Peel, was that such a police force was necessary to address an increase in crime, research suggests that the increase in figures was a result of Peels reform in criminal law, and his real motivation was to quell unwanted riots (Emsley 2002; Ignatieff 2005).

¹⁰ See Rock (2002); Bowling and Foster (2002).

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 through the creation of Europol, Eurojust, and the European Judicial Network (EJN), thereby further compromising/sharing key elements of their sovereignty. Cooperation in these areas was accompanied by the dissolution of borders between Member States and, correspondingly, a strengthening of the EU's external borders around the Schengen provisions which led to concerns of a 'Fortress Europe'.

In addition to these activities, ESDP addresses what the 2003 European Security Strategy (ESS) calls the "external dimension" of organized crime.¹² The ESS identifies 'Europe' as a "prime target" for the trafficking of drugs, women, weapons, and illegal migrants through, among others, "Balkan criminal networks" (European Council, 2003: 4f). Overall, in this 'external' picture the problem of organized crime is described not in the demand side but in the conditions that support the supply side, which according to the ESS is attributed to instability in the EU's external space.¹³ Organized crime is framed as a global economic phenomenon that weakens state structures and fuels regional conflicts "in other parts of the world" (ibid), with revenues from trafficking, including maritime piracy, seen as undermining the rule of law and social stability. In other words, organized crime is seen as both producing and thriving off regional conflict and state failure, at home in what Robert Cooper (2004) would call the 'pre-modern world'. This threat image is explicitly projected into the EU's neighborhood: "Neighbours who are engaged in violent conflict, weak states where organised crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe." (European Council 2003: 7). It is not clear, however, what these problems are.

¹¹ For a discussion of this development of AFSJ, see Monar, 2001; Rees 2003; Smith, 2003a; Kaunert, 2005; Lavenex and Wagner, 2005; also Wagner, 2003a.

¹² The ESS identifies organized crime as one of the five key threats to the EU, describing it as an "internal threat" with an "important external dimension" (European Council, 2003: 4).

¹³ Although the ESS is keen on stressing that everything is related, it does appear that regional conflicts and failed states take on the status of 'root causes' not only for organized crime but for WMD proliferation and terrorism as well. See Berenskoetter (2005).

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 essence, ESDP was envisaged as an instrument to undertake the full range of conflict prevention and crisis-management missions defined by the Petersberg tasks through a mixture of military and civilian means.¹⁷ While military capacities were seen as necessary for what the diplomatic jargon calls 'robust intervention', the focus on effective engagement in pre- and post-conflict stages led to a build-up of a range of civilian instruments.

The Feira European Council in June 2000 took an important step in this direction by dividing the civilian aspects of 'crisis management' into four priority areas, namely the police, rule of law, civilian administration and civil protection, suggesting that capabilities in these four fields could be used in EU-led missions as

¹⁴ Part of the strategy was also the EU's strong support for the establishment of the ICC (see Deitelhoff and Burkard, 2005). Although the political dynamic that eventually led to the establishment of the ICC was re-ignited in 1989 by a proposition from Trinidad and Tobago to the UN General Assembly to address the problem of drug-trafficking, the focus of the ICC on the punishment of crimes against peace, war crimes and crimes against humanity leave activities generally subsumed under the category of organized crime outside of its jurisdiction.

¹⁵ On the ENP, see Smith (2005); and Wolff (2006) specifically on judicial and police cooperation.

¹⁶ As Bono (2004) reminds, 'crisis management' can of course encompass various meanings.

¹⁷ As listed in the TEU, the Petersberg tasks include humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacemaking (Article 17 (2), TEU).

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 officers capable of carrying out police operations ranging from advisory, assistance and training tasks to substituting to local police forces. Two documents attached to the Feira Presidency Report discuss concrete targets which emphasize “the police” as the instrument of priority but also note that the (re-)establishment of judicial and penal systems are part of “a positive outcome” of a police mission. Thus, the deployment of judges, prosecutors, and penal experts is called for to ensure a successful renovation of courts and prisons and thus bring “EU-style” system of law and order to the target country.

This was followed up by a flurry of activity on the operational level. A meeting of the Member States’ ‘Chiefs of Police’ in May 2001 devised a *Police Action Plan*, and a follow-up conference in October 2004 saw the *Declaration of the EU Chiefs of Police* setting out specific steps for capacity building so that “police operations” could contribute to the fight against organised crime within an ESDP framework. The document notes that “Organised Crime is a major obstacle for the consolidation of law and order in former crisis areas. Europe is a prime target for organised crime (...) and external action, *inter alia* through international police missions, can help improve our internal security” (European Council, 2004d: Paragraph 7). With this the Chiefs of Police followed the course set on the political level by the *Action Plan for Civilian Aspects of ESDP*, adopted by the Council in June 2004, which notes that the EU should become “more ambitious” in its crisis management goals and “more capable” of delivering them. Among other things, the Action Plan emphasises “coherence” between ESDP and the fight against organised crime (European Council, 2004a: Paragraph 11) and lists Security Sector Reform (SSR), border control, and even media policy as important elements of ESDP missions (Ibid, Paragraph 1).

The Action plan was followed by a *Civilian Capabilities Commitment Conference* in November 2004 and later the agreement on the *2008 Civilian Headline Goal*. Member States further established a *Committee for Civilian Aspects of Crisis Management*, a *Civil-Military Cell*, and a *European Police College* (CEPOL). The latter’s 2004 task plan noted that the purpose of police training was not only to improve EU-internal interoperability, with a particular focus on organised crime (Art. 6,1), but also “to offer its infrastructure to senior police officers of applicant

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 evaluating the character, scope, and success of ESDP operations. The view held within EU circles that weak or failed states are breeding grounds for organized crime means that ESDP missions aimed at ‘security sector reform’ (which the 2005 Presidency Conclusions confirm as being a “core area” for ESDP) place a strategy of crime fighting under the heading of ‘crisis management’ while *de facto* being a clear case of state-building. The qualifications of doing so under a UN mandate and by invitation of the host country may ease the colonial character, yet there is no doubt that through such missions the EU is trying to expand its idea of AFSJ beyond the EU’s border. To be fair, the EU does not hide its ambitions in this regard. The frequent emphasis on implementing “EU style” law and order and “establishing sustainable policing arrangements under local ownership according to best European and international practice” (European Council, 2004d, Paragraph 5) makes quite explicit the EU’s aim of exporting its own vision of policing and judicial systems abroad. Conceptually speaking the approach makes sense if one accepts the argument that fighting organized crime is most effective when there is agreement in threat images and applied instruments. Yet it also begets several questions. How far does the EU feel the need to extend its idea of order? Is it limited to the European region, or is it global in scope? Does a coherent EU approach actually exist beyond the one imagined on paper? And, finally, how do we know ESDP missions are successful?

Second, the concept of ‘comprehensive security’ and the strategy contained therein to combine civilian and military instruments pose the problem of coherence. As the ESS notes, “the challenge now is to bring together the different instruments and capabilities” (European Council 2003: 12-13). But this challenge is not merely a technical one, that is, of how to solve the ever-present EU problem of ‘technical’ interoperability, but one of how to deal with the blurring of internal and external. As scholars repeatedly point out, CFSP/ESDP is an intergovernmental process pushed forward and controlled by member states, symbolized by the fact that there is no ‘CFSP budget’ (Wagner, 2003b) While the Feira summit declared instruments such as police and judicial personnel to be part of ESDP missions under the responsibility of the Council,¹⁸ the question is how these civilian operations are being ‘coordinated’ with Community instruments overseen by the Commission.¹⁹ The involvement of JHA in foreign policy matters and security policy more specifically, as already the case in the realm of asylum and immigration policy (Boswell 2003) or ‘terrorist financing’ (Vlcek 2005), and the corresponding overlap of intergovernmental and communal finance and control mechanisms raise issues of overlapping/conflicting responsibility and accountability between Council and Commission.

At issue is not merely the compromise of political turf but of philosophical harmony, in two ways. First, EU crisis management blends security and development policy. Whereas the Council has adopted state-building objectives into the ESDP, the Commission has linked its external assistance programmes to security policy, which means both institutions are now claiming expertise in operating in a ‘security-development interface’ (Schroeder, 2006). This invites not only conflicting policy initiatives but poses the more fundamental question where to draw the line between a development agenda and organized crime fighting. Second, there is the blurring of civilian and military spheres. The Headline Goal 2010 states in a footnote that police components may be deployed “together with military components and temporarily under military responsibility” (European Council, 2004e: 4). What does this mean for the self-understanding of the police as enforcing internal order by working within society, whereas the function of the military is to uphold the autonomy of doing so by

¹⁸ The Council responsible for ESDP issues is the General Affairs and External Relations Council, which is composed of the foreign ministers of the Member States, a representative from the Commission, and the High Representative for CFSP (Solana), with defense ministers participating twice a year.

¹⁹ See European Council, 2004a, c. For the problem of coherence in European foreign policy in general, see Winn and Lord (2001); Missiroli, 2001.

protecting the state against external intervention? Will the police now share this function? And even if the EGF can claim to straddle this divide, what does this mean for the majority of the EU member states upholding the distinction between the police and the military (Bigo 2001)?

While it is impossible to address all these conceptual and practical questions, they will be present in the discussion making up the remainder of this paper which sketches two stories of ESDP's ordering agenda in Bosnia and Herzegovina before offering a third.

How it works: EUPM

In 2003, the ESDP “jumped off the paper” (Keane, 2005) by engaging in missions in the Balkans and in the Democratic Republic of Congo. The ‘success’ of these missions and the start of additional ones have been rated as “major breakthroughs” (Grevi et al., 2005) for ESDP in becoming ‘real’.²⁰ A number of these missions involve the aim of fighting organized crime, notably those in the Balkans. As the European Police Mission (EUPM) in Bosnia and Herzegovina (BiH) is not only ESDP's first civilian crisis management operation but also the considered the most important ESDP mission for fighting organized crime and thus often identified as a ‘test case’ for ESDP, I will take this as an illustration.²¹

Based on a Council Decision from March 2002 and an endorsement by the UN Security Council, EUPM was launched on 1 January 2003, taking over from the UN International Police Task Force (IPTF), which had been present since the 1995 Dayton agreement (European Council, 2002). EUPM was renewed on 1 January 2006

²⁰ At the time of writing, these missions are (or were): a military operation in Bosnia and Herzegovina (EUFOR-Athea) accompanied by a police mission (EUPM); a military operation in the Former Republic of Macedonia (Concordia) accompanied by a police mission (Proxima), followed, after their completion, by a police advisory team (EUPAT); a rule of law mission in Georgia (Eujust Themis); a police mission in the Palestinian Territories (EUPOL COPPS) accompanied by a border assistance mission at the Rafah crossing point (EUBAM Rafah); a rule of law mission for Iraq (Eujust Lex); as well as various missions in the Democratic Republic of Congo ranging from military operations (Artemis) to security sector reform (EUSEC DR Congo), a police mission in Kinshasa (EUPOL Kinshasa); and, finally, a monitoring mission in Aceh, Indonesia (AMM). For an overview, see Grevi et al. (2005); House of Commons (2006); and the EU's website. Furthermore, if one accepts the view that EU foreign and security policy consists of what various EU bodies do *plus* what EU member states do (White 2001), then one would have to add, in the context of this paper, the European involvement in Afghanistan since December 2001 under ISAF, with Germany leading the police reconstruction, Italy the reconstruction of the judicial system, and the UK the fight against drug cultivation (poppy growth).

²¹ See House of Commons (2006). For an overview of the EU's involvement in BiH more generally, see International Crisis Group (2003); Juncos (2005).

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 (European Council, 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 Steering Board is co-chaired by the head of EUPM. In addition to these institutional reforms, EUPM declares a number of objectives for its work on the ground, which are worth listing in full (European Council 2006):

- Improve, through proactive mentoring, monitoring and inspecting, police managerial and operational capacities, in order to enhance BiH's capacity to fight organized crime in accordance with existing international, and in particular regional, commitments and obligations.
- Assist the BiH Police in initiating and conducting counter-organised crime activities and follow up their actions. When appropriate conduct is observed, refer to the High Representative for BiH for further action, in accordance with the determined procedures.
- In close cooperation with the EUSR, monitor the exercise of political control over the police and address inappropriate political interference in the operational management of the police.

Until December 2005, EUPM had a staff of up to 1,000 personnel, more than half of which were police officers, of which about 80 per cent were deployed by EU member states, and an annual budget of 38 Million Euro, of which 20 Million came from the

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 2004 replaced NATO's Stabilization Force (SFOR). According to the Council's official Factsheet, EUFOR is "operating closely" with EUPM, providing support to the fight against organized crime by "putting pressure on networks and helping to develop and strengthen the capacity of local police and law enforcement agencies" (European Council, 2005a). Furthermore, EUPM runs under the *Stabilisation and Association Process* (SAP), which focuses on institution building more generally. As BiH hopes to start accession negotiations at one point, the EU can be expected to have significant leverage when asking for compliance with certain standards (as part of a 'security sector reform').²⁴ In short, one would assume the EUPM operation is bound to leave an imprint.

Two Stories of Policing Bosnia

Taking the two conceptual frames outlined in the first part of this paper, there are two ways of analyzing the work of EUPM, the utilitarian and the social constructivist one.²⁵ Their different views both have a normative underpinning in terms of both contain an idea of what it means for ESDP to be successful. It is proposed here that the key to understand their relative notion of success is to understand their respective notions of the (potential) victim which is to be protected from 'crime'.

The utilitarian perspective, dominant in policy-oriented research, starts with the threat analysis by identifying victims and criminals to then determine whether the EU has been efficient in providing the 'technical assistance' necessary to master the problem.

On top of the list of victims are trafficked human beings, specifically "the kidnapping, torture and sexual abuse of women and children" (Montanaro-Jankovski, 2005: 10). Even without such abuses, trafficked human beings are considered victims

²² The numbers are from Grevi et al (2005: 2). Deployments have declined since. According to the EUPM website as of June 2006, the total international staff was just over 360, with only 166 being deployed by EU Member States, the remaining number being mainly from third states.

²³ During its first three years, it was headed by EUPM Commissioner Kevin Carty, who was succeeded in January 2006 by Brigadier General Vincenzo Coppola.

²⁴ For instance, when the National Assembly rejected a proposal for police reform in late 2005, the EU's Commissioner for Enlargement, Oli Rehn, declared that negotiations on a Stabilisation and Association agreement would be delayed.

²⁵ I rely mainly on Montanaro-Jankovski (2005) for the utilitarian position, and Merlingen and Ostrauskaite (2005) for the social constructivist position. Although these publications do not completely fit the two 'ideal types', they do come close.

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, more specific targeting, etc.

The constructivist story, in particular the critical version of ‘radical’ criminology, paints a very different picture of the EU’s activities in BiH. In basic terms, it assumes that there is nothing like an objective threat of organized crime and critically analyzes how the EUPM is involved in imposing a disciplining discourse of normality onto the Bosnian society through a regime of governmentality.

The argument entertains the more general line of criticism that Western interventions in the name of liberal peace and humanity with the aim of improving local conditions are, in the end, practices of colonialism. Such interventions “license forms of micropower” and exercise “subtle coercion and subjectification” by reaching deep into domestic order (Merlingen and Ostrauskaite, 2005: 298). Critical of the utilitarian approach outlined above, the EU’s agenda of security sector reform in BiH is seen not as one of functional/technical assistance but as a political undertaking. Using Foucauldian language, the work of EUPM is understood as creating a “paternal order of difference” which shapes people, their practices, and accepted threat images in BiH. As for the first two, the aims and tasks of EUPM outlined above of ‘mentoring, monitoring, and inspecting’ are seen as clear attempts of remaking indigenous police officers through “hierarchical observations, normalizing judgments, and corrections” (Ibid, 306). The mentoring scheme is described as a character building programme that moulds bodies and souls of the indigenous police officer to function appropriately, as seen by the EU, subsequently “monitored through the trained gaze of the foreign expert” (Ibid, 307). In short, here the victim is Bosnian society onto which structures of governance, in this case police and judicial institutions, are being (unconsciously?) imposed.

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 crime is the principal threat to, and emanating from, the country (Merlingen and Ostrauskaite 2005, 309). By doing so the analyst is asked to differentiate between how the threat is perceived from within the EU, and how it is seen in Bosnia itself. The verdict is that ordinary Bosnians are not part of the threat analysis:

“It is not they who are imagined to be in need of police protection against crime; rather, the organized crime discourse selects for protection the Europeanization of the Bosnian state and the consolidation of its market economy” (Ibid, 311).

Consequently, the EUPM’s institution-building agenda is not designed *for* the society that it is being build *in*. Established along EU recommendations, institutions like SIPA do not serve the need of Bosnian society but are to ensure smooth cooperation with JHA institutions, in particular the collection and transfer of intelligence. In short, the criticism is that EUPM aims only at making Bosnia safe for the EU.

To be sure, such a critical analysis of current ESDP practices does not necessarily imply a condemnation of ESDP missions *per se*. Rather, it calls for a policy that reduces the status of Bosnians as victims of quasi EU-colonialism. As Merlingen and Ostrauskaite (2005) argue, missions such as EUPM should reduce their ‘pastoral’ character and should pursue a strategy of cooperation that is less imposing, or more egalitarian in relationships between EUPM and local police and ordinary citizens. Thus, recognizing that crime reduction relies on a partnership between the police and the public, they call for moving away from a “decontextualized, economic framing” of organized crime and its focus on technical assistance and an adoption of a more communal and “caring” style of policing, or what they call “police aid lite” (Ibid, 316).

The Difficulty of Getting the Picture Across

Given that these two perspectives analyze different facets of EUPM, not least by identifying different ‘victims’ (trafficked women, EU citizens, Bosnian society) the question of which story is more accurate appears out of place. They may be seen as complementary rather than competing approaches. However, both are paying insufficient attention to the political dimension. More precisely, whereas the focus on

institutional efficiency fails to take into account the insight that a (foreign) policy of fighting organized crime is inherently political, the second comes close to treat Bosnian society as a tabula rasa and neglects the insight that threat images cannot simply be imposed but are politically contested. To put it more theoretically, rather than framing EUPM's work exclusively in terms of Foucaultian notion of governmentality, it may be more useful to employ Bourdieu's concept of a field within which actors compete for meaning (of order, crime, and victim), and where habitus, that is, established meanings and practices, are difficult to change (e.g., Chan 1996).

This concluding section therefore proposes a third story. Starting from the observation that EUPM's institution-building agenda in BiH has been of limited success, it suggests that an assessment of ESDP as an instrument in 'fighting international crime' should address the question to what extent the EU succeeds in constructing a shared understanding of organized crime and, thus, of order and victimhood.

While there has been progress in building up institutions like SIPA or SBS, if one considers that EUPM took over from the UN's IPTF, it is true that the overall state of policing in BiH has not seen significant changes. An International Crisis Group (ICG) report from September 2005 even suggests that "all efforts at reform have failed" (International Crisis Group, 2005: 5). Yet the problem is not EUPM's inefficiency in providing technical assistance. While one can always point to insufficient funding or coordination among EU bodies, the main problem EUPM faces is not a lack of operational tools but political resistance among Bosnian politicians to the EU's ordering agenda. In contrast to the radical constructivist story outlined above, the EU has been unable to shape reality in BiH. Rather than being able to impose order, EUPM's intrusive rhetoric and the expansion of its mandate in 2006, which allows EUPM personnel to randomly inspect local police officers, are indicators of EUPM's lack of success of implementing policing according to EU standards.

As the ICG report convincingly argues and statements from EU officials ranging on all levels confirm, government and parliament of the Republika Srpska (RS), in particular the leading Serbian Democratic Party, repeatedly obstruct and reject the

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 Commissioner Kevin Carty noted in frustration over the resistance of RS authorities of his reform proposals

I do not understand the politicians that are hindering this. The only ones whom police restructuring poses a danger are the criminals. It's a big shame that individuals are hindering and preventing police reform and BiH's progress toward Europe (Carty 2005a).

This line is echoed by his successor, Italian Brigadier General Vincenzo Coppola, in reaction to the RS' withdrawal from the newly established DPRI Steering Board in May 2006. When it was suggested to him that politicians were resisting police restructuring because of upcoming elections, Coppola noted that Bosnians could only benefit from police reform. Starting from the assumption that the people want to "go to Europe", he suggests that "I've heard many people stating that one of BiH's greatest problems is organized crime. For that reason this country needs a security system able to effectively fight against crime."(Coppola 2006b).

Yet the question is, and here the constructivist perspective is needed, whether Bosnians actually agree that their greatest problem is organized crime. As the IGC report points out, a key problem is a lack of public trust in the institution of the police and the judicial system more generally. The civil war in the early 1990s has left memories among ordinary people of the police as "key instruments in ethnic cleansing" (International Crisis Group, 2005: 6). Transforming the image of the police from an oppressive force working for a particular segment of society towards that of a 'neutral' servant independent from political parties is a daunting one, and one which EUPM has great difficulties to bring about. While most statements of EUPM representatives do not acknowledge the political nature of their 'technical' work, public relations campaigns and a new citizen-friendly website of EUPM proves that

²⁶ See interviews with the heads of EUPM, Kevin Carty (2005a, b) and Vincenzo Coppola (2006a, b); also International Crisis Group (2005).

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 by addressing the issue of corruption, where Coppola is asked whether gifts for better treatment are also given in other European countries. His answer is that while this may occur occasionally “the mentality of people in Italy has changed completely”, suggesting that a successful fight against corruption requires “changing the mentality in education” (Coppola 2006a).

Although this interview provides just a small glimpse into the work of EUPM, it crystallizes the task as well as the challenge for the operation: In what must be considered an attempt by the head of EUPM to gain public support for the EU's work in Bosnia (the interview is available on EUPM's website) one can witness severe difficulties in (i) identifying a threat for ordinary Bosnians that is not only different from the general EU discourse but which would also justify the EU's drastic intervention plans (including a change in 'mentality'), and (ii) portraying a common 'European' standard which Bosnians can identify with and adapt to.

Conclusion

This paper has attempted to bring some conceptual clarity into the phenomenon of ESDP as an actor in the fight against organised crime. Rather than summarizing the discussion, which due to its exploratory nature has produced more questions than answers, it suffices to point out three broad issues that seem relevant for future research on this topic.

First, it is crucial for analysts favouring the functionalist perspective to recognize that organized crime is a notoriously vague term. Thus, awareness of its political use and cultural variation in meaning is necessary. Furthermore, the concepts of 'order' and 'victim', more precisely tracing how these come to be defined in the political discourse through practices of 'criminalization' and 'victimization', are vital cornerstones for getting a conceptual grasp on the subject. At the same time, it is important for constructivists not to get seduced by the concept of governmentality. In other words, researchers would do well being careful in empirically assessing the dynamic and the success of such a discourse rather than simply assuming a power relationship where one side (in this case the EU) imposes meanings of the criminal, the victim, etc on the other side (in this case Bosnian society).

Second, it should have become clear that the way organized crime (and its victim) is politically framed has direct impact on the instruments chosen to address it. Here, the involvement of ESDP raises a number of issues. First, the causal link (prominent in EU policy-circles and academia alike) made between weak/failed and organized crime means that a strategy of crime fighting under ESDP is turned into a state-building mission. While the logic behind this may be coherent, conducting operations intended to 'fight' organized crime under the label of crisis management is less so. Certainly the link between 'crisis' and 'crime' is not obvious. Second, the

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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