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The EU as a Strategic Actor in the Realm of Security and Defence?

A Systematic Assessment of ESDP Missions and Operations

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The EU as a Strategic Actor in the Realm of Security and Defence? A Systematic Assessment of ESDP Missions and Operations

Since the European Security and Defence Policy (ESDP) emerged into the light of day in June 1999, the European Union's capacities in this field have grown enormously. It is, above all, the twenty-three ESDP missions and operations that the EU member states have deployed to places from the Balkans to Africa, the Middle East and even Asia that testify to their efforts to join together to engage in crisis management and to tackle challenges to European security. At first glance these civil and military deployments would appear to show that the EU has achieved the goals set by the December 2003 European Security Strategy. But a closer examination of ESDP missions and operations shows that in fact the EU still has a long way to go before becoming an effective and credible actor in international crisis management.

Indeed, individual missions and operations have attained very different degrees of success, both in terms of mandate implementation and with respect to their contribution to conflict management and stabilisation in the area of operations. Moreover, the record is mixed for both civil and military activities, and no particular type of mission can be identified where the EU is especially successful. As a rule, the EU has acted reactively rather than preventatively – driven by acute crises or external requests for support. In emergency crisis management rapid deployment generally is crucial for success. However, one problem has been that here the EU generally falls short. Only five of the twenty-three deployments were on the ground in less than four weeks: the missions in Aceh, Rafah and Georgia, as well as the operations Artemis in the DR Congo 2003 and Atalanta in the Gulf of Aden. In addition, preparations have often not been thorough enough. EULEX Kosovo began before the legal framework for its activities had been properly clarified, and Operation Atalanta in the Gulf of Aden suffered from the member states' inability to agree beforehand on rules for dealing with captured pirates.

In many cases, deployments have been initiated at the insistence of one member state, even when others have expressed reservations. This has at times led to a mandate so narrowly defined (in terms of geographical scope or length of operation) that the intervention was left unable to contribute meaningfully to conflict management (EUFOR Tchad/RCA) or its success was placed at risk (EUFOR RD Congo). Also, in such cases the member states often actually risk the mission's failure by providing insufficient personnel. For example, to this day EUPOL Afghanistan remains hamstrung by member states' failure to keep their pledges regarding personnel.

Communication between Heads of Mission, EU Special Representatives, individual member states and EU Delegations is often inadequate in the

drafting and implementation phases. Thus, member states are wasting an opportunity to tap profound and easily available local knowledge and expertise. In many cases coordination between the EU Council and the Commission also turns out to be difficult. This is especially critical when ESDP missions encroach on the traditional competencies of the Commission, for example with regard to support for reform in the justice sector. It should be obvious that police training and security sector reform can only work well if they are accompanied by measures strengthening the rule of law.

Another deficit is the lack of a thorough follow-up of ongoing ESDP missions and operations. Indeed, the EU member states often pay inadequate attention to the progress, setbacks and blockades that missions and operations experience, and still less to working out alternative courses of action. This is particularly grave given that the effectiveness of several missions has suffered precisely because the circumstances in which they have been operating have changed fundamentally. For example, the dramatic worsening of the security situation in Afghanistan enormously curtailed the room for manoeuvre and influence of EUPOL Afghanistan. The impact of the two missions in the Palestinian territories was seriously affected following the Hamas election victory in January 2006 and its violent seizure of power in Gaza in mid-2007 (which indeed caused the failure of EU BAM Rafah). More active follow-up of ESDP missions and operations by the member states could ensure faster response to changes on the ground and adaptation of the operational framework to the new circumstances. In those cases where mandates have been modified quickly, for example the expansion of the mandate in Aceh to include collecting and destroying weapons, this turned out to be essential for fulfilling the mission's purpose.

Recommendations

If the EU wants to develop a capacity to effectively and sustainably avert threats to European security, stabilise its neighbourhood and contribute potently to multilateral crisis management cooperation, its member states should:

- ▶ **Engage in strategic and long-term planning of deployments.** Of course in future the EU will also have to respond to crises as they blow up. But that is no reason not to agree on priorities for action. One important criterion should be whether and to what extent the EU can realistically make a decisive difference under the given circumstances. The EU should also focus more on preventative action and should seek to accelerate its deployments through early (operational) planning.
- ▶ **Conduct only missions and operations that are actively supported by a sufficiently large number of member states.** This means clarifying in advance of any future operation whether the deployment lies in the interests of a sufficient number of member states and is not just being tolerated. Failing to supply sufficient personnel or withdrawing contin-

gents unilaterally undermines missions and weakens the credibility of the EU.

- ▶ **Set up a systematic and binding “lessons learned” process.** Analysis of the strengths and weaknesses of previous operations should be taken into account for drafting new mandates and operation plans and modifying existing ones. In this context, it would also be useful to improve synergies between functional and geographical units in the Council Secretariat and make better use of the expertise of the Special Representatives, the EU Commission and the EU Delegations on the ground.
- ▶ **Critically and actively follow up on deployments.** Missions and operations can only be concluded successfully if mandates and rules of engagement can be modified quickly in response to substantial changes in the area of deployment. To make such adjustments possible, member states must have the courage and determination to critically assess, reflect and reappraise their actions.
- ▶ **Provide ESDP missions and operations with their own budgets.** A budget for quick impact projects would enable missions to supplement training measures with equipment aid (for example communications equipment or other basic infrastructure for police stations), to set concrete incentives for local agencies to cooperate and ultimately increase the attractiveness of reforms. This would considerably improve the chances of operational success.
- ▶ **Improve coordination of activities of ESDP missions and operations with those of EU Delegations** and ensure sensible division of labour.

Introduction: A Systematic Stocktaking of ESDP Missions and Operations

Muriel Asseburg and Ronja Kempin

At the European Council of Cologne in June 1999 the heads of state and government of the then EU-15 decided to set up a “Common European Policy on Security and Defence” (ESDP).¹ Its main goal was to engage in international crisis management so as to effectively counter external threats to European security. With this objective, the EU decided to establish the necessary structures and fashion the military (and from 2000 also civil) capabilities required to deploy stabilisation missions and operations to various crisis spots throughout the world. Ten years later, the ESDP has become one of the core components of the EU’s Common Foreign and Security Policy – above all, through the twenty-three civil, military and civil-military ESDP missions and operations.² What remains unclear, however, is the extent to which these deployments have actually served European policy objectives. Have the efforts in the ESDP frame transformed the EU into a powerful player whose weight on matters of foreign policy, security and defence corresponds to its economic status? Or is it rather a vain attempt by Europe to extend its influence in global politics beyond the limits of economic and financial policy? Does the ESDP’s emphasis on civil instruments of stabilisation and its integrated approach of deploying civil and military means together make it the ideal policy for effective conflict management and for deflecting threats to European security? Or are the capabilities that Europe has built up useless because the member states lack the political will to use them?³

Relevance and Contributions

To date, there is a lack of studies that examine strengths and weaknesses of deployments and that scrutinise whether ESDP operations serve European

¹ European Council, *Conclusions of the Presidency*, Annex III: “European Council Declaration on Strengthening the Common European Policy on Security and Defence”, Cologne, 3–4 June 1999, www.europarl.europa.eu/summits/kol2_en.htm#an3 (accessed 4 March 2009).

² For an overview of completed and ongoing ESDP missions see the website of the Council of the European Union, <http://consilium.europa.eu/showPage.aspx?id=268&lang=en> (accessed 4 August 2009); for an overview including costs, cooperation with third states and funding see European Parliament, *Answer to a Written Question: ESDP Missions*, E-5747/2008, Brussels, 26 January 2009, www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2008-5747&language=EN (accessed 4 August 2009).

³ See amongst others Anand Menon, “Empowering Paradise? The ESDP at Ten”, *International Affairs* 85, no. 2 (March 2009): 227–46; Asle Toje, “The Consensus-Expectations Gap: Explaining Europe’s Ineffective Foreign Policy”, *Security Dialogue* 39, no. 1 (March 2008): 121–41.

policy objectives and make a meaningful contribution to coping with crises and warding off threats. There is thus scant information available to European decision-makers about the conditions required for an ESDP deployment to make an effective contribution to international security and stability. Indeed, this study is the first attempt at a systematic stock-taking of the strengths and weaknesses of the policy instrument of ESDP missions and operations.⁴ In November 2008 the Council adopted guidelines for drawing lessons from the EU's civil crisis management operations. Such a lessons-learned process can certainly supply valuable insights into the way missions function and how to improve their operation.⁵ To enrich it with an independent external assessment – that also takes into account the EU's military operations – is another objective of the present study.

Security and defence policy is one of the most dynamic spheres of European integration. The desire of EU member states for joint action in this area has been stressed not only by the establishment of the European Defence Agency (EDA) to promote cooperation in European arms procurement and the development of defence capabilities but also by the targets set for developing civil and military capabilities. The European Security Strategy (ESS) adopted in December 2003 represented a crucial step for the EU in the process of defining strategic positions on international security.⁶ It is already evident that the process of formulating strategy will proceed beyond the status described at the end of 2008 in the Report on the Implementation of the European Security Strategy.⁷ In order to give meaning to this process, it is important to draw the lessons of ESDP activities to date. In this vein, the evaluation of the EU's civil missions and military operations presented in this volume should help to sharpen the EU's profile as an effective and credible security actor.

The goals that EU member states pursue through their Security and Defence Policy are laid down in the ESS. *Firstly*, the EU seeks to *fend off threats*, of which the ESS identifies international terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime as the most important. These threats are to be countered.

⁴ An exception is the volume by Micheal Merlingen and Rasa Ostrauskaitė, *European Security and Defense Policy: An Implementation Perspective* (Abingdon 2008), which scrutinises a selection of operations essentially from the practitioners' perspective. Since the editorial deadline of this study, two further studies have been published: Daniel Korski and Richard Gowan, *Can the EU Rebuild Failing States? A Review of Europe's Civilian Capacities* (London: European Council on Foreign Relations, October 2009); Giovanni Grevi, Damien Helly and Daniel Keohane, *European Security and Defence Policy: The First 10 Years* (Paris: European Union Institute for Security Studies, 2009).

⁵ Council of the European Union, *Guidelines for Identification and Implementation of Lessons and Best Practices in Civilian ESDP Missions*, 15987/08, Brussels, 19 November 2008.

⁶ European Union, *A Secure Europe in a Better World: European Security Strategy*, Brussels, 12 December 2003, www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf (accessed 27 March 2009).

⁷ Council of the European Union, *Report on the Implementation of the European Security Strategy: Providing Security in a Changing World*, Brussels, 11 December 2008, www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/reports/104630.pdf (accessed 27 June 2009).

above all, by deployments outside the EU's borders that combine civil and military means. *Secondly*, the EU aims to *strengthen security in the European neighbourhood*, using ESDP missions and operations to supplement other policy instruments (European Neighbourhood Policy, Strategic Partnership, Association) in setting up "a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations". Finally, ESDP deployments are intended to contribute to building *a world order based on effective multilateralism*, especially by supporting United Nations peace-making and peace-keeping operations but also through assistance for the AU and ASEAN, as well as by disseminating the principles of good governance and consolidating the transatlantic partnership.⁸

At first glance the EU member states seem to have lived up to these goals over the past six years. Since 2003 they have shown themselves capable of launching an ESDP mission or operation every three months on average.⁹ The spectrum of activities has spanned military stabilisation, fighting piracy, building police forces and security sector reform, monitoring of peace, border and cease-fire agreements, judicial reform and strengthening the rule of law. By 2004, after the first missions and operations had been deployed to various regions, the member states already described the EU as "a global actor, ready to share in the responsibility for global security".¹⁰ However, the question is, if the EU is also a strategic actor in security and defence matters, an actor that is capable of long-term planning and implementing activities in order to achieve the goals it has set? Critical voices say this is not the case, claiming for example that ESDP deployments to date represent little more than symbolic gestures: Only in five out of twenty-three cases has the EU deployed more than one thousand staff. Nine civil missions even had less than one hundred staff. In 2008 about six thousand military personnel were involved in military operations, representing just 0.3 percent of the operational military capacity of the twenty-seven EU member states.¹¹

⁸ European Union, *A Secure Europe in a Better World* (see note 6). The goals are largely confirmed in the report on the implementation of the European Security Strategy of December 2008 (see note 7).

⁹ Annika Björkdahl and Maria Strömviik, *EU Crisis Management Operations: ESDP Bodies and Decision-Making Procedure*, DIIS Report 8 (Copenhagen: Danish Institute for International Studies, 2008), 7, www.diis.dk/graphics/Publications/Reports%202008/R08-8_EU_Crisis_Management_Operations.pdf (accessed 4 March 2009).

¹⁰ Council of the European Union, *Headline Goal 2010*, approved by the General Affairs and External Relations Council on 17 May 2004, endorsed by the Council of the European Union of 17 and 18 June 2004, 1, www.consilium.europa.eu/uedocs/cmsUpload/2010%20Headline%20Goal.pdf (accessed 5 August 2009).

¹¹ Nick Witney, *Re-energising Europe's Security and Defense Policy* (London: European Council on Foreign Relations, July 2008), 39, http://ecfr.3cdn.net/678773462b7b6f9893_djm6vu499.pdf (accessed 5 March 2009).

The EU's Military Capabilities

Helsinki Headline Goal of December 1999

- ▶ Shared objective of improving the Union's capacity for military intervention by 2004.
- ▶ Establishment of a European Rapid Reaction Force (ERRF) to enable EU member states to deploy 60,000 troops to any crisis region in the world within 60 days and conduct operations lasting up to one year in the "Petersberg task spectrum".
- ▶ ERRF declared operational in May 2003, but thus far has never been deployed.

Headline Goal 2010 of June 2004

- ▶ Grants the member states another six years to meet the Helsinki Headline Goal.

EU battle groups decided in September 2004

- ▶ In order to enable the EU to engage in military crisis-prevention even before full implementation of the Helsinki Headline Goal, the EU defence ministers follow an initiative by Germany, France and the United Kingdom to set up small mobile fighting units (so-called battle groups).
- ▶ Multinational units of about 1,500 soldiers that can be deployed at just five (max. ten) days notice for operations lasting up to 120 days, to conduct a short mission or to prepare for a larger subsequent operation.
- ▶ EU battle groups were declared operational in January 2007, but thus far have never been deployed.

Declaration by the European Council on the Enhancement of the European Security and Defence Policy (ESDP) of December 2008

- ▶ Develop an effective EU capability in the coming years to plan and conduct two large stabilisation and reconstruction operations with a corresponding civil component able to run for at least two years with up to 10,000 staff in the field.
- ▶ Develop an effective EU capability to plan and conduct two simultaneous crisis response operations of limited duration, in particular with the help of EU battle groups.

In addition, the EU should be able to conduct:

- ▶ An emergency evacuation of European citizens (in less than ten days), taking account of the central role each member state has in relation to the protection of its citizens and the consular lead state concept.
- ▶ A maritime or air surveillance/interdiction mission.
- ▶ A civil/military operation providing humanitarian aid of up to 90 days.

The EU's Civil Capabilities

Action Plan of June 2000

- ▶ Four priorities for future EU crisis-prevention: building and strengthening of policing, of the rule of law, and of civil administrations in post-conflict societies, improvement of European civil protection capabilities.
- ▶ Member states pledge to provide the EU with personnel for each of these areas.

Consolidated Civilian Headline Goal 2008 of December 2004

- ▶ Expands the list of the ESDP's civilian instruments to include a crisis monitoring capability.
- ▶ Strengthens the expertise available to the Special Representatives by appointing 391 experts in the fields of human rights, political analysis, gender and security sector reform.
- ▶ Set up civilian response teams and rapidly-deployable police elements by the end of 2006 to improve the EU's rapid response capacity.
- ▶ Confirms full operational readiness of civilian EU capabilities. The twenty-seven EU member states pledge to support civil missions with 5,761 police experts, 631 legal experts, 525 experts in civil administration and 4,988 individuals for civil protection.

Declaration by the European Council on the Enhancement of the European Security and Defence Policy (ESDP) of December 2008

- ▶ Enable the EU to conduct a dozen civil ESDP missions of different types simultaneously (and also as crisis response), in particular police support missions, rule of law missions, civil administration missions, civil protection missions, security sector reform missions as well as monitoring missions, including one larger mission (with up to 3,000 experts) lasting several years.

Research Interest and Questions

Military and civil capabilities are deployed when they are regarded as a useful means to achieve an end such as maintaining or restoring security and stability. This is why a closer look at ESDP deployments is more revealing than an analysis of European military and civil capabilities per se about the EU's qualities as a strategic actor – especially given that to this date the EU can deploy civil and military personnel only when the member states provide them on a case by case basis. Therefore, the EU's capabilities (see the text boxes on “The EU's Military and Civil Capabilities”) and its weaknesses tell us little about whether the ESDP is suited to transform the EU into an international security actor as well as to guarantee security on the European continent. In addition, of course, it is not about numbers:

Conducting as many and as large operations as possible does not guarantee success with regard to realising Europe's security interests; small missions can have a big impact if they are well prepared, well targeted and coherently conducted.

That is the background against which this volume scrutinises ESDP missions and operations, seeking to systematically assess their relevance and effectiveness as an instrument of European crisis management and their contribution to honing the EU's capacity as a strong pro-active factor in international security matters. In fact, any assessment of what ESDP deployments can achieve is dogged by methodological difficulties. The complex interactions of local, regional and international factors and actors in a conflict environment make it very difficult to tease out the real impact of particular operational measures. At the same time, the causes of developments are hard to identify. Thus in many cases it is almost impossible to make out all the effects and side-effects – intended and unintended, direct and indirect, short-, medium- and long-term – that an ESDP mission or operation entails or to trace particular developments in a conflict environment directly (or exclusively) to the European presence and activities.

In order to deal with these difficulties, and building on the OECD's guidelines for evaluating activities in the field of conflict prevention and management,¹² we concentrate on three decisive aspects of ESDP deployments:

- ▶ How did the decision on a deployment originate and what does its mandate look like?
- ▶ How has the mandate been implemented?
- ▶ How can the mission or operation be assessed in terms of its effectiveness for short- and long-term crisis management?

Given the suspicion that some ESDP missions and operations serve to satisfy the national interests of individual member states, we start by examining how they come into being. What are the "driving forces" behind an ESDP commitment? What are its stated (and underlying) objectives? We also look at how the bargaining process between EU member states (and between them and others) impacts on the mandate of the deployment in question. When scrutinising the mandate we ask if the objectives target the conflict's core problems and are clearly formulated. We ask as well if implementation can be measured against clearly defined benchmarks. We then assess whether the mandate in principle provides sufficient personnel and other resources to address the defined tasks.

The second step is to examine how the mandate has been implemented, because initiatives will only be successful if the pledged resources are actually available, cooperation with national and international actors works properly, the activities of the EU bodies (Council and Commission) and member states are coordinated, and member states demonstrate suf-

¹² OECD Development Assistance Committee, *Guidance on Evaluating Conflict Prevention and Peacebuilding Activities: Working Draft for Application Period*, 2008, 40–44.

ficient flexibility to respond to changes on the ground, such as a worsening security situation or expectations of local actors for the EU to assume a more active role.

Finally, we subject each deployment to a critical assessment that explores whether it serves European policy objectives by contributing to crisis management, fending off threats, stabilising Europe's neighbourhood and strengthening international cooperation in the sense of effective multilateralism. Indeed, the EU can only be successful in achieving these objectives if the mission or operation is supplemented by the pre-existing EU activities in the area of operation and if it avoids contradicting the work of other international actors involved.

On the Case Studies

Of the twenty-three ESDP missions and operations conducted by late 2009, twelve form the empirical basis of this study. We look specifically at:

- ▶ the EU engagement in the Balkans with the military operation EUFOR Althea and the police mission EUPM, both in Bosnia and Herzegovina, and EULEX in Kosovo;
- ▶ the EU deployments to Africa with the military operations EUFOR RD Congo, EUFOR Tchad/RCA and Navfor Atalanta in the Gulf of Aden;
- ▶ the EU contribution to the Middle East Peace Process through its missions EU BAM Rafah and EUPOL COPPS;
- ▶ the EU efforts in support of peace and cease-fire agreements with the AMM and EUMM monitoring missions in the Indonesian province of Aceh and Georgia respectively; and finally
- ▶ the EU efforts to build the security sector in Iraq and Afghanistan through EUJUST LEX Iraq and EUPOL Afghanistan.

These case studies cover the strategically most important, largest and most prominent ESDP operations. They encompass the continents of Europe, Africa and Asia and include all the different civil and military measures and approaches available to the EU in the ESDP framework, including ones with an executive or partially executive mandate and those that essentially provide for monitoring, mentoring and advising. In the end, this selection also enables us to highlight the strengths and recurring weaknesses of ESDP missions and operations, to draw conclusions on the EU's qualities as an actor in security and defence policy, and finally to formulate recommendations as to how the EU should use its ESDP deployments to build up its capacity as a strategic actor in the security field so as to enforce its own security interests, and make an effective, targeted and sustainable contribution to international crisis management.

Operation Althea and the EU Police Mission in Bosnia and Herzegovina: Implementing the Comprehensive Approach

Marco Overhaus

In year fourteen after the signing of the Dayton Agreement (1995) Europe has important decisions to make in Bosnia and Herzegovina. The question has arisen – not for the first time – of closing the international community’s Office of the High Representative (OHR) and replacing it with a strengthened EU Special Representative (EUSR) with more personnel and stronger powers. That would also mean allowing the High Representative’s far-reaching “Bonn powers” of intervention in Bosnian domestic politics to lapse. After the closure of the OHR it is planned to transform the EU’s military Operation Althea under the European Security and Defence Policy (ESDP) into a mentoring and training mission for the Bosnian army. Finally, a decision on a mandate renewal – most likely the last – for the European Union Police Mission (EUPM) is due to be taken on the political level in December 2009.

All these developments fit snugly into efforts to draw Bosnia and Herzegovina politically and economically closer to the EU, including a longer-term membership perspective. The signing of a Stabilisation and Association Agreement in June 2008 marked the culmination of these endeavours to date. The European Union’s overall strategy towards Bosnia and Herzegovina aims essentially to end the international oversight of the country, to set in motion self-sustaining reform processes based on partnership and thus in the long term to contribute to the emergence of a “stable, viable, peaceful and multiethnic” state.¹ But the current reality is rather different. The complex political structure of Bosnia and Herzegovina created by the Dayton Agreement (General Framework Agreement for Peace in Bosnia and Herzegovina) still exists, dividing the country into two autonomous “entities”: the Serb-dominated Republika Srpska and the Croat- and Bosniak-dominated Federation of Bosnia and Herzegovina (itself divided into cantons along ethnic lines). Powers and structures at the level of the state itself remain weak, and according to numerous observers, since the end of the war in 1995 political tensions in Bosnia and Herzegovina have rarely been as high as they are now.²

¹ General Affairs and External Relations Council, *Council Conclusions on Operation Althea*, Brussels, 11 October 2004, www.europa-eu-un.org/articles/en/article_3891_en.htm (accessed 25 May 2009).

² United Nations Development Programme (UNDP), *Early Warning System Bosnia and Herzegovina: Annual Report 2008*, Sarajevo, 22 April 2009, www.undp.ba/index.aspx?PID=36&RID=87 (accessed 31 July 2009), 7; International Crisis Group (ICG), *Bosnia’s Incomplete Transition: Between Dayton and Europe*, Europe Report 198 (Sarajevo and Brussels, March 2009), 1.

With decisions pending at the EU and international levels, this is a good time to assess the work of the two ESDP engagements in Bosnia and Herzegovina. The very origins of the European Security and Defence Policy are closely tied to the war of 1992–95 in Bosnia and Herzegovina and the attempts to deal with its aftermath. Europe’s inability to respond effectively to violations of fundamental European principles in Bosnia and Herzegovina (and later in Kosovo) was the factor that created the necessary political pressure to equip the EU with its own instruments of civil and military crisis management. The EUPM which began on 1 January 2003 was the very first ESDP mission. Two years later the European Union also took over the task of military stabilisation in Bosnia and Herzegovina from NATO. With an initial troop strength of seven thousand, Operation Althea was by far the largest military operation yet under the ESDP. Since then it has been possible to reduce the number of troops to less than two thousand (October 2009). In a broader sense, the Bosnia intervention has also become a central reality test for the EU’s aspiration to deploy civil and military crisis instruments in tandem under a “comprehensive approach”. Apart from DR Congo, Bosnia and Herzegovina is thus far the only place where the EU has conducted civil missions and military ESDP operations at the same time. In this connection it is thus fitting that the member states declared the application of the comprehensive approach in Bosnia and Herzegovina to be one of the top priorities in implementing the European Security Strategy of December 2003.³

The Mandates

The mandate of the EU police mission

At the beginning of 2003 the European Union Police Mission replaced the UN’s International Police Task Force which had been sent to the country under the Dayton Agreement. The EUPM mandate ran initially for three years and provided a budget of €14 million for the start-up phase and another €38 million annually for running costs between 2003 and 2005.⁴ In the initial phase the EUPM had about five hundred police officers from more than thirty countries. The mandate will be extended for the third time in December 2009 and then will run until the end of December 2011.⁵

³ European Council, *European Security Strategy – Bosnia and Herzegovina/Comprehensive Policy*, Brussels, 18 June 2004, www.eusrbih.eu/Print/?cid=1,1,1 (accessed 25 May 2009).

⁴ Council of the European Union, *Council Joint Action of 11 March 2002 on the European Union Police Mission*, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:070:0001:006:EN:PDF> (accessed 25 May 2009).

⁵ Council of the European Union, “European Union Police Mission in Bosnia and Herzegovina”, Brussels, www.consilium.europa.eu/showPage.aspx?id=585&lang=de (accessed 25 May 2009). The number of international police officers has been reduced over the following years. Strength in September 2009 amounted to 152 officers (plus 211 national staff from Bosnia-Herzegovina). The following non-EU states are currently participating in the EUPM (June 2009): Canada, Iceland, Norway, Switzerland, Turkey and Ukraine.

Unlike the International Police Task Force, the EUPM has no mandate for executive or substitute action. In other words, its work is limited to advising and monitoring the middle and top levels of the Bosnian police without itself conducting operational police work. According to its first mandate of March 2002, the EUPM is supposed to work to create sustainable police institutions run by Bosnians according to recognised European and international practices. In the course of the mission three “strategic pillars” have emerged: improving the accountability and standards of the local police organs, supporting reform of police structures and helping the police to fight organised crime, especially by working to develop state-level institutions in the field of policing and criminal prosecution.⁶

The original EUPM mandate was remarkably broad but nonetheless quite precise in its formulated objectives. The Mission Statement annexed to the Joint Action of March 2002 contained four strategic political goals, broken down into fourteen objectives at the operational level. Strengthening professionalism, promoting modern police standards and combating political instrumentalisation were initially uppermost.

The original EUPM mandate left the issue of reforming police structures to one side, instead taking a functional approach aiming to improve policing on the basis of the *existing structures*. Reform of police structures is a political hot potato because it is intimately bound up with fundamental tensions over the allocation of state powers. Whereas the Bosniaks in particular support a centralisation of state-level structures, the political representatives of the Serbs resist almost any shift of powers away from their Republika Srpska. The fragmented and complex police structure thus reflects the political order in Bosnia and Herzegovina as a whole, encompassing fifteen different authorities and thirteen interior ministries at different state levels. Unlike functioning federal systems such as Germany or the United States (which likewise have decentralised police structures), Bosnia and Herzegovina has no clear demarcation of authority or institutionalised structures for cooperation between these numerous authorities and departments.

In July 2004 the then High Representative Lord Paddy Ashdown set up a Police Restructuring Commission to draw up proposals for creating a *unified* police structure, and at the beginning of 2005 the European Commission also tied the conclusion of a Stabilisation and Association Agreement with Bosnia and Herzegovina to concrete criteria for centralising police structures. Supporting this structural reform process thus became part of the remit of the EUPM.⁷

⁶ Council of the European Union, “European Union Police Mission in Bosnia and Herzegovina”, factsheet, Brussels, up-dated March 2009, www.consilium.europa.eu/uedocs/cmsUpload/090325%20FACTSHEET%20EUPM%20-%20version%206_EN.pdf (accessed 25 May 2009).

⁷ The EUPM leadership remained sceptical (if not outright rejecting) of these plans for sweeping reform of police structures because the associated politicisation of the issue would have made it much more difficult to pursue the task of making more technical improvements to police work in Bosnia and Herzegovina – which was the main concern

The mandate of Operation Althea

The European Council first officially expressed an interest in an EU operation to replace NATO's Stabilisation Force (SFOR) in Bosnia and Herzegovina at its December 2002 meeting in Copenhagen. But it took eighteen months (until July 2004) before the Council was able to adopt the Joint Action to lay the legal and structural basis of the operation and another six months before it was actually deployed in December 2004. The reasons for the long delays – both before the decision at EU level and before the actual start of the operation – are to be found in political tensions and in the EU's institutional relationship with NATO. Initially the United States in particular resisted the EU taking over the mandate because Washington lacked faith in Europe's abilities and was fundamentally sceptical about the idea of the EU as an "autonomous" security actor.⁸ On the European side it was France that pushed the idea of taking over the stabilisation operation in Bosnia and Herzegovina, in order to prove the EU's capacity to act alone. Berlin supported the French course but had to do a balancing act between Franco-German relations on the one hand and its transatlantic relationship on the other.

The unclarified institutional relationship between the EU and NATO also played a large part in the long preparations for the EU operation. Operation Althea was planned and conducted in the framework of the Berlin Plus agreements, which are supposed to allow the EU access to NATO's strategic planning capabilities and common military assets for crisis management. Although both organisations approved the agreements in March 2003, there were still differences over concrete implementation at the technical and operational level in Bosnia and Herzegovina. For example Washington handled intelligence sharing with the EU relatively restrictively. France for its part insisted on the EU operation being visible distinct from NATO – leading at one point to arguments over "the placing of flagpoles".⁹

With respect to its objectives and timeframe the EUFOR mandate was a lot less precise than the mandate of the European Union Police Mission. In accordance with the resolutions of the UN Security Council, EUFOR Althea was given the main responsibility for stabilising the peace in Bosnia and Herzegovina and for military implementation of the Dayton Agreement.¹⁰ On top of that, EUFOR Althea was to assist the High Representative of the International Community in achieving his goals and support the EU's

of the mandate of March 2002. This question is addressed in greater detail below.

⁸ Frank Kupferschmidt, *Strategische Partnerschaft in der Bewährung: Die Zusammenarbeit von NATO und EU bei der Operation Althea*, SWP-Studie 7/2006 (Berlin: Stiftung Wissenschaft und Politik, April 2006), 13–14.

⁹ Telephone interview on 22 June 2009 with a German officer who was involved in planning Operation Althea at the German Permanent Representation to the EU.

¹⁰ United Nations Security Council, Resolution 1551, S/RES/1551, 9 July 2004, www.consilium.europa.eu/uedocs/cmsUpload/N0441937.pdf (accessed 15.6.2009); United Nations Security Council, Resolution 1575, S/RES/1575, 22 November 2004, www.consilium.europa.eu/uedocs/cmsUpload/N0461922.pdf (accessed 15 June 2009).

Stabilisation and Association Process by creating a secure environment.¹¹ The EUFOR mandate stated no end date, although unofficially it was assumed that it would initially run for three years.¹² The operational military costs were borne – as is usual for EU and NATO crisis management interventions – by the participating member states. The Joint Action of July 2004 provided a budget of €71.7 million for the shared costs of the operation.¹³

Because of its long run-up, Operation Althea cannot really be described as “crisis management” in the true sense of the word. By the time EUFOR Althea took over at the end of 2004 the military aspects of the Dayton Agreement had been completed to a large extent. The armed groups of the former conflicting parties had been withdrawn and demobilised, or integrated into the new regular security structures. All heavy weapons and ammunitions had either been put under international control or destroyed. But a duty remained to support the new Armed Forces of Bosnia and Herzegovina so that they could gradually take over local responsibility for these tasks.¹⁴

Implementation and Impact

Creating a secure environment

Even today ethnically motivated violence has not completely disappeared from the reality of life in Bosnia and Herzegovina. For example, in 2007 there were reports from Mostar and the Republika Srpska of violence and vandalism in connection with the return of refugees.¹⁵ But nonetheless, since EUFOR Althea took over the military mandate in December 2004 the security situation in Bosnia and Herzegovina has as a whole remained largely stable. Violent clashes between Croats, Bosniaks and Serbs remained the exception and were locally limited, even around sensitive events such as anniversary commemorations for the Srebrenica massacre

¹¹ Council of the European Union, *Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union Military Operation in Bosnia and Herzegovina*, Brussels, http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_252/l_25220040728en00100014.pdf (accessed 25 May 2009); Council of the European Union, *Council Decision 2004/803/CFSP of 25 November 2004 on the Launching of the European Union Military Operation in Bosnia and Herzegovina*, Brussels, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_353/l_35320041127en00210022.pdf (accessed 25 May 2009).

¹² Kupferschmidt, *Strategische Partnerschaft in der Bewährung* (see note 8), 14; “Start der EU-Friedensmission in Bosnien – Übernahme der Verantwortung von der Nato”, *Neue Zürcher Zeitung*, 2 December 2004.

¹³ Council of the European Union, *Council Joint Action 2004/570/CFSP* (see note 11).

¹⁴ Council of the European Union, “EU Military Operation in Bosnia and Herzegovina”, factsheet, up-dated May 2009, Brussels, www.consilium.europa.eu/uedocs/cmsUpload/090514-Factsheet_EUFOR_Althea-version15_EN.pdf (accessed 25 May 2009).

¹⁵ “Bosnia and Herzegovina Has Historic Window of Opportunity to Move Closer to Europe: Leaders Must ‘Seize the Moment’, Security Council Told”, *States News Service*, 16 May 2007.

or the declaration of independence in Kosovo.¹⁶ While EUFOR Althea has certainly contributed to a positive trend, the operation's specific impact on stability and security cannot be measured precisely.

Since it began EUFOR Althea has never had to use military force to maintain a secure environment in Bosnia and Herzegovina. Indeed, since the operation was reduced from six thousand two hundred to two thousand five hundred soldiers in February 2007 it can no longer be regarded as possessing real military muscle. Its contribution to maintaining a secure environment lay primarily in the reassuring and deterrent effect of its presence. The psychological component here should not be underestimated, because especially for the Bosniaks the presence of international forces continued to represent an important aspect of the guarantees for the existence of the state as a whole.¹⁷ The gendarmes of the Integrated Police Unit (IPU), which is also part of EUFOR Althea, also contributed to maintaining a secure environment. These police with military status were assigned, among other things, for civilian crowd and riot control, for example in connection with demonstrations. But none of the twenty publicly documented operations of the IPU between 2004 and 2006 actually involved crowd and riot control. Instead the IPU provided concrete operational assistance in fighting crime, collecting illegal weapons and border protection, as well as training the Bosnian police in crowd and riot control.¹⁸

Defence sector reform and the establishment of the new Armed Forces of Bosnia and Herzegovina under a unified political and military command (and the associated abolition of the separate armed forces of the two entities) are regarded today as one of the greatest successes of reconstruction efforts. But the EU's contribution to this process was restricted to military training and technical support from Operation Althea in the implementation phase. At the political and strategic level the OSCE, NATO and individual states – above all the United States – played the key roles.¹⁹ Apart from continuing to collect and control stored weapons, EUFOR Althea's main contribution to building the Armed Forces of Bosnia and Herzegovina was an operational one, in the process of the gradual transfer of specific military tasks – Joint Military Affairs (JMA) – from EUFOR Althea to the new army and other local actors. Of the eight JMA tasks – ranging from mine-clearing to military movement control and control of airspace – all have by now been successfully handed over to the Armed Forces of

¹⁶ ICG, *Bosnia's Incomplete Transition* (see note 2), 3.

¹⁷ The same also applies to the Office of the High Representative of the International Community and its powers. See surveys of the population of Bosnia and Herzegovina by the UN Development Programme in UNDP, *Early Warning System Bosnia and Herzegovina: Annual Report 2008* (see note 2), 11.

¹⁸ EUFOR ALTHEA, "Integrated Police Unit (IPU)", www.euforbih.org/eufor/index.php?Itemid=32&id=16&option=com_content&task=view (accessed 24 June 2009).

¹⁹ Heinz Vetschera and Matthieu Damian, "Security Sector Reform in Bosnia and Herzegovina: The Role of the International Community", *International Peacekeeping* 13, no. 1 (March 2006): 28–42; see also Berit Bliesemann de Guevara, *Staatlichkeit in Zeiten des Statebuilding: Intervention und Herrschaft in Bosnien und Herzegowina* (Frankfurt am Main, 2009).

Bosnia and Herzegovina since the start of the EUFOR mandate.²⁰ In this connection the EU operation conducted practical training and mentoring activities, including joint inspections of arms and munitions depots, and provided technical equipment for mine clearance operations.²¹

Against this positive overall background the EU's General Affairs and External Relations Council found in November 2008 that the military part of the Dayton Agreement had been largely completed.²² But there were still months of heated discussion in the political bodies in Brussels about what conclusions to draw for the future of Operation Althea. In the first half of 2009 the Czech Council Presidency presented four options for the future of EUFOR Althea, ranging from keeping the status quo to complete withdrawal. Some EU member states, such as the United Kingdom, believe that the political situation in Bosnia and Herzegovina is still too tense for complete withdrawal. But at the same time member states facing the growing demands of other foreign interventions have started "voting with their feet" on the future of Operation Althea. Some have announced they will be leaving EUFOR Althea while others, most recently France in June 2009, have already done so.

In view of this set of national interests the third option put forward by the Czech Presidency offered a viable compromise whereby EUFOR Althea would be turned into a considerably smaller mentoring and training mission.²³ Alongside a reduction in personnel from slightly less than two thousand in October 2009 to just two hundred, the principal difference would be that the successor to EUFOR Althea would no longer have any executive mandate. This would also mean losing operational components such as the Liaison and Observation Teams (LOTs) and the Integrated Police Unit. The small size of the new operation (of two hundred soldiers roughly half would be available for actual mentoring and training activities) means that its contribution to further reform in the defence sector would be very limited and the EU would remain the junior partner to NATO. In May 2009 the EU foreign and defence ministers formally authorised the planning process for implementation of the third option, although a definite final decision has yet to be taken.²⁴

20 The final task – civilian movement control of arms and ammunition – was handed over to the Bosnian authorities on 19 November 2009.

21 EUFOR ALTHEA, "EUFOR Hands over Countermines Responsibilities to AFBiH", www.euforbih.org/eufor/index.php?option=com_content&task=view&id=191&Itemid=53 (accessed 22 June 2009).

22 Council of the European Union, *Council Conclusions on the ESDP, 2903rd External Relations Council Meeting*, Brussels, 10–11 November 2008, www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/103994.pdf (accessed 25 May 2009).

23 "Defence Ministers Undertake Reconversion of Althea Operation in Bosnia-Herzegovina", *Agence Europe*, 13 March 2009.

24 Council of the European Union, *Council Conclusions on the European Security and Defence Policy (ESDP), 2943rd External Relations Council Meeting*, Brussels, 18 May 2009, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/107867.pdf (accessed 25 May 2009).

Over the past four and a half years Operation Althea has made a limited but visible contribution to *maintaining* a secure environment in Bosnia and Herzegovina after taking over a largely pacified situation from NATO. The remaining risks in the country are no longer military but political, economic and policing-related. The return of more refugees to their former homes is now hindered less by the threat of organized violence than political and economic barriers. Military means are not useful for tackling sporadic outbreaks of violence, weapons kept in private households (suspected to be large amounts) and the increase in private security services. In this environment the Bosnian police has a central function alongside the necessary political and economic strategies.

Reforming the Bosnian police and fighting organised crime

The European Union Police Mission has had varying degrees of success in the three strategic areas mentioned at the beginning: improving professionalism and policing standards, reforming police structures and helping in the fight against organised crime.

Two factors make it difficult to give a proper verdict on the success of the EUPM in the first field. For one thing there was a lack of a clear definition of “best European and international practice”, which the mission therefore largely had to define for itself. For another there have been almost no systematic studies of the changing quality of police work in Bosnia and Herzegovina over recent years. One important indicator for the quality of police work is the population’s confidence in its own police. The UN Development Programme has conducted annual surveys since 2000, concluding that public dissatisfaction with the police in Bosnia and Herzegovina increased significantly between 2000 and 2006.²⁵ The trends for 2007/2008 also point in the same direction.²⁶ That said, the authors of the study point out that growing dissatisfaction is connected with citizens’ increasing awareness of their rights vis-à-vis the police and more concrete ideas about what is and is not appropriate behaviour by the security organs. This increased awareness is attributed above all to media campaigns and capacity-building projects of the kind also supported and conducted by the EUPM.

Information and analyses available from the regular reporting of the EUPM,²⁷ academic journals,²⁸ and interviews with national and international members of the EUPM on the ground point to concrete improvements in policing to which the EUPM has contributed – jointly with the

²⁵ UNDP, *Early Warning System Research 2000–2006*, special edition/web edition, Sarajevo, 18 October 2006, www.undp.ba/index.aspx?PID=36&RID=59 (accessed 31 July 2009), 112.

²⁶ UNDP, *Early Warning System Bosnia and Herzegovina: Annual Report 2008* (see note 2), 69ff.

²⁷ The leadership of EUPM is required to report on implementation of its mandate every six months. These reports are not public.

²⁸ See for example Thomas Mühlmann, “Police Restructuring in Bosnia-Herzegovina: Problems of Internationally-led Security Sector Reform”, *Journal of Intervention and Statebuilding* 2, no. 1 (March 2008): 1–22 (3).

European Commission – through concrete training measures and projects. For example in October 2008 the EUPM conducted a training seminar on how to handle informers. In the field of technical capacities the mission pushed forward the setting up and maintenance of a crime-fighting database and an automatic fingerprint identification system. EUPM inspections in police stations across the country represent an important instrument for monitoring policing, even if the mission has no sanctions at its disposal when it identifies questionable behaviour. Members of the mission also point to the setting up of a public complaints system and to the strengthening of internal disciplinary procedures as evidence of enhanced transparency and supervision in the police force.²⁹ Although attempts to exert political influence on police operations remain a problem, local police chiefs have grown more assertive towards local politicians.³⁰

In the second strategic area – reforming Bosnian police structures – European and international efforts have largely failed. Under pressure from the international community two attempts have been launched in the past four years to reform the Bosnian police organisation. Most recently, at the end of 2007 the Bosnian political parties agreed on a police reform that led ultimately to the passage of two new police laws in April 2008.³¹ These new laws essentially provide for the establishment of state-level institutions in the fields of logistic support, forensics, training and operational cooperation. But the original idea – that these new institutions should be responsible for support and cooperation of *all* Bosnian police organisations – had to be abandoned, largely due to resistance from Republika Srpska.³² All that was left at the end was a state-level instance basically coordinating only itself, because the new institutions possess no powers over the other state levels. In this context the police reform can actually be regarded as a step backwards, because it has accomplished nothing but the creation of additional bureaucratic structures.³³ The improvements in cooperation between police authorities that are crucial for effective crime-fighting still lack the necessary institutional and legal foundation, so this cooperation occurs on an ad hoc basis and depends strongly on the good will of those involved. All more ambitious moves were tied to reform of the Bosnian constitution and thus de facto postponed indefinitely. The European Union’s approval of a Stabilisation and Association

²⁹ Interview with a member of the EUPM, Sarajevo, 13 May 2009.

³⁰ Interview with a member of the EUPM, Sarajevo, 13 May 2009.

³¹ Solveig Richter, *The End of an Odyssey in Bosnia and Herzegovina*, SWP Comments 19/2008 (Berlin: Stiftung Wissenschaft und Politik, May 2008), www.swp-berlin.org/common/get_document.php?asset_id=5181 (accessed 20 November 2009).

³² There are several reasons why centralisation has functioned better with military structures than in policing. The strong international military presence has greatly reduced the symbolic and actual importance of the Armed Forces of Bosnia and Herzegovina as an instrument of political power, and centralisation of the military is implicit in the provisions of the Dayton Agreement. Finally, the principle of “one state, one army” is internationally recognised. See Bliesemann de Guevara, *Staatlichkeit in Zeiten des Statebuilding* (see note 19).

³³ Interview with a member of the Bosnian security ministry, Sarajevo, 14 May 2009.

Agreement with Bosnia and Herzegovina despite these meagre results can only be regarded as capitulation before the maelstrom of Bosnian politics.

Alongside the political tensions over centralisation/decentralisation in Bosnia and Herzegovina mentioned at the beginning, the inconsistent policies of the international community and the European Union represent another reason for the failure of the reform efforts to date. The EUPM and the Office of the High Representative (who is at the same time EU Special Representative), have in the past pursued different objectives in the field of police reform. While the EU Police Mission began by concentrating on technical and functional improvements in the Bosnian police, as laid out in its mandate, the Office of the High Representative (OHR) under Lord Ashdown has been working since 2003 to create a unified police structure with far-reaching powers at the level of the state as a whole.³⁴ The outcome was a more or less intractable conflict of goals, because the OHR agenda politicised police reform and blocked progress at the technical/functional level.³⁵ And then just when the EUPM and the European Commission were beginning to shift their sights towards the more far-reaching goals, the post of High Representative was taken over by Christian Schwarz-Schilling, a figure who was considerably less willing and less able to determinedly push for ambitious reform of the police structures against the resistance of the parties in Bosnia and Herzegovina.³⁶ The reform came to naught.

The unresolved fragmentation of police structures in Bosnia and Herzegovina is a constraint in the third strategic area too, fighting organised crime. Compounding the problems in this area, there were significant co-ordination problems at the beginning between the European Union Police Mission and the military operation (first NATO/SFOR then EUFOR Althea). With its non-executive mandate the police mission's possibilities for supporting the Bosnian police operationally were limited, even though at least at the beginning there was still a need for this. SFOR and later EUFOR Althea moved to fill that gap, leading to irritation in the EUPM and concrete difficulties in fighting crime.³⁷ For as a military operation EUFOR Althea had neither the capacities nor the legal competence to conduct police work.³⁸ Not until the second half of 2005 were these problems

³⁴ Mühlmann, "Police Restructuring in Bosnia-Herzegovina" (see note 28), 4.

³⁵ Stefan Feller, "Remarks by Police Commissioner Stefan Feller during the 70th Rose-Roth Seminar in Sarajevo", 19–21 March 2009, 2.

³⁶ By the time Schwarz-Schilling took office the willingness of the most important states – the members of the Peace Implementation Council (PIC) – to exert corresponding pressure had also fallen considerably. The options of the High Representative depend decisively on the support of these states, including Russia.

³⁷ Thomas Bertin, "The EU Military Operation in Bosnia", in *European Security and Defence Policy: An Implementation Perspective*, ed. Michael Merlingen and Rasa Ostrauskaite, 61–77 (69) (London, 2008); Thomas Mühlmann, "EU Civil-Military Cooperation and the Fight against Organised Crime: Lessons to be Learned from the Bosnian Example", *European Security* 17, no. 2–3 (June–September 2008): 387–413 (397).

³⁸ Cornelius Friesendorf and Susan E. Penska, "Militarized Law Enforcement in Peace Operations: EUFOR in Bosnia and Herzegovina", *International Peacekeeping* 15, no. 5 (No-

partially overcome through better separation and harmonisation of the mandates. The outcome enhanced the operational capacity of the EUPM and strengthened the role of the EU Special Representative as the coordinating instance between the civil mission and the military operation.³⁹

Despite initial difficulties in civil/military cooperation, the support given to the process of building functioning state-level institutions for fighting crime grew into a positive example of cooperation between EU actors. Thus the EU Police Mission supported the State Investigation and Protection Agency (SIPA) on legal and operational matters, including advice on developing a legal framework for the work of SIPA and support in crime-fighting operations (after the mandate realignment described above),⁴⁰ while the European Commission also assisted SIPA between 2006 and 2008 through concrete projects in the CARDS and IPA programmes.⁴¹ Even if sources in the Bosnian security ministry speak of ongoing understaffing,⁴² SIPA has proven its ability to conduct successful operations against organised crime.

Relevance

The long run-up to the military operation and the fact that the EU took over its civil policing and military responsibilities from other international actors that had been working there for years means that the EU's intervention in Bosnia and Herzegovina has not been crisis management in the true sense of the word. The decisive question for the future is whether the EU will be able to respond quickly and robustly in crisis situations that are more like Bosnia and Herzegovina in 1995 and 1996 (as opposed to 2003/2004): situations in the immediate aftermath of war where security has first to be established and new institutions need to be constructed from scratch. The mandates of the two ESDP engagements under scrutiny here reveal a number of important deficits. Although the EU and its member states placed high priority on fighting organised crime, they equipped the police mission with a soft mandate that restricted it to

ember 2008): 677–94. Note that this does not apply to the Integrated Police Unit mentioned above, which is also part of EUFOR.

³⁹ The corresponding principles and guidelines were adopted by the Political and Security Committee (PSC) in September 2005.

⁴⁰ The report on the work of the EU Police Mission for the period September 2008 to March 2009 lists concrete examples. Thus a SIPA operation against a drug ring in Sarajevo in February 2009 was accompanied by the EUPM in an advisory capacity.

⁴¹ A member of the Commission staff in Brussels provided the author with a summary: "Ongoing Projects and Projects in the Pipeline under CARDS 2006 and IPA 2007/2008". From 2000 the EU channelled its financial assistance to the countries of the Western Balkans through the CARDS programme (Community Assistance for Reconstruction, Development and Stabilisation). In 2007 CARDS was replaced by the Instrument for Pre-Accession Assistance (IPA) which is supposed to support accession candidates and potential accession candidates to better prepare them for eventual accession in the future.

⁴² Interview with members of a European Commission delegation in Bosnia and Herzegovina and with a member of EUPM staff, Sarajevo, 13 May 2009.

observing and advising the actors in Bosnia and Herzegovina. Where the local actors were unable to satisfy the operational requirements for fighting organised crime the military operation – including the gendarme forces attached to them – became increasingly involved. The problems this threw up also resulted from inadequate civil/military planning in the start-up phase of Operation Althea. The fact that the EU took action to harmonise the crime-fighting aspects of the civil and military mandates in the course of implementation does however suggest a capacity for institutional learning.

Despite the deficits, both the police mission and the military operation were effective to the extent that clearly identifiable progress towards their respective mandate goals was achieved. The security situation remained stable and made it increasingly possible for the international forces to withdraw from the country or concentrate on training local security forces. Concrete improvements in police work, training assistance for the new Armed Forces of Bosnia and Herzegovina and the handing over of the remaining military responsibilities from the Dayton Agreement number among the clear achievements of the ESDP interventions in Bosnia and Herzegovina. Despite the teething troubles described above, cooperation with the remaining NATO presence also functioned well, but in the area of military reform the EU will remain the junior partner to NATO under American leadership.

Looking at the situation as a whole, we find that both ESDP engagements discussed here were able to achieve successes – especially in the field of operational and technical support – when the local partners were both willing and able to take up this offer of assistance. With this cooperative approach the ESDP deployments fit seamlessly into the overall approach of the European Union, which is based on partnership in the framework of the Stabilisation and Association Process. But conversely, that also means that the ESDP deployments often got bogged down when the actors in Bosnia and Herzegovina were unwilling and/or unable to make use of the offer of cooperation. The failed reform of the police structures is the clearest example of this.

Conclusions

If we set aside for a moment the overall political approach of the EU and the policies of its member states towards Bosnia and Herzegovina and examine the European Security and Defence Policy in isolation, we cannot identify for the country *fundamentally* more effective policy options than those chosen by the EU since 2002. Beyond maintaining a safe and secure environment, the ESDP engagements aim essentially to build capacities and improve the work of the security actors (police and army) through observation, mentoring, concrete training measures and technical support. Giving the police mission an executive mandate – at least in the start-up phase – might have produced more visible results in crime-fighting and counteracted the confusion of civil and military mandates. But such an

operational mandate would have left the mission requiring more resources in a situation where the member states are already finding it difficult to provide enough qualified police personnel.

Since spring 2009 the EU member states and the responsible bodies in Brussels have been discussing and preparing new mandates for both engagements. The balance drawn in this contribution shows clearly that further progress is still required in all aspects of police reform. This applies in particular to further improvements in transparency and policing standards and to support for structural reform of the police – to the extent that the politicians in Bosnia and Herzegovina can agree on this. To that extent the way forward is in fact to continue the police mission under a comprehensive approach that devotes more attention than before to co-operation between police and the justice system. The planning documents for the follow-on mandate of EUPM already foresee a shift in this direction.

Given that the military tasks in Bosnia and Herzegovina have been largely completed, the current preparations for transforming the military operation into a mentoring and training mission are absolutely consistent. However, if – as currently appears likely – the successor mission will lose all of EUFOR Althea’s operational components, it will also lose its psychological stabilising effect on the population, especially with respect to the Bosniaks. For that reason Brussels should consider whether the mission should be left with an operational core that can be reinforced with additional troops if necessary. The arrangement already used in 2007 for the massive reduction in personnel of EUFOR Althea could serve as a model.

Regardless of how the future mandates of ESDP engagements in Bosnia and Herzegovina turn out exactly, this security instrument alone will not be able to solve the continuing fundamental problems in this country. Much more important is the overarching approach of the EU and the international community as a whole. Bosnia and Herzegovina is today still a long way from the long-term European and international goal of a “stable, viable, peaceful and multiethnic” state, because the groups composing Bosnia and Herzegovina are still far from reaching a consensus about the country’s political constitution. On the contrary, the dominant view is that since Dayton the political situation has rarely been as intractable and tense as today. In many respects the current political situation in Bosnia and Herzegovina resembles a “frozen conflict”.

Long-term resolution of this conflict will not come through economic or political pressure (still less military). So the Stabilisation and Association Process, including the long-term membership perspective, remain the central elements of the EU strategy towards Bosnia and Herzegovina and the whole region. But as long as a positive conflict transformation in Bosnia and Herzegovina has not yet become reality, the EU needs other credible policy options in addition to the accession perspective. If the EU makes the Stabilisation and Association Process and the offer of a long-term perspective of membership its *only* strategy it is left bereft of options and instruments for protecting the substantial political, economic and security investments of the past years and preventing a possible spiral into

more manifest forms of conflict. This scenario could certainly come about if Serb politicians threaten to declare the independence of the Republika Srpska or Bosniak politicians implicitly call for its abolition, while the political and economic situation continues to stagnate. In order to be able to deal appropriately with such a situation the EU thus needs the option of short-term sanctions and effective levers to supplement its long-term incentives.

The EU member states should not shrink from drawing “red lines” for the domestic political actors in Bosnia and Herzegovina and threatening clear sanctions if they are crossed. The future mandate of the EU Special Representative will be decisively important in this connection. The EUSR needs the unequivocal backing of the member states and clear guidelines allowing him to exercise a strong and independent mandate. This could include recommending travel restrictions for Bosnian politicians or even freezing EU aid. Instead of relying exclusively on the attractiveness of membership, the EU would be well advised to combine effective short-, medium- and long-term policy options with one another.

Promoting Rule of Law without State-building: Can EULEX Square the Circle in Kosovo?

Solveig Richter¹

In a move underlining the European Union's aspiration to be the driving force for stability in the Western Balkans,² its member states agreed on 4 February 2008 to send a mission to establish rule of law in Kosovo. With three thousand staff EULEX is the biggest civilian mission to date under the European Security and Defence Policy (ESDP).³ The EULEX mission was to be the "flagship" of the ESDP,⁴ but Kosovo's unilateral declaration of independence on 17 February 2008 made the international and regional context for the mission so tough that it struggled to meet its own objectives during its first year.

EULEX was originally conceived as a central pillar of the international community's reconfigured civilian presence under the Ahtisaari Plan.⁵ UNMIK (United Nations Interim Administration Mission in Kosovo), which had been operating since 1999, was to hand over its powers to the Kosovan authorities and the EULEX mission was to provide assistance establishing rule of law. But the political realities turned out to be much stickier because of resistance to the unilateral declaration of independence, internationally and even within the EU. Although many key Western states (including the United States and Germany) recognised Kosovo immediately, and by July 2009 the total had grown to sixty-two, five EU members, Serbia, Russia and much of the international community refused to recognise Kosovo on various legal and political grounds.⁶ Russia used its

¹ I would like to thank the numerous sources who gave their time for in-depth background discussions in Pristina, Prizren and Berlin. Because these interviews were given on the basis of anonymity, individual statements and opinions are not cited by name. This contribution was completed in July 2009.

² Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO", *Official Journal of the European Union*, L 42/92, 16 February 2008.

³ Council Joint Action 2008/124/CFSP" (see note 2).

⁴ Iniciativa Kosovare për Stabilitet (Kosovar Stability Initiative – IKS), *Who's the Boss?* (Pristina, 3 December 2008), www.iksweb.org/repository/docs/who_the_boss.pdf (accessed 11 June 2009).

⁵ The final status proposal for Kosovo that Finnish mediator Martti Ahtisaari presented to the UN Security Council in March 2007 called for conditional independence and foresaw various international intervention mechanisms; Johanna Deimel and Armando García Schmidt, "It's Still the Status, Stupid' – Eckpunkte einer neuen Politik der Verantwortung im Kosovo", *Südosteuropa-Mitteilungen* 49, no. 1 (January 2009): 36–49.

⁶ They generally contest the unilateral declaration's legality under international law and see it as setting a damaging precedent. At Serbia's request, in autumn 2008, the UN General Assembly asked the International Court of Justice in The Hague to rule on the legality of the declaration of independence.

Security Council veto to block a new resolution that would have legitimised changes in the international community's presence in Kosovo. As a result Security Council Resolution 1244, which made Kosovo a protectorate in 1999, remains in place until a new resolution can be passed.

The vehemence of this resistance forced the EU to seek compromise with actors whose interests were diametrically opposed to its own: Russia, Serbia and even – because of Russia's veto – the UN. This created contradictions within the mandate, in particular setting up constitutional institutions while ostensibly abiding by the UN's status-neutral approach. The mission also suffered practical difficulties with deployment, having overestimated both UNMIK's willingness to compromise and cooperate and the EU's own organisational capacities. So the EU's aspirations to play a leading role as soon as independence was declared were thwarted by mistakes in assessing the political room for manoeuvre. After the first intense months the EULEX mission is still therefore a long way from achieving its objective of establishing rule of law. Under the given conditions the technical approach of the mission – focusing primarily on processes, procedures and the monitoring of European standards but sidestepping key questions of Kosovan statehood – stands little prospect of success in the short to medium term.

The Mandate

The political intention: a rule of law mission

The establishment of the EULEX mission in 2008 was preceded by a long exploratory phase during which Javier Solana, the EU High Representative for the Common Foreign and Security Policy, and Enlargement Commissioner Olli Rehn led the campaign for greater European involvement in Kosovo. Already in 2006 the pair were proposing that the EU should become the driving force of the international presence in Kosovo through an ESDP mission establishing rule of law, a Special Representative and financial assistance.⁷ The EU's commitment was motivated by its desire to make an independent operational contribution to conflict transformation in the Western Balkans. But stalemate in the status talks eroded consensus among the member states, with sharp differences emerging over the finality of the mission (where Germany, the UK, France and Italy strongly supported the Ahtisaari Plan and thus independence, while other countries like Spain were more sceptical). There was also no consensus on the legal basis, powers and size of the mission.⁸ There may have been a unanimous declaration by the European Council in December 2007 that the EU

⁷ *Summary Note on the Joint Report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the Future EU Role and Contribution in Kosovo*, Brussels, July 2006, www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/90537.pdf (accessed 4 July 2009).

⁸ Marie-Janine Calic, "Das ewige Laboratorium: Die Politik der Europäischen Union auf dem Balkan: Eine Evaluierung", *Internationale Politik* 63, no. 6 (2008): 26–31.

was ready and willing to act and the Joint Action of 4 February 2008,⁹ but these reflect above all the EU's need to demonstrate its ability to take action in support of stability in Kosovo and the region, and less the outcome of a coherent, focused European policy.¹⁰

The politically doable: mandating the EULEX mission

The lack of consensus on Kosovan independence within the EU and throughout the international community put the mandate of the EULEX mission on increasingly shaky ground. Whereas the declaration of independence and the Kosovan constitution passed on 15 June 2008 by the assembly in Pristina concurred with implementation of the Ahtisaari Plan and thus welcomed the EULEX mission,¹¹ the Plan was not approved by the Security Council. But politically – and in the view of the five EU member states that did not recognise Kosovo also legally – the EU needed explicit UN authorisation of the EULEX mission.¹² Russia and Serbia insisted on the authority of the UN and rejected the idea of deploying an EU mission on the basis of what they regarded as an illegal unilateral declaration of independence. International and European dissonance could have endangered the success of the whole mission.

The UN Secretary-General and his Special Representative in Kosovo (SRS), Lamberto Zannier, put together a package that included a stronger role for the EU and reduced the functions of UNMIK, to bring together Belgrade, Brussels and New York.¹³ The EULEX mission was to be deployed under the UN umbrella in accordance with Resolution 1244 and the UN's

⁹ Council of the European Union, *Brussels European Council, 14 December 2007, Presidency Conclusions*, www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/97669.pdf (accessed 4 July 2009).

¹⁰ See for example the contribution by the German diplomat Emily Haber, "Primat der Stabilität: Der Pragmatismus aller beteiligten Parteien ebnete den Weg für den Aufbau rechtsstaatlicher Strukturen im Kosovo", *Internationale Politik*, 64, no. 7–8 (2009): 83–89.

¹¹ *Kosovo Declaration of Independence*, Pristina, 17 February 2008, www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf (accessed 4 July 2009); *Constitution of the Republic of Kosovo*, Pristina, 15 June 2008, www.assembly-kosova.org/common/docs/Constitution1%20of%20the%20Republic%20of%20Kosovo.pdf (accessed 4 July 2009).

¹² The five EU member states that did not recognise Kosovo – Spain, Greece, Cyprus, Romania and Slovakia – argued that the Joint Action setting up the EULEX mission did not pre-empt the status of Kosovo, so the mission needed a UN mandate under Resolution 1244. The other EU states felt that an invitation from Kosovo – in their eyes now a sovereign state – actually provided sufficient legal grounds, but were forced to bend to the political realities. Deimel and Schmidt, "It's Still the Status, Stupid" (see note 5), 46; On the legal debate over Kosovan independence and the presence of the EULEX mission see Christian Schaller, "Die Sezession des Kosovo und der völkerrechtliche Status der internationalen Präsenz", *Archiv des Völkerrechts* 46 (2008): 131–71; and Erika de Wet, "The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX", *American Journal of International Law* 103 (2009): 83–96.

¹³ Elizabeth Pond, "Der Kosovo: Prüfstein für die EU", *Europäische Rundschau* 36, no. 4 (2008): 48; IKS, *Who's the Boss?* (see note 4), 9; International Crisis Group (ICG), *Kosovo's Fragile Transition*, 25 September 2008 (Europe Report 196), 1, 12, www.crisisgroup.org/library/documents/europe/balkans/196_kosovos_fragile_transition.pdf.

status-neutral approach.¹⁴ In six functional areas – policing, customs, judiciary, transport and infrastructure, border control and Serbian cultural heritage – temporary arrangements with Belgrade will apply until adequate follow-up mechanisms can be established. This package was finally accepted unanimously on 28 November 2008 and published as a statement of the President of the Security Council.¹⁵ Following this, Serbian President Boris Tadić wrote to Solana promising his support for EULEX and called on all Serbian representatives, including those in Kosovo, to cooperate with the mission. So it took until the end of November 2008 – more than ten months after the formal start of the mission – before EULEX had a proper mandate.

The package negotiated by the UN Secretary-General is a double-edged sword for the EULEX mission. On the one hand, in view of the political realities created by the Kosovan declaration of independence, Russian and Serbian approval for the mission can be assessed as a partial success for the EU. The primacy of stability – which would have been endangered by the fragility of the situation in Kosovo without the deployment of the EULEX mission – was accepted by all involved.¹⁶ On the other hand, the compromise mandate strays a long way from the EU's original intentions. The EU had not originally assumed that the UN Security Council would keep Resolution 1244 in force and require EULEX to act in accordance with it. And operating under a status-neutral UN umbrella jarred with the EU's claim to an autonomous leading role. So the legal basis of the EULEX mission was fraught from the outset.

The mandate: broad goals, sweeping powers

The mandate of the EULEX mission is initially for 28 months, beginning from the agreement on the Operation Plan on 14 February 2008. The EU has set high sights for what is its biggest civilian mission to date: “EULEX Kosovo,” according to the mission statement in the Joint Action, “shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service” (Article 2). The mission is to ensure nothing less than “the maintenance and promotion of the rule of law, public order and security”. The EULEX mandate consequently provides for involvement in three central areas: policing (as well as normal operational police matters also border policing, fighting organised crime and police administration), justice (civil and criminal cases, restruc-

¹⁴ “[...] assume responsibilities in the areas of policing, justice and customs, under the overall authority of the United Nations, under a United Nations umbrella headed by my Special Representative and in accordance with resolution 1244.” United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, New York, 24 November 2008.

¹⁵ Russia and Serbia insisted that the Security Council be consulted.

¹⁶ Haber, “Primat der Stabilität” (see note 10).

turing the Ministry of Justice and Judicial Council, missing persons) and customs.

The EU chose a combined approach for achieving these objectives: the cooperative instruments of advising and capacity-building are backed up – for the first time in a civilian ESDP mission – by the more strongly interventionist instruments of the “executive responsibilities”.¹⁷ The cooperative aspect is represented by the mission’s “MMA” activities: monitoring, mentoring and advising. EULEX staff work alongside local colleagues in the local institutions, cooperating on court cases, police investigations and customs work (the principle of “co-location”). Augmenting this strongly cooperative approach, the mandate also allows the mission to make use of executive powers in the fields of policing, justice and customs for which it is responsible. It can “as necessary” reverse or annul operational decisions taken by the competent Kosovan authorities where the latter prove unable or unwilling to act adequately. This power also encompasses the classical judicial functions: EULEX judges can make legal rulings alone or in mixed teams.

The political reality: “status neutrality” in practice

Operating under the UN umbrella – and thus respecting the UN’s status-neutral approach – while at the same time building the key institutions of internal sovereignty (police, justice and customs) means squaring the circle. How can it set about establishing state institutions while avoiding anything that would strengthen independent statehood? The EULEX mission is trapped between the practical requirements of applying the law on the ground, and political pressure (for example on the part of the non-recognising EU member states) not to do anything that would manifest Kosovan independence. EULEX attempts to deal with this disparity by operating as a “technical” mission that understands rule of law as a service to the citizens rather than an expression of sovereignty. The mission aims to improve procedures, processes and the maintenance of particular standards “bottom-up” in the everyday work of the judicial and policing sectors rather restructuring the Kosovan institutions “top-down” through political directives. This leaves a gap between the mission statement and the mission’s actual work, and a series of open questions.

Arrangements concerning the six points: Although both UNMIK and EULEX always point out that the compromise with Belgrade on the six points was only temporary, it is proving difficult to establish the “follow-up mechanisms” called for in the UN Secretary-General’s report. The talks between the UN, EULEX and Belgrade are turning out to be especially

¹⁷ “Council Joint Action 2008/124/CFSP” (see note 3). Because the EULEX mission operates under the UN umbrella it could in theory also call on the UN to deploy its own powers to implement the EULEX mandate. Under Resolution 1244 the UN Special Representative still possesses formal legislative, executive and judicial powers, but has made no significant use of these since independence in the light of the de facto autonomy of the government of Kosovo.

laborious in the fields that are central for EULEX, policing, customs and judiciary, where Belgrade is showing little inclination to compromise. Still dependent on Belgrade's goodwill in some respects and loth to endanger the talks, EULEX shies away from making clear-cut political decisions on issues such as applicable law.

Chain of command and political control: Putting the EULEX mission under the UN umbrella made the question of the chain of command and political control a hot potato within the EU and between the EU and the UN. Originally the EU Special Representative (EUSR, currently Pieter Feith, mandated simultaneously with the EULEX mission on 4 February 2008, doubles as the International Civilian Representative, ICR) was supposed to be the linchpin for implementing the Ahtisaari Plan.¹⁸ But since the International Civilian Office (ICO), which Feith heads as ICR, was established to support an independent Kosovan state, the non-recognising EU member states ensured that the EULEX mission operated separately from EUSR/ICR, whose leadership is consequently ham-strung.¹⁹

Nor has the relationship with the UN been properly clarified. EULEX denies that the UN has any direct control. Head of Mission Yves de Kermabon takes his political orders from Brussels, observing – with the tacit agreement of SRSG Zannier – only a duty of information towards the UN.²⁰ With the hand-over phase completed, the two organisations operate almost autonomously on the ground in Kosovo, especially now that UNMIK has more or less completely withdrawn from the activities covered by the EULEX mission.²¹ It remains to be seen whether this status quo in the relationship between UN and EU – which is formally contested – can be upheld in every respect.

Applicable law: The status-neutral approach of the UN, under whose umbrella the EULEX mission operates, has created a crucial paradox that particularly affects the justice component of the mission: EULEX staff participate in the work of the local judicial system to promote legal security and create a coherent jurisdiction without clarification of which system of law is to be applied. The legal basis on which EULEX judges are expected to

¹⁸ The EU Special Representative was mandated simultaneously with the EULEX mission on 4 February 2008, and doubles as the International Civilian Representative (ICR).

¹⁹ The five non-recognising states in Brussels demand above all a status-neutral outward stance for the mission, for example in official reports and statements. So in its reports the EULEX mission is not permitted to refer to a Kosovan “government” or “citizens”; reference to Resolution 1244 is required in all the EU's official legal texts; and in certain political matters EULEX is required to remain neutral. But otherwise, these states do not actually hinder EULEX in its everyday work or exert strong influence on its strategic political direction.

²⁰ In view of the dwindling political role of the SRSG, this autonomous chain of command certainly corresponds with the political balance of power within the international community in Kosovo. Often the decisive factor is no longer the opinion of the UN, but of the EU member states and the United States.

²¹ In this connection it should not be forgotten that EULEX staff formally derive their privileges and immunities through the UN; on this discussion see also ICG, *Kosovo's Fragile Transition* (see note 13), 9, 15f; IKS, *Who's the Boss?* (see note 4), 15f; Deimel and Schmidt, “It's Still the Status, Stupid” (see note 5), 46.

make rulings and advise their local colleagues remains unclear. In practice two parallel legal worlds have emerged in Kosovo: according to the states that recognised Kosovan independence, the Kosovo assembly has been the legitimate legislative body since the constitution came into force, whereas the non-recognising states insist on the validity of UNMIK law.²² In the practical work of EULEX mission it has been left to each individual judge to make their own pragmatic or scholarly choice. Most of the EULEX judges working in Kosovo take Kosovan law as the legal basis for their judgements.²³

In the context of its technical approach EULEX deals with these contradictions with “ambiguous silence” (as one EULEX staffer put it) and has to date (summer 2009) proven unable to free itself from this political and diplomatic straitjacket.

Implementation and Impact

The lack of an international consensus on the Ahtisaari Plan and Security Council approval of the EULEX mission also threw up practical difficulties affecting deployment. The EU faced the challenge of protracted negotiations with Belgrade on the dislocation in the north – and was able to score a success here. The Civilian Planning and Conduct Capability in Brussels (CPCC), on the other hand has had to swallow the bitter pill of having misjudged both UNMIK’s willingness to compromise and its own organisational capabilities, and as a consequence being unprepared for a civilian mission of these dimensions.

Deployment: not up to the organisational challenges?

The mission had to deal with massive teething troubles, despite an EU planning team having been on the ground since 2006. Problems with the hand-over of important buildings and resources from UNMIK and with the recruitment and training of international and local staff led to impairments of operational capability.

The EU had only vague and legally non-binding arrangements with UNMIK for the hand-over of logistics and documents, which were worthless in the complicated political situation after the declaration of independence.²⁴ In June 2008 the UN Secretary-General announced the withdrawal

²² Under Resolution 1244 the SRSG has executive and legislative powers, but no use of this right has been made since the passing of the Kosovan constitution. Thus one interpretation concludes that he implicitly approved the legislation passed by the Kosovan assembly.

²³ Judges and prosecutors operate on the basis of the *Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors* and the *Law on the Special Prosecution Office of the Republic of Kosovo*, which regulate their powers in detail and were approved by the Kosovan assembly in March 2008.

²⁴ Vedran Džihic and Helmut Kramer, *Der Kosovo nach der Unabhängigkeit: hehre Ziele, enttäuschte Hoffnungen und die Rolle der internationalen Gemeinschaft*, Internationale Politik-analyse (Berlin: Friedrich-Ebert-Stiftung, 2008), 17.

of UNMIK and paved the way for facilities and logistics to be handed over to the EU. A technical agreement on the modalities was finally concluded on 18 August 2008, although it was not to lead to a smooth transfer.

The squabbling between Brussels and New York and between the two mission headquarters in Pristina can only partly be explained by the political background.²⁵ The rift was also a product of EULEX's PR strategy, which aimed to distinguish the mission clearly in the eyes of the Kosovan population from the strong protectorate of UNMIK and to generate public support for its "new" and "better" cooperative approach. In response UNMIK blocked or delayed hand-over and EULEX was left bereft of almost all resources. The EU found itself unable to bridge the shortfall caused by the slow UNMIK hand-over at such short notice.²⁶ In some cases police files and court documents that EULEX would have needed for its work were found to have disappeared. All in all, positive experiences such as the hand-over of the sensitive witness protection programme were overshadowed by the negative ones.

On the personnel side, recruitment proceeded in fits and starts. Some countries such as the UK actually withdrew their contingents in the wake of the credit crunch. Fourteen whole months passed between the start of the mandate and the official pronouncement of full operational capability on 6 April 2009. The mission has an authorised maximum strength of 1,950 international staff;²⁷ most of these are police (about 1,400 police officers), with smaller numbers for justice (about 230, including judges and prosecutors) and customs (27 international customs officers), and in addition some staff for leadership and administration.²⁸ But just 300 staff were on the ground by mid-June 2008,²⁹ and even in May 2009 the

²⁵ Russia definitely kept a close eye on the responsible Department of Peacekeeping Operations (DPKO) and attempted to delay the UNMIK pull-out; ICG, *Kosovo's Fragile Transition* (see note 13), 17. The problem is illustrated by the recent tussle over the former UNMIK headquarters that now houses the EULEX police component. Rumours that EULEX intended to hand the building over to the Kosovan justice ministry triggered diplomatic reverberations: UNMIK insisted on retaining control over the building itself, while the Serbian defence ministry also asserted ownership of the building; "UNMIK Flexes Muscles Over Former HQ", *Balkan Insight*, 3 July 2009.

²⁶ According to EU estimates the extra cost in 2008 would have been €68 million; source: ICG, *Kosovo's Fragile Transition* (see note 13), 12. Originally €205 million were budgeted for the first sixteen months (until 14 June 2009) but increased to €265 million for the period 9 June 2009 to 14 June 2010; "Council Joint Action 2008/124/CFSP" (see note 2); and European Union, *Council Joint Action 2009/445/CFSP of 9 June 2009 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, Brussels, 9 June 2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:148:0033:0033:EN:PDF> (accessed 23 October 2009).

²⁷ The figure comes from the revised Operation Plan; *European Union Security and Defence Policy EULEX Kosovo*, Factsheet, Brussels, April 2009, www.consilium.europa.eu/uedocs/cmsUpload/090406-FACTSHEET_EULEX_Kosovo-version7_EN.pdf (accessed 4 July 2009).

²⁸ Staffing figures from the EULEX mission website: www.eulex-kosovo.eu (accessed 4 July 2009).

²⁹ ICG, *Kosovo's Fragile Transition* (see note 13), 8.

mission's operational capability was complete only on paper (30 May 2009: 1,651 international and 918 local staff).³⁰

During the first year much of the time and energy of EULEX staff was tied up with internal administration and organisation, to the detriment of the quantity and quality of attention to their proper responsibilities. The mission lacked local support staff, such as administrators, assistants and translators; this demand for qualified local personnel had the counter-productive effect of draining from the local justice system precisely those capacities it needed to fulfil EULEX's requirements. On the other hand, the integration of a number of non-EU states in the mission, including Croatia and Switzerland, went very smoothly, and the United States sent its first contingent on a civilian ESDP mission: eighty police under EULEX command.

First successes in the north

The UNMIK era and the run-up to the declaration of independence saw a widening rift between the Serbian-majority north and the Albanian majority in the south. North of the River Ibar the Serbian state has funded the setting up and running costs of parallel institutions. The situation escalated in February and March 2008 following the unilateral declaration of independence in Pristina: Serbs in the north (and to some extent in the southern enclaves) quit their posts in key institutions (courts, customs, railway and police).³¹

Belgrade and the Kosovo Serbs rejected cooperation with EULEX, feeling that as part of the Ahtisaari Plan it would put the seal on Kosovan independence. Confronted with this resistance, the EU mission was at first practically paralysed in the north. Only (or at least) under the conditions of the six point talks pushed through by Belgrade and the seal of approval of the Security Council at the end of November 2008 was the EU able to ensure speedy deployment of personnel to the north. One problem for EULEX here is that although the Serbian government in Belgrade might support the mission it has little control over local officials on the ground, who are more closely aligned with the populist opposition parties in the Belgrade parliament.

Since the official start of the mission on 9 December 2008 (initial operational capability) EULEX has been exercising key tasks and operational responsibilities: the customs service occupied border crossings 1 and 31, which had been unoccupied for months;³² police units began regular

³⁰ United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, New York, 10 June 2009. In April 2009 the German contingent comprised about 100 police officers and 25 civilian experts.

³¹ ICG, *Kosovo's Fragile Transition* (see note 13), 3.

³² Border crossings 1 and 31 are on the direct border between Serb-populated northern Kosovo and Serbia itself. The Serbs vehemently resist any sovereign authority being exercised at this border, whose existence they deny on the grounds that it would divide

patrols (and for example suppressed the violent clashes in May 2009 over the reconstruction of Albanian houses); judges passed their first verdicts in the northern town of Mitrovica. But the underlying problem of de facto division of the Kosovan territory is far from resolved. In the north, much more strongly than in the rest of the Kosovan territory, the confrontation between Serbia and Kosovo hampers the practical work of setting up institutions. The impact of EULEX as a technical mission has been very limited by the politicisation of practical and everyday questions. An effective presence in the north remains one of the most important future goals for EULEX, in order to stabilise the security situation and forestall the further consolidation of parallel structures through the establishment of formal institutions.

On the practicalities of the MMA mandate and executive responsibilities

In the guise of MMA activities and executive responsibilities the mandate provides two very different approaches, which diverge strongly in their practical implementation. The “MMA approach” is cooperative; judges, prosecutors, police and customs officials work side by side with their local colleagues within the Kosovan institutions, analysing weaknesses and providing advice. For the first time in an ESDP mission a programme office drew up comprehensive guidelines and indicators for the MMA activities before the staff were even deployed, to ensure a uniform approach was adopted by the whole staff and permit systematic evaluation. The department is an integral component of the EULEX mission and reports directly to the Head of Mission.³³

The mandate ties the mission’s executive responsibilities to the sphere of rule of law: the mission has prescribed procedures for exercising these responsibilities, even if the cases in question are not always clearly defined. Within the local system these powers are subject to no democratic control mechanism other than the regular appeals procedure. So when an EULEX judge issues a verdict it is unclear what legal channels would be available to challenge it. Also, legal rulings are enforced not by EULEX itself but through national institutions, for example by the administration.

But EULEX explicitly sets out to make as little use as possible of its executive powers, and instead to cooperate with the Kosovan authorities wherever possible. According to Head of Mission Yves de Kermabon: “The key concept is local ownership and accountability: the Kosovo authorities will be in the driver’s seat.”³⁴ Nonetheless, since initial operational capability was reached in December 2008 EULEX has exercised significant executive responsibilities – above all by the police in the north, where

the Serb people. The border posts were burnt down by Serbs in February 2009 following the Kosovan declaration of independence.

³³ ESDP Mission in Kosovo, *Programme Implementation Document: Justice Component – Kosovo Judicial Council*, unpublished document, Pristina, 20 July 2008.

³⁴ Quote from Yves de Kermabon on the EULEX mission website, www.eulex-kosovo.eu (accessed 11 June 2009).

there have been repeated clashes between Albanians and Serbs. EULEX judges have also relied on this mechanism in war crimes trials, but policing is where executive powers play the greatest role. Since the independence declaration the Kosovo police have been primarily responsible for security (first responder) but if they are unable to cope EULEX is second in the response chain – before NATO’s Kosovo Force (KFOR) – and does not need a request from the Kosovan authorities to move into action. EULEX customs officials in the north have exercised executive powers at border posts 1 and 31.

The road to rule of law: first results and prospects for success

After just a few months of full operational capability it is still too early to pass judgement on the mission’s success. But taking a look at starting conditions and the first results that have already been achieved can give us a tentative impression of the extent to which EULEX is moving towards achieving its objectives in Kosovo.

Alongside the aforementioned problem of parallel institutions in the north and the ensuing de facto division of the Kosovan territory, the biggest challenges are widespread corruption and the agglomeration of criminal, business and political interests that emerged in the course of the break-up of Yugoslavia. These factors make the establishment of rule of law a particularly urgent priority, but also a slow and arduous process.³⁵

The following initial achievements and difficulties can be identified in the three key areas of the EULEX mission:

Police: The starting conditions in the field of policing are relatively good in comparison to the other two areas. From the beginning of international administration in 1999, UNMIK and the OSCE mission placed great importance on restructuring and training the Kosovan police. The Kosovo Police Service (KPS) today matches the standard of other Western Balkan countries and has good development perspectives.³⁶ EULEX has a full contingent of police and civilian advisers and can operate across the territory. The EU’s involvement has paid its greatest dividends so far in the north, where EULEX police established multi-ethnic police patrols and were able to prevent violent clashes between Albanians and Serbs from escalating. The mission also undertook investigation work in important cases in other regions (e.g. witness interviews) and monitored the restructuring process in the top management of the Kosovo Police Service in Pristina.³⁷

The main difficulties encountered by the EU have been the need to clear up differences with Belgrade about the chain of command and the participation of Kosovan Serbs and, *secondly*, achieving adequate reforms in

³⁵ Pond, “Der Kosovo: Prüfstein für die EU” (see note 13), 51ff; Freedom House, *Nations in Transit 2008 – Country Report Kosovo (Serbia)*, www.freedomhouse.org/template.cfm?page=47&nit=456&year=2008 (accessed 11 June 2009).

³⁶ This opinion is shared by all UNMIK and EULEX staff in the police sector.

³⁷ United Nations Security Council, *Report of the Secretary-General*, 10 June 2009 (see note 30).

the special units. Kosovan Serbs adamantly refuse to serve under the direct command of the police headquarters in Pristina and instead report only to EULEX, which thus fulfils a mediating role between Serb and Albanian police units. The EULEX mission was able to score a success in June 2009 when it succeeded, together with the Kosovo Police Service, in persuading more than three hundred Serb police in the regions south of the Ibar to return to the posts they had abandoned on political orders from Belgrade after the declaration of independence.³⁸

Progress in restructuring special units tackling crimes such as money laundering, corruption and human trafficking has been slower than with the regular police. In these key sectors the EULEX mission has so far been able to exert least influence on legislation and institution-building.

Customs: EULEX finds itself up against severe obstacles in supporting a customs service whose work – actually purely practical technical tasks – is heavily dependent on political factors, in particular the ongoing talks with Belgrade on a single customs area for Kosovo and revenue-sharing arrangements. Until the EULEX mission deployed in December there were no controls on persons and goods crossing from Kosovo into Serbia (Gates 1 and 31). After taking over executive functions at the key crossings 1 and 31 in the north of Kosovo, EULEX customs officials succeeded in severely curtailing the open smuggling operations there (unverified estimates speak of a two thirds reduction in illegal transport of petrol). At first, beginning on 1 February 2009, the EU was only able to record cross-border traffic, but since 20 May 2009 has also been able to forward freight documents to the responsible customs agencies.³⁹ Mere observation has sufficed as a deterrent and has at least made illegal cross-border activities more difficult.

Justice: The most problematic area for EULEX is building a Kosovan judiciary. The mission's achievements thus far include conducting criminal trials in northern Kosovo (two by May 2009), the completion of a small number of trials (above all in the field of war crimes) and the opening of numerous other cases (including property matters). The EULEX Office of Missing Persons and Forensics has already begun work on a large number of autopsies, exhumations and excavations.⁴⁰ It will be several years before the effectiveness of the MMA approach becomes truly apparent, but a number of EULEX staff are reporting from their own experience that legal abuses have already lessened. That said, there is a whole set of different factors standing in the way of progress, and at least in the short to medium term the prospects are pretty gloomy.

Firstly, the starting conditions in the country are dreadful. UNMIK made little progress in this field since 1999, and Kosovo can in no way be said to have an independent and functioning justice system.⁴¹ *Secondly*, the contra-

³⁸ "Rückkehr der Serben zu Kosovos Polizeidienst", *Neue Zürcher Zeitung*, 1 July 2009.

³⁹ United Nations Security Council, *Report of the Secretary-General*, 10 June 2009 (see note 30).

⁴⁰ *Ibid.*

⁴¹ Freedom House, *Nations in Transit 2008 – Country Report Kosovo (Serbia)* (see note 35).

dictions in the mandate described above (especially concerning applicable law) and the drawbacks of the mission's MMA approach have an especially constraining effect here. Training and advice can bring about changes in attitude and behaviour in individual judges and prosecutors, but if nothing is altered in the structural context they will evaporate as soon as the local personnel find themselves subjected to contrary systemic constraints. The process of investigation and reappointment of all judges – still ongoing in summer 2009 – means that major staff restructuring is still to be expected. Long-term relationships, learning effects and building an institutional memory – all crucial to the MMA approach – are practically impossible with fluctuating personnel. In the face of this flurry of challenges the mission is – *thirdly* – hitting capacity limits that are exacerbated by specific problems of the Kosovo justice system such as the complicated civil and criminal legal codes, which often tie up several judges for a single case and its appeals procedure. The concrete judicial work of EULEX is made more difficult – *fourthly* – by the different legal cultures existing within the EU.

Intervention or cooperation? Chances and risks of the EULEX mission

The first months of full operational capability were still a “settling-in phase”, so by summer 2009 it was not yet clear whether EULEX would adopt a more interventionist or cooperative character.

Fundamentally, the EU's approach – pushing forward reforms in the fields of policing, customs and justice with less heavy intervention than UNMIK and more strongly cooperative instruments – bears opportunities as well as risks. The success of such an approach depends to a great extent on the willingness of local partners to cooperate and reform. In principle the Kosovo Albanians are showing interest in building institutions of their own to cement sovereignty following independence. In all three areas EULEX staff gathered positive experiences in the first weeks and months. In view of the history of efforts to promote rule of law in the Western Balkans and Kosovo, however, there must be serious doubts as to whether the EU will be able to find long-term “actors for change” across the whole territory.⁴² Ultimately there is a gap between the expectations of the EULEX mission concerning the willingness of local elites to reform and the incentive structures of the corruption and clientelism in which Kosovans are often enmeshed.⁴³

EULEX could face a dilemma in the medium term, because the logic of the two instruments – MMA activities and executive powers – is in some cases diametrically opposed. With its current set of instruments EULEX faces a difficult choice if it is confronted with violations of legal standards or its recommendations are ignored: It can either make use of its executive

⁴² Compare for example the OSCE's experience in Croatia: Solveig Richter, *Zur Effektivität externer Demokratisierung: Die OSZE in Südosteuropa als Partner, Mahner, Besserwisser? Demokratie, Sicherheit, Frieden* 192 (Baden-Baden: Nomos, 2009).

⁴³ Here see also Džihčić and Kramer, *Der Kosovo nach der Unabhängigkeit* (see note 24).

powers – and in so doing undermine Kosovan ownership (as the UNMIK protectorate did). Or it can simply advise and thus risk standing by while judicial norms are ignored and thus relativised. The mission's strongly technical slant leaves it lacking a mechanism that would close the instrumental gap between cooperation and intervention and allow it through pressure and clear conditionalities to force the key actors in the central institutions to make the structural changes (e.g. legislation) required to create a productive political environment for setting up a democratic state.

Relevance

The EULEX mission is just one element of the massive international peace-making and democratisation efforts in Kosovo, alongside ICO, UNMIK, OSCE, KFOR and a multitude of other state (especially American) and non-state actors. But the unclear legal status of Kosovo leaves the international community deeply divided. International actors neither behave coherently towards the Kosovan authorities nor do they pursue a clear strategy that could offer Kosovo a perspective for the future.

For a long time the international organisations on the ground have wrestled to come up with a pragmatic line that allows all participants to coordinate and cooperate without contradicting their diplomatic or political principles (recognition vs. status neutrality). Not until January 2009 was a mode of coordination finally found that allows all the international agencies and key states (first and foremost the Quint states United States, United Kingdom, Germany, France, Italy) to meet more or less weekly. Despite the lack of technical agreements EULEX and KFOR also cooperate closely. But the international community still lacks clear leadership. In the legal “twilight zone” between independence and Resolution 1244 four different international organisations (ICO, SRSG, KFOR and EULEX) possess certain executive powers without their relationship to the Kosovan authorities or the question of implementation of these powers having been clarified.

That makes the role of the EU in Kosovo ambivalent too. On the one hand EULEX – through its objective of strengthening rule of law – is dedicated to an essential strand of Kosovo's trajectory towards lasting peace and democracy. The EU backs up its involvement under the ESDP with elements of the enlargement process: in the scope of the Stabilisation and Association Process – which offers a perspective of membership to all the countries of south-eastern Europe – the EU began work in 2008 on a “feasibility study for possible contractual relations between the EU and Kosovo”. Kosovo can also benefit in the fields of police, justice and customs from a wealth of programmes and projects associated with financial assistance. In comparison to other international organisations, the EU also has the advantage – in the guise of the membership perspective and the instruments of the Common Foreign and Security Policy (CFSP) – of holding a trump card with respect to the key player Serbia. For example, it turned

out to be a clever move by Solana to send a representative to Serbia who can work together with the EUSR/ICR in Kosovo to mediate between Belgrade and Pristina and thus provide Serbia with a channel for pragmatic face-saving cooperation with EULEX.

On the other hand, none of these instruments can yet have a deep-acting impact on political developments in Kosovo, because they are hampered by the divergence of interests within the EU. The limited capability of central actors (EULEX, EUSR/ICR) leaves EU policy more an outcome of the fragmented situation than a driving force. Cooperation between EULEX and EUSR/ICR has turned out to be more difficult than planned, because the status-neutral approach of the EULEX mission collides with the job of the ICO to advance the Ahtisaari Plan and thus independent statehood for Kosovo. A clear and coherent European conflict management strategy with EULEX at its heart is only just beginning to emerge.

Conclusions

In the first year of this ambitious ESDP project arguments about the mission's legal basis and questions concerning deployment left a yawning gap between wish and reality. The political realities required EULEX to be designed as a purely technical mission that avoids touching on the status of Kosovo. This leaves the mission fundamentally unequipped to meet the practical challenges on the ground and unable to fulfil the EU's desire for a leading role in the region. EULEX's current approach of advancing cautiously on the basis of self-imposed strategic political restraints runs the danger of reconsolidating the status quo and throwing away the opportunities that the mission's instruments and the possibility of linkage with future membership offer the EU for building rule of law in Kosovo.

The paradoxes of the mission can only be resolved through sweeping changes in the wider diplomatic picture – such as a fundamental decision of principle in the Security Council on the question of independence for Kosovo and the international presence. The chances of that are poor in the short to medium term. If the key questions remain politically unresolved, the EULEX mission will show up the inadequacies of the ESDP rather than spotlighting its coherence and success.

Thus the EU faces the challenge of finding a *modus vivendi* for EULEX that grants the EU greater proactive options on both the strategic political and operational levels.

On the **strategic political level** the EU needs to widen its options in the open questions of justice, customs and policing through a speedy conclusion of talks with Belgrade. That would allow it to politically strengthen the technical approach of the mission through clear political decisions on the open questions of the mandate (e.g. concerning applicable law). Although Belgrade may regard the talks as revitalised status negotiations – leading it to resist an all too pragmatic approach by the EULEX mission – all involved are clear that the process of Kosovo becoming a state is irreversible and in reality it is almost impossible for the mission to operate in a

status-neutral manner (setting aside the question of what the details of a status settlement between Pristina and Belgrade will actually be in international law). Clear affirmation of these realities – and thus of the role of the mission in the process of building a constitutional justice, police and customs system – by the non-recognising states would lend EULEX greater political weight (even if that would require a new diplomatic balancing act within the EU to avoid touching on the question of the finality of the mission’s activities).

On the **practical operational level** this would open up an opportunity for EULEX to apply political pressure on the national actors. In view of the problems experienced to date in establishing rule of law, the EU must assume that there are generally political interests behind persistent “technical” difficulties. The mission needs to be able to exert political pressure quickly and up to the highest political level, and not to leave disciplinary or restructuring measures solely to the local institutions (as per the cooperative “MMA approach” of the bulk of the mission’s activities). If local authorities fail to cooperate, or do so only superficially, the EU should also use its own hierarchy to put the Kosovans under pressure to justify or reform their actions with the threat of sanctions (withdrawal of financial support) or public naming and shaming. EULEX and the EU states represented in the Quint group – Germany, France, Italy and the UK – should keep in mind the incentives offered by the EU (Stabilisation and Association Agreements, visa liberalisation) and the corresponding (Copenhagen) criteria, and not shrink from expressing open criticism of the Kosovo elites when they fail to meet their obligations in justice reform. There is also a need to reduce the gap between the great structural deficits of the justice system in Kosovo and the relatively small capacities of the mission to address these deficits through qualitatively and quantitatively enhanced intervention. The prospects of success establishing a functioning policing system are good enough that EULEX can think about reassigning resources in the medium term.

In terms of the **European Security and Defence Policy**, the EU can draw important lessons about the design, implementation and deployment of civilian peacebuilding missions. Dependency on actors outside its sphere of influence has turned out to be a crucial weakness in the structure of the EULEX mission, and should be minimised in future.

EUFOR RD Congo: A Success, But Not a Model

Denis M. Tull

The international community's efforts to resolve the conflict in the Democratic Republic of the Congo achieved a partial breakthrough in 2002. The conflicting parties agreed to form a government of national unity to lead the country out of crisis and prepare the way for democratic elections to bring the three-year transitional phase to an end in 2006. In DR Congo, as in other conflicts, the international community regarded democratic elections as the decisive step on the road to a stable and democratic state.¹ The United Nations Organisation Mission in the DR Congo (MONUC), especially, undertook considerable political and logistical efforts to make elections possible. Following the 2002 peace agreement, planning and conducting the elections became the overriding objective of the UN and the international community. Elections, it was hoped, would grant legitimacy to the nation's ruling elites and lay the groundwork for a successive withdrawal of the UN peacekeeping mission. Thus elections were an elementary component of the UN's exit strategy.

But voting was associated with great risks. *Firstly*, elections would change the balance of political power that had emerged during the war and the transitional phase (2003–2006). The government of national unity would have to step down after the elections, so most members would automatically lose power and influence. *Secondly*, all the main candidates came from the former warring groups. Because of the slow progress of demobilisation during the transitional phase, these candidates still controlled armed troops at the time of the elections. So there was good reason to fear an increased risk of conflict before, during and after the vote. It was certainly conceivable that the losers would contest their defeat with force of arms.

The Mandate

In view of the security risks associated with holding elections and the overstretched capacity of the relatively small UN peacekeeping mission, UN Secretary-General Kofi Annan asked the Security Council several times to increase the strength of MONUC temporarily in advance of the elections.²

¹ United Nations, *Special Report of the Secretary-General on Elections in the Democratic Republic of the Congo*, S/2005/320, 26 May 2005, paragraph 3.

² Even after MONUC reached the strength of 16,700 soldiers in 2004 it was still one of the world's smallest peacekeeping missions in relation to the area it had to cover (one peacekeeper for every 139 km²) or the population (one peacekeeper for every 3,572 Congolese).

After this request had been repeatedly turned down, the UN turned to the EU. The Under-Secretary-General for Peacekeeping, Jean-Marie Guehénno, wrote to the British Council Presidency in December 2005 asking the EU to provide a “visible and credible force, that could enhance MONUC’s quick reaction capabilities in the DRC during and immediately after the electoral process”.³ On 23 March 2006 the EU Council agreed to send a military force to support MONUC in situations that represented a danger to the election process and were beyond MONUC’s capacity to deal with. The Austrian Council Presidency informed the UN of this decision on 28 March 2006, and on 27 April 2006 the Council passed Joint Action 2006/319/CFSP authorising the deployment of a military operation (EUFOR RD Congo). Two days earlier, in Resolution 1671, the UN Security Council granted EUFOR a mandate under Chapter VII of the UN Charter to take all measures necessary:

- ▶ to support MONUC to stabilize a situation, in case MONUC faces serious difficulties in fulfilling its mandate within its existing capabilities,
- ▶ to contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment, and without prejudice to the responsibility of the Government of the Democratic Republic of the Congo,
- ▶ to contribute to airport protection in Kinshasa,
- ▶ to ensure the security and freedom of movement of the personnel as well as the protection of the installations of Eufor R.D. Congo,
- ▶ to execute operations of limited character in order to evacuate individuals in danger.⁴

Because the UN’s request came at an early stage and there was a long run-up, it was possible to conclude the political decision-making processes within the EU in good time, and EUFOR was operational as planned on the day of the parliamentary and presidential elections (30 July 2006). It was helpful that a political consensus in favour of a military operation emerged relatively quickly within the EU. There were two main reasons for this: *Firstly*, the EU had designed the ESDP as an instrument of “effective multilateralism” serving to strengthen international cooperation and security.⁵ That explicitly includes supporting the UN, which is where the request for support came from in this case. Rejecting the UN’s request would have sent a devastating political message.⁶ *Secondly*, the decision to send an operation also fitted with the political interests of member states and the European Commission. France, Belgium and the Commission (above all in the person of former Belgian Foreign Minister Louis Michel, at that time Commissioner for Development and Humanitarian Aid) argued

³ United Nations Security Council, *Letter dated 27 December 2005 from the Under-Secretary-General for Peacekeeping Operations to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland*.

⁴ United Nations Security Council, Resolution 1671, S/RES/1671, 25 April 2006.

⁵ European Union, *European Security Strategy: A Secure Europe in a Better World*, Brussels, 12 September 2003.

⁶ “Verdruckste Debatte”, *Frankfurter Allgemeine Zeitung*, 18 April 2006.

decisively for EUFOR. Both France and Belgium maintain close political – and to an extent economic – relations with DR Congo. The multilateral framework of the EU allows them to pursue their interests in DR Congo, and thus in central Africa as a whole. That said, the interests of individual states were not emphasised to a point where one could speak of an instrumentalisation of the EU.⁷

Despite political consensus for the operation being reached at a relatively early stage, the advance planning and decision-making processes went anything but smoothly. Questions of “how” (tasks, mandate) and “who” (participation, leadership) caused considerable irritation and tension between EU member states, between individual member states and the High Representative for the Common Foreign and Security Policy, Javier Solana, and ultimately between the EU and the UN.

Germany: a reluctant framework nation

At the end of January 2006 the EU sent a fact-finding mission to Kinshasa to map out the operation’s conditions and define its tasks. The request from the UN Department of Peacekeeping Operations (DKPO) had left a great deal of room for interpretation (and apparently MONUC had not been officially informed of the DKPO’s initiative). The fact-finding mission confirmed that the EU would respond favourably to the UN’s request.

The same message had already been sent by the Franco-German summit on 23 January 2006, where Chancellor Angela Merkel and President Jacques Chirac indicated that Germany and France would both participate in an operation in DR Congo, each providing one third of the soldiers. Here Merkel rejected the idea of deploying the partially operational Franco-German Battle Group, which was composed largely of German troops. Still, the German government remained under pressure, especially because the operation was going to have to be led by one of the few EU member states possessing a functioning Operations Headquarters (OHQ); in other words, the UK, Italy, France or Germany. The UK and Italy had declined the role from the outset and France was out of the question, so everything pointed to Germany providing the OHQ.⁸ Despite widespread domestic scepticism towards an operation in Congo, Germany was the only country without an argument why it should *not* provide the OHQ (in Potsdam).⁹

The German government thus found itself in a difficult position, having declared its willingness to contribute soldiers to the operation but still holding considerable reservations about suggestions from the EU that it

⁷ The case of EUFOR Tchad/RCA is different. See the contribution by Patrick Berg in this volume (p. 57ff).

⁸ France had already conducted Operation Artemis practically alone (2003, also in DR Congo). French leadership of yet another European operation in DR Congo would have raised doubts about its neutrality, given that Paris maintained good relations with President Kabila.

⁹ Helmut Fritsch, *EUFOR RD Congo: A Misunderstood Operation?* (Kingston, Ontario: Centre for International Relations, Queen’s University, 2008), 37.

should lead the operation too. In response, Berlin stated strict preconditions for German leadership of the operation, and thus delaying a firm commitment. This stance, which was conditioned by domestic scepticism about the operation, caused delays in the EU planning process. At the end of February 2006 Germany and France blocked the planning process for the operation as it was starting up, on the grounds that EUFOR's scope, duration and tasks were unclear. Another equally important motivation for that move was that there were still not enough firm pledges of troops from other EU member states. And the government in Kinshasa had yet to give its consent to the operation. In view of these unresolved issues, Germany and France were not willing to commit to forming the backbone of the operation as the main troop providers. At the meeting of EU Defence ministers in Innsbruck on 6 March 2006, Defence Minister Franz Josef Jung emphasised that Germany was willing to lead the operation only under five conditions:¹⁰

- ▶ the consent of the government of DR Congo;
- ▶ a robust mandate from the UN Security Council;
- ▶ substantial military participation by other EU member states apart from France and Germany;
- ▶ geographical concentration on the Congolese capital Kinshasa; and
- ▶ duration restricted to four months.

These conditions turned the usual planning processes for EU crisis response on their head (under which the Council would adopt a Joint Action that named the OHQ and the Operation Commander, which would then be integrated from an early stage into the process of drawing up a concept of operations). But Germany blocked the initiation of this process. Nor was Germany willing to open the way for the planning process informally, as this would have presented the German parliament, which had to agree to the German participation, with a *fait accompli*. In this situation the planning process became bogged down, because Germany insisted that the force generation process had to be completed *before* the concept of operations was prepared,¹¹ but that was impossible as long as neither the OHQ nor the Operation Commander had been named. As reported in the press, the German position led to tensions between Solana and Defence Minister Jung, who criticised both the preparation of the operation by the EU and the prevarication of other EU member states in giving firm promises of troops.¹²

Despite these difficulties, the planning process was actually concluded on time. On 19 March 2006 Solana received the consent of Congolese President Joseph Kabila for the EUFOR Operation, on 4 April the Political and

¹⁰ "Jung fordert mehr EU-Solidarität für Kongo-Einsatz", *Frankfurter Allgemeine Zeitung*, 7 March 2006.

¹¹ Fritsch, *EUFOR RD Congo: A Misunderstood Operation?* [see note 9], 3; Claudia Major, *EU-UN Cooperation in Crisis Management: The Experience of EUFOR RD Congo in 2006*, Occasional Paper 72 (Paris: Institute for Security Studies, 2008), 23–7.

¹² "Jung: Regierung zu Kongo-Einsatz bereit", *Frankfurter Allgemeine Zeitung*, 16 March 2006.

Security Committee named the Bundeswehr Operations Command in Potsdam as the OHQ, on 25 April the UN Security Council issued a mandate, on 27 April the Council adopted the Joint Action establishing EUFOR RD Congo, and in early May two successful meetings of EU member states generated adequate troop contingents. But if the delays in the planning process did not ultimately endanger the timely deployment of EUFOR, fortune played a role too: the first round of the elections, originally scheduled for 29 April, was postponed to 30 July because of logistical difficulties.¹³

Goals, tasks and approach

EUFOR RD Congo was made up of two thousand two hundred seventy six men and women; one third from Germany, one third from France and one third provided by thirteen other EU member states plus Turkey. In contrast to Operation Artemis in 2003, which was conducted in DR Congo practically by France alone, EUFOR was thus a European operation. France provided the Force Commander on the ground, while the operation was commanded by the German General Karlheinz Viereck in Potsdam. One unusual aspect of the operation was that more than eight hundred soldiers were stationed as an over-the-horizon reserve at a French military base in Gabon, while only thousand four hundred twenty-five were actually deployed to the area of operations in Kinshasa. This model in no way contradicted the objectives of the operation. The prime purpose of EUFOR was deterrence. It was designed to send a message to potentially violent actors in Kinshasa that if it came down to it the EU would respond to any disruption of the election process with military intervention.

The scenario of violent disruption was certainly realistic. There was a great deal at stake for the former warring groups, which all entered the elections as political parties but still controlled armed supporters who could have been mobilised in the event of electoral defeat. It was correct to concentrate EUFOR in the capital Kinshasa because, as the seat of government and all important institutions (including the electoral commission), that is where threats to the electoral process were most likely to flare up. The objective of the operation was not to stabilise Congo as a whole, but to safeguard the election process so as to allow an elected government to be formed. In fact, the EUFOR mandate provided for intervention only in cases where neither MONUC nor the Congolese security forces were able to contain unrest. Under its mandate, military “activation” of EUFOR was foreseen only at the request of the UN Secretary-General or in emergency in close coordination with MONUC. In view of this limited remit the relatively small number of EUFOR troops seemed sufficient – although the troop strength seemed to be influenced by political considerations along the lines of “as few as possible, as many as necessary”.

¹³ Denis M. Tull, “Democratic Republic of Congo”, in *Africa Yearbook 2006*, ed. Andreas Mehler et al. (Leiden, 2007), 232.

Alongside its restricted geographical scope, EUFOR's duration was also limited, at Germany's insistence, to four months, beginning with the day of the Congolese parliamentary and presidential elections on 30 July 2006 and ending on 30 November. Under the Congolese electoral commission's original schedule the planned duration of EUFOR would thus have covered all the stages of any presidential run-off. But delays meant that the second round of voting could not be held until 29 October and as a result the announcement of the results of the run-off shifted dangerously close to the end of the EUFOR mandate on 30 November.

In the end the provisional election results were announced on 15 November and there was no violence or unrest on the part of the losing candidate, Jean-Pierre Bemba or his supporters. But on 18 November Bemba appealed against the outcome to the Supreme Court. Even if Bemba was expressing his rejection of the result through legal channels, there was no guarantee that his supporters would not respond with violence if the appeal was rejected – as it was on 27 November. The dangers under the surface were revealed on 21 November, when shooting broke out in Kinshasa and Bemba's supporters ransacked the Supreme Court.

Implementation and Impact

From a political and organisational perspective the operation ran satisfactorily, especially in terms of the cooperation between EUFOR and MONUC in Kinshasa. EUFOR was essentially designed to deter possible disruptions of the election process and to act only after two other instances (the Congolese security forces and MONUC) had failed. For that reason the operation on the ground tried to keep a low profile. Where it did seek attention was through a media strategy informing the population about the purpose of the intervention, using radio broadcasts, brochures and a weekly newspaper (*La Paillote*) to publicise the operation's goals and functions and emphasise the impartiality of the European involvement.

Although a few violent incidents occurred, only one event represented a real danger to successful and peaceful conclusion of the electoral process: after the results of the first round of the elections became known violent clashes erupted between the forces of two of the presidential candidates, Bemba and Kabila, in front of Bemba's residence between 20 and 22 August 2006. That was exactly the political/military scenario for which the operation had been deployed.

EUFOR supported the UN peacekeeping mission MONUC as planned. In response to the fighting on 21 August around Bemba's residence – where ambassadors from the International Committee for Support of the Transition (CIAT) were trapped inside – MONUC and EUFOR forces deployed to stabilise the situation and evacuate the diplomats. The unit of 130 Spanish soldiers that took part in the action was the only effective fighting force available to EUFOR in Kinshasa (out of more than 1,400 soldiers).¹⁴ In the

¹⁴ There were about 130 Polish military police protecting EUFOR facilities. The rest of

following two days another 220 soldiers were flown to the Congolese capital from Gabon, but by then the situation had calmed down again.

The operation had fulfilled its purpose, and was spared any more serious test. In fact, EUFOR probably made an important indirect contribution to the way the crisis was handled, as its presence will likely have strengthened the resolve of the MONUC forces, which had previously hesitated to act (for example in Bunia in 2003 and Bukavu in 2004, when militias committed serious human rights violations before the eyes of the UN peacekeepers). In a wider sense, the August crisis allowed EUFOR to demonstrate its political neutrality, which large parts of the population in Kinshasa had previously doubted. The joint EUFOR/MONUC operation to protect Bemba contradicted the widely held opinion that the operation served to support President Kabila.

The impact of the operation

It is impossible to say with certainty what concrete contribution EUFOR made to the positive conduct of the elections, apart from dealing with the August crisis. Aside from its media strategy and regular but scattered patrols, the operation was hardly to be seen. If and how the presence of its troops in Kinshasa influenced the behaviour of Bemba, Kabila and other actors remains an open question. Observations would suggest that EUFOR did indeed have a conflict-inhibiting effect. As Operation Artemis in Ituri and the British intervention in Sierra Leone demonstrated, even a relatively small Western task force can command great respect among local militias. So it would certainly seem plausible that the presence of superior EU forces led the conflicting parties to hold back. That view is backed up by the events of 21 August, when advancing reinforcements of the presidential guard stopped their march on Bemba's residence after MONUC and EUFOR took up positions there.

Without the intervention of MONUC and EUFOR, Bemba might well have been killed by Kabila's presidential guards. The greatest threat to the elections emanated all along from Kabila's camp and not from the election losers. But it is also conceivable that EUFOR had a preventive effect on the behaviour of Bemba and the other losing candidates. Despite the media reporting and the statements of a number of sceptics in advance of the deployment, Bemba and Kabila are rational actors capable of soberly weighing up the military balance of forces. The same can be said of most of their followers: Kabila's troops – and even more so Bemba's militias – were well aware that they would be no match for the EUFOR and MONUC forces. It was at least equally important that the broader political situation left violent troublemakers with no illusions about the consequences of their actions. The broad international coalition that had worked to make the elections come about (including the regional heavyweight South Africa)

the contingent had duties such as intelligence and communications, medical services and other support functions.

made no bones that a violent termination of the vote would have repercussions.¹⁵ The intense political scrutiny of the elections by the international community was an enabling factor for the operation's positive outcome.

Lessons of success

Within the EU there are voices that attribute the success of EUFOR to a correct assessment of the situation and a well-judged application of means. Pre-deployment criticisms of the engagement's restricted duration and geographical scope, they say, had been refuted by the way it played out. Design and implementation, it is said, had been precisely tailored to the requirements on the ground. In brief, EUFOR had been a model for effective military intervention.¹⁶

The facts speak against that interpretation. Rarely does a military intervention go entirely smoothly. Disruptions and unforeseen events – entirely or largely outside the influence of a deployment – can lead to completely unexpected outcomes. A well-prepared operation should be able to reduce these obstacles and uncertainties or at least control them. That was not the case with EUFOR, which was not prepared for all eventualities. In two respects, the operation's successful completion was due as much as anything else to good fortune. *Firstly*, the number of effective fighting troops in Kinshasa was probably too small to respond quickly and appropriately to all conceivable situations. In the event of major clashes, forces stationed in Gabon and France would first have had to be flown to Kinshasa. So they would have been able to contain the consequences of violent escalation, but not to prevent fighting in the first place. That said, sending a very tightly calculated number of soldiers is the rule in almost all peacekeeping missions, especially those of the UN.

Secondly, the duration of the operation was not extended in response to political events on the ground, namely the delays in the election process. By September 2006 at the latest it was predictable that the end of the EUFOR mandate would come very soon after the announcement of the results of the run-off. Above all the UN, France and Belgium argued at an early stage to extend the mandate to allow it to remain in the country for a while after the announcement of the results. But for domestic political reasons the German government resisted even allowing a discussion in the first place, even after it became clear that the official results would be announced just three days before the mandate ended (27 and 30 November respectively). Refusing an extension clearly contradicted the operation's objectives, given that EUFOR was deployed precisely because it was feared that those who disagreed with the election results might respond violently – and that is just what had happened after the first round. An extension of about two weeks would have been enough to respond to possible unrest

¹⁵ It must be emphasised that DR Congo's neighbours and South Africa all welcomed EUFOR.

¹⁶ "La mission européenne en RD Congo, un exemple pour le futur", *Agence France-Presse*, 7 June 2006.

and would have given a clear message to potential troublemakers. Instead EUFOR took the risk of fighting breaking out the moment it began to withdraw, which would have called into question the success of the whole operation and thus also of the elections. In the event, there were fortunately no major outbreaks of violence and the operation was able to conclude successfully.

Relevance

In view of the difficult political circumstances, it was a great success that the elections in Congo went off in a largely peaceful and orderly fashion. The idea that EUFOR RD Congo made a contribution appears justified, even if it cannot be proven beyond doubt. However, at German insistence the operational planning was based on an “end date” rather than an “end state”,¹⁷ reflecting the great hesitancy of the German public concerning military interventions, especially in supposedly peripheral regions where they do not serve the defence of vital interests.

This raises the question of how important EUFOR was for the European efforts to stabilise DR Congo. Can the operation be placed in an overall political context? Was it perhaps even part of a “Congo strategy”? It could be argued that the European Union and its member states have been steadily expanding and intensifying their involvement in DR Congo for years. The EU has had a Special Representative for the African Great Lakes Region, which includes DR Congo, since 1996 and also supplies large-scale humanitarian and development aid. In 2003 it sent Operation Artemis to Bunia, to assist the UN MONUC mission. Since 2005 the EU has been participating in the reform of the security sector in DR Congo through two civil-military missions (EUPOL and EUSEC), and it was the biggest donor funding the 2006 elections, with a contribution of about €250 million. This makes the EU, alongside the UN, the most important external actor working for the stabilisation of DR Congo. To that end it has applied an impressively broad range of development, diplomatic, military and civil-military instruments.

But the sum of these parts does not of itself produce a coherent political strategy. The EU possesses no explicit or implicit strategy towards DR Congo. And it would also be going too far to interpret the intervention in DR Congo an example of the implementation of the EU’s Africa strategy.¹⁸ The EU was present in DR Congo well before the strategy was adopted in 2005/06, and anyway the strategy focuses on institutional cooperation with its partner organisation, the African Union. Likewise, the EU has formulated little in the way of specific political objectives, beyond the vague pronouncement that it wants to make a European contribution to stabilising the country. The EU’s de facto “Congo policy” is the sum of incremental and ad hoc decisions and measures that reveal no clear line. It is

¹⁷ Fritsch, *EUFOR RD Congo: A Misunderstood Operation?* [see note 9], 37.

¹⁸ For example Fritsch, *EUFOR RD Congo: A Misunderstood Operation?* [see note 9], 13ff.

the result of the interests of individual countries (France and Belgium) or – as in the case of the military operations Artemis and EUFOR – an institutional and diplomatic desire to demonstrate the EU’s punch and enhance its capacities and image as a global force. One could argue that in the course of its growing involvement the EU has developed a certain responsibility for the peace process in DR Congo. But the DR Congo has no special importance for the EU. Only France and the former colonial power Belgium have – on the basis of their historical relations with the country and the Great Lakes region – political and economic interests in the country. Nor would the EU’s deployment of resources suggest that Europe gave any priority to DR Congo. The two civil-military missions that started in 2005, EUPOL and EUSEC, may make a contribution to security sector reform, but with personnel of just sixty or so between them they are too small to have any substantial impact. For years EUSEC has been operating about 30 percent below its mandated staffing level. Furthermore, a number of European states (first and foremost France and Belgium) are pursuing (bilateral) activities of their own in the field of security sector reform, increasing still further the already large number of actors in this field and making coordination on the ground yet more difficult. And the EU did little to step up its involvement in Congo after the elections. On the contrary, the political attention devoted to the country evaporated, even though the peace process could still fail. The EU’s development and reconstruction aid is small, measured against the size of the country and its huge needs.¹⁹ The diplomatic activism of 2005 and 2006 has waned, as the focus has shifted over the past two years much more to the crises in Somalia and Sudan. A coherent policy with staying power is nowhere to be seen. But that is what would be needed to safeguard DR Congo’s fragile peace in the long run.

Conclusions

As a military operation EUFOR RD Congo made an important contribution to the peace process in Congo, and it appears by all accounts to have had the intended deterrent effect on the Congolese parties. But this was primarily a product of the broad international consensus (among UN, EU, South Africa) that disruption of the election process would not be tolerated, rather than EUFOR’s military capacity. The operation was never required to prove its worth, which was fortunate because its limited personnel and duration might well have prevented it from achieving its foremost political objective.

More broadly, EUFOR raises more questions about the EU’s policy towards DR Congo than it answers. Like Operation Artemis in 2003, it was an intervention of limited duration and geographical scope – a vehicle for the EU to demonstrate its global reach in matters of security and diplomacy.

¹⁹ The reconstruction aid supplied by the EU Commission currently amounts to about €110 million annually (without humanitarian aid).

One intended positive side-effect of these operations is that the EU was able to support the United Nations, breathing life into the slogan of “effective multilateralism”.²⁰ But neither of the operations was embedded in a broader strategic concept. That impression has been underlined by the way DR Congo disappeared from the EU’s list of priorities after EUFOR ended. The scarcity of serious, sustained efforts to stabilise the fragile peace in Congo is reflected in the lack of commitment to reconstruction and in the limited size of the two civil-military missions, EUPOL and EUSEC, which are supposed to promote reform of the security sector. Furthermore, the EU has failed even to coordinate its security sector reform activities, still less to generate a consensus. There are still bilateral programmes (Belgian and French) to support the Congolese police and armed forces running in parallel to the two EU missions. Worse still, the EU is plainly operating in rivalry with the UN in this field.²¹ The intense diplomatic activity of the period before, during and after EUFOR (for instance visits to DR Congo by Solana and Commission President José Manuel Barroso) has dropped off greatly. Precisely because the EU has actually launched so many activities and deployed so many instruments, an explicit and coherent strategy towards Congo is overdue.

This necessity has less to do with Congo per se than with the question of peace processes in general. Only through a coherent and integrated long-term approach can the EU contribute to the lasting stabilisation of post-conflict societies. Reform of the security sector and substantial, lasting economic reconstruction must be elementary components of such a policy. Without staying power – which is currently absent – the EU risks frittering away the impact of operations like EUFOR. So EUFOR was a success, but cannot be regarded as a model.

²⁰ “Europa kann es: das ist die wichtigste Botschaft”, *Die Welt*, 16 December 2006.

²¹ Sébastien Melmot, *Candide in Congo: The Expected Failure of Security Sector Reform (SSR)*, IFRI Focus Stratégique 9 (Paris: Institut Français des Relations Internationales, April 2009), 16f.

EUFOR Tchad/RCA: The EU Serving French Interests

Patrick Berg

The border area between Sudan, Libya, Chad and the Central African Republic (CAR) has been a flashpoint of national and regional power struggles for decades. Over the years the region has served as a rear base for various rebel groups and has repeatedly been the scene of military confrontations in power struggles at the centres of the bordering states. The proliferation of small arms combined with a large number of men with combat experience as well as a general neglect of the region by the respective central governments has resulted in a precarious security situation characterised by frequent outbursts of localised conflict.¹

Since 2003 the crisis in the Darfur region of Sudan has led to huge movements of refugees, and in late 2005 the security situation began to deteriorate dramatically in eastern Chad as well. Attacks on the civilian population by various militias forced more than 180,000 people to flee their villages in a short space of time and robbed a further 700,000 of their livelihoods. Together with the roughly 250,000 Sudanese refugees in Chad, this left more than one million people in the region dependant on humanitarian aid.

Urged on by France, the Council of the European Union decided in October 2007 to send an EU operation to the region to serve as the military component of the UN mission to be deployed there. As well as protecting civilian populations and securing deliveries of humanitarian aid, the mandate of EUFOR Tchad/RCA was to protect UN personnel and facilities. It was thus limited to mitigating the effects of the crisis without actually addressing the conflicts in Chad and Darfur. However, EUFOR did not even manage to achieve the relatively narrow goal of allowing internal refugees to return to their homes.

The Mandate

The decision to deploy EUFOR Tchad/RCA must be seen in the context of the complex conflicts in the region and in particular of international efforts to bring a peaceful end to the crisis in the Sudanese region of Darfur, which erupted in 2003.² Following the failure of the Darfur peace negotiations in Abuja in mid-2006, the international community's main

¹ On the cross-border movements of fighters in the region and their deployment in various conflicts see Marielle Debos, "Fluid Loyalties in a Regional Crisis: Chadian 'Ex-Liberators' in the Central African Republic", *African Affairs* 107, no. 427 (2008), 225-41.

² On the background to and outbreak of the Darfur conflict see Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War* (London, 2008).

concern was to send a UN mission that could at least provide protection and humanitarian aid for the civilian population in Darfur. Faced with bitter resistance from the government in Khartoum, however, the UN found itself embroiled in a diplomatic showdown that monopolised the attention of the international community for more than a year.

It was therefore slow to respond to the crisis in Chad, where – in contrast to the neighbouring region – humanitarian aid organisations were managing to get supplies through to the civilian population. Furthermore, the escalation of violence in eastern Chad, observable since 2005, was generally interpreted as an extension of the Darfur problem rather than as a separate conflict. It was not until September 2007, two years after the escalation had begun, that the UN Security Council adopted Resolution 1778 dispatching a mission to eastern Chad and to the north-eastern Central African Republic.³

From resistance to a robust UN mission ...

The EU and the United Nations eventually came to treat the conflict in Chad as a crisis in its own right largely because of French persistence in both the European Union and the UN Security Council. France had a hand in drafting Security Council Resolution 1706 of 31 August 2006, which mentioned the possibility of sending an operation to Chad for the first time. While the resolution mainly dealt with the deployment of a UN mission to Darfur (UNMID), France managed to get the Security Council to consider sending a further mission to the neighbouring states by pointing to the regional repercussions of the Darfur crisis.⁴ The ensuing report contained an unusually frank statement by then UN Secretary-General Kofi Annan opposing a UN mission to Chad and the Central African Republic on the grounds that local conditions were not conducive to a successful mission. He referred specifically to the lack of ceasefire agreements or of any credible political process in the countries concerned. Annan also feared that the lack of support from the parties to the conflict might make the UN mission itself the target of attacks.⁵ Despite these reservations the Security Council decided, again under pressure from France, to pursue

³ United Nations Security Council, Resolution 1778, S/RES/1778, 25 September 2007. The main area of deployment of the operation was eastern Chad, so this will be the focus of our analysis. The north-east of the Central African Republic (CAR) was also included in the mandate, mainly because the region, which forms a kind of wedge between Sudan and Chad, was used as a transit route by Chadian rebels in an attack on the Chadian capital in spring 2006. The EUFOR contingent stationed in the CAR consisted of only two hundred soldiers. On the regional background to the internal conflicts in the CAR see Patrick Berg, *The Dynamics of Conflict in the Tri-Border Region of Sudan, Chad and the Central African Republic* (Bonn: Friedrich-Ebert-Stiftung, March 2008).

⁴ It was clear from the voting on Resolution 1706 that the clause on Chad was of little significance to the other Security Council members. United Nations Security Council, *Minutes of the 5519th Meeting of the UN Security Council*, S/PV.5519, 318.2006.

⁵ United Nations, *Report of the Secretary-General on Chad and the Central African Republic*, S/2006/1019, 22 December 2006.

the idea of a military operation to eastern Chad and asked for a mandate to be drafted. The report issued in February 2007 under the new UN Secretary-General Ban Ki Moon refrained from any further political commentaries but highlighted the complex security situation in the region to stress the need for a military component to protect civilian personnel. In the event that an operation should be deployed, Ban recommended a troop strength of 10,900 soldiers.⁶ By then, however, Chadian President Idriss Déby had made it clear that he would not approve a military UN mission to his country, thus putting the mission on hold for the time being.

Meanwhile plans to deploy UNMID had also run aground. Instead of a purely UN mission the Sudanese government had succeeded in enlisting Chinese support to persuade the Security Council to send a joint mission of the UN and the African Union to Darfur. The hybrid UNAMID mission was, however, regarded as a poor substitute and there is still little hope that it will make any serious contribution to ending the conflict.⁷ Particularly in the United States and Europe, where well-organised civil society campaigns had drawn broad public attention to the Darfur crisis, governments thus continued to come under pressure to do something about it.⁸ In France it even became an issue in the presidential elections in early summer 2007, resulting in all the candidates publicly signing a memorandum, prepared by the network Urgence Darfour, undertaking to do everything in their power to protect the Darfur refugees.⁹ Subsequently President Nicolas Sarkozy and his foreign minister, Bernard Kouchner, found themselves under considerable pressure to match their words with deeds. Kouchner, who had close ties to the Urgence Darfour initiative, had repeatedly raised the issue in public statements. As a prominent member of the political left, he also had to justify his participation in a conservative government. It is therefore hardly surprising that the day he was

⁶ The report also presented an option involving only six thousand soldiers, but this would have meant equipping them with significantly more helicopters to ensure mobility. United Nations, *Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad*, S/2007/97, 23 February 2007.

⁷ Security Council Resolution 1769 of 31 July 2007 authorised a troop strength of 26,000 (soldiers and civilian police). On 31 March 2009 there were only 15,351 uniformed personnel. United Nations, "Darfur – UNAMID – Facts and Figures", www.un.org/Depts/dpko/missions/unamid/facts.html (accessed 29 May 2009). Other points of criticism of the mission are insufficient authority to take active (including preventive) measures to protect the civilian population as well as the bureaucratic decision-making structures resulting from the hybrid nature of the joint AU/UN mission.

⁸ Maria Gabrielsen, *Campaigning for Darfur: Can Western Advocacy Movements Bring Peace to Sudan?* working paper presented at the European Conference on African Studies, June 2009.

⁹ The text calls for the deployment of French troops in Chad and for a European operation to protect the population in Darfur. Collectif Urgence Darfour, "Le Président Sarkozy et le Darfour", www.urgencedarfour.info/index.php?module=Pagesetter&func=viewpub&tid=10002&pid=44 (accessed 5 June 2009).

sworn into office he demonstratively put the Darfur crisis on his agenda.¹⁰ In preparation for a high-level conference on Darfur that Kouchner had convened in Paris for June 2007, he travelled to the Sudanese and Chadian capitals Khartoum and N'Djamena and succeeded in persuading Chadian President Déby to change his mind and approve a UN mission to Chad after all, albeit with the proviso that the military security component would be under EU command.¹¹

... to the birth of a feeble EU operation

Kouchner had not discussed his proposal in advance with his European partners, whose response was thus initially reserved and in some cases dismissive. Indeed, the German EU Council Presidency forbade Kouchner to announce an ESDP operation to the region at the Paris Sudan conference.¹² Yet France continued to pursue the idea energetically and by July 2007 had persuaded the Council to declare its general readiness to send an operation to Chad and the Central African Republic – even if this decision was tolerated rather than actively supported by some member states.¹³

The UN revised the mission concept on the basis of the agreement reached by Déby and Kouchner. The proposal presented in August 2007 not only changed the leadership of the military component but also made two other important amendments. One was to explicitly exclude the immediate border area between Sudan and Chad from the sphere of operations of MINURCAT (United Nations Mission in the Central African Republic and Chad) – and hence from that of its military component EUFOR. The other was to remove the civilian police component tasked with securing the refugee camps from the command of the UN and put it directly under Chadian supervision. The Security Council adopted the new concept with Resolution 1778 of 25 September 2007. MINURCAT's mandate focused mainly on improving security in the area of operation to allow for the voluntary and permanent return of internally displaced people (IDPs). However, since Chadian scepticism meant MINURCAT was not to have its own protection force, Resolution 1778 authorised the EU to send an accompanying military operation to the region initially for twelve months.¹⁴

10 Kouchner's initial proposal to set up militarily secured humanitarian corridors to Darfur using Chad as a base was so vehemently rejected by humanitarian organisations working on the ground that he soon dropped it again.

11 President Déby believed a UN military mission would constrain his own leeway for military activity both in combating the Chadian rebels and in supporting the Sudanese rebels. Because of his close relations with France – and particularly with the French army in which Déby himself had been trained – he believed he would be able to exert more control over an EU operation.

12 Interview with a high-ranking German diplomat in June 2007.

13 Legally binding official approval did not come until September 2007, see United Nations, "Letter from Secretary-General of the Council of the European Union Javier Solana to the UN Secretary-General of 17 September 2007", S/2007/560, 17 September 2007.

14 A number of EU member states made their approval or participation in the operation contingent on a clear time limit for the engagement, and they called for it to be taken

The Council of the European Union created such an operation on 15 October 2007 (EUFOR Tchad/RCA) with the following tasks based on the UN mandate:¹⁵

- ▶ Protect endangered civilians in Chad and the Central African Republic, particularly refugees and IDPs
- ▶ Generally improve security in the areas where humanitarian aid organisations were operating
- ▶ Protect UN personnel and facilities and guarantee freedom of movement for UN personnel in the area of operations.

EUFOR's tasks were limited to providing physical security in the form of regular patrols in the sphere of operations and protecting UN personnel and occasionally staff of other aid organisations. The central assignment of MINURCAT's exclusively civilian mandate was training a new Chadian police unit that was to be deployed to improve security in the refugee camps. MINURCAT was also supposed to monitor the human rights situation and, by coordinating development aid, facilitate the return of IDPs to their homes.

By deliberately excluding any political component, the MINURCAT and EUFOR mandates were limited to ameliorating the symptoms of the crisis while ignoring its causes. European decision-makers must therefore surely have been aware that the chances of the operation contributing to a long-term improvement in Chad were extremely small. We can only assume that in addition to the goals described in the official mandate there were other motives for sending a military operation to eastern Chad.

A French "shadow mandate" and reticence by the other member states

Couched in positive terms, France's goal was to stabilise the Chad government whose rule was seriously threatened by ever stronger rebel groups.¹⁶

over by the UN at an early stage. In official declarations EUFOR was therefore often referred to as a bridging operation designed to give the UN time to put together its own troops. At the time the operation was deployed, however, Chad's refusal to accept a military UN component meant that the likelihood of the EU deployment remaining brief was very small. For this reason Resolution 1778 provided not for a hand-over of responsibility but rather for a joint EU/UN evaluation as a basis for deciding the future of the military components of MINURCAT.

¹⁵ Council of the European Union, *Council Joint Action 2007/677/GASP of 15 October 2007 on the European Union Military Operation in the Republic of Chad and the Central African Republic*, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:279:0021:0024:EN:PDF>.

¹⁶ The reasons why successive French governments were prepared to lend almost unqualified support to dictatorial regimes are complex and do not necessarily follow the schematic categories of utilitarian *Realpolitik*. After all, France has almost no economic interests in Chad that would justify an expensive military intervention. Yet French army units stationed in Chad intervened in the attempted putsches of 2006 and 2008 and in both cases played a key role in quashing the rebels. In 2006 France even used its locally stationed troops directly to defend President Deby, with French warplanes firing on rebels advancing towards the capital. In 2008 France obtained a declaration of the UN Security Council calling on states to support the Chad government (S/PRST/2008/3 of

The motive for this support can be found in the intricate relationship between the elites in Paris and the former French colonies known as “France-Afrique”. Although French influence in the region has dwindled in recent years and calls in France for the normalisation of relations with its former colonies are becoming ever louder,¹⁷ entrenched networks and the clientelism of these elites continue to have a strong influence on French foreign policy.¹⁸

The motive for the deployment of EUFOR seems to have been neither the prospect of success, nor broad European support for French goals in the region but rather a variety of other reasons. What they all have in common is that they concern national or European interests that have nothing to do with the conflict in the Sudanese/Chadian border region. First of all, following the failure of the UN mission to Darfur (UNMID) European governments may have found the idea of the EU making its mark as an effective actor in this conflict-torn region rather appealing. That would appear to be why the Chad operation was presented to the public as a way of helping to resolve the Darfur crisis, even though the drastic changes in the MINURCAT mandate (no control over the border with Sudan, no role in the camps for Sudanese refugees) rendered it largely irrelevant for Darfur. The Council of the European Union therefore emphasised the regional dimension of the crisis in Darfur and EU High Representative Javier Solana assured the public that the operation would “contribute without any doubt to the solution of the crisis in Darfur”.¹⁹

Britain’s support for the French initiative (which was conditional on it not having to send any troops of its own) can no doubt be explained by the two countries’ agreement to cooperate over policy towards Africa as well as British hopes of French backing for future projects.²⁰ Sweden’s interest in EUFOR seemed to grow as the possibility emerged of testing the Nordic Battle Group, which was to achieve operational readiness at the beginning of 2008.²¹ Ireland, which until then had taken a very reserved attitude to

4 February 2008), thus creating a moral justification for its intervention. In cooperation with Libya it then supplied the Chadian army with munitions. See “Tchad: la France reconnaît avoir acheminé des munitions libyennes”, *Agence France-Presse*, 14 February 2008.

¹⁷ For an early contribution to this debate see Jean-François Bayart, “France-Afrique: la fin du pacte colonial”, *Politique africaine* 39 (September 1990), 47–53. For an overview of the current debate see Richard Banégas and Roland Marchal, eds., *France-Afrique: sortir du pacte colonial* (Paris, 2007).

¹⁸ Klaus Schlichte, “La Françafrique: Postkolonialer Habitus und Klientelismus in der französischen Afrikapolitik”, *Zeitschrift für Internationale Beziehungen* 5, no. 2 (1998): 309–42.

¹⁹ Council of the European Union, *Shot List: Countdown to Operation EUFOR Tchad/RCA*, January 2008. See also the press release announcing Javier Solana’s visit to EUFOR: “The Establishment of EUFOR Tchad/RCA Forms Part of a Comprehensive Package of Enhanced EU Commitment to a Solution to the Crisis in Darfur,” and Council of the European Union, *Javier SOLANA, EU High Representative for the CFSP to Visit the Central African Republic and Chad*, Brussels, 5 May 2008.

²⁰ *Franco-British Summit – Declaration on Franco-British Cooperation in Africa*, 24 November 2003.

²¹ Sweden’s decision to participate in the European Battle Groups caused great domestic controversy, so the Swedish government saw the deployment of the Nordic Battle Group

ESDP engagements, may have seen its participation in the EUFOR operation as a chance to restore its reputation as a reliable EU partner after its rejection of the Lisbon treaty. Many of the eastern European member states, which had only gained full membership of the EU at the start of 2007 and had traditionally pursued no Africa policy of their own, showed little interest in the discussion. For Poland, which sent four hundred soldiers – the third largest contingent – the operation was a good opportunity to establish itself as a serious player willing to shoulder EU responsibilities. Germany – the only EU country besides France to have a diplomatic representation in Chad and hence able to make an independent analysis of the situation – for a long time maintained a critical stance towards the operation but ultimately voted in favour of the deployment. No doubt the German government wished to avoid further burdening relations between Berlin and Paris – strained since President Sarkozy took office – on account of a project of only marginal interest for German politics.²²

The lack of enthusiasm for the EUFOR operation by the majority of EU member states was evident in the wording of the Joint Action of October 2007. The mandate was clearly limited to twelve months and emphasised its role as a bridging mission until the stationing of UN units. Moreover, the proportion of the costs to be borne by the EU was restricted to about one fifth of the overall costs of the operation. Since the remaining costs had to be carried by those supplying troops according to the “costs lie where they fall” principle, France unexpectedly found itself having to finance the lion’s share of the operation. The disinterest of the other member states was made even plainer by the lack of concrete troop commitments. Britain and Germany had ruled out sending any of their own troops from the beginning. Sweden, which had originally shown interest in the post of commander, backed out again following a first visit to the field, simultaneously reducing its troop commitment.²³ The Irish EUFOR commander General Patrick Nash, who had originally declared a need for four thousand three hundred troops after a fact finding mission in August 2007, was eventually forced to reduce the troop strength to three thousand seven hundred – even after France increased its contribution from one thousand five hundred to two thousand. Between November 2007 and

as part of a humanitarian operation as a way of justifying its unpopular policy. Lars Wedin, “The Impact of EU Capability Targets and Operational Demands on Defence Concepts and Planning: The Case of Sweden”, in *The Nordic Countries and the European Security and Defence Policy*, ed. Alyson J. K. Bailes et al. (Stockholm, 2006). In the meantime the Swedish government has announced its intention to make a fundamental debate on EU Battle Groups a theme of its EU Presidency. “Sweden Wants EU to Rethink its Army”, *Agence France-Presse*, 3 June 2009.

²² Points of disagreement include Sarkozy’s plans for a Mediterranean Union, his offer of nuclear cooperation with Libya, strongly diverging positions in economic policy and the role of the European Central Bank, and last, but not least, conflict over reform of the ailing European aircraft manufacturer Airbus.

²³ On the difficulties of getting troops together see Assembly of the WEU, *Recommendation 818 on the European Union Mission in Chad*, 4 June 2008, www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2008/2007.php#P205_25790 (accessed 6 June 2009).

January 2008 no fewer than five conferences had to be held before sufficient commitment was obtained even for the reduced contingent, and even then the EU states remained unwilling to provide enough helicopters for the huge 350,000-km² area of operations. In the end the required numbers could only be provided thanks to a contribution from Russia, which thus participated in an EU military operation for the first time.

A total of six months had elapsed between the Council's first declaration of intent and the eventual commitment of its member states to make available the personnel and material necessary for the operation. Originally set to begin in November 2007, the operation was delayed until March 2008 owing to member states' unwillingness to provide sufficient military personnel or financing. Plans for the deployment of the 1,500-strong combat-ready Nordic Battle Group had to be abandoned because, among other reasons, the member states refused to assume the cost of the operation. This foot-dragging clearly shows that approval for the deployment of EUFOR was not primarily motivated by the wish to help improve the situation in the crisis region. Rebel attacks in the Abéché region in November 2007 underscored the great potential risks to personnel and equipment, and are likely to have confirmed the member states' disinterest.

Implementation and Impact

Stationing an independent military operation in eastern Chad would be a huge logistical challenge even in times of peace. In this arid region water and food are scarce and there is no reliable infrastructure through which to obtain fuel and other supplies. The nearest harbours are thousands of kilometres away in Cameroon and Libya, the area has no tarmac roads and the few landing strips are unsuitable for heavy transport planes. Accordingly, a large proportion of the troops in the European operation spent their time organising supplies with only a small contingent left over to carry out the mandate itself. For this reason the UN originally recommended a troop strength of around eleven thousand for a military mission in Chad, which independent observers also saw as realistic.²⁴ Plans for a UN follow-up operation to EUFOR also envisaged a contingent of more than six thousand plus a further battalion "over the horizon" ready to step in if necessary.²⁵ Repeated reductions in the EUFOR troop contingent – eventually leaving just three thousand three hundred soldiers effectively deployed on the ground – made it clear the mission was shaped primarily not by the goal of fulfilling the mandate but by the resources available.²⁶ Even prior to deployment many observers were already pointing out that the resources provided by the EU member states were completely inadequate.

²⁴ See, for example, Björn H. Seibert, *African Adventure? Assessing the European Union's Military Intervention in Chad and the Central African Republic*, MIT Security Studies Program Working Paper (Cambridge: Massachusetts Institute of Technology, November 2007).

²⁵ United Nations, *Report of the Secretary-General on Chad and the Central African Republic*, S/2008/601, 12 September 2008.

²⁶ Ibid.

quate to fulfil the mandate and that this created a discrepancy between the declared goals and the chosen military strategy.²⁷

As a result the operation was only able to achieve one of its goals, namely, the protection of civilian UN personnel. It was not possible, however, to significantly improve the situation for the civilian population. This was largely due to the way the mandate was formulated, giving priority to the protection of IDPs, even though their camps had hardly ever been the target of armed attacks even before the arrival of EUFOR. For this reason the absence of attacks after the deployment of the operation can hardly be chalked up as a success. On the contrary, the security situation in the camps deteriorated, as documented by a joint EU/UN evaluation report in September 2008.²⁸ Besides daily occurrences of sexual violence and other violations of human rights there was a growing militarisation of the camps, for example in the uncontrolled recruitment of child soldiers. Six months later the UN Special Representative on Internally Displaced Persons visited the camps and came to the same sobering conclusion.²⁹

EUFOR also failed to achieve its third goal in improving the general security situation to create a basis for the return of IDPs. Admittedly, in the areas where there were regular patrols there was a 30 percent fall in the number of violent attacks.³⁰ However, since EUFOR troops were mostly deployed near refugee camps and main thoroughfares and relatively close to EUFOR base camps, this positive development could by no means be said to apply to the whole area of operations.

EUFOR's "deterrent presence" strategy proved to be particularly effective with respect to rebel movements, so that attacks on government facilities more or less stopped during the EUFOR operation. Violence against the civilian population, however, had been perpetrated not by the rebels – whose goal was to take over the national government in N'Djamena – but by local, mostly ethnically motivated groups. The first wave of Chadian civilians being driven from their homes in late 2005 was initially launched from Sudanese territory. Subsequently, however, it took on a purely Chadian dynamic. Instead of being deployed to protect the civilian population, the Chadian army was actually withdrawn from the region when the power struggle for control of the government in N'Djamena came to a head. In its place the Chad government armed allied groups to form self-defence forces. These proved quick to use their weapons to pursue old conflicts with neighbouring ethnic groups, thus triggering a further escala-

²⁷ Seibert, *African Adventure?* (see note 24), 41. For a critical examination of EUFOR prior to deployment see also Denis M. Tull, *The Chad Crisis and Operation EUFOR Chad/CAR*, SWP Comments 2008/C 02 (Berlin: Stiftung Wissenschaft und Politik, February 2008).

²⁸ United Nations, *Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad*, S/2008/601, 12 September 2008.

²⁹ United Nations, "Le Représentant du Secrétaire Général pour les droits de l'homme des personnes déplacées en appelle à la responsabilité de l'Etat tchadien envers les personnes déplacées", press release, 11 February 2009.

³⁰ Council of the European Union, *The European Union's Actions in the Context of EUFOR Tchad/RCA*, Brussels, 8 December 2008, www.consilium.europa.eu/uedocs/cmsUpload/081208-EUs_actions_in_the_context_of_EUFOR_Tchad-RCA.pdf (accessed 6 June 2009).

tion. The absence of state-controlled forces of law and order, the experience of brutal attacks and expulsions, and easy access to firearms led to a more or less complete collapse of the social fabric. Robbery became a widespread source of income so that the acute danger for the population lay mainly in the villages and on secluded roads. If anything the general lack of security for the civilian population actually increased during the EUFOR operation. Humanitarian aid organisations were also attacked several times, and in 2008 four staff were killed. In November 2008 supplies to the towns of Dogdore and Ade, which had sheltered about a fifth of all IDPs, had to be temporarily suspended, since EUFOR had no bases in the two towns and was therefore unable to guarantee the safety of the aid organisations.³¹ The EU/UN evaluation report for 2008 thus concluded that current conditions did not allow the return of IDPs to their homes.

These examples show that EUFOR did not have sufficient personnel and material resources to fulfil the goals detailed in its mandate. A reduction in robberies was only recorded in areas where regular patrols were carried out. Extending these patrols to cover the whole area would, however, have required many times the number of personnel actually provided. The militarisation of the camps, too, shows that the mandate was inadequate to bring about a long-term improvement in the situation. Since neither EUFOR nor MINURCAT could be deployed in the camps themselves or in the area directly bordering on Sudan, the possibility of their exerting a positive influence on developments there was ruled out from the start.

However, it is not only the failure to produce changes for the better that deserves critical mention. Rather, there are also good grounds for arguing that the EUFOR presence actually aggravated the power struggle between the Chadian government and the rebels – a central element of the conflict scarcely mentioned either in the official justification for the operation or in the conflict analysis. Hence, for example, there may well be a connection between the timing of the renewed coup attempt in Chad in early February 2008 just before the imminent deployment of EUFOR. President Déby used the rebel attacks – once again put down with French support – as an excuse to launch an offensive against the civilian opposition. Although the Delegation of the EU Commission in N'Djamena had the previous year mediated a political agreement between the government and political parties on holding new elections (the “Agreement of 13 August”), the EU hardly responded to the arrest and suspected killing of opposition leaders.³² It is characteristic of the EU’s lack of understanding of the com-

³¹ Internal Displacement Monitoring Centre, *Renewed Attacks Threaten IDPs and Humanitarian Operations*, 6 November 2008, www.reliefweb.int/rw/rwb.nsf/db900SID/CJAL-7LBRFR?OpenDocument (accessed 2 June 2009).

³² The spokesman of the party alliance CPDC (Coordination des Partis politiques pour la Défense de la Constitution), Ibn Omar Saleh, was arrested by the military on 3 February 2008 and probably murdered. A commission of inquiry called under international pressure remained inconclusive. See *Rapport de la Commission d'Enquête sur les événements survenus en République du Tchad du 28 janvier au 08 février 2008 et leurs conséquences*, 31 July 2008, www.fidh.org/IMG/pdf/Notedesyntheserapportcommission.pdf (accessed 2 June 2009).

plex background to the Chad conflict that while extending the mandate of the EU Special Representative for Sudan to the EUFOR areas of operations it did not task him with continuing the EU Commission's mediator role in N'Djamena.³³ The implementation of the Agreement of 13 August 2007 mediated by the EU Commission more or less ground to a halt in the absence of international pressure. By sending EUFOR the EU not only took sides in an on-going civil war, but by de facto distancing itself from the 13 August agreement deprived itself of instruments to exert political influence over the conflict.

Relevance

We can conclude that the EUFOR operation in Chad is certainly not a genuine expression of a *common* European foreign policy based on a shared assessment of the situation and designed to promote the interests of Europe as a whole. Rather the operation represents the successful attempt by a single European state to get its own interests placed on the European agenda. While this is not unique in European foreign policy, the deployment of EUFOR is different from comparable cases as the EU agreed to pursue the national interests of one state fully aware of the damaging effect this might have on its reputation as a conflict mediator. As a former colonial power in Chad and the Central African Republic, France is not regarded as neutral by either country. And with more than 50 percent of the EUFOR soldiers being French, the Chadian rebels regarded it not as an impartial mission to protect the civilian population but as an instrument of the Chad government to suppress the rebellion.³⁴

The doubts about the neutrality of the operation are certainly not unfounded. The fierce rebel attacks on government facilities a few weeks after the handover of military tasks to MINURCAT in March 2009 make it clear that the rebels' restraint after the battles of the previous February was directly connected with the EUFOR presence. This allowed President Déby to re-group his army at his leisure, while at the same time the limited reach of the EUFOR und MINURCAT mandate meant he was also able to continue his support for the Darfur rebels undisturbed. There is little doubt that the attack by the Darfur rebel Justice and Equality Movement on the Sudanese capital Khartoum in May 2008 would not have happened without Déby's backing. Thus EUFOR's indirect, yet no less effective siding with Déby in both the internal power struggle in Chad and in the conflict

³³ Council of the European Union, *Council Joint Action 2008/110/CFSP of 12 February 2008 Amending and Extending the Mandate of the European Union Special Representative for Sudan*, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:038:0028:0031:EN:PDF>.

³⁴ In November 2007 the UFDD – the largest Chadian rebel group at the time – declared war on all foreign soldiers in the country, thus issuing an unmistakable warning to EUFOR, which was still in the process of forming, not to interfere in Chadian power struggles. “Des rebelles tchadiens menacent l’armée française et l’Eufor”, *Le Point*, 30 November 2007, www.lepoint.fr/actualites-politique/2007-12-01/des-rebelles-tchadiens-menacent-l-armee-francaise-et-l-eufor/917/0/212548 (accessed 6 June 2009).

between N'Djamena and Khartoum damaged the EU's reputation as a neutral mediator in the region.

In international terms, too, the operation can scarcely be seen as a success. While cooperation with the United Nations may have led to a better understanding of how the two organisations function at a technical level, the operation can hardly be called a successful example of "effective multilateralism". The cooperation on EUFOR Tchad/RCA cannot be attributed to a concordance (or a complementarity) of political goals, but rather to France's clout both in the UN Security Council and in the Council of the European Union. Since the EUFOR operation ended, the United Nations has returned to the more independent stance reflected in Kofi Annan's clear rejection of the military operation. The UN report on preparations to take over the military components of MINURCAT thus explicitly calls on the Chadian government to assume responsibility for a long-term solution to the crisis both by withdrawing its support for the Sudanese rebels and by entering into serious dialogue with the civilian opposition in order to advance the democratisation of the country's political system.³⁵ The explicit exclusion of these issues from the first MINURCAT mandate as a result of French intervention is unlikely to have left the UN looking forward to future cooperation with the EU.

The experience with EUFOR Tchad/RCA confirmed two well-known findings of conflict research, namely, on the one hand that a military operation without an accompanying political process cannot bring about long-term peace and on the other, that serious attempts to bring peace require long-term commitment. Hence, if the EU wishes to be taken seriously as an actor in international crises, it needs to pay more attention to both these principles in the future.

The positive outcomes of the EUFOR operation are thus to be found mainly outside its mandate. With its largest military operation to date, the EU was able to demonstrate that the reforms of the ESDP made in recent years have made it capable of carrying out larger operations. In this context the excellent logistical performance deserves mention, even if the French military infrastructure already in place gave it a key advantage that it would not have had in other areas of the world. Finally, we should mention the experience the EU has gained in operative cooperation with the United Nations, which may prove to be beneficial for future operations. The clear division of responsibility between EUFOR and MINURCAT allowed operations to run smoothly on the ground, although given MINURCAT's very limited activities there was not much scope for misunderstanding.

The operation once again pointed to specific weaknesses of the EU. The lack of commonly defined EU foreign policy interests and the opt-out mechanisms provided by the ESDP have created structures that allow individual member states to turn their national interests into European

³⁵ United Nations, *Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad*, S/2008/760, 4 December 2008.

issues. Instead of actively participating in developing common policies, smaller states especially have taken to using foreign policy positions as bargaining chips in internal EU affairs. The EU will have to develop mechanisms to limit the dominance of its larger states in foreign policy. Plans to create a European diplomatic service may be an important step in this direction, since its conflict analysis will probably be less marked by national interests. The service could also make an important contribution to the cohesion of the various pillars of the EU, for instance by allowing the work of the Commission (in the case of Chad, the mediation of the Agreement of 13 August) to play a greater part in the decisions of the Council.

Conclusions

The EUFOR Tchad/RCA operation failed to achieve its goals. Throughout the deployment security situation for the ordinary civilian population remained precarious, so the operation was unable to create the conditions to allow the internally displaced to return to their homes. But the operation was unsuccessful in a broader sense as well, since rather than helping to solve national and regional conflicts it actually made them worse – albeit indirectly. The most important reasons for this failure were the insufficient and erroneous analysis of the causes of the conflict together with the unwillingness of the EU member states to commit the necessary resources. The perception of EUFOR as a French project without a genuine European character no doubt largely accounted for this.

In the end the EU has missed a chance to effectively use its still largely untapped potential as a mediator in international crises. Especially in Africa, where the EU has the extensive knowledge and very good contacts of its member states to fall back on without being suspected of a post-colonial lust for power, it actually has a comparative advantage over other actors. In the case of Chad the EU should continue to play a key role in reviving a serious political process with positive potential. But for this to happen it must find a way of capitalising on France's undoubted influence in N'Djamena without becoming a puppet of French interests.

EU Naval Operation in the Gulf of Aden (EU NAVFOR Atalanta): Problem Unsolved, Piracy Increasing, Causes Remain

Annette Weber

Within just one year, from 2007 to 2008, the number of pirate attacks on merchant ships in the Gulf of Aden – through which more than twenty thousand pass every year – increased tenfold.¹ The global financial cost of piracy is estimated to be several billion dollars annually.² Given that the bulk of maritime trade between Europe and Asia passes through the Suez Canal and the Gulf of Aden, this leap in the incidence of piracy places Europe especially under considerable pressure to respond. Earlier, pirates had already been hijacking growing numbers of ships chartered by the World Food Programme to carry aid for the civilian population in Somalia. In Resolution 1838 of 7 October 2008 the UN Security Council declared that the conflict in Somalia, exacerbated by piracy on the high seas, represented a threat to world peace. At this time the international community was already engaged in the Gulf of Aden – with a mission under Operation Enduring Freedom (OEF), the anti-terrorism Combined Task Force 150 (CTF 150) and NATO warships – but this was not enough to reduce the attacks at sea.

For that reason the European Union decided on 10 November 2008 to launch a naval operation at the Horn of Africa to safeguard its trade interests and improve the humanitarian situation in Somalia. EU NAVFOR Atalanta is the first naval operation under the European Security and Defence Policy (ESDP). It is designed in particular to escort ships of the World Food Programme, to protect merchant shipping in the region and to put an end to piracy. But the latter will be almost impossible. EU NAVFOR sets out neither to stabilise the situation on land in Somalia nor to address the root causes of piracy in the Gulf of Aden. Without tackling the development dimension of the piracy problem, Atalanta can only reach an “end date” but not an “end state”.

¹ Statistics from ICC International Maritime Bureau, *Piracy and Armed Robbery against Ships: Annual Report 2009* (Barking: ICC IMB, 2009), 23f. From January to September 2009 more than 168 attacks were carried out. Between 2003 and 2007 the highest number of attacks in a year was 18 (in 2003). In 2007 there were 13, but in 2008 already more than 130. See also Bjørn Møller, *Piracy, Maritime Terrorism and Naval Strategy*, DIIS Report 2/2009 (Copenhagen: Danish Institute for International Studies, February 2009), 9.

² Peter Chalk, *The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States*, RAND Project Air Force (Santa Monica et al.: RAND, 2008), 16.

The Mandate

The number of attacks on merchant ships increased rapidly in 2008, with ever more kidnappings and ransom demands. Shipowners demanded better protection for their vessels and put pressure on European governments. The biggest insurer, Lloyd's of London, classified the Gulf of Aden as a war risk zone in May 2008, sharply increasing insurance premiums for merchant ships operating there. Despite initial reservations on the part of the United Kingdom and Italy, the Council of the European Union decided to send a naval mission to protect aid supplies and trade routes. Germany was a driving force in the process: the German navy provided one vessel for Atalanta straight away, later up to four, and intends to participate with two frigates in the long term. The command structure is run by the UK from its Operations Headquarters in Northwood near London.³

During its EU Council Presidency in the second half of 2008 France worked hard to bring about a European engagement. The circumstances appeared favourable because the endeavour was plainly feasible, useful and legitimate. What was planned was a purely military naval operation that involved little danger to the deployed forces which would not be involved in the conflict on land in Somalia itself. The operation clearly served a humanitarian objective (feeding the Somali population) as well as European trade interests. It had been requested by the transitional government of the country itself and was supported by the UN Security Council. French President Nicolas Sarkozy sought a leading position for France in the European coalition, with the usefulness of France's strategically important base in Djibouti also speaking for French participation.

Through its prominent commitment to the operation, Germany is on the one hand fulfilling its multilateral obligations, and in the EU context participation in Atalanta can be seen as a pro quo for German troop reductions in the Balkans. But even more important for Berlin was to safeguard its national economic interests through the framework of the EU's Common Foreign and Security Policy (CFSP). Although often operating under foreign flags, German shipowners run the world's third-largest merchant fleet and its biggest container fleet. According to the International Maritime Bureau in Kuala Lumpur, Germany is the country worst affected by piracy.⁴ The annual volume of trade between Germany and China alone – most of which passes through the Gulf of Aden – amounts to \$84 billion (2007).⁵ More than 92 percent of Germany's overseas trade is transported

³ For information on EU NAVFOR Atalanta see the website of the Council of the European Union, www.consilium.europa.eu/showPage.aspx?id=1518&lang=en. For a regularly updated overview of all force providers in the Gulf of Aden see Thomas Wiegold's blog "Augen geradeaus!" *Focus online*, <http://wiegold.focus.de/>.

⁴ Andreas Uhl, "Gemeinsam gegen die Piraten: Mit Atalanta auf Erfolgskurs am Horn von Afrika", *Internationale Politik*, June 2009, 60.

⁵ See Bundesministerium für Wirtschaft und Technologie (BMWi), "Wirtschaftliche Beziehungen – China", www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Bilaterale-Wirtschaftsbeziehungen/laenderinformationen,did=316542.html.

by sea,⁶ and Germany as a major exporting nation relies heavily on this route.

So the ESDP operation was set up in the first place to defend European trade interests rather than to deal with the conflict. On 10 November 2008 the Council of the European Union approved the EU Naval Force (EU NAVFOR) Atalanta operation, and on 2 December 2008, UN Security Council Resolution 1846 (2008) extended the authorisation for states and regional organisations to enter Somali territorial waters to fight piracy through until 2 December 2009.⁷

What does the EU want to achieve?

Joint Action 2008/851/CFSP of 10 November 2008 defines the mandate for the EU operation. Its rules of engagement allow the participating forces to take robust action against piracy under Security Council Resolution 1838 of 7 October 2008, which authorises the international community to fight piracy under Chapter VII of the UN Charter. The Atalanta mandate – on the basis of Security Council resolutions 1814 (2008), 1816 (2008) and 1838 (2008) – lists the following tasks:⁸

- ▶ “provide protection to vessels chartered by the WFP, including by means of the presence on board those vessels of armed units of Atalanta, in particular when cruising in Somali territorial waters”;
- ▶ “provide protection, based on a case-by-case evaluation of needs, to merchant vessels in the areas where [the operation] is deployed”;
- ▶ “keep watch over areas off the Somali coast, including Somalia’s territorial waters, in which there are dangers to maritime activities, in particular to maritime traffic”;
- ▶ “take the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where [the operation] is present”;
- ▶ “in view of prosecutions potentially being brought by [member states or defined third states], arrest, detain and transfer persons who have committed, or are suspected of having committed, acts of piracy or armed robbery in the areas where [the operation] is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board”;

⁶ Flottenkommando der Marine, *Jahresbericht 2008: Fakten und Zahlen zur maritimen Abhängigkeit der Bundesrepublik Deutschland* (Glücksburg, 1 September 2008), 31.

⁷ On 10 December 2008 the German cabinet approved the proposal to participate in the operation. Nine days later the German Bundestag also approved it with a clear majority.

⁸ For the Council decisions and the legal basis of the operation see Council of the European Union, *Council Joint Action 2008/851/CFSP on a European Union Military Operation to Contribute to the Deterrence, Prevention and Repression of Acts of Piracy and Armed Robbery off the Somali Coast*, L301/33, 10 November 2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:301:0033:0037:EN:PDF>.

- ▶ “liaise with organisations and entities, as well as States, working in the region to combat acts of piracy and armed robbery off the Somali coast, in particular the ‘Combined Task Force 150’ maritime force which operates within the framework of ‘Operation Enduring Freedom’”

A Policy Update of May 2009 added protecting supply ships for the African Union mission (AMISOM) – which has 5,600 troops stationed in Somalia – to Atalanta’s tasks.⁹

Readiness and resources

Just one month passed between the Council decision to deploy EU NAVFOR (on 10 November 2008) and the start of the operation on 8 December. One reason why it was so quickly operational was that several of the force providers already had warships in the region on other missions (OEF, NATO).¹⁰ Three months after it began, Atalanta was patrolling off the Somali coast in close cooperation with one NATO and two OEF operations and six warships under national command. In summer 2009 warships from Spain, Germany, France, Italy, Sweden and Greece were made available to the ESDP operation, while Holland and Norway joined in August 2009.

At sea EU-NAVFOR Atalanta is commanded on rotation by Greece, Spain and the Netherlands. The headquarters in Northwood (England) coordinates operations escorting ships for the World Food Programme and the Internationally Recommended Transit Corridor for group transits through the Gulf of Aden. Orders from headquarters go to the command at sea, which is taken on by a different participating nation every four months. A Maritime Security Centre (Horn of Africa) was set up, also under Northwood’s command. The MSC(HOA) informs merchant vessels about current risks in the Gulf of Aden and the Indian Ocean, and especially along the Somali coast. Vessels can register with MSC(HOA) to travel in the protected transit corridor.¹¹

For the initially planned duration of twelve months Atalanta operated with at least six warships, several reconnaissance planes and up to 1,500 military personnel. In July 2009 it had eleven warships, three supply vessels and three reconnaissance planes in operation.¹² The costs of deploying ships, aircraft and military personnel are borne by the member

⁹ See updated European Union factsheet “EU naval operation against piracy (EU NAVFOR Somalia – Operation ATALANTA)”: www.consilium.europa.eu/uedocs/cmsUpload/090507%20Factsheet%20EU%20NAVFOR%20Somalia%20-%20version%207_EN.pdf.

¹⁰ However, the German frigate *Mecklenburg-Vorpommern* initially remained allocated to OEF-CTF 150 with the task of fighting terrorism, while the frigate *Karlsruhe* was sent to join Atalanta. The *Mecklenburg-Vorpommern* was not placed under the control of Atalanta until 29 June 2009. All the German contingents previously participating in OEF are now part of EU NAVFOR.

¹¹ See the website of NAVFOR Atalanta’s Maritime Security Centre (Horn of Africa), www.mschoa.eu/.

¹² See the overview on the website of the Council of the European Union, www.consilium.europa.eu/uedocs/cmsUpload/naviresjuin.pdf.

states. Germany alone has budgeted €50 million for a one-year operation. In the first year €8.3 million were provided through the ATHENA mechanism, which was set up especially to administer the shared costs of ESDP operations, to cover EU NAVFOR's running costs (for example for the headquarters).¹³

In principle Atalanta has sufficient personnel and funding to protect WFP aid supplies and merchant vessels, as long as the latter join the group transits. But in May 2009 the area of operations had to be expanded after pirates attacked more than five hundred miles from the coast. In the operation there is consensus that even with many times the resources it would still be impossible to cast a fine net over the whole mandate area.

International anti-piracy

The European operation was the first with a mandate to fight piracy; other international efforts followed. In Resolution 1816 of 2 June 2008 the UN Security Council declared that piracy off the Somali coast threatened world peace, and subsequently various approaches were developed for dealing with the problem. The United States – which had already conducted operations in the region under the banner of the “coalition of the willing” – and NATO now adapted their existing missions to the new situation. The United States – whose Fifth Fleet and Naval Forces Central Command (NAVCENT) are based in Bahrain – created OEF Combined Task Force 151 specially to fight piracy and appealed to other nations to participate. NATO moved part of its Standing NATO Maritime Group 2 (SNMG 2) – which normally operates in the Mediterranean – to the Gulf of Aden to escort WFP vessels.

In Resolution 1846 of 2 December 2008, the UN Security Council welcomed – alongside the initiatives of NATO and individual states – the EU's decision of 10 November 2008 to set up a naval operation to protect WFP convoys and other endangered vessels and combat piracy and armed robbery off the Somali coast. Six months earlier, in July 2008, the World Food Programme had asked the Security Council to provide escorts for food aid shipments to Somalia after several WFP ships had been attacked. And the situation in Somalia itself had escalated, with the country suffering under a long drought and many people having fled prolonged fighting in Mogadishu.¹⁴ On 25 September 2008 UN Secretary-General Ban Ki Moon asked NATO whether its SNMG 2 could provide escorts for the WFP aid supplies. NATO took on this task, together with Denmark, France, Canada and the Netherlands. Later this function was formulated as the first objective of the EU NAVFOR Atalanta mandate.

¹³ EU Council Secretariat, “EU Naval Operation against Piracy (EU NAVFOR Somalia – Operation ATALANTA)”, factsheet, May 2009, www.consilium.europa.eu/uedocs/cmsUpload/090507%20Factsheet%20EU%20NAVFOR%20Somalia%20-%20version%207_EN.pdf.

¹⁴ World Food Programme, *Somalia Faces Dire Crossroads as Insecurity and Drought Combine*, 18 July 2008, www.wfp.org/node/162.

Cooperation with other actors?

Alongside the EU operation in the Gulf of Aden, there are numerous other actors working to secure trade routes and fight piracy: by early summer 2009 there were nearly forty warships in the region. It is plain that we have a conglomeration of different mandates without any strategy for cooperation planned, still less already implemented. And NATO was discussing another independent anti-piracy mission of its own: Ocean Shield was lined up to follow Operation Allied Protector when the latter ended on 28 June 2009. In this connection German Defence Minister Franz Josef Jung warned against a “beauty contest” of wrangling over powers and competencies.¹⁵ The EU NAVFOR mandate notes that connections must be forged to other missions, states and organisations fighting piracy in the region. Adding to the confusion, some EU member states have ships both in the Atalanta group and in national contingents. Better coordination is needed in order to improve European coherence in foreign and security policy.

In formal terms, the mandate of the ESDP operation provides for no cooperation with other interventions, still less for coordination. But it does permit vessels to temporarily come under the command of EU NAVFOR, NATO or OEF as required. German officials praise the mandate’s flexibility. Precisely because there is no formal coordination, they say, communication between the contingents can be unbureaucratic and simple. Generally, a decision to come to the assistance of a nearby ship is made on an ad hoc basis by the various missions and national contingents.¹⁶ NATO’s ambitious plans for Ocean Shield, however, showed that not all actors on the ground are equally enthusiastic about the European operation’s claim to leadership. Cooperation between the EU and NATO is supposed to be based on “interlocking institutions”, but at the Horn of Africa this turned out to be a pretty shaky arrangement.

Otherwise, the African Union sent a peace-keeping mission to Somalia itself in 2007. It was mandated by Security Council Resolution 1772 (2007)

¹⁵ “Jung warnt vor Kompetenzgerangel bei Pirateriebekämpfung”, *Associated Press*, 11 June 2009. Alongside the ESDP operation there are: *Firstly*, the NATO Allied Protector Mission, which was succeeded in August 2009 by Operation Ocean Shield. Unlike its predecessors, the latter possesses an expanded mandate to actively fight piracy as well as protecting the WFP ships. Portugal, Canada, the Netherlands, Spain and the United States participate in this NATO mission. The German units originally assigned to this task force are now part of Atalanta. *Secondly*, Combined Task Force 150 operates as part of the anti-terrorism Operation Enduring Freedom (OEF) under the rotating command of the members of a “coalition of the willing”. France, the United Kingdom and Pakistan provide vessels for OEF-CTF 150. Warships from Saudi Arabia and Japan are also assigned to CTF 150 but remain under national command. The mission is coordinated from the US base in Bahrain. *Thirdly*, a dedicated anti-piracy operation was created within OEF: Combined Task Force 151. The United States, Turkey and Singapore provide ships, South Korea is associated. *Fourthly*, national contingents are active in the Gulf of Aden, including warships from Russia, China, South Korea, Japan, Malaysia, India and Iran. Finally, French and Italian ships operate under national command as well as in the scope of Atalanta.

¹⁶ On the criticism of the lack of coordination see “Combating Piracy off Somalia”, *IJSS Strategic Comments* 15, no. 1 (February 2009): 2.

and is intended above all to protect the transitional federal government.¹⁷ Whereas ESDP operations on the African continent have mostly been set up to support existing United Nations missions, Atalanta is the first independent military EU operation. With its robust mandate and a comparatively large fleet in the Gulf of Aden it has become the leading operation in the region.

Mandate takes insufficient account of conflict analysis

Somalia experts and force providers broadly agree that Atalanta cannot stop piracy in the long term. The operation concentrates at best on containing its consequences. When British Rear Admiral Peter Hudson took over as Operation Commander of EU NAVFOR, he pointed out that the problem can only be solved through diplomatic means and not at sea. Security Council resolutions similarly emphasise that the threat to world peace comes from the situation in Somalia itself and that piracy off the Somali coast only worsens that threat. The first two objectives of the operation's mandate (to protect WFP vessels and merchant shipping) aim at the symptoms of piracy. But the causes cannot be fought through the current mandate, because the roots of piracy lie in the unresolved conflict on land in Somalia.

Piracy off the Somali coast is fostered by three main factors, which in turn tell us what action would be necessary to solve the problem. *Firstly*, the pirates are taking a relatively small risk. The risk of death in violent conflicts on the mainland is considerably greater than in acts of piracy. *Secondly*, piracy promises great rewards. The pirates' takings exceed the revenues of the Puntland administration or the transitional federal government. *Thirdly*, sources of income are scarce. Illegal fishing fleets have overfished Somalia's coastal waters in recent years, leaving growing numbers of local fishermen unable to live from what they catch – and willing to try piracy instead. The Gulf of Aden attracts fishing fleets from South Korea, Egypt, Russia, Spain, France, Italy and other countries because the EU has imposed strict quotas and restrictions in its own coastal waters and fishing grounds in Asia have also been overfished. Even if fishing vessels sometimes possess licences issued by warlords or the Puntland or Somali administration that by no means legitimises their activities.¹⁸

Another problem alongside these three main factors is the dumping of toxic waste off the Somali coast.¹⁹ If piracy is to be driven back, it will be

¹⁷ For the mandate and troop numbers see also the website of the African Union, www.africa-union.org/root/AU/AUC/Departments/PSC/AMISOM/amisom.htm.

¹⁸ On criticism from Puntland of illegal European fishing and the EU's response see Leigh Phillips, "Commission Ready to Investigate Illegal European Fishing off Somalia", *EU Observer*, 22 April 2009, <http://euobserver.com/13/27983>.

¹⁹ An initial investigation was conducted by the UNDP and the UN Coordination Unit for Somalia. Mahdi Gedi Qayad, *Mission Report: Alleged Dumping of Hazardous Substances* (n.p., 1997). For later reports see "Waves Brought Waste to Somalia", *BBC News*, 2 March 2005, <http://news.bbc.co.uk/2/hi/africa/4312553.stm>.

crucial to deal with illegal fishing and toxic waste dumping, because at the moment the population feels that the operation is primarily concerned to protect European interests. The Somali government has repeatedly pointed this out, but a thorough study of the coastal waters to determine the extent of pollution and its effects has yet to be conducted. Properly tackling these problems – for which European businesses are partly to blame – would mean using civil policy instruments to supplement the military operation. This would be a step towards a comprehensive long-term anti-piracy strategy.

Last but not least, piracy is closely linked to the conflict in Somalia and the lack of state structures and law and order. In February 2008 Somalia's transitional government asked the UN Security Council to support its fight against piracy. Previous requests from the transitional government and the Intergovernmental Authority on Development (the regional organisation for north-east Africa) for the UN to send a peace-keeping mission to stabilise the security situation in Somalia had been rejected. The offers of troops were inadequate and the security situation was too volatile. The transitional government itself has insufficient security forces to ensure order in the country. The AMISOM forces of the African Union are responsible for the security of the government and the port in Mogadishu. Police and the army training are progressing only slowly and fluctuation between clan militias, jihadist fighters and government troops remains high. It is extremely doubtful whether security can be stabilised permanently.

Implementation and Impact

The first six months of the operation saw the supply of humanitarian aid to the Somali population – the first objective of the mandate – improve considerably. Atalanta escorted WFP vessels into port, and since then there have been no more attacks on WFP ships. Since the beginning of the operation there have been more than twenty escorts, delivering 267,000 metric tonnes of food to feed about 1.6 million Somalis daily.²⁰

The picture is foggier where the question of securing trade routes is concerned. If we consider that about twenty thousand ships pass the Gulf of Aden every year, the absolute number of attacks might seem unimpressive.²¹ But the ransom demands are enormous and the traumatising effect on crews not to be underestimated.²² While the number of attempts has continued to rise, fewer ships have actually been hijacked, at least when

²⁰ According to the WFP the number of people who had to be fed rose in recent years to 3.5 million. In 2008 260,000 tonnes of food were supplied – eight times as much as in 2005. World Food Programme, *EU Provides Long-Term Protection for WFP Lifeline to Somalia*, 15 December 2008, www.wfp.org/content/eu-provides-long-term-protection-wfp-lifeline-somalia-0. General overview: www.eunavfor.eu/about-us/mission/.

²¹ This number includes all ships that pass the Suez Canal.

²² “Factbox – Ships Held by Somali Pirates”, *Reuters*, 8 July 2009, www.alertnet.org/thenews/newsdesk/L894062.htm.

they have used Atalanta's Transit Corridor. Whereas before the operation began one in every three hijacking attempts was successful, by June 2009 the figure had fallen to one in ten.²³ So merchant vessels are well advised to register with the Maritime Security Centre (MSC(HOA)).

Pirates were still active in summer 2009. Although by 25 June 2009 at least seventy-seven pirates had been arrested and handed over to various courts, the number of attacks actually increased and the pirates also expanded their area of operations. Initial reports that the number of attacks had fallen after the start of Atalanta had to be revised when the monsoon season ended in spring 2009. The apparent successes had been caused more by poor weather than effective deterrence. In the first week of April 2009 alone eleven pirate attacks were recorded, some of them now far out to sea.²⁴ By 7 July 2009 the number of attacks had reached 143, of which 31 were "successful".²⁵

In response to the pirates' ever-widening radius of action the EU operation expanded its area of operations in May 2009 from 3.5 to 5 million square kilometres, in particular to include the Seychelles.²⁶ This measure reflects a certain degree of success: as the massive presence of warships in the Gulf of Aden foiled increasing numbers of attacks, the pirates were forced to shift their activities to the high seas. In the following period they attacked ships in Seychelles territorial waters and off the coast of Oman. It became clear that the pirates had been investing their takings in modern technology (GPS systems) and boats capable of operating far out to sea. It is also clear that the missions are hard pushed just to get the problem under control, let alone to deal with its causes.

What to do with the pirates

What should be done with pirates arrested carrying out attacks? This foreseeable problem was not dealt with in the planning for the operation. Article 105 of the United Nations Convention on the Law of the Sea of 1982 states: "On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board."²⁷ And Security Council resolutions 1816 and 1838 allow pirates to be pursued and arrested in Somali territorial waters too. Article 12 of the Joint Action for EU NAVFOR provides for three possibilities to transfer pirates: either to the state under whose

²³ Rear Admiral Peter Hudson, "Piracy 'Cannot Be Solved at Sea'", *BBC News*, 23 June 2009.

²⁴ Jeffrey Gettleman, "Somali Pirates Seize Five Ships in 48 Hours", *New York Times*, 7 April 2009.

²⁵ "Piracy Doubles in First Six Months of 2009", *IMB Piracy Reporting Centre*, Press Release, Kuala Lumpur, 15 July 2009.

²⁶ Auswärtiges Amt, "Einsatzgebiet zur Pirateriebekämpfung wird erweitert", 26 May 2009, www.auswaertiges-amt.de/diplo/de/Europa/Aussenpolitik/ESVP/090526-Atalanta-Erweiterung.navCtx=31380.html.

²⁷ www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

flag the warship is operating or to a third state participating in Atalanta or, after agreement of transfer conditions, to another third state whose legal system meets international human rights standards.²⁸ A single binding arrangement for the operation was not found.

On 23 February 2009 the European Union decided that pirates captured by EU NAVFOR may be taken to Kenya and handed over to the justice system there.²⁹ But the force providers are also entitled to try captured pirates in their own courts. The EU NAVFOR mandate does not close the gap between national criminal law and international conventions. In summer 2009 Germany, the Netherlands and Russia called for an international criminal court for pirates to be set up.³⁰

Since the agreement with Nairobi was signed, which allows the transfer of pirates to Kenya for trial, fifty-two captured pirates have been handed over to Kenya, another twenty-five have been transferred to Somalia or the Seychelles or came before national courts in France, the Netherlands and the United States.³¹ The EU has no transfer agreements with Somalia, Yemen or the Seychelles because these countries have the death penalty, so to transfer pirates to these countries the warship involved briefly leaves the Atalanta command to transfer prisoners under its national flag.³²

Cooperation with other missions

Critics complain above all that European coordination is inadequate.³³ Nominally the operation may be under European command, but when there is a need for action the respective commanders tend to seek backing from their own national defence structures, which appear to them to be more reliable. Also, certain member states have ships in the region both in the Atalanta group and outside it, and these national contingents can act independently of the Atalanta rules. An evaluation of EU NAVFOR of March 2009 notes that coordination between commander and headquarters and between the different ships in the region takes too long. Often so much time passes between the sighting of a pirate boat and a coordinated re-

²⁸ Council of the European Union, *Council Joint Action 2008/851/CFSP* (see note 8).

²⁹ Council of the European Union, *Council Decision 2009/293/CFSP*, Brussels, 26 February 2009.

³⁰ "Länder für Piraten-Gerichtshof", *Frankfurter Allgemeine Zeitung*, 20 June 2009, 4. Especially in Germany it is feared that pirates might apply for asylum after a trial before a court in a European country or after completing a prison sentence.

³¹ "Exchange of Letters between the European Union and the Government of Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer", Official Journal of the European Union, L79/49, 23 March 2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:079:0049:0059:EN:PDF>.

³² Nicolas Gros-Verheyde, "Taking Stock Six Months On", *Europolitics*, 28 May 2009, 16, www.europolitics.info/sectorial-policies/taking-stock-six-months-on-art237912-13.html.

³³ Björn H. Seibert, "EU NAVFOR: Countering Piracy in Somali Waters", RUSI Commentary, 21 November 2008, www.rusi.org/research/militarysciences/maritime/commentary/ref:C492691049A922/.

sponse that the pirates are able in the meantime to enter a ship or retreat.³⁴ So alongside the necessary diplomatic, political and development measures, centrally coordinating the numerous warships in different missions is a prime concern. Informal exchange of convoy situation reports between ESDP operation, NATO, OEF-CTF 151 and the national contingents is not enough.³⁵

There are political reasons why coordination is still rudimentary. Although all involved want to secure the shipping routes, Atalanta, NATO, China, Russia – and not least India – do not necessarily see themselves as partners in a shared security strategy in the Gulf of Aden. Atalanta's activities may be coordinated from the Northwood headquarters, but each member country reserves the right to go it alone. So France pursues military solutions that include pursuing pirates onto land using helicopters, while Germany tends to hold back and avoid escalation. It would make sense to formulate shared rules of engagement and improve strategic and tactical coordination of the different missions and national actions.³⁶

Assessment of the operation

Evaluating the impact of EU NAVFOR Atalanta, we come to an ambivalent verdict. The operation has fulfilled one part of its mandate, namely, to protect WFP vessels and merchant shipping. This has worked because there are other international missions and national contingents in the area of operations and convoys can be formed. On the other hand, Atalanta has failed to mount an effective long-term fight against piracy, in the first place because it is not integrated in a political process intended to abolish the causes of piracy. EU NAVFOR has few points of contact with the forces driving the conflict on land. Unless Somalia can be stabilised politically and a minimum of security, rule of law and development guaranteed, there will be an “end date” without an “end state” for the ESDP operation.

Until summer 2009 the EU had not thought about expanding Atalanta's mandate to the mainland. But there are growing calls for more robust approaches and for pirates to be pursued onto land – which would be possible under Security Council Resolution 1851 (2008). Intervention on land would, however, be inadvisable because the conflict in Somalia is ongoing and the security situation there remains volatile. European armed forces would automatically become embroiled in fighting between groups

³⁴ Giji Gya and Johann Herz, “ESDP and EU Mission Updates – March 2009”, *ISIS European Security Review*, no. 43 (März 2009): 1, www.isis-europe.org/pdf/2009_artrel_253_esr43-esdp-mission-update.pdf.

³⁵ The “Shared Awareness and Deconfliction Mechanism” is coordinated from Bahrain. Its meetings bring together representatives of the missions, many national contingents and the Gulf states. This makes the mechanism a first step towards better coordination. Alastair Clark, *Combined Maritime Forces (CMF) Operations: Counter Piracy Operations, Challenges, Shortfalls and Lessons Learned*, 4 June 2009, www.nato.int/structur/AC/141/pdf/PS-M/Combined%20Maritime%20Forces%20Ops.pdf.

³⁶ For criticism of uncoordinated operations and national solo decisions see “Combating Piracy Off Somalia” (see note 16).

struggling for power in the country. In Somalia itself there is growing criticism that the efforts of the international community are one-sided. The transitional government and the population call for the international community to address not only the fight against piracy but also its causes, and to do something about illegal fishing and waste dumping off the Somali coast.³⁷ As long as the operation remains Europe's only substantial response to the massive political and economic problems in Somalia, the question of whether Atalanta is still appropriate can only grow in urgency.

Relevance

Both the EU's Africa Strategy and the Council's civil Action Plan represent important cornerstones for a long-term policy at the Horn of Africa. Here the priorities are primarily conflict prevention, rule of law and building and strengthening the police and the civil administration.³⁸ Atalanta's tasks, however, bear no relation to the EU's Somalia Joint Strategy Paper, which focuses on security and fighting poverty, naming as concrete goals holding a constitutional referendum and building selected institutions.³⁹ The discrepancy between anti-piracy action at sea and political inaction on land shows up glaringly the absence of a coherent overall concept for Somalia.

Optimistic observers in the EU member states regard the attention that the operation attracts in Europe as a door-opener for more comprehensive and longer-term development and state-building programmes for Somalia. At the European Union's Somalia Conference in April 2009 in Brussels €164 million were promised for development over the next five years.⁴⁰ First and foremost, five thousand soldiers and ten thousand police are to be trained. A large part of the money is earmarked for funding the AMISOM mission. We cannot assume that the United Nations will find enough troop providers to send a mission to Somalia, so the AU mission remains for the time being the only support for the transitional government. The gravest difficulty is that the Somali government remains too weak to implement these measures. But if it cannot rule effectively or even keep itself in power, the EU is again left without a responsible partner for stabilising the stateless formation in the country. And a worsening security situation in the country – as observed in the first half of 2009 –

³⁷ Andrea Böhm/Heinrich Wefing, "Wer ist hier der Pirat?" *Zeit online*, 27 November 2008, www.zeit.de/2008/49/Piraten.

³⁸ See *Presidency Conclusions, Santa Maria de Feira European Council*, 19 and 20 June 2000, www.consilium.europa.eu/uedocs/cmsUpload/Feira%20European%20Council-Presidency%20conclusions.pdf (accessed 10 April 2009). See also Reinhardt Rummel, *Konfliktprävention: Etikett oder Markenzeichen europäischer Interventionspolitik?* SWP-Studie 45/2003 (Berlin: Stiftung Wissenschaft und Politik, November 2003).

³⁹ European Commission, *Somalia: Joint Strategy Paper for the Period 2008–2013*, Brussels, http://ec.europa.eu/development/icenter/repository/scanned_so_csp10_en.pdf.

⁴⁰ EU Council Secretariat, "EU Engagement in Somalia", factsheet, Brussels, April 2009, and Council of the European Union, *EU Council Conclusions on Somalia*, 2942nd General Affairs Council Meeting, Brussels, 18 May 2009.

will give another boost to the pirates, whose networks profit from the entangled coexistence of state, quasi-state and non-state actors.

Conclusions

The EU NAVFOR Atalanta mandate can be extended if the piracy problem is still virulent after the originally planned twelve months.⁴¹ One dilemma of the operation is plain here: through Atalanta the EU may have succeeded in raising its profile as a security actor in the international framework (for until summer 2009 the EU operation had more success to show than NATO or the “coalition of the willing”) but it also ties up the most personnel and ships, which are then unavailable to the other two missions. And it was still unable to eliminate piracy. So securing the shipping routes remains an urgent concern.

Above all, Atalanta’s lack of political embedding stands in the way of lasting success. Ad-hoc cooperation between the missions and contingents at sea often works very well, but cooperation with AMISOM to stabilise the government in Mogadishu and improve the security situation is far from adequate. With a strength of five thousand six hundred soldiers in November 2009, AMISOM protects government buildings and the port in Mogadishu where the WFP food aid arrives. On 22 June 2009 the transitional federal government in Mogadishu declared a state of emergency and called on neighbouring countries to intervene militarily in its support. This underscores just how fragile the security situation in the country has become. If piracy is to be stopped, regional law and order structures will have to be strengthened, the fledgling democratic experiments in Somaliland will have to be consolidated, and the new administration in Puntland will have to be supported with training for police and coastguards.

The government in Puntland wants to halt piracy by creating new sources of income for the port cities. Here too Europe should help. Training coastguards is one important measure. In order to ensure the survival of subsistence fishermen on the Somali coast the foreign fishing fleets have to be brought under control. It would make sense for Europe to act decisively against illegal fishing and grant assistance in regenerating fish stocks off the Somali coast.

In Somalia itself a start should be made with state-building at different levels. The decision of the donors’ conference in April 2009 to provide funds for training police and army was a first step. The transitional government is the only legitimate partner for the EU, but it is very weak. In order to broaden its base of legitimacy, the international community should permit the government to negotiate with members of the radical opposition, because this important force cannot simply be ignored. The contact group for Somalia could instead use its communication channels to facilitate talks between those groups that pursue a national agenda.

⁴¹ EU Council Secretariat, “The Council of the European Union Decides to Extend EU NAVFOR Atalanta Operation for One Year”, press release, Brussels, 15 June 2009, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/esdp/108482.pdf.

In order to ensure supplies to the 3.5 million Somalis in need of aid, AMISOM needs sufficient support to protect the port where the food aid arrives. Here, close coordination between the EU and AMISOM would be desirable. Without a safe port where aid can be landed there is not much sense in having escorts for WFP ships.

Further options for action open up with respect to anti-piracy. In order to stop arms supplies to jihadist militias and pirate groups, the mandates of the missions in the region should be expanded to allow them to track and seize arms shipments in the Gulf of Aden.⁴² The anti-terrorism and anti-piracy mandates of the US-led Operation Enduring Freedom missions are already adequate to this task. A UN arms embargo has been in force since 1992; it was introduced by Security Council Resolution 751 (1992) and confirmed by Resolution 1811 (2008).

Experts suspect that the cooperation between pirate networks and jihadist militias will grow even closer and make it more difficult to stabilise the country. Tackling this symbiosis calls for more than just concentrating on the piracy problem; a political process is required to consolidate government structures in Somalia. Like in other war economies, “legal partners” profit from piracy alongside criminal networks, so to cut the ground out from under them financial flows should also be controlled more closely.

⁴² See the reports of the UN Monitoring Group on Somalia. United Nations, *Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1811 (2008)*, S/2008/769, New York, 10 December 2008, www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S2008%20769.pdf.

The ESDP Missions in the Palestinian Territories (EUPOL COPPS, EU BAM Rafah): Peace through Security?

Muriel Asseburg

Since the 1993 Oslo Agreement the EU has provided considerable technical and financial assistance to support the Middle East peace process and the practical implementation of a two-state solution. Establishing Palestinian governance structures has been one of Europe's priorities from the beginning. In recent years the EU has increasingly turned its attention to the Palestinian security sector, pursuing a twin-track approach of, *firstly*, rebuilding institutions and capacities that were largely destroyed in the course of the Second Intifada (2000–2003), and *secondly*, enhancing the effectiveness of the security organs by reforming the highly fragmented and opaque structures inherited from the Arafat era that lacked transparent hierarchies, clear competencies and political oversight. The Europeans – cooperating closely with their American colleagues who train and equip the more robust security forces – were (and remain) especially concerned to enable the Palestinian Authority (PA) to fulfil its obligations under the 2003 “Road Map” to restore order and fight terrorism effectively. In this context the EU decided to deploy an ESDP mission, the European Union Police Mission for the Palestinian Territories (EUPOL COPPS), to support the civil police with training measures, advice and equipment.¹ The mission's mandate started in January 2006, initially for three years, and was to be expanded at a later date to add reform of the justice system.

Following the Israeli withdrawal from the Gaza Strip in August/September 2005 the EU also sought to help preserve access to Gaza and territorial continuity between Gaza and the West Bank by supporting the implementation of the Israeli-Palestinian Agreement on Movement and Access of 15 November 2005, and contribute to ultimately transforming Israel's unilateral withdrawal into a stepping stone towards restarting the peace process.² Under the agreement the EU took on a “third party” responsibility to ensure that the border crossing was managed in accordance with the Agreed Principles for the Rafah Crossing laid out in the annex to the agreement, and to this end set up the European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah). Although the EU monitors were in place very quickly (full operational capacity on the ground was achieved less than ten days after the EU's decision to take on the role of third party) and were initially able to ensure regular opening of the border, operation of the crossing was severely curtailed following

¹ The acronym reflects the fact that the mission builds on the work of the European Union Coordinating Office for Palestinian Police Support (EU COPPS).

² EUBAM Rafah, *Agreement on Movement and Access*, 15 November 2005, www.eubam-rafah.eu/portal/node/11 (accessed 25 August 2009).

the kidnapping of Israeli soldier Gilad Shalit in June 2006. After Hamas seized power in Gaza in June 2007 an almost total blockade was imposed, with exceptions only for a minimum of humanitarian aid. In practical terms the ESDP mission has been suspended ever since.

In contrast, EUPOL COPPS was only able to get to work properly in mid-June 2007 – and then only in the West Bank – because the EU refused to work with a Hamas-led interior ministry.³ American and European security cooperation with Salam Fayyad's transitional government has steadily and significantly improved the security situation in West Bank cities. But the legitimacy of international security efforts has been undermined by a widespread perception among Palestinians that the PA's security forces largely serve Israeli security interests and that they take sides in the ongoing power struggle between Hamas and Fatah.

The Mandates

EUPOL COPPS

In November 2004 the EU High Representative for the Common Foreign and Security Policy, Javier Solana, presented an Action Plan designed to help the Road Map – which had failed to launch a new peace process in 2003 – to be implemented after all.⁴ In particular, the Action Plan aimed at putting the Palestinians in a position to fulfil their obligations in the security sector, both in terms of enforcing law and order in the areas under Palestinian security control (“Area A”) and with respect to cooperating with Israel on combating security risks to Israeli citizens and facilities.⁵ To this end the EU took up a proposal of its Special Representative for the Middle East peace process, Marc Otte, and in January 2005 established the European Coordinating Office for Palestinian Police Support (EU COPPS) in Ramallah to coordinate the provision of training, equipment and advice to support the reform of the civilian police. That same year the EU Council decided to send an ESDP mission, EUPOL COPPS, so as to strengthen the office and enhance the support given to the Palestinian civil police. It was deployed in January 2006.

³ Hamas won the elections in January 2006 and formed a government that collapsed in March 2007. The government of national unity that followed was dissolved in June 2007, after Hamas seized power in Gaza, and replaced by a technocratic transitional government in the West Bank. For more detail see Muriel Asseburg, “*Hamastan vs. Fatahland*”: *A Chance for Progress in the Middle East?* SWP Comments 2007/C 14 (Berlin: Stiftung Wissenschaft und Politik, July 2007), www.swp-berlin.org/en/common/get_document.php?asset_id=4191 (accessed 5 September 2009).

⁴ Adopted by the Council in November 2004, Council of the European Union, *Presidency Conclusions*, Brussels, 5 November 2004, <http://register.consilium.europa.eu/pdf/en/04/st14/st14292.en04.pdf> (accessed 5 September 2009).

⁵ *A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict*, 30 April 2003, Phase 1, www.un.org/media/main/roadmap122002.html (accessed 26 August 2009).

The mission was initially designed to last three years (but was extended to five years in December 2008, thus running until the end of 2010) and has no executive mandate. According to the Council Joint Action, its task is to “contribute to the establishment of sustainable and effective policing arrangements under Palestinian ownership in accordance with best international standards, in cooperation with the Community’s institution building programmes as well as other international efforts in the wider context of Security Sector including Criminal Justice Reform”.⁶ To this end EUPOL COPPS was to a) support the development of the civil police through advice and mentoring, b) coordinate financial and technical assistance from the EU and its member states and, if requested, other international aid, and c) advise on police-relevant matters of criminal justice. The mission’s objective is thus to contribute both to short-term improvements in the operational capacities of the civil police and to long-term reform of the security sector on the basis of a Palestinian Civil Police Development Programme (PCPDP) developed jointly with the Palestinian police.⁷ The Operations Plan defines the desired end state as: “a police organisation which is both transparent and accountable with a clearly defined role, operating within a sound legal framework in accordance with international standards, capable of delivering an effective and robust policing service responsive to the needs of society and able to effectively manage its human and physical resources.”⁸

Because the member states (and other participating countries) cover their own personnel costs, the budget for the period from 14 November 2005 (the date of the Council Joint Action) to the end of 2008 was just €14.9 million, while €6.2 million are planned for 2009.⁹ The mission has been shaped by a strong and sustained commitment of the United Kingdom: it was initially set up by John McIvor, Colin Smith took over at the beginning of 2007, and Paul Kernaghan succeeded him as Head of Mission in January 2009.¹⁰ EUPOL COPPS began with a staff of some thirty; by mid-

⁶ Council of the European Union, *Council Joint Action 2005/797/CFSP of 14 November 2005 on the European Union Police Mission for the Palestinian Territories*, Article 2, Mission Statement, Brussels, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_300/l_30020051117en00650069.pdf (accessed 1 August 2009).

⁷ EU COPPS and Palestinian National Authority Ministry of Interior, *Palestinian Civil Police Development Programme (PCPDP), Transformational and Operational Plans 2005–2008*, Ramallah, June 2005. According to EUPOL COPPS, while the plan quickly became outdated, it has not been replaced.

⁸ Council of the European Union, *Amended Operations Plan (OPLAN) for the EU Police Mission in the Palestinian Territories (EUPOL COPPS)*, 7394/1/08, Brussels, 2 March 2008, 13f, <http://register.consilium.europa.eu/pdf/en/08/st07/st07394-re01ex01.en08.pdf> (accessed 27 August 2009).

⁹ The budget increased incrementally. While €2.5 million were earmarked for 2005, the figure increased to €3.7 million in 2006 and €5 million in 2008 (raised again mid-year to €6 million). Besides covering the mission’s running costs, these funds have also been used to fund Quick Impact Projects – largely to provide equipment.

¹⁰ In the second half of the 1990s the United Kingdom and others were already running programmes to strengthen the Palestinian security sector. The immediate precursor of the COPPS was a project to improve the police’s communications infrastructure run by

2009 this had grown to forty-one international staff (from fifteen EU member states plus Norway and Canada), and sixteen local staff. At the beginning the staff deployed were largely police advisers, but in the meantime they are gradually being joined by legal and administrative experts. Indeed, the mission's personnel strength, duration and resources match up to the objectives laid out in its mandate. The mandate also sensibly provides for close coordination and cooperation with other actors supporting Palestinian security sector reform – first and foremost the United States, which concentrates on training and equipping the more robust security organs. In addition, close coordination with Israel is essential for each individual step, whether bringing in donated equipment or ensuring that Palestinian police are able to move between the narrowly defined Area A “islands”.

In principle, the deployment of the police mission represents a sensible complement to other EU activities supporting the Middle East peace process. Not only does this involvement in strengthening and reforming the security sector and in promoting the rule of law fit into broader European efforts to create effective Palestinian institutions of governance and public order, and thus establish the nucleus of a Palestinian state and contribute concretely to realising a two-state settlement. It was also urgently needed to put an end to the security chaos and restore order to Palestinian cities after the Palestinian security infrastructure had largely been destroyed by Israeli retaliation in the course of the Second Intifada (in addition to dealing with the legacy of the Arafat era).¹¹ As well as serving the immediate interests of the Palestinian population, restoring order is also central to putting the PA in a position to fulfil its Road Map obligations and thus in turn to convincing Israel that the PA is a reliable and effective partner. In practice, however, EUPOL COPPS has from the outset found itself confronted with political difficulties that have undermined its legitimacy and made it very difficult to implement its mandate.

EU BAM Rafah

The Israeli withdrawal from the Gaza Strip announced by Prime Minister Ariel Sharon in autumn 2003 and completed in August/September 2005 presented the international community with enormous challenges. While the Sharon government conceived it as a unilateral step of “disengagement” from a piece of land that did not bear any ideological and economic relevance and was a security nightmare, the Middle East Quartet (United

the UK Department for International Development and led by McIvor. For detail see Ari Kerkkänen, Hannu Rantanen and Jari Sundqvist, *Building Capacity for the Palestinian Police: EUPOL COPPS and Communications Project*, CMC Finland Civilian Crisis Management Studies, vol. 1, no. 3 (n.p.: CMC, 2008).

¹¹ For the starting situation see for example Patrick Müller, *Palästina-Konferenz in Berlin: Chancen für Sicherheitsreformen der Palästinensischen Autonomiebehörde*, SWP-Aktuell 51/2008 (Berlin: Stiftung Wissenschaft und Politik, June 2008), www.swp-berlin.org/common/get_document.php?asset_id=5036 (accessed 5 September 2009).

States, EU, Russia, United Nations) and its Special Envoy for Gaza Disengagement, James Wolfensohn, did everything they could to ward off negative repercussions for the territorial unity of the Palestinian Territories and turn the withdrawal into a first step towards ending the occupation altogether – amongst other things by persuading the Israeli leadership to evacuate some West Bank settlements at the same time.¹² Wolfensohn and his team prepared an Israeli-Palestinian agreement, which was successfully mediated by US Secretary of State Condoleezza Rice and EU High Representative Javier Solana and signed in mid-November 2005: the Agreement on Movement and Access (AMA) including the Agreed Principles for Rafah Crossing. The latter provide for regular opening of the Rafah border crossing between Gaza and Egypt under the control of the PA, primarily for passage of people. The EU's role as a third party was to contribute to ensuring that the border crossing functioned properly and opened regularly and to assist confidence-building between the Israeli government and the PA.

To these ends the EU Council decided on 21 November 2005 to deploy a border mission, EU BAM Rafah.¹³ Under the Joint Action it was to a) “actively monitor, verify and evaluate the Palestinian Authority's performance” of the agreed procedures at the Rafah terminal, b) “contribute, through mentoring, to building up the Palestinian capacity in all aspects of border management at Rafah”, and c) “contribute to the liaison between the Palestinian, Israeli and Egyptian authorities in all aspects regarding the management of the Rafah Crossing Point”.¹⁴ Although under the agreement the EU has no executive powers as a third party – and in particular does not conduct border controls itself – it still has greater powers than just monitoring. Besides providing training and equipment it has, *firstly*, a responsibility to ensure that the PA abides by the provisions of the agreement. If the rules are broken, it has the right to order persons and luggage to be rechecked.¹⁵ After a period of twelve months it was, *secondly*, to present an evaluation of the PA's performance on border management and customs procedures (whereby goods moving into the Gaza Strip from Egypt were to pass through a different crossing, namely Kerem Shalom, where there are direct Israeli controls for which the EU

¹² Four isolated settlements in the northern West Bank were indeed dismantled at this time.

¹³ Council of the European Union, *Middle East Peace Process – Council Conclusions*, Brussels, 21 November 2005, <http://register.consilium.europa.eu/pdf/de/05/st14/st14754.de05.pdf> (accessed 5 September 2009).

¹⁴ Council of the European Union, *Council Joint Action 2005/889/CFSP of 12 December 2005 on Establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah)*, Article 2 Mission Statement, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:327:0028:0032:EN:PDF> (accessed 1 August 2009).

¹⁵ Responsibility for border and customs management remains with the PA. The text of the Joint Action clarifies in Article 2: “EU BAM Rafah shall implement the responsibilities entrusted to it in the Agreements between the Government of Israel and the Palestinian Authority regarding the management of the Crossing Point. It shall not undertake substitution tasks.”

mission has no responsibility). *Thirdly*, it runs a liaison office where the activities at the Rafah border crossing are transmitted by video in real time to give Israeli representatives the opportunity to register any concerns and where Israeli and Palestinian representatives can resolve any conflicts over implementation.

EU BAM Rafah put an advance party on the ground in record time, so that it was possible to open the border crossing as planned on 25 November 2005; just a few days later the mission reached full operational capacity. Such a rapid deployment was possible largely because the EU was involved from the beginning in the process of negotiating the agreement and because there was a broad consensus among the member states that they wanted to raise the EU's profile as an active player in the Middle East with a presence on the ground. Another motivation that played a role was to demonstrate to Israel that the EU was by no means biased or pro-Arab, but willing and able to deploy European crisis management to fulfil a constructive role in the Middle East peace process extending way beyond that of a mere "payer".

The civilian mission was initially limited to one year, but has been extended several times since. Its current mandate runs until 24 May 2010. It was initially led by the Italian Pietro Pistolese; Frenchman Alain Faugeras took over as Head of Mission in November 2008. While the Rafah mission has many positive aspects – it suffers no lack of clear and measurable objectives, its funding and staffing are adequate (initially a team of about seventy was planned, composed primarily of police and border experts) and its approach is in principle well-suited to strengthening Palestinian capacities – restricting the mission's duration to one year appears not to have been very astute, as it has an ongoing task to accomplish that will be needed at least until a final status agreement has been negotiated.¹⁶ That said, it would certainly have made sense to review the mandate and the mission's progress after a year (i.e. before it was extended). As things turned out, the events of June 2006 altered the circumstances of the European intervention in such a way as to severely reduce its impact.

Nevertheless, the EU in principle took the right approach by sending a border mission to actively assist Israel in withdrawing not only from Gaza but also from the border strip between Gaza and Egypt (the Philadelphi Corridor) and the Rafah border crossing. This was the first time a border crossing had been placed under Palestinian control and thus represented a step towards statehood. However, it was soon to transpire that although the PA had the last word on admitting particular individuals, the main problem for regular border traffic was that the power to decide to open or close the crossing lay not with the PA or the EU but in the hands of Israel and Egypt. This set-up – which relieved Israel of responsibility for the nitty-gritty of border management in Rafah but left it with ultimate control

¹⁶ The budget was about €1.7 million for 2005, about 5.9 million for 2006, €7million for May 2007 to November 2008 and €2.5 million for November 2008 to November 2009.

over opening and closure – put strict limits on the Palestinians’ real control of the crossing and quickly put EU BAM Rafah in a position where it was unable to meet its primary responsibility. In fact, it would only have been possible to override an Israeli order to close the crossing if the PA (plus later the de facto government of Gaza), the EU and Egypt had all agreed to open it anyway.

Implementation and Impact

EUPOL COPPS

The police mission in the Palestinian Territories very quickly found itself struggling with a radical change in the circumstances under which it had to operate. It had hardly begun its work when Hamas – which both the EU and the United States classify as a terrorist organisation – won the parliamentary elections in January 2006 and formed a government in March. In response the Quartet made continuing cooperation with the Palestinian Administration (contact, diplomatic support and budgetary aid) conditional on the new government accepting the so-called Quartet criteria: recognise Israel’s right to exist, renounce violence and commit to all prior agreements concluded between Israel and the PLO. The Hamas leadership refused to comply. Consistently – but politically unwisely – the EU broke off contact with the Hamas-led PA, stopped its budgetary aid and established – in the guise of the Temporary International Mechanism (TIM, later superseded by PEGASE) a stopgap to prevent the complete collapse of infrastructure and public services in the Palestinian Territories by, while bypassing PA ministries, directly supplying funds for infrastructure maintenance, wages and salaries in the health and education sectors, energy supplies for the Gaza Strip, and for emergency and welfare payments. TIM also supported measures strengthening the office of the Palestinian president.

This approach also meant that the European police mission was unable to cooperate with the now Hamas-led interior ministry. Although it implemented a number of smaller activities with other partners (such as the president’s office), EUPOL COPPS was unable to begin its real work until President Mahmud Abbas appointed a transitional government in the West Bank in mid-June 2007, and even then its work was restricted to the West Bank. Given that two thirds of the civil police were working in Gaza that meant that most of the police force was (and still is) completely excluded from profiting from the mission’s activities.¹⁷

¹⁷ Of almost nineteen thousand police employed by the PA at the beginning of 2006 more than twelve thousand were based in Gaza. For figures see European Union Coordinating Office for Palestinian Police Support (EU COPPS), “Factsheet”, 15 February 2006, www.consilium.europa.eu/uedocs/cmsUpload/EUCOPPShandoutFeb2006.pdf (accessed 26 August 2009). After the Hamas take-over in mid-2007 Ramallah ordered PA police in Gaza to stop reporting for work if they wished to continue receiving their salaries. The EU has continued to fund the salaries of some nine thousand inactive police officers in

Evaluating the extent to which EUPOL COPPS has succeeded in fulfilling its mandate is hampered because the Joint Action did not define benchmarks and target dates against which the achievements could be measured. Instead the objectives were, as described above, kept relatively general and vaguely worded. What can be said is that to date the mission has concentrated above all on one aspect of its mandate, namely, training activities and infrastructure measures designed to meet the short-term operational priorities identified in the Palestinian Civil Police Development Programme (PCPDP). Accordingly it has – in addition to the American team – coordinated donor assistance and activities, advised senior police officials and conducted training measures focussing on public order (and backed up by corresponding equipment aid: body armour, handcuffs, batons, vehicles, etc.). Other priorities included refurbishing and expanding the capacity of police stations, prisons and the police training centre in Jericho, and improving police radio reception.¹⁸ But it is impossible to avoid the overall impression that the activities to date have been a hotch-potch of individual measures by the EU, its member states and other countries, rather than following clear strategic priorities.

In the field of long-term structural reform the mission was able to make little headway either in relation to the civil police or to the legal and justice system. A comprehensive legal framework for the work of the security services, a police law and clear guidelines for police work are, for example, all still lacking. Fundamentally, legal reform would need to be a priority in order to allow for effective, transparent and independent criminal prosecutions. At the moment there is neither a clear division of competencies between the various judicial institutions, nor is the justice system in a position to process cases in a timely fashion.¹⁹ Therefore in May 2008 the EU's Political and Security Committee (PSC) decided to expand the mission's rule of law activities and set up a department for this within EUPOL COPPS with some twenty new staff (experts for criminal prosecution, legal defence, the judiciary, court administration, ministerial administration, human rights, criminal law and police law).²⁰ They were to work closely

Gaza. European Union Technical Assistance Office, "Netherlands Contributes €6 Million through EU's PEGASE Mechanism to Pay Salaries of over 14,500 Members of Palestinian Civil Police and Civil Defence Services", press release, Jerusalem, June 2009, www.delwbg.ec.europa.eu/en/whatsnew/114.pdf (accessed 1 September 2009).

¹⁸ For examples see EUPOL COPPS, "Outline of EUPOL COPPS Projects during last 18 Months", press release, Ramallah, 15 December 2008, www.consilium.europa.eu/uedocs/cmsUpload/20081215_EUPOL_COPPS_project_in_the_last_18_months.pdf (accessed 26 August 2009).

¹⁹ See the factsheet published for the Berlin conference in 2008: "Criminal Justice System: Justice Sector Projects 2008–2010", www.consilium.europa.eu/uedocs/cmsUpload/080519-CriminalJusticeBrochure.pdf (accessed 28 August 2009).

²⁰ See information brochure on EUPOL COPPS, 7 June 2009, www.consilium.europa.eu/uedocs/cmsUpload/EUPOL%20COPPS%20booklet.pdf (accessed 5 September 2009). The decision was formalised by the Council in December 2008. Council of the European Union, *Council Joint Action 2008/958/CFSP of 16 December 2008 amending Joint Action 2005/797/CFSP on the European Police Mission for the Palestinian Territories*, Brussels, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:338:0075:0076:EN:PDF> (accessed 1 August 2009).

with Palestinian partners to develop a comprehensive strategy for the Palestinian justice sector, monitor the legal situation and provide advice. The measures only slowly began starting up in summer 2009 after a comprehensive needs assessment and feasibility study – conducted in exemplary cooperation between the various EU institutions. It is to be expected, however, that they will end up once more concentrating largely on equipment and infrastructure projects with little prospect of bringing about tangible improvements with regard to the rule of law. Indeed, that will hardly be possible under the given circumstances of ongoing political division and a power struggle between two Palestinian governments, a defunct parliament, and the existence and consolidation of different legal systems in the West Bank and the Gaza Strip all blocking progress towards an independent judiciary. Another question that arises in this connection is whether such a task could not anyway be tackled more coherently and with more staying power by the EU Delegation than by the member states in the ESDP framework, especially given that the Delegation has been heavily involved in judiciary reform since Oslo and has amassed considerable competence and experience.

EUPOL COPPS is characterised by close coordination and division of labour with US Security Coordinator Keith Dayton and his team.²¹ In summer 2008 the Berlin Conference in Support of Palestinian Civil Security and Rule of Law officially confirmed a division of responsibilities that had already emerged in the course of the work. Whereas the Dayton team concentrates its support largely on the Presidential Guard and the robust National Security Forces, the Europeans focus their activities on the civil police and the justice system.²²

So what impact have the European activities had so far? In concert with the Dayton team (and support provided by individual states), EUPOL COPPS has undoubtedly made a contribution to regenerating the PA security forces after the setbacks of the Second Intifada and helped to make them a more powerful and efficient institution. In turn the security forces have succeeded in re-establishing order in the cities of the West Bank – which had suffered from an absence of police forces and the proliferation of militias and criminal gangs – and thus considerably improving the

²¹ Canada, the United Kingdom and Turkey cooperate under US leadership in the United States Security Coordinator's Team (USSC), which was set up in March 2005 to coordinate donor support for the Palestinian security sector with the aim of strengthening rule of law and the capacities of the security organs. The USSC works in four areas: training and equipping the Presidential Guard (PG) and the National Security Forces (NSF); capacity-building in the interior ministry; expanding the infrastructure of the security forces, for example setting up a training centre for the Presidential Guard; and special leadership training. See Keith Dayton, "Michael Stein Address on U.S. Middle East Policy" (Washington Institute for Near East Policy, Washington, D.C., 7 May 2009), www.washingtoninstitute.org/html/pdf/DaytonKeynote.pdf (accessed 27 August 2009).

²² "Berlin Conference in Support of Law, Summary of the Chair", Berlin, 24 June 2008, www.consilium.europa.eu/uedocs/cmsUpload/080624Berlinconference.pdf (accessed 27 August 2009).

security of the Palestinian population.²³ At the same time progress has also been made towards putting the PA in a position to meet its Road Map obligations in the field of security. Israel – which initially eyed the development very warily – has increasingly come to appreciate and value the benefits of building the PA’s capacities in the field of security, and indeed come to regard it as essential to safeguarding Israeli security. As a consequence security cooperation between the PA and Israel was resumed in 2008. Since then Israel has gradually increased the freedom of movement of the Palestinian security forces, permitted deliveries of equipment, handed over West Bank cities to PA control and at the same time reduced the presence of the Israeli army there. In 2009 Israel also began dismantling checkpoints in the West Bank (although only a few so far).²⁴

One major deficit is that the security sector involvement is still a long way from having the Palestinian “ownership” that the Europeans – as stated in the mission statement – and also the Americans have proclaimed.²⁵ Workshops with security force members found that they largely welcomed the measures in the security sector but complained that both the legal framework for their work and the strategic direction of the reforms were still unclarified.²⁶ They also feel exposed to great popular mistrust, above all because the legitimacy of their efforts is undermined by a widespread perception in the Palestinian population that the Palestinian security forces serve Israeli security interests first and foremost. This impression is fed by the lack of progress in the peace process – because with-

23 At the same time Hamas has succeeded in setting up a five-tier security apparatus of its own in Gaza (separate from the PA’s security forces) and enforcing order and internal security to a remarkable degree. Hamas claims that about two thousand former PA security force members are now working for forces controlled by the Hamas-led interior ministry. “The police force in Gaza is comprised of about 13,000 people,” reports Amira Hass, adding that: “Seven hundred more people serve in the ‘civil defense’ (firefighters and the various rescue services), 1,000 in national security (the border guard), 1,000 in ‘security and protection’ and 300–400 in internal intelligence.” Amira Hass, “Illusions in Gaza”, *Haaretz Online Edition*, 11 December 2008.

24 While cooperation with Israel was initially very difficult for both the American and European missions – and the Israeli side granted very little leeway to the Palestinian security forces – the relationship has improved considerably since 2008. This has also made it easier for EUPOL COPPS to bring in donated equipment, conduct training and move police from one part of Area A to another in the fragmented West Bank. Shlomo Brom, *Update on Reform of the Palestinian Security Apparatuses*, INSS Insight 77 (Tel Aviv: Institute for National Security Studies, 30 October 2008), www.inss.org.il/publications.php?cat=21&incat=&read=2279 (accessed 28 August 2009); *Supporting Palestinian Capacity Building: Israel’s Efforts in Supporting the Palestinian Economy, Security Reforms and Civil Affairs: Report of the Government of Israel to the Ad Hoc Liaison Committee*, Oslo, 7–8 June 2009, 17ff.

25 For detail see Roland Friedrich and Arnold Luethold, “And They Came In and Took Possession of Reforms: Ownership and Palestinian SSR”, in *Local Ownership and Security Sector Reform*, ed. Timothy Donais, 191–213 (Geneva, Geneva Center for the Democratic Control of Armed Forces, DCAF: 2008).

26 For example: DCAF Ramallah, “Palestinian Security Governance: The View of Security Forces in Nablus,” DCAF Spotlight 2, July 2009, www.isn.ethz.ch/isn/Current-Affairs/Policy-Briefs/Detail/?lng=en&id=105041 (accessed 5 September 2009).

out a political process heading towards independence the strengthening of the security forces is not perceived as a state-building exercise – and bolstered by ongoing Israeli army operations in the West Bank, sometimes jointly or concurrently with PA security operations. Dayton’s proud report that Israel had learned to appreciate the newly acquired capabilities of the Palestinian security forces during the Gaza War of winter 2008–09 when it was able to deploy most of its forces to Gaza without fearing that the conflict might flashover to the West Bank was definitely not helpful in this connection.²⁷ The Palestinian civil police supported by EUPOL COPPS made use of its newly acquired capabilities and riot control gear during the war to strictly prevent any solidarity demonstrations in the West Bank. The security forces have also increasingly come to be perceived as biased in the intra-Palestinian conflict (pro-Fatah) rather than a neutral force dedicated to the common Palestinian good. This harms their reputation, especially in a situation where an absolutely overwhelming majority of Palestinians want reconciliation between Hamas and Fatah.²⁸

EU BAM Rafah

The EU monitors were quickly deployed and initially able to ensure regular opening of the border. At the beginning the mission was largely able to meet its objectives successfully, even if certain basic issues concerning co-operation remained unresolved (and still do). Thus the Agreement on Movement and Access never came into force in full with all the protocols; the protocol on passage of persons did but those on passage of goods and security were never signed. As a consequence there were ultimately no clear guidelines for dealing with suspicious objects and persons and EU BAM staff had to make do with ad hoc arrangements.²⁹ Through training measures EU BAM was able to help speed up Palestinian controls and the opening hours of the crossing were quickly expanded. As a whole cooperation initially proceeded smoothly and without major incidents, because all sides had a stake in successful implementation of the arrangements. According to the EU, 280,000 people used the crossing between 25 November 2005 and 25 June 2006.³⁰

But after a good six months in operation the circumstances and the partners’ willingness to cooperate changed decisively. After the Hamas-led government took office in March 2006 it was initially possible to keep the crossing open, because Hamas and Fatah agreed that the Fatah-controlled Presidential Guard would continue to man the border post – which meant that none of the international actors had to have any dealings with Hamas

²⁷ Dayton, “Michael Stein Address on U.S. Middle East Policy” (see note 21).

²⁸ Palestinian Center for Policy and Survey Research, “Poll Nr. 33 Conducted between 13–15 August 2009”, press release, 17 August 2009, www.pcpsr.org/survey/polls/2009/p33epressrelease.html (accessed 1 September 2009).

²⁹ See among others Tovah Lazaroff, “EU BAM Head: Keeping Gaza Border Open Is the Trick”, *Jerusalem Post*, 6 February 2009.

³⁰ Details at www.eubam-rafah.eu/portal/node/382 (accessed 1 September 2009).

security forces. But after Hamas militiamen kidnapped Israeli soldier Gilad Shalit on 25 June 2006 Israel ordered the border to be shut down. Military operations to free Gilad Shalit and destroy Hamas's infrastructure followed and an almost total blockade was imposed on Gaza, with the Rafah crossing opening only for exceptional reasons. Although the EU tried in the following months to have regular opening times restored, it succeeded only in having the crossing opened for brief periods for humanitarian and religious purposes. Altogether in the year following the kidnapping (until 13 June 2007) the crossing was open on only eighty-three days; about 165,000 Palestinians were able to enter or leave. Thus in the eighteen months of the EU BAM deployment in Rafah altogether nearly half a million people passed through the border crossing.³¹

Violent clashes in Gaza initiated a new round of escalation and led to Hamas seizing power there in June 2007. Since then Rafah has remained closed at the behest of Israel and Egypt and Gaza placed under a strict blockade. The Europeans have also shown no interest in any kind of cooperation with Hamas that might have made it possible to reopen the crossing. The European mission has been suspended or "dormant". Nonetheless, EU BAM Rafah has maintained its operational readiness and could resume its work at the border crossing quickly if the parties so wished. Its members have not spent their time idly at headquarters in Ashkelon, but made themselves useful supporting EUPOL COPPS by preparing and holding training courses for border management and customs and in the field of auditing for the civil police. Nonetheless the mission has noticeably cut back its staff since mid-2007; by spring 2009 there were just twenty foreign staff (from eight member states) and seven local staff in the team.

After separate cease-fires declared by Israel and Hamas ended the 2008–09 Gaza War, hopes arose that there might be a speedy return to the arrangements of 2005 with the EU monitors taking up their work again. There was even discussion of a role for the EU at the Karni crossing for goods passing between Israel and Gaza or in controlling the tunnels under the Egypt/Gaza border that under the embargo serve as the population's first line of supply for essential consumer goods and are also used for arms smuggling. But it quickly became clear that the preconditions for reopening the crossing were absent: Hamas and Israel were unable to agree an exchange of prisoners to free Gilad Shalit (which was Israel's key precondition for lifting the total blockade), nor were Egyptian-mediated talks able to get Fatah and Hamas to agree on a new arrangement allowing the Presidential Guard to return to the Rafah crossing. Neither were Israel, Egypt, the PA, and the EU willing to permit the border to open as long as Hamas manned the border crossing. Consequently, although Egypt has repeatedly opened the crossing briefly for humanitarian and religious reasons since mid-2007 – not least to prevent violent breaches of the kind

³¹ Figures from EU Council Secretariat, "EU Border Assistance Mission at Rafah Crossing Point (EU BAM Rafah)", factsheet Rafah/10, updated March 2009, http://consilium.europa.eu/uedocs/cms_data/docs/missionPress/files/090325%20FACTSHEET%20EUBAM%20Rafah%20-%20version%2010_EN.pdf (accessed 26 August 2009).

that occurred in July 2006 and on a much larger scale in January 2008, when tens of thousands of Palestinians streamed across the border to visit relatives and go shopping – the border has remained basically closed since then. Thus it has been impossible to begin any significant post-war reconstruction, even though the international community pledged about \$5 billion for rebuilding and strengthening the PA at a donors' conference in Sharm al-Sheikh in March 2009. As a consequence, the population of Gaza is still supplied largely through tunnels under the border – a situation that has dramatic repercussions on the economic and social conditions there.³² It also has the unintended side-effect of further strengthening Hamas's position by way of its control of the tunnels and taxation of the goods that pass through them and due to the continued isolation of the population.

Relevance

EUPOL COPPS

After the Palestinian security infrastructure was destroyed in the course of the Second Intifada, and in particular in the 2002 Operation Defensive Shield, the security chaos in the Palestinian cities of the West Bank and in Gaza increased immensely. The justice and prison systems were plainly unable to cope, and rule of law was absent. Therefore, it made sense to deploy the EUPOL COPPS mission with a focus on precisely these areas. The mission's activities in the justice sector build on the long experience of the EU Delegation (which had, however, made little in the way of substantial progress since the establishment of the PA). They also build on many years of work by EU member states in support of the security sector – in which, however, we have repeatedly seen Palestinian capacities strengthened without fundamental reforms being implemented, and Palestinian ownership regularly relegated to the back burner.

One reason for this is that since their missions began in 2005 neither the EU nor its American partners have succeeded in turning advances in the security field into substantial and tangible progress in the peace process. The West has also adversely influenced the conflict environment through its “West Bank first” approach that has deepened the divisions

³² According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) the blockade has reduced legal imports to one fifth to one sixth of their pre-blockade volume, and exports to almost zero. This means that alongside shortages of important consumer goods, capital goods are unavailable, and export-orientated agriculture has largely collapsed. Embargo and war have caused the closure of about 95 percent of industrial firms in Gaza. In August 2009 the unemployment rate in Gaza was more than 40 percent, and around 60 percent among those under 30. Three quarters of the population are dependent on food aid from humanitarian organisations. UN OCHA Occupied Palestinian Territory, *Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip*, Special Focus August 2009 (East Jerusalem: UN OCHA oPt, 2009), www.ochaopt.org/documents/Ocha_opt_gaza_impact_of_two_years_of_blockade_August_2009_english.pdf (accessed 27 August 2009).

among Palestinians rather than seeking to overcome them.³³ Sustainable institution-building is unrealisable under these circumstances. In a situation where two illegitimate governments face off, parliament is defunct and the security forces are perceived to be taking sides in the power struggle (and especially where they are conducting politically motivated mass arrests of supporters of the respective opposition), it is simply impossible to build a security apparatus that meets international standards and is under democratic control, nonpartisan, citizen-oriented and unified.³⁴ In the end, Europeans have joined in a policy line that gives greater priority to shoring up the compliant President Mahmud Abbas and the Fayyad government rather than supporting democratically controlled and accountable institutions.

EU BAM Rafah

EU BAM Rafah in principle fits sensibly into the EU's overall approach for supporting the peace process. Taking on the role of a third party to stabilise the situation corresponded with the EU's interest in acting no longer just as paymaster but as an active player in the Middle East – and being recognised as such by the conflicting parties and the United States. But ultimately this has transpired to be almost impossible as long as the EU is unwilling to wield real political influence and as long as political constraints leave it unable even to communicate with all the local actors. The mission was able to fulfil its purpose only as long as the regional partners were prepared to cooperate. In addition, it was unable to exercise any conflict-preventing influence. Concentrating solely on the border crossing and neglecting the problem of effective border security left it unable to prevent the rearming of Hamas and other militants.

From the outset the international community's failure to exert consistent pressure for implementation of other provisions of the Agreement on Movement and Access has been detrimental with regard to maintaining the integrity of the Palestinian Territories, integrating Gaza into the global economy and the Palestinians' freedom of movement. Little or no progress has been made on setting up convoys to transport people and goods between the Gaza Strip and the West Bank, dismantling checkpoints and roadblocks in the West Bank, building a port or rebuilding the Gaza airport.

³³ For detail see Muriel Asseburg, *European Conflict Management in the Middle East: Toward a More Effective Approach*, Research Paper 4/2009 (Berlin: Stiftung Wissenschaft und Politik and Carnegie Endowment for International Peace, February 2009), 29–44, www.swp-berlin.org/en/common/get_document.php?asset_id=5777 (accessed 5 September 2009).

³⁴ European officials tend to ignore this problem and instead emphasise the importance of an effective police force for a future Palestinian state. See for example the contribution by EU Special Representative Marc Otte, "Europa als strategischer Partner Israels im Friedensprozess", *Internationale Politik*, May 2008, 74–80, and the article by then Head of Mission Colin Smith, "High Noon for PA Civil Police", *Haaretz Online Edition*, 20 June 2008.

Conclusions

To date, the two ESDP missions to the Palestinian Territories have produced two very different outcomes. Whereas EU BAM Rafah has been suspended since mid-2007 and can to all intents and purposes be said to have failed, EUPOL COPPS has certainly been able to make a contribution to rebuilding the Palestinian civil police and improving the security situation in the West Bank. But Europeans have not been in a position to initiate comprehensive structural reforms either in the security apparatus or in the justice sector. The European policy of taking the side of President Abbas and his transitional government in the West Bank in the Palestinian power struggle while banning any contact or cooperation with Hamas has severely curtailed their options and undermined the legitimacy of both missions. It has become clear that the missions cannot achieve their intended lasting impact unless they are accompanied by measures designed to overcome the geographical and political division of the Palestinian Territories, restart the peace process and open up a credible perspective for ending the occupation and realising Palestinian independence. European conflict management measures need to be backed up much more strongly by conflict settlement activities.

Through training, advice, and infrastructure and equipment aid, EUPOL COPPS has certainly made a contribution to strengthening the capacity of the PA in policing and fighting crime. Working in close cooperation with US Security Coordinator Keith Dayton it has helped the PA to restore order in the cities of the West Bank, directly satisfying the population's need for security and creating one of the preconditions for reviving the economy. But precisely this close cooperation has tainted the legitimacy of the EU's efforts in the eyes of the Palestinian population, which has interpreted them in the twin contexts of Israeli's interest in fighting terrorism and the internal Palestinian power struggle. Additionally, because EUPOL COPPS has so far made little progress in initiating reforms to make the security services and criminal justice institutions not only more effective but also unified, legitimate, democratically controlled and nonpartisan, there is a real danger that the EU will ultimately contribute to establishing an authoritarian, repressive security apparatus. Human rights training may not be completely useless in this context, but it is definitely not an adequate remedy where the circumstances preclude proper legal procedure.

Alongside diplomatic efforts to promote the intra-Palestinian reconciliation that would allow a unified political system to be restored and an elected parliament with corresponding oversight and control functions to be reinstated, the Europeans should ensure above all that their training, infrastructure and equipping activities in support of the civil police and the justice system are integrated into a legal framework that is yet to be created. There also needs to be much greater emphasis on promoting Palestinian ownership through participation, in order to persuade the security forces and society of the sense of the measures and thus strengthen their legitimacy. This could mean participatory drafting of a national security

strategy or local meetings discussing the population's concrete security needs with security personnel and on this basis developing citizen-oriented policing approaches.

The operations of the European border mission EU BAM Rafah were severely curtailed after June 2006 and have been suspended since June 2007; it is no longer able to fulfil its purpose, in particular the regular opening of the border crossing between Gaza and Egypt. The mission has failed to make a substantial and lasting contribution to implementation of the Agreement on Movement and Access or to confidence-building between the parties of the kind needed to prevent violence or encourage steps towards a peaceful resolution. In terms of its liaison role, the mission was also unable to reach any compromise between the regional parties concerning a new arrangement for opening the border.

All the same, terminating the mission would send the wrong political message. Instead the EU should join with its Quartet partners to urge for the blockade of Gaza to be lifted as soon as possible and for regular and permanent reopening of the Rafah crossing to be permitted – which would then allow and require the European border mission to return to its real work. Thus *firstly*, the Egyptian efforts to mediate an exchange of prisoners and a comprehensive cease-fire between Israel and Hamas should be supported. *Secondly*, Egyptian (and other Arab) efforts to bring about an arrangement between Fatah and Hamas for staffing the border post on the Palestinian side and a mechanism for reconstruction should be encouraged rather than undermined. But success in this question is unlikely as long as the Hamas government in Gaza worries that Israel, the PA, the United States and the EU have not given up their plans for regime change. Progress here is hardly on the cards without a broader power-sharing arrangement between Fatah and Hamas. *Thirdly*, once the crossings for people and goods have been reopened and import restrictions largely lifted, ways and means must be found – together with Egypt and Israel – to put a permanent stop to arms smuggling through the tunnels underneath the border. The question for Europe here is not so much the training and equipment required to control the border more effectively, but generating the political will amongst all participants that is the basis for effective control.

ESDP in Asia: The Aceh Monitoring Mission in Indonesia

Felix Heiduk

On 15 August 2005 the civil war in Aceh ended and the first ESDP mission in Asia began. A Memorandum of Understanding (MoU) including demilitarisation and extensive autonomy laid to rest the conflict between the GAM (Gerakan Aceh Merdeka – Free Aceh Movement) and the Indonesian central government. The EU played a key role in this process, sending an observer mission to monitor implementation of the MoU. The Aceh Monitoring Mission (AMM) differed in many respects from other ESDP missions: it was the first mission in Asia, the first to be conducted in co-operation with another regional organisation (ASEAN) and it took place just a few months after the devastating tsunami of 26 December 2004 laid waste to large parts of Aceh and cost more than 150,000 Acehnese their lives. The AMM took place in a unique context where disaster aid, reconstruction and a peace process were occurring in parallel. Also of note is the speed of deployment: less than three weeks passed between the decision being taken and the first monitors actually being deployed.

The Mandate

The story of the AMM is closely bound up with the Helsinki peace process that began in January 2005, just a few weeks after the tsunami wreaked havoc in the war-torn province of Aceh. The Finnish Crisis Management Initiative (CMI) under the leadership of former Finnish President Martti Ahtisaari mediated talks in Helsinki between the GAM and the Indonesian government.¹ Supported by EU funds from the Rapid Reaction Mechanism (RRM), the negotiations produced a signed Memorandum of Understanding (MoU) after just four rounds. One of the key issues was the question of an external monitoring mission, on which the GAM had insisted (given that the absence of neutral observers was one factor behind the failure of two earlier cease-fire agreements in 2000 and 2002). But against the background of recent Indonesian history, especially the “loss” of East Timor, the United States and Australia (which in the eyes of many Indonesians were the driving forces behind the intervention in East Timor) were discredited from the outset.² ASEAN’s lack of structural prerequisites and

¹ Kirsten E. Schulze, *Mission Not So Impossible: The Aceh Monitoring Mission and Lessons Learned for the EU*, International Policy Analysis (Berlin: Friedrich-Ebert-Stiftung, July 2007), 3.

² Felix Heiduk, *Nine Months after the Tsunami: Hopes for Peace in Aceh*, SWP Comments 2005/C36 (Berlin: Stiftung Wissenschaft und Politik, August 2005), 2. Following Indonesia’s illegal annexation of the former Portuguese colony of East Timor in 1976 the Revolutionary Front for an Independent East Timor (FRETELIN) began an armed indepen-

experience made an ASEAN-led monitoring mission unlikely. Jakarta's agreement to a mission made up of EU and ASEAN nations represented a tangible demonstration of its political desire for lasting peace in Aceh.³ Ahtisaari responded by approaching the Council of the European Union in February 2005 with a request for it to play a more active role in the Helsinki peace process by providing a civil EU peacekeeping mission.⁴

However, for a good while there was no consensus at all either within the EU institutions or between the individual member states concerning a more active role for the EU in Aceh. Finland, Sweden, the Netherlands and France in particular strongly supported the proposal to send the first ESDP mission to Asia. But the majority of member states (including Germany) rebuffed the idea. They simply did not regard EU involvement in Asia as a priority of European security and defence policy. The positive progress made at the Helsinki talks and the British Council Presidency's support for the mission in the second half of 2005 (after the United Kingdom had initially been sceptical about the idea when the talks began) ultimately tipped the scales in favour of the AMM. So from July 2005 a majority on the General Affairs and External Relations Council of the EU was favourably disposed towards the mission. Alongside supporting a peace process to end a decades-long conflict, there were also strategic political considerations behind the decision. As the first EU mission in Asia it was a test of the EU's decision-making processes and capacities in the field of civil crisis management, of its capacity to act as a global security player and not least – especially after the rejection of the Treaty establishing a Constitution for Europe – of the ESDP itself.⁵ More broadly, according to Javier Solana the AMM represented a step towards closer partnership between the EU and the countries of East Asia.⁶

Cooperation with ASEAN

The AMM was the first ESDP mission to be conducted in cooperation with another regional organisation under the policy of “effective multilateral-

ence struggle. In a referendum held in 1999, after twenty-four years of Indonesian occupation and a conflict that cost more than 180,000 Timorese their lives, the population voted by a large majority for independence. After the results were released massacres were committed by the Indonesian security forces stationed in East Timor and their allied pro-Indonesian militias, which did not end until a UN peacekeeping force was deployed. East Timor was under UN administration until it became fully independent in 2002.

³ International Crisis Group (ICG), *Aceh: A New Chance for Peace*, Asia Briefing 40 (Jakarta and Brussels: ICG, 15 August 2005), 11.

⁴ Pierre-Antoine Braud and Giovanni Grevi, *The EU Mission in Aceh: Implementing Peace*, Occasional Paper 61 (Paris: EU Institute for Security Studies, December 2005), 21.

⁵ *Ibid.*, 22.

⁶ Council of the European Union, “Javier Solana, EU High Representative for the CSFP, Welcomes Launch of the Aceh Monitoring Mission”, press statement S299/05, Brussels, 15 September 2005; also Caroline Bivar, *Emerging from the Shadows: The EU's Role in Conflict Resolution in Indonesia*, EPC Issue Paper 44 (Brussels: European Policy Centre, December 2005), 24.

ism". The mission deployed on 15 September 2007 comprised a total of 226 monitors, of whom 130 came from Europe and 96 from the five participating ASEAN states. But because ASEAN possesses none of the structures required to conduct complex interventions, Brussels undertook most of the work of planning and executing the mission, and also its funding.⁷ Nonetheless, the structure of the mission did reflect genuine EU-ASEAN cooperation: while all the leading posts were filled by Europeans all their deputies were from ASEAN, and six of the eleven district offices were headed by ASEAN representatives. So the EU and ASEAN shared leadership responsibility at all levels.⁸ The AMM's institutional structures also included a committee of contributors where Norway and Switzerland – as non-EU states supplying funding and personnel – were represented alongside the EU and representatives of the five ASEAN states.⁹ Personnel decisions and appointments were consequently more complex than in many other ESDP missions, and there were occasional communication difficulties due to the poor English of some of the Asian staff.¹⁰ But despite these problems and ASEAN's small financial and organisational contribution, observers emphasised the advantages of cooperation, above all in the shape of enhanced regional expertise and cultural competence.¹¹

When the AMM arrived in Aceh in August 2005 it encountered a multitude of other local, national and international actors providing post-tsunami humanitarian aid and reconstruction. Although there were no direct connections at the institutional level between the AMM and most of the actors involved in reconstruction in Aceh, the peace process and reconstruction were plainly mutually intertwined processes. Rebuilding the utterly destroyed province was impossible without lasting peace, and reconstruction could only be successful if it took account of the specifics of the civil war.¹² In this connection there was often criticism of the AMM's failure to integrate Acehnese civil society. Restricting the remit to institutionalised cooperation with the GAM and the Indonesian central government left out both Acehnese civil society and the pro-Indonesian militias that were also involved in the conflict.¹³

7 Paul Kirwan, "From European to Global Security Actor: The Aceh Monitoring Mission in Indonesia", in *European Security and Defence Policy: An Implementation Perspective*, ed. Michael Merlingen et al., 128–42 (133) (London, 2008).

8 *Ibid.*, 134.

9 John Quigley, "Enhancing South-East Asia's Security: The Aceh Monitoring Mission", in *Multiregionalism and Multilateralism – Asian-European Relations in a Global Context*, ed. Sebastian Bersick, Wim Stockhof and Paul van der Velde, 61–81 (68) (Amsterdam, 2006).

10 Schulze, *Mission Not So Impossible* (see note 1), 5.

11 Kirwan, "From European to Global Security Actor" (see note 7), 135.

12 Felix Heiduk, *Conflict Analysis: Province of Aceh/Indonesia*, Series of Country-Related Conflict Analyses (Bonn: Friedrich-Ebert-Stiftung, October 2006), 11ff.

13 Sami Ladensuo, *Building Peace in Aceh – Observations on the Work of the Aceh Monitoring Mission (AMM) and Its Liaison with Local Civil Society*, (Helsinki: Crisis Management Initiative, 2006), 27ff.

Fast deployment

As well as its area of operations and its hybrid structure the AMM was noteworthy for the very short timeframe between the decision to set up the mission and its actual deployment. The MoU called for a civil monitoring mission to be stationed in Aceh immediately after the agreement was signed on 15 August 2005. But by mid-July 2005 it was already apparent that there was an irreconcilable contradiction between the provisions of the MoU and the extremely complex bureaucratic processes within the EU institutions. It was simply impossible to have a fully functional mission in operational readiness by 15 August, so the Council set 15 September as the starting date. To allay fears that the slightest delay could endanger the fragile peace, staff of the Commission and the Council came up with a provisional solution in the form of a fifty-strong EU Initial Monitoring Presence (IMP) to monitor the peace agreement on the ground between 15 August and 15 September. So the gap between the decision to act and deployment of the IMP amounted to just eighteen days.

This very quick response collided with the long-winded bureaucratic procedures for funding such missions. The costs amounted to some €15 million and were ultimately funded partly from the ESDP budget (about €9 million) and partly through contributions from various member states (about €6 million) according to the principle “costs lie where they fall”. The unconventional financing arrangements for the AMM had repercussions on the ground in the form of severe funding bottlenecks. In some cases IMP staff initially had to lay out their own local expenses and pay for their own plane tickets. Funding delays left the IMP without mobile phones or access to cash for a time, and there was a general shortage of computers, offices and office staff.¹⁴ The tight timetable also affected the training of monitors, which was initially conducted on an ad hoc basis in a two-day seminar in Medan (North Sumatra).

The mandate and its limitations

The AMM’s mandate, like its timing, was closely tied to the provisions of the MoU. The mandate initially ran for a period of six months and covered the following tasks:¹⁵

- ▶ monitor the demobilisation and demilitarisation of GAM, especially the surrender of weapons,
- ▶ monitor the withdrawal from of Aceh of Indonesian police and military forces that had been stationed there for the purposes of counter-insurgency,
- ▶ monitor the reintegration of former GAM fighters,
- ▶ monitor the human rights situation and document human rights violations,

¹⁴ Schulze, *Mission Not So Impossible* (see note 1), 5.

¹⁵ Council of the European Union, *Council Joint Action 2005/643/CFSP*, Brussels, 9 September 2005.

- ▶ monitor the implementation of the changes in the government and autonomy of Aceh required by the MoU, in particular the Law on the Governing of Aceh (LoGA) to be passed by Jakarta by March 2006,
- ▶ rule on disputed amnesty cases,
- ▶ investigate violations of the MoU.

The AMM was given executive powers for implementing the demilitarisation and reintegration of the GAM, implementing special autonomy status, ruling on disputed amnesty cases, and investigating contraventions of the MoU and violations of human rights in Aceh. The main benchmarks of the mandate (and of the peace process as a whole) were the disarming and reintegration of the GAM, the withdrawal of counter-insurgency forces stationed in Aceh and the implementation of the LoGA. As well as marking specific progress on demilitarisation and the implementation of special autonomy status, achieving benchmarks was crucial for confidence-building between the parties. After mutual mistrust had undermined two previous cease-fires confidence-building was essential to stabilise the peace process. The timeframe envisaged for fulfilling these tasks – and thus the duration of the mandate – was initially six months.

The mandate reproduced almost word for word the requirements for the AMM laid out in the MoU. The only exception was the item in the MoU: “to monitor the human rights situation and provide assistance in this field”. Alongside responsibilities in the field of DDR (Disarmament, Demobilization, Reintegration), the MoU also gave the AMM – as the first EU mission in the field of civil crisis management – tasks in the field of human rights protection. Given the massive human rights violations committed in Aceh during the conflict, especially by the Indonesian security forces, tasking the mission with an objective of this kind seemed to be a prerequisite for lasting conflict transformation. This step was explicitly welcomed by some analysts as evidence of increasing efforts by the EU to integrate human rights protection in the mandates of civil and military missions.¹⁶ But whereas the MoU explicitly included monitoring and supporting human rights in the remit of the AMM, the Joint Action adopted by the Council on 9 September 2005 curtailed the human rights component: the AMM was only to become involved where human rights violations affected the core areas of the mandate (demilitarisation, demobilisation and reintegration) and had been committed by the parties themselves after the signing of the MoU, and was to pass all other human rights violations directly to the national human rights commission or appropriate NGOs.¹⁷ According to observers, the sensitivity of the issue and hopes of improving the prospects of timely implementation were the

¹⁶ Suying Lai, “Civilian Crisis Management in Asia: The Aceh Monitoring Mission”, in *The European Union and Security Sector Reform*, ed. David Spence and Philip Fluri, 243–61 (252) (London, 2008).

¹⁷ Jürgen Rathner and Peter Hazdra, “The Aceh Monitoring Mission – An Innovative Approach to DDR”, in *Small Arms – Big Problem: A Global Threat to Peace, Security and Development*, ed. Peter Hazdra, 103–11 (109) (Vienna, 2007).

reasons for the Council to narrow the definition of human rights violations.¹⁸

Implementation and Impact

The work of the AMM in the first months following deployment aimed primarily at fulfilling the first three tasks of the mandate (monitoring the demobilisation and demilitarisation of the GAM, the withdrawal of Indonesian police and military counter-insurgency units from Aceh and the re-integration of former GAM fighters. The most high-profile activity initially was the AMM's destruction in the presence of representatives of the Indonesian security forces of 840 weapons surrendered by the GAM under the provisions of the MoU.¹⁹

Expanding the mandate: destroying the GAM's weapons

Destruction of weapons by the AMM was not mentioned in the MoU. It was originally to have been the job of the Indonesian security forces. But the GAM's mistrust of the Indonesian security forces – which for their part saw the surrender of arms by the GAM as a central “benchmark” of the peace process – made a compromise necessary, namely, an expansion of the AMM mandate to allow it to destroy the weapons.²⁰ Four AMM decommissioning teams with the requisite technical equipment were set up in September 2005. During the demilitarisation phase of the GAM, which lasted until 15 December 2005, the teams destroyed weapons in public places – sometimes before several thousand onlookers – before handing them over to the military. Fears that this could lead to clashes between the GAM and the national armed forces of Indonesia (Tentara Nasional Indonesia, TNI) or that local GAM units might refuse to hand in their weapons proved to be unfounded. During the same period AMM representatives monitored the withdrawal of more than 25,000 Indonesian soldiers and 5,000 members of the (paramilitary) Mobile Police Brigade. This task, too, was successfully completed by the end of December 2005.

The meetings of the Commission of Security Arrangements (COSA) – initially weekly, later fortnightly – were central to cooperation between the AMM and the parties to the conflict. Smaller meetings were also held at district level (DiCOSA). Under the auspices of the international monitor-

¹⁸ Nicoletta Pirozzi and Damien Helly, “Aceh Monitoring Mission: A New Challenge for ESDP”, *European Security Review*, no. 27 (October 2005): 3. Since the UN intervention in East Timor large parts of the Indonesian political class, and especially the Indonesian military, have come to regard human rights and their enforcement by the international community as an instrument to curtail Indonesian sovereignty and discredit Indonesia and its armed forces.

¹⁹ The “symbolic” number of weapons agreed by the GAM and Jakarta in the MoU, 840, was a compromise based on the claims of the GAM, the Indonesian intelligence service and observers.

²⁰ A previous cease-fire failed in February 2003 because the GAM had not surrendered its weapons.

ing mission, representatives of the Indonesian security forces and the GAM met regularly to address and resolve problems, questions and complaints quickly and unbureaucratically. In the few cases of violations of the MoU the perpetrators were quickly identified in COSA and DiCOSA meetings and the resulting animosities between the GAM and Jakarta resolved through the mediation of the AMM. According to observers it was the recognition of the AMM as a neutral third party by both sides that principally made this possible.²¹

Amnesty and reintegration

Less publicity-attracting but no less difficult was the work of monitoring the amnesty for nearly two thousand GAM members and the reintegration of almost three thousand former guerrilla fighters into Acehese society as agreed in the MoU. Almost three hundred prisoners were released just two days after the signing of the MoU, the rest followed at the beginning of September 2005. The amnesty served as a confidence-building measure and largely proceeded smoothly, but the GAM did criticise the AMM over a significant number of cases where Jakarta refused to release guerrilla fighters on the grounds that they had been detained for criminal offences rather than for membership of the GAM. Here the GAM accused the AMM of holding back out of consideration for Jakarta's interests and contributing little to resolving the disputes. Reintegrating former combatants and prisoners also turned out to be less than simple. The reintegration programmes were run by international bodies such as the International Organisation for Migration (IOM) and supervised by the AMM. Right at the beginning the GAM protested that the lists of names demanded by the Indonesian government and the AMM could be misused by the Indonesian security forces in the event of a collapse of the peace process. Consequently the funds for the first reintegration programme were handed to the regional GAM commanders. But this was an invitation to abuse and embezzlement within the GAM, leading to many fighters receiving only a third or a quarter of the money they were supposed to. Accordingly the combatant-focussed structure was dropped in subsequent reintegration programmes in favour of a project-based approach and an agency created up to oversee the reintegration programmes, including members of the Indonesian central government, the GAM and Acehese civil society. One general problem with the reintegration of former combatants was that the pro-Indonesian militias that had fought the GAM alongside the military were completely excluded from the "peace dividend". Sporadic attacks on GAM members in 2005 and 2006 were often attributed members of pro-

²¹ ICG, *Aceh: So Far, So Good*, Asia Briefing 44 (Jakarta and Brussels: ICG, 13 December 2005), 7; also Schulze, *Mission Not So Impossible* (see note 1), 4.

Indonesian militias. Of course the AMM cannot be blamed for this problem, which stems from deficits in the MoU itself.²²

Autonomy and local elections

Whereas the accomplishment of the AMM's security tasks was delayed only a little by a few minor difficulties, the political component of the MoU – the implementation of special autonomy status for Aceh and the holding of local elections – turned out to be the real hurdle. The Indonesian parliament only began drafting the LoGA (Law on the Governance of Aceh) after the successful demilitarisation of the province, and it did not become law until July 2006, thus missing the deadline set in the MoU (31 March 2006) and requiring two extensions of the AMM.²³ These delays in implementing the autonomy arrangements in turn caused the gubernatorial and local elections to be postponed until 11 December 2006. The late election date made it necessary to extend the AMM yet again until 15 December 2006. The main task of the mission – now much reduced in numbers after having fulfilled many of its tasks – was to monitor the elections together with EU election observers. Hardly a week after the largely free and fair elections the Aceh Monitoring Mission came to an end.

Successful mandate implementation but deficits in human rights protection

Measured against the objectives of its mandate the AMM must be regarded as a success. By starting work quickly and deploying the IMP immediately the AMM created a sense of confidence in the stability of the peace process within Acehnese society. Its neutrality and professionalism gained it the acceptance of both sides, while cooperation with ASEAN enhanced the mission's expertise with regard to regional and cultural specifics and thus increased its legitimacy on the ground and diplomatic muscle at the international level. The clear provisions of the mandate and the transparent approach of the AMM made it possible to successfully disarm the GAM within three months. Together with the simultaneous troop withdrawals this meant that the mission had already fulfilled important parts of its mandate by December 2005. After successfully stabilising the peace process the AMM went on to tackle critical points from the MoU (amnesty arrangements, distributing reintegration funds, drafting the LoGA).

The human rights component of the mandate was the only one the AMM was unable to fulfil in full. The Council's decision to restrict the mandate in the sphere of "human rights" impacted on the mission's practical work. The task to "monitor the human rights situation" was neither

²² Patrick Barron, Samuel Clark and Muslahuddin Daud, *Conflict and Recovery in Aceh: An Assessment of Conflict Dynamics and Options for Supporting the Peace Process* (Jakarta: Bank Dunia and World Bank, August 2005).

²³ Altogether there were three three-month extensions of the AMM mandate, authorised on 27 February 2006, 7 June 2006 and 7 September 2006.

part of the monitors' training nor were there clearly defined strategies, methods or approaches on the ground, and the networking with local and national organisations that would have been needed for a more pro-active role in this field took place only on an ad hoc basis.²⁴ The AMM's focus on security tasks was also reflected in the composition of its staff. Although it was a civil mission most of its staff were military or ex-military. The Council felt that this personnel structure was necessary above all in the first months of the intervention in order to supply the expertise for security tasks such as destroying the GAM's weapons. When the AMM began there were efforts to increase the proportion of civilian monitors and add specialist human rights monitors but these measures were never implemented. With respect to its personnel structure and associated expertise the AMM thus corresponded more to an "unarmed military mission" than a civilian mission.²⁵ The AMM's lack of expertise in the fields of civil society cooperation, human rights and reintegration was criticised by observers, by the GAM and by Acehnese civil society,²⁶ as was the inadequate inclusion of women's groups in the peace process.²⁷ For more comprehensive implementation of the mission's goal of protecting human rights it would have made sense to have a better staff set-up and closer cooperation with the corresponding civil society actors.

Operationally, the close cooperation between the AMM and the Indonesian security forces also worked to prevent the AMM from taking a more effective, pro-active role in the field of human rights protection. Under the terms of the MoU the Indonesian security forces were responsible for the security of the AMM, so Indonesian police guarded AMM offices and escorted AMM vehicles. Whereas other international organisations and NGOs moved around Aceh without police or military escorts, this was not possible for the AMM. So even though the security situation continued to improve after the conclusion of the MoU, the mission had no neutral setting for investigating and documenting accusations of human rights violations by the Indonesian security forces.²⁸

Flexibility due to lack of capacity

Despite (or because of) its obvious success in many respects, the AMM was thus a mission that conformed to traditional foreign policy objectives and parameters such as testing out the instruments of the ESDP and expanding the EU's "global role". With its relatively short duration the mission concentrated on implementing short-term security stabilisation measures

²⁴ Ladensuo, *Building Peace in Aceh* (see note 13), 25.

²⁵ Taina Järvinen, "Aceh Monitoring Mission and the EU's Role in the Aceh Peace Process", (paper presented at the International Studies Association Conference, Chicago 2007), 5, www.hsrgroup.org/images/stories/Documents/ISA2007/isa07_proceeding_179085.pdf.

²⁶ Ladensuo, *Building Peace in Aceh* (see note 13), 26.

²⁷ Crisis Management Initiative (CMI), *The Aceh Peace Process: Involvement of Women* (Helsinki: CMI, August 2006), 20.

²⁸ Järvinen, *Aceh Monitoring Mission* (see note 25), 7.

without the more ambitious elements of a comprehensive conflict transformation strategy (addressing human rights violations, setting up reconciliation commissions, etc.).

On the one hand the repeated extensions of the mandate demonstrate the operational flexibility of the EU (also, to a lesser extent because of its smaller organisational and financial participation, of ASEAN). In order to allow the mission to begin extremely quickly, unconventional measures were successfully applied to shorten or at least bridge long-winded bureaucratic processes. On the other, the necessity of repeated extensions and the mass of ad hoc measures on the ground at the beginning of the mission highlight weaknesses in the planning structures that still hamper swift implementation of ESDP missions.

Relevance

Through until the tsunami of December 2004 the Aceh conflict appeared to have little relevance for EU foreign policy towards Indonesia. External mediation in Aceh had produced cease-fires negotiated with American and Japanese support in 2000 and 2002, but neither held. The sectoral priorities of the EU's *Indonesia Country Strategy Paper 2002–2006* encompassed supporting *good governance* programmes, protecting natural resources and ecological sustainability. The primary goals in the *good governance* sector were developing the structures of local government and administration and improving public services in the health and education systems. Although supporting “conflict prevention” and “human rights” in Aceh are mentioned in passing, they were not among the EU's clearly defined political goals towards Indonesia. Conflict prevention was merely one of the “cross cutting issues” to be included where possible in all the EU's programmes in Indonesia.²⁹

An active EU policy with respect to the Aceh conflict emerged only as the peace talks between the GAM and the Indonesian central government began making progress in the aftermath of the tsunami. Nonetheless, the implementation of the AMM demonstrates the application of a plethora of EU foreign policy and development instruments in the context of parallel civil crisis management and humanitarian aid and reconstruction.³⁰ First of all the Rapid Reaction Mechanism (RRM) was used in 2005 – during the period following the tsunami – to fund the peace talks in Helsinki, financially support the rebuilding of local government and administration structures, and encourage Acehnese civil society contribute to the reconstruction plans for Aceh. When the AMM began work another €4 million were provided through the RMM for reintegrating GAM fighters. At the same time the EU contributed more than €200 million to the Multi-Donor Trust Fund, making it the biggest donor to the fund administered by the World Bank for humanitarian aid and rebuilding in Aceh. The European

²⁹ European Commission, *Indonesia Country Strategy Paper 2002–2006* (Brussels, 2002), 25.

³⁰ This encompassed €200 million from the Asia/Latin America budget and €40 million from the budget of the European Commission Humanitarian Aid Office (ECHO).

Investment Bank provided another €50 million in loans for small and medium-sized enterprises affected by the tsunami.³¹ In December 2006 an EU Election Observation Mission (EOM) was sent to Aceh to monitor the provincial elections alongside the now much reduced AMM. In its mandate and goals the AMM thus complemented the general goals of EU foreign policy towards Indonesia as laid out in the Indonesia Country Strategy Paper 2002–2006.

For many EU experts the relevance of the AMM consisted – apart from its function as a test of the EU’s capacity to act in the field of civil crisis management and indeed of the ESDP itself – in establishing the EU as an international actor and deepening relations with ASEAN. From that perspective, the AMM – as an ESDP mission deployed in the shortest of time and conducted with the participation of another regional organisation – has supplied proof of the global reach and readiness of the ESDP. The AMM, praised repeatedly for its neutrality by sides, represents “added value” for future EU initiatives. However, at the operational level the necessity for three mandate extensions demonstrates both a certain degree of operational flexibility and evidence of initial inadequacies in the sphere of planning. The rather unconventional funding of the AMM, whose speedy deployment was only possible at all thanks to a contribution of €4 million from Sweden, pointed up the need for a “start-up fund” for ESDP missions and a general reduction in bureaucracy.³²

Although the AMM’s contribution to the implementation of the MoU, to the rebuilding of the province after the devastating tsunami of 2004 and to the political stabilisation of Aceh after three decades of civil war should not be played down, we must remember that the sustainability of the peace process cannot be measured simply in terms of the successful holding of local elections. Although the parliamentary elections of April 2009 also passed off without major incidents, other central points of the MoU – such as introducing human rights tribunals, setting up a reconciliation commission or regularising relations between provincial and central government – remained unimplemented. Repeated proposals from Jakarta to divide Aceh – like Papua – into several provinces in order to weaken the ex-guerrillas who govern there have met with resistance.³³ The end of the bulk of the international rebuilding efforts at the end of 2009 and the associated withdrawal of the external actors involved could turn out to be another litmus test for Aceh’s stability. The flow of funds and the provision of employment through the “donor economy” that emerged in the course of the post-tsunami rebuilding papered over socio-economic fault lines. As external aid tails off such conflict-stoking factors could re-emerge.

³¹ Quigley, “Enhancing South-East Asia’s Security” (see note 9), 73ff.

³² “Strengthening Peace after the Disaster: The Aceh Monitoring Mission”, interview mit Pieter Feith, *ESDP Newsletter*, no. 2 (June 2006): 19.

³³ ICG, *Deep Distrust in Aceh as Elections Approach*, Asia Briefing 90 (Jakarta and Brussels: ICG, 23 March 2009); also Ridwan Max Sijabat, “Aceh Still Struggling”, *Jakarta Post* (online), 15 August 2007.

Conclusions

The Aceh mission was nonetheless a success in many respects. Despite its limited resources, the AMM succeeded quickly in largely fulfilling its mission and making an important contribution to stabilising the peace process in Aceh. In a broader sense, the cooperation between the EU and ASEAN showed that multilateral approaches in EU foreign policy can work well operationally – including in the ESDP framework. Indeed, cooperation between the EU and ASEAN on the ground turned out to be advantageous for the success of the mission. The “comparative non-military advantages” of EU foreign policy, as opposed to the military power of the United States and other geopolitical actors in South-East Asia, were put to good use, and the AMM has shown that the EU would be well advised to continue working to develop those (civil) foreign policy and security instruments. In the example of the AMM these encompass credibility as a neutral mediator or observer, multilateralism and power-sharing within the EU,³⁴ knowledge and competence in the field of conflict transformation (e.g. in the field of disarmament, demobilisation and reintegration or DDR) and experience with complex negotiating systems. The mandate’s concentration on essentially security-related tasks to the detriment of human rights protection came in for criticism from the Crisis Management Initiative and other observers.

Alongside important internal factors for the success of the AMM, such as the willingness of some member states to guarantee unbureaucratic financing in the start-up phase, it must not be forgotten that an important outside factor for the success of the AMM was the commitment of local parties to the peace process. In the discussion about the AMM as a “role model” for future civil ESDP missions it must not be forgotten that the circumstances for the AMM were exceptionally favourable. Without the war-weariness of both sides and a conflict structure that was “ripe” for external intervention, the success of the AMM cannot be explained.³⁵

To continue to support the commitment of the conflict parties, EU follow-on projects for conflict transformation in Aceh should be considered, especially for the period after 2009. Alongside increased involvement in the provision of socio-economic development perspectives for the province this could also involve previously neglected aspects of the MoU such as setting up a reconciliation commission or support measures for regulating relations under Aceh’s special autonomy status between the provincial government and Jakarta.

³⁴ When the commander of the Indonesian armed forces in Aceh, Bambang Darmono, was asked why he now had the fullest confidence in the AMM after initial mistrust, he replied that what had really convinced him that the EU could be trusted was the thought that when so many states were working together it would be “impossible to lie to us”. Horst Bacia, “Sicherheitsvereinbarungen erfüllt: Die europäische Beobachtermission in der indonesischen Provinz Aceh zieht eine erfolgreiche Zwischenbilanz ihrer Mission”, *Frankfurter Allgemeine Zeitung*, 31 December 2005, 6.

³⁵ Schulze, *Mission Not So Impossible* (see note 1), 12ff.

The European Union Monitoring Mission in Georgia: Peacekeeping on a Controversial Footing

Uwe Halbach

Only a few weeks after the “Five-Day War” between Russia and Georgia in August 2008 a European Union Monitoring Mission (EUMM Georgia) was sent to the region. The EUMM – currently considered to be the most important international peacekeeping mission in the conflict-ridden southern Caucasus – is an unarmed civilian mission charged with monitoring the ceasefire agreements and the post-war stabilisation process. The decision to deploy the EUMM was taken at the Gymnich meeting of EU foreign ministers in Avignon in early September 2008 and mandated by the Council of the European Union on 15 September 2008. The German diplomat Hansjörg Haber was appointed Head of Mission and empowered by the civilian operations commander, the Director of the Civilian Planning and Conduct Capability (CPCC) in Brussels, to command the personnel and units of the states participating in the mission. His deputy is the French police general Gilles Janvier.

One of the mission’s initial tasks was to coordinate closely with the OSCE mission to Georgia and the United Nations Observer Mission in Georgia (UNOMIG). At Russia’s insistence, however, the mandates of these two missions – with monitoring posts in South Ossetia and Abkhazia, respectively – were allowed to expire in May and June 2009. The EUMM was thus deprived of an important foundation for the international cooperation that had originally determined its mandate in Georgia. Since the August war Russia has done everything in its power to prevent any international presence in Georgia gaining access to Abkhazia and South Ossetia. Hence the EUMM now remains the only international mission in this “vacuum in the Caucasus”, albeit without free access to the two contested territories.¹

The mission’s assignment is “to contribute to long-term stability *throughout Georgia* and the surrounding region”.² While this in theory gives the mission a broad regional radius for carrying out its stabilisation assignment, in reality Russia’s attitude and that of its protectorates Abkhazia and South Ossetia means that the EUMM does not even have access to “the whole of Georgia”. The southern Caucasus also includes the territory of Nagorny-Karabakh, disputed between Armenia and Azerbaijan. The EU

¹ Frank Nienhuysen, “Vakuum im Kaukasus: Beobachter verlassen Südossetien und Abchasien”, *Süddeutsche Zeitung*, 1 July 2009.

² Council of the European Union, Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia, Brussels, Article 2, para 2. For the particular objectives of the mission see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:248:0026:0031:EN:PDF>.

has played little role in regulating that conflict; here the mediator is the OSCE's Minsk Group. The northern Caucasus, which is part of the Russian Federation and to which the EU and the international community have almost no access, is a further area that should be counted as a neighbouring region. Russia regards this highly instable region as an internal matter, in which external actors have no business interfering.

The short-term objective of the EUMM is “the stabilisation of the situation with a reduced risk of a resumption of hostilities, in full compliance with the six-point Agreement and the subsequent implementing measures”.³ There is still a danger that hostilities may flare up again; indeed, in summer 2009, less than a year after the August war, Russian, Georgian and Western sources were speaking of a renewed danger of war.⁴

The Mandate

The EUMM is one of the most hastily assembled civilian peacekeeping and security missions, having emerged, so to speak, “in the heat of battle”. The brief armed encounter between Russia and Georgia – on the margins of Europe – dominated the headlines in August and September 2008, sent shockwaves through the international community and prompted talk of “a new Cold War”.⁵ Under the French EU Council Presidency the EU played a surprisingly high-profile role in the Georgia – or Caucasus – crisis. For the first time it was the EU, not the United States, that led the process of ending a war in the European neighbourhood. At the time, the United States was in the throes of the presidential election campaign; moreover, if NATO had intervened in the Georgia conflict there would have been considerable resistance from Russia.

Following the ceasefire agreements initially negotiated by the French President (in his function of Presidency of the EU) Nicolas Sarkozy and Russian President Dmitrii Medvedev on 12 August and renegotiated on 8 September, an international mission was required to monitor the implementation of these agreements and the post-war stabilisation process in Georgia. In the immediate aftermath of the August war the EU member states proved remarkably willing to participate in such a mission. Their unanimity on this issue was particularly surprising given that the EU had previously tended to be divided on the issue of relations with the two opposing powers, Georgia and Russia – with some states (like Sweden,

³ Ibid.

⁴ “Russia Begins War Games in Georgia”, *The New York Times*, 30 June 2009; “Predchuvstvie Avgusta: Russkie voennye gotovyatsya otrazhat' novuyu agressiyu Gruzii” [A premonition of August: The Russian military is prepared to repel new aggression from Georgia], 15 June 2009, www.rbcdaily.ru/2009/06/15/focus/418922; International Crisis Group (ICG), *Georgia and Russia: Still Insecure and Dangerous*, Europe Briefing No. 53 (Tbilisi and Brussels, 22 June 2009).

⁵ Hans-Henning Schröder, ed., *Die Kaukasus-Krise: Internationale Perzeptionen und Konsequenzen für die deutsche und europäische Politik*, SWP-Studie 25/2008 (Berlin: Stiftung Wissenschaft und Politik, September 2008); Uwe Halbach, “Die Georgienkrise als weltpolitisches Thema”, *Aus Politik und Zeitgeschichte*, 2009, no. 13 (23 March), 3–11.

Poland and the Baltic states) coming down firmly on Georgia's side and supporting its Euro-Atlantic ambitions and others, like Germany, maintaining a more neutral position between the two adversaries.

The ceasefire agreements: a problematic reference point

The ceasefire agreements concluded by the French and Russian presidents – which ended the fighting, stipulated the withdrawal of Russian troops from Georgia's heartland and provided for subsequent peacekeeping – are one of the mission's central reference points. The ceasefire agreements are referred to as the "six-point agreement"; hence the wording of the mandate text of 15 September, which defines the assignment of the mission as monitoring "full compliance with the six-point Agreement and the subsequent implementing measures throughout Georgia".⁶ In view of the stepped-up Russian military presence in Abkhazia and South Ossetia, however, Russian military withdrawal to the "status quo ante bellum" remains unfulfilled. There can thus be no question of "full compliance" with the ceasefire agreements "throughout Georgia", putting the mission in something of a dilemma.

The six-point peace plan agreed by Sarkozy and Medvedev on 12 August 2008 stipulated first and foremost the cessation of hostilities by the two adversaries and the withdrawal of their troops behind pre-war lines. Other points concerned the return of refugees to their homes and granting international aid organisations access to the conflict zones. The Russian Foreign Ministry defined the conflicting parties in this peace agreement as Georgia, Abkhazia and South Ossetia, while regarding itself, France (representing the EU) and the OSCE as mediators. The ceasefire plan avoided mentioning the territorial integrity of Georgia explicitly, but called for the withdrawal of Russian troops from Georgia – with the exception of the Russian "peace troops" stationed in Abkhazia and South Ossetia. It also spoke of launching "international negotiations on modalities for security and stability in South Ossetia and Abkhazia".

Russia subsequently withdrew most, though not all, of its troops from Georgia's heartland and in recognising the independence of Abkhazia and South Ossetia on 26 August 2008 took a decisive diplomatic step towards the division of Georgia. The EU and other international organisations protested against this step and declared their support for Georgia's territorial integrity – in other words, for the two disputed territories to remain part of the internationally recognised national territory of Georgia. Nicaragua and Venezuela were the only other states to join Russia in recognising Abkhazia and South Ossetia.

This made it necessary to renegotiate the six-point plan. On 8 September Sarkozy and Medvedev held a private meeting in Moscow and once again set deadlines for the withdrawal of Russian forces from the areas of

⁶ Council of the European Union, Council Joint Action 2008/736/CFSP (see note 2), Article 2: Mission statement.

Georgia's heartland bordering on Abkhazia and South Ossetia. They also agreed that international observers from the United Nations and the OSCE already present in Georgia would stay on and that an additional contingent of at least two hundred EU observers would be sent. An international conference was to be called in Geneva to address the issue of security in the conflict zones, the return of refugees and a peaceful regulation of the conflict.⁷ With regard to "peaceful conflict regulation" vis-à-vis Abkhazia and South Ossetia, however, Russia had in the meantime sent a clear signal of its own by according the two regions diplomatic recognition. It thus became clear that there could be no question of restoring the military "status quo ante bellum". Just one day after the negotiations the Russian defence minister announced that several thousand Russian soldiers would remain stationed in Abkhazia and South Ossetia, a far greater number than the "peacekeeping contingent". Moscow countered the call for a withdrawal of its troops behind pre-war lines with the argument that it had to uphold its military protection for Abkhazia and South Ossetia in view of what it called "Georgian aggression".

Peacekeeping on a controversial footing

Having withdrawn from the territory that it considers to be Georgia (of which in Moscow's view Abkhazia and South Ossetia are no longer part), Russia believes it has fulfilled its part of the ceasefire agreements. It has stepped up its military presence in Abkhazia and South Ossetia and established new military bases in both regions. In addition, on 30 April 2009 a treaty was signed in Moscow between Russia and the two de facto statelets, providing for the stationing of Russian border troops along the administrative borders to Georgia (or the "rest of Georgia"). Russia has thus done everything it can to mark out and legalise the division of Georgia and the definitive separation of the two regions from Tbilisi.

In the period following the second round of negotiations in September 2008, the international community failed to challenge Russia's deviation from the ceasefire agreements with any consistency, or pursue the conflict with any vigour. After a phase of protesting against Russian policy towards Georgia, Western states and organisations like NATO switched in November 2008 (or earlier) to a policy of avoiding confrontation and a return to "business as usual" with Moscow. Indeed, the French Council Presidency confirmed in November 2008 that Russia had complied with the EU's main demands with respect to Georgia and recommended resuming negotiations over a new Partnership and Cooperation Treaty with Russia, which had been interrupted by the war. Although at this point Russian troops had withdrawn from Georgia's heartland as far as the village of Perevi on the administrative boundary of South Ossetia, Russian was simultaneously busy strengthening its military presence in Abkhazia and South Ossetia. In

⁷ On the negotiations over the ceasefire agreement see Jim Nichol, *Russia-Georgia Conflict in August 2008: Context and Implication for U.S. Interests* (Washington, DC: Congressional Research Service, 3 March 2009), 7–10.

addition, Russian, Abkhazian and Ossetian military outposts remained in some parts of the region that had been controlled by Georgia before the war, including the region of Akhgori (which in the Soviet era was part of the South Ossetian Autonomous Oblast and had been controlled by the Georgian government since 1991), the village of Perevi on the administrative boundary to South Ossetia and the Upper Kodori Valley in Abkhazia (which had been under Tbilisi's military control since 2006). With respect to these three places, Perevi, Upper Kodori and Akhgori, the EU has continued to insist that the pre-war status quo be restored. Although in February 2009 the NATO Secretary General criticised Russia's plans to expand its military bases in Abkhazia and South Ossetia, he also supported a "measured reengagement" with Russia through the NATO-Russia Council.⁸

Mandate and area of deployment

The mandate lists the main tasks of the mission as follows:

- ▶ *Stabilisation*: "[...] centred on full compliance with the six-point Agreement [the ceasefire concluded by the French and Russian presidents], including troop withdrawals";
- ▶ *Normalisation*: "Monitor, analyse and report on the situation pertaining to the normalisation process of civil governance." The mandate document names the following fields to be monitored: the rule of law, law enforcement structures, public order, security of transport links, energy infrastructures and utilities and the return of internally displaced persons and refugees;
- ▶ *Confidence building*: through "facilitation of contacts between parties".
- ▶ *Information*: Informing the EU about the situation on the ground.⁹

The differences in interpretation of the ceasefire agreements concern key points of the EUMM mandate, particularly the question of the territory it is to monitor. The documents pertaining to this point are vague, using formulations like "in Georgia" or "throughout Georgia", without explicitly mentioning Abkhazia and South Ossetia. But opinions differ between Russia and the rest of the international community over what still constitutes "Georgia" after the August war. For the EU the mandate applies to the entire internationally recognised national territory of Georgia, to which the two disputed regions still belong. Yet in practice neither the two de facto states nor their patron Russia has granted the EU access to South Ossetia and Abkhazia. This means two things: first, by deploying a monitoring mission whose activities are in practice limited to the regions adjacent to Abkhazia and South Ossetia, the EU is actually making a contribution to securing de facto borders that neither it nor the rest of the world – with the exception of Russia, Nicaragua and Venezuela – recognises. Second, denied access to the former war zone of South Ossetia and to

⁸ Aurel Braun, *NATO and Russia: Post-Georgia Threat Perceptions*, *Russie.Nei.Visions* 40 (Paris: IFRI, May 2009), 13.

⁹ Council of the European Union, Council Joint Action 2008/736/CFSP (see note 2), Article 3: Mission tasks.

Abkhazia the EUMM is being prevented from carrying out one of its main tasks, namely to monitor the implementation of the ceasefire agreements and to investigate and report on armed incidents. Such monitoring continued to be necessary for months after the war, as both Russian and Georgian sources persistently issued contested reports of armed clashes.¹⁰ At the end of 2008 Head of Mission Haber described the EUMM's approach to the former war zone in South Ossetia as "a policy of knocking on doors". "We get as close to the borders as possible. We go to the checkpoints and say to them: 'We have the right to monitor.' And they show us the door".¹¹

The Georgian side accused South Ossetia and Abkhazia of driving out ethnic Georgians and provoking outbreaks of violence in order to legitimise the continued presence of Russian troops or even to make their return to the former buffer zones appear necessary. South Ossetia and Abkhazia, in turn, accused the Georgian side of staging armed incidents on their territory in order to discredit the "separatist" governments and their authority. Together with Russia they claimed that the EUMM was ignoring Georgian violations of the ceasefire agreements. The EU monitors, for their part, complained that they were unable to fulfil their mandate until they obtained unhindered access to South Ossetia and Abkhazia.

The EUMM has repeatedly been accused by the governments of Russia and its two protectorates in the southern Caucasus of tolerating alleged Georgian violations of the ceasefire agreements and hence of failing to fulfil its peacekeeping assignment. Haber, as Head of Mission, and Brussels responded that Russia's hindering of access to the conflict zones stood in the way of the peacekeeping assignment. The EUMM and the Georgian government agree on this point. Two memoranda of understanding with the Georgian ministries of the interior and defence impose certain restrictions and reporting obligations on Georgia with respect to police and troop movements and specify what equipment is permitted near the administrative boundaries of Abkhazia and South Ossetia. They also give the EUMM broad inspection and access powers. Yet despite these restrictions Russia has accused the Georgian side of preparing renewed offensives against South Ossetia and Abkhazia, thus justifying its own claim that the two territories continue to require Russian protection against alleged Georgian aggression.

Implementation and Impact

Only two weeks elapsed between the decision of the Council to send the EUMM to the conflict region and its actual deployment. The mission, which was planned to last twelve months and has a budget of €35 million,

¹⁰ Uwe Halbach and Sabine Jenni, *Nachkriegsentwicklung in Südossetien und Abchasien: Internationale Isolation und Abhängigkeit von Russland*, SWP-Aktuell 28/2009 (Berlin: Stiftung Wissenschaft und Politik, June 2009).

¹¹ Hansjörg Haber, "Monitoring ES v Gruzii meshayut osetiny i russkie" [Russians and Ossetians hinder EU monitoring in Georgia], *Deutsche Welle*, 5 December 2008, www.dw-world.de/dw/article/0,,3852585,00.html.

had already reached its full intended strength of 340 staff by the time deployment began in October. Personnel currently includes representatives from all EU states except Belgium, Cyprus and Slovakia. The largest contingents of monitors were contributed by Germany and France, with the German EUMM monitors stationed mainly around Abkhazia and the French deployed to the areas bordering on South Ossetia. Besides the main headquarters in Tbilisi, four field offices were set up to carry out the mission: one in the Georgian (Mingrelian) town of Zugdidi on the border to Abkhazia, two in the towns of Gori and Khashuri near South Ossetia, and another in Mskheta near the Georgian capital. The main contingent of unarmed monitors in the “adjacent areas” around Abkhazia and South Ossetia comprises 225 staff, mainly police with experience of international operations. Between fifteen and twenty patrols are on duty every day and report on complaints by the local population, human rights problems, the security situation and the local military and police presence.¹² The monitors are operating literally in a minefield. When a landmine exploded on the border to Abkhazia in June 2009, this was assessed as a deliberate attack on the unarmed monitoring mission.¹³

The enabling phase of the mission lasted until January 2009. This was followed by a mission-building phase focusing on improving cooperation between the headquarters and the field offices and among the four field offices. In the initial phase there had been complaints about a lack of coordination and of the individual field offices being too autonomous. The problems included the procurement of vehicles and other equipment by individual member states, which meant that at the beginning the mission lacked a uniform outward appearance. Patrols were made up of national contingents with their own vehicles rather than mixed patrols with mission vehicles (as is customary in OSCE missions). In this case the outcome of “national packages” for equipping ESDP missions raises the question of whether alternative procurement principles should not be considered.

Rivalry within the EU

The EUMM has given the EU a higher profile in the southern Caucasus – something for which Georgia in particular had been calling for some time. At the same time, the European presence in this region and in the Georgian capital has become more complicated. Currently, the EU has five different addresses in Tbilisi: the headquarters of the EUMM led by Hansjörg Haber; the representation of the European Commission headed by the Swede Per Eklund; the Special Representative (EUSR) for Georgia, Pierre Morel; the Special Representative for the Southern Caucasus, Peter Semneby; and the local representative of the rotating EU Council Presidency. EU Special Representatives often become involved in conflict regulation in the regions for which they are responsible. The Special Represen-

¹² Website of the EUMM – European Union Monitoring Mission, Tbilisi, www.eumm.eu/ (accessed 9 April 2009).

¹³ “EUMM Says ‘Deliberate Attack’ on Its Monitors”, *Civil Georgia*, 22 June 2009.

tative for Moldova, Kalman Mizsei, for instance, played an active role in regulating the Transdniestr conflict. But in the southern Caucasus the position of the EUSR, the Swedish diplomat Semneby, was rather undermined during the Georgian crisis by the French EU Council Presidency. President Sarkozy succeeded in pushing through the appointment of a separate EUSR for Georgia, bringing in the French diplomat Pierre Morel, who already represents the EU in Central Asia, to fill the post. While this move allowed France to exercise a degree of control over the EU's engagement in Georgia that went beyond that of the Council Presidency, it also led to unnecessary overlaps in mandates and powers, thus complicating matters on the ground.¹⁴ It thus remains unclear which EU address in Georgia is most able to issue authoritative statements on Russia's Georgia policy and on violations of the ceasefire agreements of August and September 2008: the Special Representative for the Southern Caucasus, the holder of the same office for Georgia or the head of the EUMM?

Relations with other actors: effective multilateralism?

The EUMM is currently the main pillar supporting the international presence surrounding Georgia's unresolved secession conflicts. While the international operations involved in conflict mediation and monitoring armed incidents in South Ossetia and Abkhazia were still present immediately after the war, Russia saw to it that their mandates were not extended when they came up for renewal in May and June 2009.

With respect to South Ossetia this meant the OSCE mission in Georgia.¹⁵ Until August 2008 this mission consisted of a headquarters in Tbilisi and a smaller field office in Tskhinvali, with eight unarmed military monitoring officers (MMOs) stationed in South Ossetia with a mandate to monitor the implementation of the 1992 ceasefire agreement between Georgia and South Ossetia. After the August war twenty additional MMOs were stationed in the areas bordering South Ossetia. Russia's stance was now that the "new local realities" – in other words, South Ossetia's independence – required the joint OSCE mandate for Georgia and South Ossetia to be re-examined and it called for the two components of the mission to be separated. Greece, which chaired the OSCE in 2009, proposed two independent missions and a new headquarters in Vienna to monitor the work of the now twenty-eight MMOs on the ground. Russia rejected this proposal, however, calling instead for recognition of South Ossetian independence as a condition for further international missions to be stationed in the area. The OSCE mission was forced to end its seventeen-year presence in Georgia at the end of June 2009, two weeks after Russia vetoed an extension of its mandate. OSCE officials also had the impression that Georgia, too, was ambivalent about its continuing presence. And indeed, Georgia

¹⁴ Amanda Akçakoca et al., *After Georgia: Conflict Resolution in the EU's Eastern Neighbourhood*, EPC Issue Paper 57 (Brussels: European Policy Centre, April 2009), 36f.

¹⁵ Jean-Christophe Peuch, "Georgia – OSCE Calls Timeout While Wrestling with Russia's Ossetia Conundrum", *Eurasia Insight*, 15 May 2009.

had already written off the OSCE mission and had been seeking for some time to replace the Russian-dominated formats for peacekeeping, monitoring and mediation in the two conflicts with the involvement of organisations like the EU, in which Russia did not have the power of veto.

Russia also voted against extending the mandate for the UN Observer Mission in Georgia (UNOMIG), which had 156 monitors stationed in Georgia with access to Abkhazia. Here, too, the de facto state, having received diplomatic recognition and support from Russia, insisted that it be treated under a separate mandate from the one pertaining to Georgia, and called for the renaming of the mission and the recognition of the “new realities”, i.e. Abkhazian statehood.

Up to that point the EUMM had been working together with both missions, particularly with the OSCE on the implementation of the Incident Prevention and Response Mechanism (IPRM) for South Ossetia. Together with the OSCE and the UN, the EU is co-chairing the Geneva talks on Georgia and security in the southern Caucasus. In the fourth round of the Geneva talks in February 2009 the parties hammered out proposals for dealing with violent incidents. The proposals for an IPRM entail holding regular meetings between the security organs of all the parties to the conflict and international monitors, as well as joint inspections of places where incidents have occurred. A first such meeting, set up by the EUMM and the OSCE, was held in April 2009 in Ergneti on the administrative boundary of South Ossetia. Already in May, however, attempts to arrange a second meeting ended in disagreement over where it should be held. With regard to access to the former war zone, much will depend in future on whether this Incident Prevention and Response Mechanism really works. It would at least in theory give the EUMM a right to limited access to South Ossetia, even if the South Ossetian side is ruling this out in practice. A second IPRM for Abkhazia chaired by the UN was agreed on, and two meetings were held in July 2009.

So far the IPRM has been the most visible result of the Geneva talks, which for a long time were dominated by disagreements over the participation of delegations from South Ossetia and Abkhazia. It connects the Geneva talks – which are jointly chaired by the EU, the OSCE and the UN – with the EUMM. Yet even the IPRM is now being called into question. At the beginning of June 2009 South Ossetia was talking about withdrawing from the meetings of the IPRM again – giving as one reason “organisational grounds”, which include the refusal of the OSCE and the EU to recognise its independence. Georgian officials also expressed scepticism about whether the meetings would do much to ensure security and stability in the region.¹⁶

The EU Special Representative for the Southern Caucasus, Peter Semneby, expressly emphasised to the OSCE on 28 May 2009 his desire for a continuing presence of the two missions and with respect to the OSCE mission voiced the hope that, “even now, when discussions have been sus-

¹⁶ ICG, *Georgia-Russia: Still Insecure and Dangerous* (see note 4), 13.

pending, [...] there will be a way to maintain such an important presence on the ground”.¹⁷ Yet the EUMM is being left to perform the essential task of monitoring post-war developments in Georgia alone. This ultimately also applies to its exit strategy. The EU could have established a follow-up mission in concert with the United Nations, but now UNOMIG is having to leave Georgia as well. In late July the EUMM mandate was extended for a further year to September 2010. In the run-up to the visit of US Vice President Joe Biden to Tbilisi on 21 July 2009 Georgia expressed the wish for the United States to actively support the EU monitoring mission or even to join it. A transatlantic expansion of the mission would, of course, meet with resistance from Russia. Hence the rather cautious response to this proposal – in Washington as well as in Brussels.¹⁸

Relevance

Alongside the assignments pertaining to the post-war situation in Georgia the mandate document of the EU Council lists as a fourth assignment the contribution “to future EU engagement”. Given the restrictions to which the EUMM is subject with respect to its central peacekeeping mission “throughout Georgia” (see above), the question is, of course, to what extent it can actually make a decisive contribution to realising European political goals in the southern Caucasus. It is symbolic inasmuch as it is the first ESDP mission with a peace assignment in this conflict-ridden region. The only previous ESDP mission in this region had a pronounced civilian character and avoided becoming directly involved in the conflict: The one-year EUJUST-Themis mission to Georgia (July 2004 – July 2005) was charged with helping Georgian institutions like the Ministry of Justice, the Public Prosecutor’s Office and the Supreme Court to bring about rule of law reforms, which is a top priority of the EU-Georgia Action Plan (European Neighbourhood Policy).¹⁹

The absence of ESDP security and peace missions in the Caucasus was conspicuous, particularly in comparison with the increasing number of such missions being sent to Africa and other regions outside Europe. After all the Caucasus is a particularly vulnerable sector of the EU’s Eastern Neighbourhood when it comes to peacekeeping and conflict management.²⁰ The EU’s desire for stability on its external borders has caused it to

¹⁷ Organisation for Security and Co-operation in Europe (OSCE), “Monitoring Presence in Georgia Remains Essential, EU Special Representative for the South Caucasus Says”, *OSCE Press Release*, 28 May 2009.

¹⁸ “Georgia Wants U.S. to Monitor Conflict”, *New York Times*, 21 July 2009, www.nytimes.com/2009/07/21/world/europe/21georgia.html?_r=1&ref=global-home.

¹⁹ Council of the European Union, Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, Brussels, http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_228/l_22820040629en00210024.pdf.

²⁰ Another ESDP mission tackled another unresolved regional conflict in the EU’s eastern neighbourhood: the EU Border Assistance Mission (EUBAM) to support a customs regime agreed between the Republic of Moldova and Ukraine, which began in November 2005.

become involved in one of the thorniest and most conflict-ridden post-Soviet regions. Three of the four unresolved post-Soviet secession conflicts are in the southern Caucasus. With a population of just fifteen million it represents only a small fraction of the former Soviet Union, but encompassing three internationally recognised states, Georgia, Armenia and Azerbaijan, and three largely unrecognised statelets, Abkhazia, South Ossetia and Nagorny-Karabakh, the most fragmented in political and ethno-territorial terms.

The European Union has always identified these conflicts as the chief causes of the region's political and socio-economic deficits and underdevelopment. When Brussels included the region in its neighbourhood policy in 2004, one of the EU's chief arguments vis-à-vis Georgia, Armenia and Azerbaijan was that EU support could only be effective if two conditions were fulfilled: peaceful conflict regulation and intra-regional cooperation. The EU did not, however, develop any strategy for direct engagement in the field of conflict management. It was hardly involved in any of the conflict negotiation mechanisms – from Abkhazia to Nagorny-Karabakh – always insisting that other actors were active here. While supporting rehabilitation measures in war-torn conflict zones like South Ossetia and encouraging confidence-building measures across conflict boundaries, it avoided tackling “hard” security policy issues such as a European peacekeeping force as an alternative to the Russian monopoly in this field. Georgia's calls before the war of August 2008 for the internationalisation of the Russian-dominated “peacekeeping” in South Ossetia and Abkhazia were directed particularly at the EU and NATO, in other words organisations where Moscow had no veto. Although by 2008 the EU had had to concede that Moscow was hardly playing the role of a neutral mediator in the conflicts in question but was actually one of the parties to the conflict, it avoided responding to Georgia's calls so as not to antagonise Russia. NATO was even less eager than the EU to take on such a role, which would inevitably have aggravated the confrontation with Russia. “Working *around* conflict”, rather than “working *on* conflict” was how a 2006 study by the International Crisis Group characterised EU policy in this area.²¹

When the August war broke out the EU was forced to learn that in this region every external actor would be confronted sooner or later with the challenge of conflict management, even if it had focused cooperation in other fields like governance, the rule of law, promoting democracy or energy cooperation. In October 2008 External Affairs Commissioner Benita Ferrero-Waldner called for an intensification of EU involvement in its eastern neighbourhood, citing the argument that the Georgia crisis had created a “sense of urgency” in bringing eastern neighbours closer to the EU. To reassure Moscow, Commission President José Manuel Barroso emphasised that the plan was not to create a new dividing line in Europe that would isolate Russia. Nevertheless, the EU will scarcely be able to avoid

²¹ ICG, *Conflict Resolution in the South Caucasus: The EU's Role*, Europe Report 173 (Tbilisi and Brussels, 20 March 2006).

becoming more politically involved in regions that, following the Georgia war, Moscow claims even more strongly as its *privileged sphere of influence* and that increases the rivalry between Russia and the EU in their common neighbourhood.

When it comes to conflict management the central challenge for any external actor engaged in the Caucasus is always Russia. For external conflict mediators like the OSCE the past fifteen years of dogged work on the “frozen conflicts” have revealed a dilemma: there is no way forward without Russia, and certainly not against Russia; but neither – at least to date – is there a way forward with Russia, for this central actor in the Caucasian conflicts, most especially in Georgia’s unresolved secession disputes, has too many hybrid functions as a party and a mediator at the same time. Russia mediates conflicts, but it also manipulates them – and sometimes benefits from them as well. With respect to Georgia Russia has always stubbornly insisted on its “peacekeeping” monopoly in Abkhazia and South Ossetia, which has been described in Tbilisi as “not peacekeeping, but keeping in pieces”.²²

Nevertheless, Georgia too has become a major cause of concern in European Caucasus policy. In view of the developments that led up to its South Ossetia offensive of 7–8 August 2008 Georgia ultimately stands for the failure of attempts to project “European conflict culture” into the Caucasus. With its mixture of peaceful and military initiatives the very country that had claimed to be “firmly on the road to Europe” proved to be far from practicing an “exclusively peaceful” policy in the conflicts with its break-away territories, which, along with its neighbours Armenia and Azerbaijan, it had promised to do in its treaties with the EU. The 2006 EU-Georgia Action Plan under the European Neighbourhood Policy listed “the peaceful regulation of internal conflicts” as one of eight priorities. The 2008 progress report therefore criticised Georgia’s unilateral moves vis-à-vis South Ossetia and Abkhazia in 2007 as deviating from this agreement.²³

Conclusions

The August war in Georgia changed the conflict situation in the southern Caucasus for external actors like the EU. Unlike the situation before the war internationally mediated talks between all the parties to the conflict are now being held in Geneva, and the two conflicts, Abkhazia and South Ossetia, are being tackled simultaneously and in the same format. The EU’s role in conflict management has been expanded, and, with the deployment of the EUMM, its presence on the ground considerably stepped up. It no longer functions simply as a monitor and supporter of the mediation activities of other actors (like the OSCE in the case of South Ossetia) but

²² *The Economist*, 12 February 2005, 22.

²³ European Commission, *Implementation of the European Neighbourhood Policy in 2007: Progress Report Georgia*, Brussels, 3 April 2008, http://ec.europa.eu/world/enp/pdf/progress2008/sec08_393_en.pdf.

has taken on greater responsibility as co-chair of the Geneva talks and as the only remaining actor with a monitoring mission.

Nevertheless, we are still a long way from “full compliance with the ceasefire agreements” concluded in August and September 2008 between Sarkozy and Medvedev, which form the central reference point for the EUMM mission. On the contrary, Russia has expanded its military presence in Abkhazia and South Ossetia, failed to implement important provisions of the ceasefire agreements and forced the OSCE and UN missions to leave Georgia. While the West did not accept this development, it did not show any determined opposition either. The security situation surrounding Georgia’s two unresolved secession conflicts remains tense, even if considerable progress has been made with EU support in returning refugees from the “adjacent areas” to their homes. In July 2009 there was once again talk of the threat of war, and in August and September tit-for-tat military threats moved from land to sea after the Georgian coastguard captured a Turkish ship on its way to Abkhazia, and Abkhazia responded by accusing Georgia of piracy and threatening to open fire on Georgian vessels. The most that the EUMM can do in its monitoring role is to ensure that Georgia does not amass new forces on the borders to South Ossetia and Abkhazia. But as the only international monitoring mission left in Georgia, it has no access to the two territories that Russia has recognised as independent states. It is thus pursuing a peacekeeping mandate with one hand tied behind its back.

In July 2009 the EUMM mandate was extended for twelve months, so the EU will be carrying out its mission in Georgia for at least another year. If the EU is to pursue an effective peace policy in Georgia, however, it should not accept the current barriers to EUMM access to Abkhazia and South Ossetia. At the very least it should ensure that the Incident Prevention and Response Mechanism can function properly. In addition the EU should strive above and beyond its monitoring mission to forge contacts with the two de facto states in the fields of peace and development aid, even if these states currently appear to have the status of Russian protectorates, if not indeed that of de facto members of the Russian Federation. Abkhazia at least has shown interest in opening up to the outside world beyond Russia. In an opening of this kind the involvement of European civil society actors seems to be desirable. For among the secessionist entities of post-Soviet space Abkhazia has shown itself to be a remarkable example of how civil society can function under extremely adverse conditions.²⁴

²⁴ Walter Kaufmann, “Der weite Weg zur ‘Zivilgesellschaft’”, *Aus Politik und Zeitgeschichte*, 2009, no. 13 (23 March) Themenheft Kaukasus, 12–18 (17).

The European Union Integrated Rule of Law Mission for Iraq (EUJUST LEX): A Policy Surrogate with Potential

Guido Steinberg

EUJUST LEX is the EU's first "integrated" rule of law mission, in the sense of a single mission aiming to reform the police, the prisons and the courts simultaneously. Its work is purely advisory and is restricted to the criminal justice system. Its origins are closely connected with the EU's decision in 2004 to support reconstruction efforts in Iraq after an initial period of paralysis following the US-led invasion. In the beginning, European support was limited to financial assistance, with EUJUST LEX being the first more substantial measure in the EU's joint policy towards Iraq.

After a planning phase during which the Iraqi transitional government was consulted and a fact-finding mission travelled to Iraq at the end of 2004, the Council of the European Union adopted the Joint Action setting up EUJUST LEX in March 2005, and training activities began in July. EUJUST LEX offers management training for judges and high-ranking police and prison officials and training in investigation methods for judges and high-ranking police officials. Between 2005 and 2009 the one-month courses were hosted by eighteen EU member states – because of the security situation in Iraq, but also because the opponents of the Iraq War wanted no EU presence in the country itself. Originally designed to last one year, the mission has since been extended three times. In November 2008 the Council decided – to the extent permitted by the security situation – to shift the activities of EUJUST LEX to Iraq in a pilot phase starting in July 2009. In autumn 2009, the first courses took place in various regions of Iraq.

The work within Iraq will be fundamentally different from the activities outside the country, because the mission will be forced to address the concrete problems of criminal justice and prison management on the ground. The mission will also have to devote special attention and more resources to the security of its European staff.

The Mandate

The history of the mandate for the EU rule of law mission in Iraq can only be understood in the context of the sharp conflict within the EU in 2002 and 2003 over the invasion of Iraq. The reactions of the various European states made it abundantly clear that there were two very different perspectives within the EU – on this conflict but also on the whole future of the ESDP. One camp was led by the United Kingdom, which joined the Americans to invade Iraq and subsequently provided forces for stabilising the country. Spain, Italy, the Netherlands, Denmark and several eastern Euro-

pean countries joined the British and sent troops after the country had been occupied. France, Germany and a number of smaller member states publicly rejected the war, causing a bitter rupture within the EU. The quarrel over Iraq exposed broader differences, with the British-led camp espousing a concept of the ESDP as an extension of transatlantic ties and NATO, whereas the Franco-German group sought to put a more strongly European stamp on security and defence policy.¹

This background gave great weight to the question of EU involvement in post-war Iraq. The EU wanted to prove – in the very country that had caused the quarrel – that the ESDP had not died the death many commentators had proclaimed in 2003. From 2004 on the initiative was taken by the Commission, which wanted to prove that the EU had recovered from the 2003 stalemate over Iraq and was still capable of acting on foreign policy issues.² It was joined by those states that were already present in Iraq and that anyway demanded stronger EU involvement (even if some successively withdrew their troops from 2004). The United Kingdom led this group, which also included countries like Denmark and the Netherlands, and in 2004 and 2005 London was the driving force behind EUJUST LEX. The British wanted an EU contribution in Iraq to prevent Europe's relations with the United States from deteriorating any further, and were also keen to have European burden-sharing and activities complementing their own efforts to train Iraqi police.

On the opposing side in 2003, Germany initially protested even more vehemently than France against the slightest involvement in Iraq. Berlin rejected the idea of any EU role while France led a larger group of member states (including Belgium and Luxembourg) that rejected direct engagement in Iraq – in order to avoid retrospectively legitimising the invasion – but were still willing to support UN activities.³ Their resistance fell away over the course of 2004. On the one hand Germany and France wanted to repair their badly damaged relations with the United States. On the other, the opponents of the Iraq War wanted to prove that the ESDP they had created was still a viable instrument of European foreign policy. Genuine interest in relations with the new Iraq – which neither Germany nor France wanted to leave to the United States alone – appears to have been a secondary factor in 2004.

¹ Michael Merlingen and Rasa Ostrauskaitė, “Introduction: The European Union in International Security Affairs”, in *European Security and Defence Policy: An Implementation Perspective*, ed. Michael Merlingen and Rasa Ostrauskaitė, 1–24 (13f) (London: Routledge, 2008).

² Daniel Korski and Richard Gowan, “The EU, So Far”, in *What Can Europe Do in Iraq. Recommendations for a New European-U.S. Collaboration*, ed. Heinrich-Böll-Stiftung, 73–85 (75) (Berlin, 2009).

³ Jeffrey Lewis, *EU Policy on Iraq: The Collapse and Reconstruction of Consensus-Based Foreign Policy* (Dublin: Dublin European Institute, University College Dublin, 2008), 2.

The timing of the mission

Since 2003 the number of ESDP missions has grown apace. To that extent the decision to send a rule of law mission to Iraq was part of a general trend. Developments within Iraq played a role too: German and French resistance to a European mission lessened as the structures of an Iraqi state emerged, gradually taking over powers from the occupying forces and acquiring legitimacy through elections.

The handover of sovereignty to an Iraqi transitional government on 28 June 2004 was a crucial factor for the timing of the EUJUST LEX mission. Washington dissolved the Coalition Provisional Authority (CPA) headed by US proconsul Paul Bremer and handed the country's day-to-day administration over to an interim government under Prime Minister Ayad Allawi. From this point the EU began to intervene a little more actively – but still very cautiously. Shortly before the handover of sovereignty the Commission presented the Council and the European Parliament with proposals for increasing involvement in Iraq.⁴ The authors of this strategy paper, which was to guide EU policy in the subsequent years, asserted that the upcoming handover of sovereignty and the central role of the UN gave the EU an opportunity to support Iraq. The Commission recommended initiating a dialogue with Iraq about possible European contributions and gradually stepping up engagement. Questions of rule of law and reform of the justice and security sectors topped the Commission's wish list.⁵ Although the anti-war side continued to maintain a clear distance to Allawi's government, they protested less decisively against EU activities.⁶ Now the poor security situation in Iraq became the main argument against stepping up activities and engagement on the ground.

The development of Iraqi-owned political structures proceeded. Elections were announced for a new transitional government, which was then to prepare a constitution and hold new elections on that basis. It became increasingly clear that the opponents of the invasion and the EU were harming their own interests if they refused to establish relations with the forces now coming to power in Iraq. The Netherlands – which held the EU Council Presidency in the second half of 2004 – tried to convince its European partners to send EU observers to support the January 2005 elections. The rift within the EU was still too wide to allow that, but a compromise was found: the UN sent a small group of international election observers,

⁴ European Commission, *Communication from the Commission to the Council and the European Parliament: The European Union and Iraq: A Framework for Engagement*, COM(2004) 417, Brussels, 9 June 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0417:FIN:DE:PDF> (accessed 4 June 2009).

⁵ Ibid.

⁶ Jonathan Spyer, "Europe and Iraq: Test Case for the Common Foreign and Security Policy", *MERIA Journal* 11, no. 2 (June 2007), www.merijournal.com/en/asp/journal/2007/june/spyer/index.asp.

while the European Commission gave financial support for election preparations.⁷

From winter 2004–05 this gave rise to a model for supporting the political process in Iraq where the EU primarily supported the work of various UN institutions, which in turn supervised the elections and the constitutional referendum of 2005. The most important prerequisite for this compromise was the expanded role of the UN in Iraq. Its presence gradually persuaded potential veto-holders like France, Germany, Belgium and Luxembourg to give up their resistance to European involvement.⁸ Because France in particular had insisted on a stronger role for the UN in Iraq, it would have found it difficult to justify further prevarication. Consistently, in its strategy paper of July 2004 the Commission pointed to the central role of the UN in rebuilding in Iraq.⁹ Although the anti-war camp remained hesitant, they permitted activities to begin, including EUJUST LEX. This debate is reflected in the way the mandate itself repeatedly underlines the role of the UN and the complementary nature of the EU and UN measures.

The mandate and its objectives

The Commission began by entering into contact with the Iraqi authorities and sending a fact-finding mission at the end of 2004 to prepare proposals for the mission. During these discussions the differences between the two groups within the EU resurfaced. The opponents of the war continued to voice their reservations and insisted on a very cautious course. This is apparent even in the name of the mission – EUJUST LEX “for Iraq” rather than “in Iraq” – and was the main reason why until 2009 training measures took place exclusively outside Iraq. Britain made proposals designed partly to support its own activities and those of the coalition. One proposal was to establish a police academy in the country, but was given up even before it entered the deliberations in Brussels.¹⁰ Thus the shape of the mandate was determined by the lowest common denominator

The mandate for EUJUST LEX was laid out in detail in the Council Joint Action of 7 March 2005.¹¹ The mission was to begin on 1 July 2005 after a short planning phase, initially for one year (it has since been extended

⁷ Ibid.

⁸ Lewis, *EU Policy on Iraq* (see note 3), 16.

⁹ European Commission, *Communication from the Commission to the Council and the European Parliament* (see note 4)

¹⁰ Author’s interview with the Head of Mission, Stephen White, Arbil, 25 October 2009. British assistance to Iraq concentrated on Basra, the location of its main base and headquarters, where Britain ran a Provincial Reconstruction Team. On British police training see Richard Youngs, *Europa and Iraq: From Stand-off to Engagement?* FRIDE Policy Paper 1 (Madrid: Fundación para las Relaciones Internacionales y el Diálogo Exterior, November 2004), 9.

¹¹ Council of the European Union, *Council Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX*, Brussels, 7 March 2005, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:062:0037:0041:EN:PDF>.

three times).¹² The EU wanted to “contribute to the reconstruction and the emergence of a stable, secure and democratic Iraq” by strengthening the criminal justice system. The European intervention was to be “an integrated mission, which could *inter alia* promote closer collaboration between the different actors across the criminal justice system and strengthen the management capacity of senior and high-potential officials from the police, judiciary and penitentiary and improve skills and procedures in criminal investigation in full respect for the rule of law and human rights.”

EU representatives emphasise that this was the first time an integrated approach had been chosen for a rule of law mission. Senior judges and high-ranking police and prison officials were to attend the same courses together with an eye to strengthening cooperation between the different parts of the criminal justice system. In the first year it was planned to train 770 high-ranking Iraqi officials in EU member states. The EU believed this figure to be the “critical mass” required to effect change. Whether or not that was actually the case, the EU was probably not yet in a position to judge. In close cooperation with the responsible Iraqi authorities 770 men were chosen for training:¹³ 520 judges and high-ranking police and prison officials for management training and 250 judges and high-ranking police officials for training in criminal investigation methods. The most important criteria were seniority and an appropriate functional and geographical distribution.¹⁴ The individual courses were to last about one month and be offered in Arabic and Kurdish.

Stephen White, a former police officer from Northern Ireland, was appointed Head of Mission. He had already worked as a police advisor to the CPA in Basra in 2003–04, and in a sense embodied the outstanding British interest in the mission. Tying the mission closely to British interests seems not to have impaired its legitimacy among the Iraqis; it was at least clearly rejected by no party or population group.¹⁵ The mission is led from a coordination office under the Council Secretariat in Brussels, with a small liaison office in Baghdad (housed symptomatically in the British embassy in the Green Zone). The liaison office is principally responsible for organisational matters, as well as maintaining contact with the Iraqi authorities, together with whom it selects the candidates to be sent to Europe.

Although the Joint Action states that “training activities shall take place in the EU or in the region”, it was clear that courses would initially be held exclusively in Europe. EUJUST LEX was given a budget of €10 million for the first year, with running costs of about €7 million for each of the fol-

¹² The first two extensions were for eighteen months each, the third for one year.

¹³ At this point there was indeed not a single woman involved.

¹⁴ Catriona Gourlay and Annalisa Monaco, “Training Civilians and Soldiers to Improve Security in Iraq: An Update of EU and NATO Efforts”, *ISIS European Security Review*, no. 25 (March 2005): 1–3 (1), www.isis-europe.org/pdf/esr_26.pdf.

¹⁵ This impression was confirmed to the author by the Head of Mission, Stephen White, in an interview in Arbil, 25 October 2009.

lowing years up to 2009.¹⁶ However, all the costs of training measures in the member states were covered by the member states themselves, which also provided personnel for the office in Baghdad and some of the staff in Brussels.¹⁷

Assessment of the mandate

The details of the mandate reflect the broader difficulties of EU policy towards Iraq. For the ESDP it was certainly a success simply to be able to reach a consensus at all for an involvement in Iraq, just one and a half years after the rift over the invasion. But the restrictions applied, such as insisting that training take place outside of Iraq, reveal the very narrow bounds of flexibility on both sides.

The goal/means relation of the mandate was especially problematic in this context. The stated goal of the mission, namely, to “contribute to the reconstruction and the emergence of a stable, secure and democratic Iraq” by strengthening the criminal justice system, was ambitiously formulated. But it was very unlikely that a long-term rule of law mission as outlined in the Council Joint Action would be able to make a meaningful contribution, especially given the situation in Iraq at that time. The Sunni uprising was already well under way in winter 2004–05 and from spring 2005 the clashes spiralled steadily into confessional civil war. EUJUST LEX could offer nothing towards solving that problem, not even in questions of detail. In fact, by 2005 the very existence of the Iraqi state itself was in danger. Even if, in the ideal case, EUJUST LEX had a positive effect on the Iraqi criminal justice system, this would have only been noticeable in the long term. And in the absolutely conceivable worst case scenario, Iraq would by then have ceased to exist. So to that extent the mission completely disregarded the actual problems on the ground.

Another factor is that the three professions involved faced very different problems. Head of Mission Stephen White pointed this out at the end of 2005 when he mentioned the special problems of the police (in contrast above all to the courts), but without going into detail.¹⁸ The reality was much more dramatic than White suggested. The United States had initiated several attempts to rebuild the Iraqi police from scratch. But in spring 2005 a Shiite-dominated transitional government took control of the interior ministry and the security forces and permitted members of the Shiite militias to be integrated into the police. Police and Shiite militias working together then acted with great brutality against Sunni insurgents and civilians, transforming the police from a failing law and order force into a party fighting on one side in the civil war (and fragmented into different militias). Since then the Iraqi police’s reputation has

¹⁶ The budget for 2008–09 was €7.2 million, with €10.8 million planned for the following year.

¹⁷ Gourlay and Monaco, “Training Civilians and Soldiers to Improve Security in Iraq” (see note 14), 2.

¹⁸ Stephen White, “The EUJUST LEX Mission”, *EuroFuture*, winter 2005, 2–5 (3).

been dreadful, especially among the country's Sunni population. In reality, the whole security sector would have to have been rebuilt from the bottom up – but the mission was not set up for fundamental reform.

Implementation and Impact

The concrete tasks of EUJUST LEX are narrowly defined: training senior judges, police officers and prison officials in order to strengthen the country's criminal justice system. This restriction makes it easier to implement the mandate. EUJUST LEX succeeded in meeting its quantitative targets in all years to date. By April 2009 a total of 2,064 Iraqi officials had taken part in 111 courses, thus achieving what the EU had defined as “critical mass” in 2005. Almost all Iraqi judges, all high-ranking prison officials and most of the higher-ranking police officers in Iraq passed through the programme.¹⁹ The number of states conducting training grew steadily between 2005 and 2009, ultimately reaching eighteen. The UK conducted the most courses (22) followed by France (16), Spain (14) and Germany (13). Next was Denmark (9) – a small country but generally very active with respect to Iraq even after pulling out its troops.²⁰

Expanding the mandate

Since 2005 the mission has twice been extended by eighteen months. In 2009–10 it is planned to expand activities into Iraq itself for the first time, with the first courses taking place in Iraq in autumn 2009. The original mandate contained a clause authorising the Council, “depending on developments in the security conditions in Iraq and on the availability of appropriate infrastructure”, to “examine the possibility of training within Iraq and, if necessary, [...] amend this Joint Action accordingly”.²¹ This occurred in spring 2009, after corresponding initiatives had begun in 2008. When the mission was extended by a year in November 2008 the Danish and Dutch governments, with British support, sought an expansion.²² France was a new force on their side. Under President Nicolas Sarkozy French interest in an involvement in Iraq had grown, also with a view to improving relations with the United States. Therefore, France moved from being one of the blockers of EUJUST LEX to be one of its most determined supporters.²³ Only Germany and Spain (which switched sides after its

¹⁹ Council of the European Union, “Briefing by Stephen White, Head of the EUJUST LEX Mission for Iraq”, Brussels, 26 November 2008, <http://consilium.europa.eu/uedocs/cmsUpload/081126TranscriptPressBriefStephenWhite.pdf>.

²⁰ Council of the European Union, “EUJUST LEX Course Table (up to 30 April 2009)”, www.consilium.europa.eu/uedocs/cmsUpload/ACTIVITY_LIST_0904.pdf (accessed 2 June 2009). On Danish policy see Edward Burke, *The Case for a New European Engagement in Iraq*, FRIDE Working Paper 74 (Madrid: FRIDE, January 2008), 7.

²¹ Council of the European Union, *Council Joint Action 2005/190/CFSP* (see note 11).

²² Korski and Gowan, “The EU, So Far” (see note 2), 78.

²³ Burke, *The Case for a New European Engagement in Iraq* (see note 20), 5.

change in government in March 2004) still advised caution. The old fault line of 2009 was still visible but it had less practical importance now.

But this was not the only reason why EUJUST LEX became more proactive at this time. *Firstly*, the security situation in Iraq improved in 2007 and 2008. Even if the progress was by no means irreversible, it was now possible at least to consider sending personnel to Iraq. *Secondly*, in November 2008 Iraq and the United States signed a Status of Forces Agreement that restricted the powers of the American forces and provided for their complete withdrawal by 2011, thus dissipating any worries that European engagement might legitimise the American presence. *Thirdly*, domestic political developments also suggested that the process of setting up institutions could now be supported more intensively and purposefully, after the regional elections at the end of January 2009 passed off without incident and strengthened the central government.

Accordingly the EU decided to start a pilot phase on 1 July 2009, continuing training in Europe but increasingly holding courses in Iraq itself. The latter are aimed only at new candidates, but also to offer follow-up training to those who had already completed a course. Courses of this type had previously only been offered sporadically in states in the region.²⁴ Now, for example, a mentoring programme to improve the sustainability of the mission was under discussion.²⁵

But in summer 2009 the first contours of the new EUJUST LEX format were only just emerging. The member states, the Commission and the Council Secretariat were still discussing where in Iraq courses should take place, because the security situation still set narrow constraints. Providing security for the European staff will increase the cost of the mission as a whole, and the small office in Baghdad will have to cope with many new tasks. Even more important, perhaps, is the sharp change in the character of the mission: direct contact with the situation on the ground will give the mission a political dimension.

More coordination needed with the United States

The most sensitive questions have always been cooperation with the American forces on the ground and coordinating EU activities with those of the United States and the European states with a presence in Iraq. Conducting training in Europe largely bypassed these issues. The Americans tolerated European activities without granting them any importance. They themselves dominated activities in the security and justice sectors on the ground, but clearly prioritised effective counter-insurgency and counter-terrorism rather than legal training. After 2003 the Americans undertook several attempts to rebuild the Iraqi police, and spent many times more than the EU. Even Washington's European allies (i.e. those in the "coalition

²⁴ Germany conducted courses in Jordan, Egypt and the United Arab Emirates, but stopped after participants reported negative experiences there.

²⁵ European Council, "Briefing by Stephen White" (see note 19).

of the willing”) fretted about the military character of American police training and their neglect of human rights.²⁶

Expanding EUJUST LEX into Iraq increases the need for coordination. Now that European training personnel are in the country it will be imperative to coordinate the mission’s activities with those of the United States.²⁷ The same applies to the activities of the British, who have been training Iraqi police since 2003. The UK will continue to push for EUJUST LEX to complement its own activities. The Europeans will also have to put work into implementing their intention – as stated in the original mandate – of working with the UN, which also trains police.

Tangible successes?

So far EUJUST LEX has no tangible achievements to show. This is largely because the mission is designed for long-term impact and focuses on convincing Iraqi officials of the value of rule of law by confronting them with European practices. Ultimately successes in this field will depend largely on the future development of the Iraqi state. If the country can consolidate its young democracy there is a good chance that the European measures will fall on fertile soil. But if Iraq regresses into an authoritarian state the prospects are poorer. It may be easier to assess progress once European specialists are working on the ground as mentors. Currently we often have to rely on anecdotal evidence and the opinions of Iraqi and Iraqi Kurdish government officials (which are frequently positive).²⁸

Relevance

Small and in practical terms relatively insignificant, this rule of law mission reflects the different stages of development of broader EU policies towards Iraq. The EU gradually became more active as the resistance of the opponents of the invasion diminished. During this time the EU invested a great deal of money in reconstruction but neglected its own interests the country. Between 2004 and 2008 many of Europe’s activities served largely to repair the harm done to relations with the United States, with Iraq itself playing a subordinate role in the scheme of things. In that context, EUJUST LEX served more to demonstrate that Europe was able to overcome the conflict between supporters and opponents of the war and take united action, rather than Europe’s actual interests in Iraq.

Viewed purely objectively, a more active and assertive EU policy would have been desirable ever since 2003. European interests were affected by the collapse of the Iraqi state after the invasion: regional security, energy security, fighting terrorism, and migration being only the most important.

²⁶ Youngs, *Europe and Iraq* (see note 10), 9.

²⁷ Burke, *The Case for a New European Engagement in Iraq* (see note 20), 12.

²⁸ This holds especially true for representatives of the Kurdish Regional Government. Author’s interview with Karim Sinjari, Interior Minister of the Kurdistan Region, 22 October 2009.

Simply in its own interests the EU should have done much more to contribute to stabilising Iraq. But the policies of the individual member states did not permit this. The end of the era of George W. Bush radically shifted the EU's coordinates in Iraq. The goals of the new President Barack Obama, who plans to withdraw US forces as quickly as possible without risking destabilising the country, are much closer to those of the Europeans.

It is difficult at this point in time to assess the relevance of EUJUST LEX. The foremost success, implementation of the mandate, was possible because the narrowly defined concrete goals were achievable. But the Europeans are aware that success in terms of a stabilising security – if it occurs at all – will only become evident over the long haul, and even then the extent of the mission's contribution will not be clear.

Today we can say the following: For one thing the mission has not yet contributed in a measurable and meaningful way to strengthening the Iraqi justice system and security apparatus. The criminal justice system may be in better shape today than in 2005, but the improvements have largely been brought about by altered circumstances on the ground. In 2005 the country was on the brink of a civil war that lasted until 2007. Today the security situation is significantly better. For another, the mission tackles an important problem of European policy in the Arab world, where the EU and its member states have to work together in different ways with authoritarian regimes, large parts of whose populations reject their own governments and regard their allies as accessories. It is high time for Europe to counterbalance its necessary cooperation with Middle East dictatorships by making it clear that it seeks political reforms and above all more rule of law in the region. Offering corresponding cooperation can be a first step in this regard.²⁹ Rule of law missions could certainly make a contribution there, and in this connection EUJUST LEX represents an important experiment. In the Arab world even small positive steps, for example in prison organisation, are important. Positive reactions from Iraq suggest that with rule of law the EU has taken on an important problem for which the Europeans have valuable experience to offer.

Conclusions

There is another reason why the mission has not been a failure. For a long time EUJUST LEX was a policy surrogate, but it was still a sensible measure. It offered an opportunity to act in concert even when the member states were deeply divided over Iraq. And when the chance of expansion appeared it was taken. The approach of gradually expanding engagement – laid out in the discussion document of June 2004 – has turned out well. Expanding EUJUST LEX into Iraq is the right road to take and should be continued, ideally until the Iraqis have accumulated enough competence to be able to teach the programme themselves. The uncertain future

²⁹ For detail see Guido Steinberg, "Countering Jihadist Terrorism", in *German Middle East and North Africa Policy: Interests, Strategies, Options*, SWP Research Paper 2009/RP09, ed. Guido Steinberg, 15–21 (Berlin: Stiftung Wissenschaft und Politik, September 2009), 16–23.

trajectory of the political system represents the main source of potential obstacles. Even if new problems surface in Iraq the EU should continue the programme. Iraqi Kurdistan, where most use of the programme has been made, appears to offer the best prospects of success for the rule of law mission.

As soon as EUJUST LEX becomes more active within Iraq coordination with the American, British and UN police and justice programmes will become a matter of urgency. Now that all the major obstacles to closer cooperation have disappeared it would probably make sense to bring the various measures together in a mission under UN control.³⁰ In any case the Europeans should expand security sector cooperation in order to contribute more to stabilising Iraq. The most important task is fundamental reform of the Iraqi interior ministry, which is responsible for the still-controversial police forces. In 2009, the preconditions are there to move from training measures of uncertain effectiveness to fundamental reforms.

³⁰ On this proposal see Burke, *The Case for a New European Engagement in Iraq* (see note 20), 12.

EUPOL Afghanistan: The Credibility-Test for Europe's Civilian Engagement

Ronja Kempin and Stefan Steinicke

On 15 June 2009, Germany handed responsibility for transforming the Afghan National Police (ANP) into an effective civil police force to the EU. A police force dedicated to following democratic principles, capable of guaranteeing law and order and enjoying the confidence of the citizens is a fundamental building block of any functioning state. In fragile states establishing such a force is therefore one of the most important challenges for the international community.¹ Germany supported the Afghan police once before, back in the 1960s and 1970s. When reconstruction began in 2002 Berlin again took on this task at the request of the Afghan transitional government and the United Nations, and has played a leading role since then.² In recent years the security situation has worsened dramatically, with suicide bombings and insurgent attacks rising steadily since 2006, and corruption is endemic throughout the Afghan security sector. In this situation Berlin used its EU Council Presidency in the first half of 2007 to put its own efforts to assist the building of the ANP on a broader footing: On 30 May 2007 the EU's General Affairs and External Relations Council adopted a Joint Action establishing the police mission EUPOL Afghanistan. With 195 police officers and legal experts it was at the time the largest and most ambitious civil mission under the ESDP.³

The Mandate

EUPOL Afghanistan was established to expand the existing German efforts to build an Afghan police force dedicated to civil democratic standards. For that reason the background to the mission and its tasks are closely tied to the preceding German intervention.

¹ Andrew Goldsmith, "Policing Weak States: Citizen Safety and State Responsibility", *Policing and Society* 13, no. 1 (2002): 3–21; Nick Grono, *Policing in Conflict States – Lessons from Afghanistan*, speech in The Hague, 16 June 2009, www.crisisgroup.org/home/index.cfm?id=6167&l=1 (accessed 7 July 2009).

² Auswärtiges Amt, *Deutsches Engagement beim Wiederaufbau der afghanischen Polizei*, 8 July 2009, www.auswaertiges-amt.de/diplo/de/Aussenpolitik/RegionaleSchwerpunkte/AfghanistanZentralasien/Polizeiaufbau-dt-Engagement.html (accessed 29 June 2009).

³ Council of the European Union, *Council Joint Action 2007/369/CFSP of 30 May 2007 on Establishment of the European Union Police Mission in Afghanistan (EUPOL Afghanistan)*, Brussels, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_139/l_13920070531en00330038.pdf, (accessed 29 June 2009).

The mission's precursors

In January 2002 the participants at the International Conference on Reconstruction Assistance to Afghanistan (Tokyo Donors' Conference) decided to support comprehensive reform of the Afghan security sector. Lead nations were chosen to coordinate different parts of the security sector: the United States was to rebuild the Afghan National Army (ANA); Italy took on the justice sector; the United Kingdom was to lead the fight against the opium trade; Japan was to lead the process of disarming, demobilising and re-integrating former fighters. Germany's role was to reconstitute the Afghan police force.⁴

The German Police Project Office (GPPO) made important progress repairing civilian structures that had been almost completely wiped out under the mujahedin and the Taliban. The ANP was reformed organisationally by slimming down the traditional ranks in favour of an effective homogeneous leadership structure and leading posts were filled according to criteria of professionalism. Arrangements were also made to ensure that police were paid regularly. Finally, the German government set up a police academy in Kabul to train middle- and high-ranking officers.⁵

From 2002 to 2007 Berlin provided €12 million annually for police-building in Afghanistan. On average there were forty police officers from Germany's national and state forces working at GPPO in Kabul and its outposts in Mazar-e-Sharif, Kundus, Faizabad and Herat,⁶ but the funds and personnel were not enough to achieve the goals that had been set. In January 2006, in the Afghanistan Compact, the international community agreed to set up a "fully constituted, professional, functional and ethnically balanced Afghan National Police and Afghan Border Police with a combined force of up to 62,000" by the end of 2010.⁷ Although Germany succeeded in training about five thousand middle- and high-ranking police officers at the police academy in Kabul and providing short training courses for another fourteen thousand, the available resources did not stretch to either training the urgently needed uniformed police on the ground or to reforming the Afghan Ministry of Interior Affairs, which is responsible for the ANP.⁸ Germany's difficult situation became worse still

⁴ Duncan Barley, "Rebuilding Afghanistan's Security Forces", *The RUSI Journal* 153, no. 3 (2008): 52–7.

⁵ Auswärtiges Amt (AA) and Bundesministerium des Innern (BMI), *Polizeiliche Aufbauhilfe in Afghanistan* (Berlin, December 2005), www.bmi.bund.de/cae/servlet/contentblob/139388/publicationFile/15219/Polizeiliche_Aufbauhilfe_in_Afghanistan_Id_95041_de.pdf (accessed 29 June 2009).

⁶ Bundesministerium des Innern (BMI), *Polizeiliche Aufbauhilfe in Afghanistan*, www.bmi.bund.de/cln_095/DE/Themen/Sicherheit/Polizei/Afghanistan/Afghanistan.html (accessed 25 June 2009).

⁷ The London Conference on Afghanistan, *The Afghanistan Compact*, London, 31 January–1 February 2006, Annex 1: Timelines and Benchmarks, 6, <http://unama.unmissions.org/Portals/UNAMA/Documents/AfghanistanCompact-English.pdf> (accessed 26 June 2009).

⁸ International Crisis Group (ICG), *Reforming Afghanistan's Police*, Asia Report 138 (New York: ICG, August 2007).

in the course of 2006, when the United States called for the number of trained Afghan police to be increased by 20,000 to 82,000.⁹

But criticism of Germany's lack of commitment arose long before the Afghanistan Compact. Already in late 2003 transitional President Hamid Karzai was demanding twenty thousand police to secure the first free presidential elections scheduled for October 2004; otherwise, he said, the vote would not take place.¹⁰ In order to ensure that the election went ahead, the United States decided to invest in training the ANP as well as the Afghan army. Within a short space of time the United States became the biggest national donor for police-building in Afghanistan. Washington's spending increased a hundredfold in five years, from \$25.5 million in 2002 to \$2.7 billion in the 2007 financial year,¹¹ and its commitment of personnel soon outstripped Berlin's as well. The US Department of Defence is responsible for American police-building efforts. Since November 2003 approximately one hundred American military personnel and five hundred employees of the private security firm DynCorp have been working to create a functioning Afghan police force.¹²

So although the United States had much more ambitious plans for the ANP than Germany, Berlin stuck to its course and did not expand its own efforts. As well as producing tensions in the transatlantic relationship, this left Germany without influence on the American training activities. Whereas Berlin concentrated in creating a civilian police force to ensure law and order, Washington wanted to train a force capable of protecting itself and fighting terrorists.¹³

Origins and timing of the mission

In the run-up to the November 2006 NATO summit in Riga, the United States, Canada, the Netherlands and the United Kingdom urged Berlin to

⁹ This increase was approved in April 2007 by the Joint Coordination and Monitoring Board (JCMB), whose members represent the Afghan government and the twenty-three countries that donate most funds for police work. See ICG, *Reforming Afghanistan's Police* (see note 8), 10.

¹⁰ Under the German training concept the first 230 senior officers were not to be appointed until 2005. In 2003 less than 800 German-trained junior officers were available to the Afghan transitional government. Karzai's exasperation is understandable in the light of these figures. Figures from AA and BMI, *Polizeiliche Aufbauhilfe in Afghanistan* (see note 5), 11.

¹¹ United States Government Accountability Office, *Afghanistan Security*, Washington, D.C., June 2008 (Report to Congressional Committees, GAO, 08-661), 11, www.gao.gov/cgi-bin/getrpt?320488-GAO-08-661 (accessed 29 August 2009).

¹² Andrew Wilder, *Cops or Robbers? The Struggle to Reform the Afghan National Police* (Kabul: Afghanistan Research and Evaluation Unit, July 2007), 19, www.areu.org.af/inde.php?option=com_docman&task=doc_download&gid=523 (accessed 29 June 2009).

¹³ Especially since the resurgence of the Taliban, the United States has been concentrating increasingly on sheer force of numbers in police recruitment and training. See Ronja Kempin, *Polizeiaufbau in Afghanistan: Plädoyer für eine weitere Ausdehnung des EU-Engagements*, SWP-Aktuell 47/2007 (Berlin: Stiftung Wissenschaft und Politik, August 2007), www.swp-berlin.org/common/get_document.php?asset_id=4276 (accessed 26 June 2009).

commit more money and personnel to Afghanistan. In a move designed to silence criticism of Germany's work thus far, the German Foreign Ministry revived its proposal of spring 2006: an EU mission to expand and intensify the existing German efforts to rebuild the Afghan police force. Thus, Berlin had to set up an ESDP mission considerably better staffed and funded than the German GPPO. It was to begin during the German EU Council Presidency in the first half of 2007. The EU was particularly well-suited to be the vehicle for Germany's reform efforts because the member states had already agreed in November 2005 to provide "funds and expert assistance" to assist efforts to "develop a national police and border police force".¹⁴ So in October 2006 the Political and Security Committee (PSC) sent an EU assessment mission to Afghanistan. It recommended "that the EU could consider contributing further to support the police sector through a police mission."¹⁵ At the end of November 2006 the PSC sent a fact-finding mission to Afghanistan. In this context Berlin was quickly able to win the approval of its EU partners for a civilian ESDP mission: on 12 February 2007 the Council of the European Union adopted the Crisis Management Concept (CMC) for a police mission in Afghanistan and the Concept of Operations (CONOPS) was approved on 23 April 2007. On 16 May 2007 the Afghan government invited the EU to send a police mission and within two weeks the General Affairs and External Relations Council had adopted the Joint Action establishing a police mission (EUPOL Afghanistan), which began its work on the ground just a fortnight later.¹⁶

The mandate and its goals

EUPOL Afghanistan was set up to assist "the establishment under Afghan ownership of sustainable and effective civilian policing arrangements" and thus help stabilise the security situation on the ground. Brussels initially proposed sending 195 police and legal experts under a non-executive mandate. From the CFSP budget €44 million were provided to fund EUPOL Afghanistan until the end of March 2008 and bring the mission to full operational capacity.¹⁷ The deployment was initially set for three years with the mission's size and tasks to be reviewed every six months; in May 2008 the defence ministers decided that the contingent would be expanded to four hundred over the following twelve months in response to the difficult circumstances under which its mission was operating.¹⁸

¹⁴ Council of the European Union, *EU-Afghanistan Joint Declaration, Committing to a New EU-Afghan Partnership*, Strasbourg, 16 November 2005, 4, <http://register.consilium.europa.eu/pdf/en/05/st14/st14519.en05.pdf> (accessed 30 June 2009).

¹⁵ Council of the European Union, *Council Joint Action 2007/369/CFSP of 30 May 2007* (see note 3).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Council of the European Union, *Council Conclusions on Afghanistan*, 2870th External Relations Council Meeting, Brussels, 26–27 May 2008, www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/100631.pdf (accessed 29 June 2009).

Once EUPOL has achieved full operational capacity in Afghanistan it is mandated to fulfil the following four tasks:

- ▶ To help the Afghan government draw up a comprehensive police-building strategy, focusing on the development of a national policing plan and a methodical approach for criminal investigations and border management.
- ▶ To support the Afghan government in implementing this strategy coherently.
- ▶ To connect the simultaneous processes of rebuilding the ANP and establishing and expanding rule of law structures by conducting training with selected members of the interior and justice ministries and the prosecution service as well as with the police.
- ▶ To improve cooperation between the different international actors involved in police-building. To this end, Germany handed its leadership of the secretariat of the International Police Coordination Board (IPCB) to the EU. The IPCB was created in October 2006 at the suggestion of Germany and the United States to strengthen international networking and cooperation in the police sector.¹⁹ The secretariat's job is to coordinate the operational measures (training, mentoring, logistics, reporting) designed to help turn the ANP into an effective civilian institution.²⁰

The mandate of EUPOL Afghanistan is thus very strategic and conceptual; in contrast to the German reform efforts, training measures play only a subsidiary role. Whereas the GPPO concerned itself primarily with training high- and middle-ranking police officers, the EU seeks to work out a general strategy for building a functioning national police force.²¹ Senior officials in the Afghan interior ministry and the regional police chiefs are to formulate and coordinate political measures.²² On the basis of this strategic concept, EUPOL Afghanistan was not given its own budget, but depends instead on funds from EU member states and other countries. Brussels believes that its own experts can successfully conduct their monitoring job without any funds of their own.

Under the terms of its mandate the European experts are to train, observe, mentor and advise in the capital, in the five regional police headquarters (Mazar-e-Sharif, Herat, Kandahar, Gardez, Kabul) and at the level

¹⁹ Bundesministerium des Innern, *Bericht über die deutsche Unterstützung für den Wiederaufbau der afghanischen Polizei*, Sitzung der Ständigen Konferenz der Innenminister und -senatoren der Länder, Nuremberg, 16–17 November 2006, 7, www.berlin.de/imperia/md/content/seninn/imk2007/beschluesse/imk182_bericht_top12.pdf (accessed 26 August 2009).

²⁰ Council of the European Union, *Council Joint Action 2007/369/CFSP of 30 May 2007* (see note 3). On the functions of the secretariat see in particular Wilder, *Cops or Robbers?* (see note 12), 26.

²¹ As well as participating in EUPOL Germany is continuing the bilateral projects started by the GPPO. In summer 2009 these involved twenty officers from national and state forces and about thirty experts as trainers at the German Police Project Team in Kabul and its outposts. See BMI, *Polizeiliche Aufbauhilfe in Afghanistan* (see note 6).

²² Eva Gross, *Security Sector Reform in Afghanistan: The EU's Contribution*, Occasional Paper 78 (Paris: European Union Institute for Security Studies, April 2009), 30.

of the thirty-four provinces. Whereas in the past the work of the forty German police and legal advisers was concentrated on Kabul and the northern provinces, EUPOL Afghanistan's mandate provides as well for mission staff to work in the volatile southern and eastern provinces, where they are to assist members of the ANP and the Afghan interior ministry in setting up a police force committed to democratic principles and human rights.²³ While EUPOL Afghanistan operates at the central, regional and provincial levels,²⁴ the country's approximately four hundred districts were explicitly excluded from the mandate.

Implementation and Impact

When the mission began its work in June 2007 the ANP was – for all the German and American efforts – far from being an effective functioning police force. In much of the country police stations were in a desolate state with widespread shortages of modern firearms, munitions, vehicles, fuel and communication systems. The police were so poorly paid that they were unable to feed a family on their salary, making many prone to corruption or entanglement in criminal activities, such as charging arbitrary “taxes” at checkpoints. Members of the police force have been accused of torture and other human rights violations,²⁵ while arrangements allowing suspects to buy their way out of custody further undermined the integrity of the force. So it can come as no surprise that the Afghan population regarded the ANP as part of the country's security problem rather than as a means to resolving it.²⁶

At the political level too, the situation was in disarray. Karzai's government has the right to appoint police officers and other civil servants in the thirty-four provinces and nearly four hundred districts. All too often it legalised militias run by influential warlords by turning them into local police forces. Those responsible in Kabul cared little that the militias possessed neither police experience nor training, so in everyday situations police recruited in this way often acted according to their own “laws”. The trade in police posts also worked to delegitimise the Afghan police. Interior ministry officials, most of whom are involved in the drugs trade, misused their powers to knowingly sell police stations to tribal leaders and

²³ Council of the European Union, *Council Joint Action 2007/369/CFSP of 30 May 2007* (see note 3).

²⁴ Deutscher Bundestag, 16. Wahlperiode, *Polizeiaufbau in Afghanistan*, Innenausschuss, 81. Sitzung, Öffentliche Anhörung von Sachverständigen, Protokoll Nr. 16/81, 15 December 2008, 12, www.bundestag.de/bundestag/ausschuesse/a04/anhoerungen/Anhoerung_17/Protokoll.pdf (accessed 24 August 2009).

²⁵ A study published in October 2008 reported that 36 percent of 247 minors interviewed in juvenile detention facilities had been tortured or mishandled by the police. See UNICEF Afghanistan and Afghanistan Independent Human Rights Commission, *Justice for Children: The Situation for Children in Conflict with the Law in Afghanistan* (Kabul, October 2008), 16, www.unicef.org/infobycountry/files/Juvenile_Detention_Study_engl.pdf (accessed 26 August 2009).

²⁶ Wilder, *Cops or Robbers?* (see note 12), 48.

drug barons, who were thus able to ensure that their drug transports could pass unhindered through particular regions.²⁷

Implementation of the mandate

The EU has found itself unable to fix these grave problems through the work of EUPOL Afghanistan since 2007. Of course the war-torn environment in which the mission operates must be taken into consideration. In May 2009 the Afghan interior ministry classified eleven districts as “outside government control” and another 124 as extremely dangerous; in large parts of the country counter-insurgency is a much more pressing concern than the international community’s reconstruction and development efforts.²⁸ But the reasons for the mission’s lack of success to date also include home-grown problems within the EU. It is still significantly understaffed, and still unable to expand its activities to the whole territory of the Afghan state.

The EU mission was supposed to grow in three phases. First an EU planning team was set up to create the mission’s structures and prepare the way for its personnel to take up their work smoothly (20 May to 29 June 2007). Then the leading positions were to be filled, the EUPOL offices and staff equipped and 128 police officers from EU member states and other countries integrated into the mission (30 June to 14 November 2007). Finally, the mission was to be fully operational and present everywhere in the country by the end of March 2008.²⁹ However, the last two deadlines were missed by a considerable distance. It was months before the participating states began sending personnel to Afghanistan. The size stated in the mandate – 195 experts – was not achieved until 26 February 2009, in other words almost two years after the EU intervention began.³⁰ Although the maximum size under the mandate was more than doubled on 26 May 2008 (to 400 police advisers and legal experts),³¹ by July 2009 the mission still had only 245 of them.³² The story of the mission is thus a very good

²⁷ International Crisis Group, *Policing in Afghanistan: Still Searching for a Strategy*, Asia Briefing 85 (New York, December 2008), 2–7.

²⁸ Winfried Nachtwei, *(Klein-)Krieg bei Kunduz – Weizenrekordernte nebenan: Besuch in Kabul und Kunduz Mitte Juni 2009*, Gesellschaft für Wehr- und Sicherheitspolitik e.V., Sektion Recklinghausen, <http://gfw-re.de/berichteausderbundespolitik/kleinkriegbeikunduz.html> (accessed 28 August 2009).

²⁹ Antwort des Auswärtigen Amtes und des Bundesministeriums des Innern auf die Anfrage des Abgeordneten Winfried Nachtwei, Fraktion Bündnis 90/Die Grünen vom 23. Juli 2007, 3, www.nachtwei.de/downloads/brief/20070814_aa-bmi_wn_eupol.pdf (accessed 26 August 2009).

³⁰ European Union Police Mission in Afghanistan, *EUPOL – Serving Afghanistan* (online bi-weekly newsletter), 2009, no. 4 (1 March): 1, www.eupol-afg.eu/pdf/4_09.pdf (accessed 25 June 2009).

³¹ Auswärtiges Amt, “EUPOL Afghanistan – Unterstützung der EU für die afghanische Polizei”, 6 July 2009, www.auswaertiges-amt.de/diplo/de/Aussenpolitik/RegionaleSchwerpunkte/AfghanistanZentralasien/Polizeiaufbau-EUPOL.html (accessed 25 June 2009).

³² EU Council Secretariat, *EU Police Mission in Afghanistan*, July 2009, www.consilium.europa.eu

illustration of one of the EU's great weaknesses in foreign and security policy: member states plainly find it difficult to keep their promises and place their own personnel at the service of the mission. Only fifteen of the twenty-seven member states are taking part in EUPOL Afghanistan – and of these only Germany, the United Kingdom, Denmark, the Netherlands, Spain and Italy have managed to contribute more than ten experts apiece.³³ In order just to reach the named figure of 245 EU staff on the ground, fourteen calls for contributions were needed.³⁴ The slowness of member states to provide EUPOL Afghanistan with sufficient personnel is especially incomprehensible when one remembers that in April 2009 Paris declared itself willing to lead the future NATO Training Mission Afghanistan (NTM-A) – which also aims to train the ANP – and to send 150 French gendarmes to Afghanistan as part of that mission.³⁵

Finally, EU bureaucracy also considerably delayed the start of EUPOL Afghanistan's work. Under EU law the individual member states cannot supply missions with equipment such as vehicles and computers. Supplies and services have to be put out to tender, with the order going to the lowest bidder regardless of when they are able to deliver.

The grave shortage of qualified personnel leaves EUPOL Afghanistan hardly able to critically support the work of the interior ministry or the regional police chiefs, or to influence the building, training and conduct of the ANP at the critical junctures. It also means that expanding training measures into the provinces (as stipulated by the mandate) is almost impossible.

By March 2009 EUPOL was active in half of the thirty-four provinces, with the bulk of its staff stationed in the Kabul area (140 persons) and the rest (about 70) distributed throughout the northern and western provinces.³⁶ EUPOL's severely limited ability to operate in the country's regions did not make it any easier for it to support the Afghan government in country-wide implementation of police reforms (again, as required by the mandate). EUPOL staff in the provinces enjoys the protection of the local Provincial Reconstruction Teams (PRTs), which are part of NATO's Interna-

europa.eu/uedocs/cms_data/docs/missionPress/files/090708%20FACTSHEET%20EUPOL%20Afghanistan%20-%20version%202015_EN.pdf (accessed 25.8.2009).

³³ EUPOL Afghanistan, *European Union Police Mission in Afghanistan, Factsheets, Police Strength*, 11 March 2009, www.eupol-afg.eu/images/strength.jpg (accessed 25 June 2009); Daniel Korski, *Shaping Europe's Afghan Surge*, Policy Brief (London: European Council on Foreign Relations, 2009), 9, http://ecfr.3cdn.net/4599862142844e090e_oum6bzbv4y.pdf (accessed 25 June 2009).

³⁴ Deutscher Bundestag, *Polizeiaufbau im Afghanistan* (see note 24), 12.

³⁵ North Atlantic Treaty Organization, *NATO Training Mission – Afghanistan*, 4 April 2009, www.nato.int/cps/en/natolive/news_52802.htm (accessed 12 September 2009).

³⁶ On 11 March 2009 there were thirty-six EU officials in the northern provinces, eighteen in the west, seventeen in the south and just three in the eastern provinces. The seventeen EUPOL staff in the south are members of the Royal Canadian Mounted Police and the Royal Netherlands Marechaussee (police with military status). They are under the responsibility of the Canadian- and Dutch-led PRTs respectively. See EUPOL Afghanistan, *European Union Police Mission in Afghanistan, Factsheets, State of Deployment*, March 2009, www.eupol-afg.eu/images/state.jpg (accessed 24 June 2009).

tional Security Assistance Force (ISAF). Before EUPOL staff come under the shield of a PRT the EU and the respective lead nation have to conclude a bilateral technical agreement, but in the south and east this was blocked by Ankara. Although a full member of NATO, Turkey refuses to agree to any deepening of the EU-NATO relationship beyond the Berlin Plus agreement until the Cyprus question is resolved,³⁷ which means it is impossible to conclude a general agreement between the EU and NATO/ISAF on the protection of EUPOL staff.³⁸ The American militaries' refusal to protect the members of the EU mission is also an issue here.

From the outset Washington was dubious about the EU police-building initiative. In view of the immense challenge of reconstituting a civilian police force dedicated to democratic principles in a land of the size and ethnic diversity of Afghanistan, US leaders felt that the EU mission was too small. The United States has more than three thousand police trainers in Afghanistan and at the end of March 2009 deployed another four thousand advisers to speed up training of the security forces.³⁹ Financially too, the EU's commitment is dwarfed by that of the Americans: Whereas the twenty-seven EU member states are spending €64 million on training the ANP in 2009, the United States is investing about €700 million (\$1.1 billion) – more than ten times as much.⁴⁰ Disappointed at its European allies' lack of vigour, Washington refuses to this day to extend the protection of the American armed forces to EUPOL staff, and has joined Turkey in obstructing an agreement between the EU and NATO/ISAF. Washington considers the activities of the EU staff in the restive southern provinces to be too peripheral for it to be worth risking its own soldiers for their protection.

Beyond that Washington also refuses to support the EU mission in coordinating the respective training efforts. One of EUPOL's most important goals is to improve the cooperation between international actors in the field of police-building. The instrument for this is the secretariat of the International Police Coordination Board (IPCB, see above), which includes the most important police-building donors and high-ranking representatives of the Afghan interior ministry. This does not prevent the United States from refusing to recognise the body, even though it set it up itself in 2006. Washington bears well over 90 % of the burden of police-building in Afghanistan. Unless and until Brussels makes a more substantial contribution in this field the Americans will not tolerate Europeans telling them which training measures to conduct and asking to coordinate them. Consequently the Americans send only a single representative to the meetings

³⁷ Nikolas Busse, "Rückschlag für EU-Polizeimission in Afghanistan", *Frankfurter Allgemeine Zeitung*, 13 September 2007, 6.

³⁸ Gross, *Security Sector Reform in Afghanistan* (see note 22), 31.

³⁹ The White House, Office of the Press Secretary, *Remarks by the President on a New Strategy for Afghanistan and Pakistan*, Washington, D.C., 27 March 2009, www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan (accessed 26 June 2009).

⁴⁰ United States Accountability Office, *Afghanistan Security* (see note 11), 11.

of the IPCB secretariat and ignore its decisions, which rather undermines its authority. Washington sees this drastic measure as the most effective way to prod its European partners into considerably stepping up their police-building efforts.

Relevance

There are three decisive weaknesses in the mandate of EUPOL Afghanistan. *First*, the mission is too small. Given the dramatic state of the ANP, EUPOL's four hundred EU advisers are a drop in the ocean. *Second*, it is plainly not enough to concentrate the EU's reform efforts on the national, regional and provincial levels. More uniformed police and border police need to be trained. *Third*, not having its own budget has impaired the credibility of the EU mission.

When the text of the mandate was being drafted there was already criticism of the mission's meagre personnel resources. Francesc Vendrell, then EU Special Representative for Afghanistan (EUSR), called for the mission to supply at least two thousand advisers and trainers.⁴¹ In view of the desolate condition of the Afghan police and the widespread corruption in and around the police service, he said, the upper limit of two hundred would have to increase tenfold if noticeable headway was to be made. But his recommendation fell on deaf ears in Brussels, which raises the question whether the EU member states actually ever really set out to improve the state of the ANP.

The hesitancy of the chosen EU approach is also reflected in the way the mission was designed from the beginning only to change the structural framework of policing while remaining blind to the country's almost total lack of functioning uniformed police on the ground. When EUPOL Afghanistan failed to make satisfactory progress and there was no debate about the mission's course, certain important EU member states, for example the UK and the Netherlands, turned their backs increasingly openly. Since the end of 2008 they have been pulling their police advisers and legal experts out of EUPOL and working with the Americans instead. In the course of 2007 the Pentagon's central command for Afghanistan (Combined Security Transition Command – Afghanistan, CSTC-A) developed what is so far the most comprehensive programme for training and building the ANP: Focused District Development (FDD). Set up to cover the previously neglected district level, it provides two months training in regional centres for every police unit in each of the almost four hundred districts. While a unit is in training, the police work in its district will be conducted by the newly created and especially well trained Afghan National Civilian Order Police (ANCOP). After training has been completed the police units will return to their home districts, where they will be supported by a Police Mentoring Team (generally composed of civil police

⁴¹ Uwe Sattler, "Mit GSG-9-Erfahrung nach Afghanistan: EU-Polizeimission unter deutscher Führung", *Neues Deutschland*, 15 June 2007.

trainers, military police and interpreters) which provides ongoing training and advises the police units in their daily work. The complete cycle of the FDD programme amounts to about ten months, comprising assessment of the district, the actual training and post-training support. An initial evaluation found the programme to produce solid and lasting results.⁴²

The UK and the Netherlands are now participating exclusively in the American FDD programme. Since January 2009 Germany has also been training police at district level under the FDD scheme and intends to model its national police projects – currently running under the auspices of EUPOL Afghanistan – ever more strongly on that example.⁴³

A further weakness of the mandate lies in the mission's lack of budgetary autonomy, which considerably hampers the ability of the EU officials on the ground to work effectively and flexibly and heavily reduces the mission's prospects of success. As long as it possesses no funds of its own it can neither test alternative approaches for police building through pilot projects nor offer financial incentives for political reform processes. Nor is EUPOL Afghanistan in a position to impose penalties in cases where agreed strategies are not implemented properly.⁴⁴ And being almost invisible in the public sphere, the mission lacks the instruments for taking the initiative itself, for example gaining public impact by handing over vehicles to the ANP or opening EU-funded police stations.

Conclusions

In June 2007 the member states of the EU declared themselves willing to join together to build the Afghan police force. The civil EUPOL Afghanistan mission pursued ambitious goals: it was supposed to develop a national policing plan and thus generate viable police structures. And it was supposed to coordinate international efforts to create an Afghan police force dedicated to the principles of democracy and rule of law.

Those goals are still far off. The civilian intervention of EUPOL Afghanistan is increasingly turning out to be a litmus test of the EU's credibility in the field of security. To this day the EU member states have failed to deploy the full contingent. Nor were they able to keep their promise to have a presence across the whole country. Their activities are still concentrated primarily on the capital Kabul and the northern provinces. But above all the EU has failed to earn the support of the Americans. Without active American cooperation the Europeans have no chance of developing a comprehensive training strategy encompassing border police, uniformed

⁴² Bundesministerium des Innern, *Fragen und Antworten zum Focused District Development (FDD), Polizeireform in Afghanistan – Deutscher Beitrag zum „Focused District Development (FDD)“*, www.bmi.bund.de/SharedDocs/Standardartikel/DE/Themen/Sicherheit/ohneMarginalspalette/fragen_antworten_fdd.html?nn=107364 (accessed 29 June 2009).

⁴³ Auswärtiges Amt, “Bundesregierung verstärkt Engagement in Afghanistan”, press release, 7 July 2009, www.auswaertiges-amt.de/diplo/de/Infoservice/Presse/Meldungen/2009/090707-afghPolizeiaufbau.html (accessed 8 July 2009).

⁴⁴ Gross, *Security Sector Reform in Afghanistan* (see note 22), 33f.

patrols and criminal investigators. And without the protection of the US forces the mission is unable to work at all in the volatile south. The EU will not receive that support until it tangibly enhances the impact of EUPOL Afghanistan.

If the member states of the EU wish to exert a greater influence on the reform of the security sector in Afghanistan, they will have to considerably boost the ESDP mission's staff and funding. EUPOL Afghanistan is still significantly below its upper limit of four hundred staff and the European financial contribution is but a fraction of the American. These defects need to be remedied swiftly. EUPOL Afghanistan must also be put in a position to participate in the American FDD programme. The mandate of the ESDP mission excludes measures at the district level, but the success of FDD demonstrates just how urgently Afghanistan needs capable police in the districts as well. The EU should commit itself to supporting the United States and put the forces of EUPOL Afghanistan at its service. In order for Brussels to be able to contribute its EUPOL staff to FDD activities, the EU member states need to amend the text of the mandate as quickly as possible and authorise EUPOL Afghanistan to work at the district level. Even the enormous American commitment leaves niches for others in the work of police-building. This opens up possibilities for the EU mission, above all in training the border police which has so far been thoroughly neglected. Those in the EU Council Secretariat and the PSC, responsible for the political control and strategic direction of EUPOL Afghanistan, should identify these gaps and give the mission the job of filling them. In that way it could meaningfully complement the American efforts.

Finally, EUPOL Afghanistan should to be given its own budget. Only then will the mission be able to more effectively shape political reform initiatives on the ground and put itself more strongly in the public eye.

The mandate of EUPOL Afghanistan comes up for review in February 2010. Currently the mission risks being sidelined. Restoring credibility will require action above all from those EU member states that turned their backs on it in the past few months. It will require courage and cash, and above all the political will to accomplish a determined course correction.

Conclusions and Recommendations

Muriel Asseburg and Ronja Kempin

In 2003 the EU declared its instruments for civil and military crisis management ready to be deployed. Since then the member states have demonstrated their will to be present as a security actor in many parts of the world, with civil and military engagements in sub-Saharan Africa, the Balkans, the Eastern neighbourhood, the Middle East and even in Asia. In this context, they have contributed to the rule of law and the training of security forces, they have observed and militarily secured elections and border regimes, they have monitored cease-fire and peace agreements, and they have fought piracy and other forms of organised crime. Between January 2003 and autumn 2009 the EU conducted twenty-three ESDP missions and operations, some of which are still ongoing. The missions differ widely in their mandate, size, participation of member and third states, duration, area of operations, and cost.

A Mixed Picture

As the case studies in this volume show, ESDP missions and operations have achieved very different degrees of success, both in terms of implementation of their mandates and with respect to their contribution to conflict management and stabilisation in the area of operations. The record is also mixed with regards to the relevance of the individual deployments for implementing the policy goals identified in the European Security Strategy, i.e., averting security threats to the EU, stabilising its immediate neighbourhood and strengthening effective multilateralism. Without any doubt some ESDP deployments have contributed decisively to conflict management or even resolution. Active monitoring of the cease-fire and peace agreement between the Indonesian central government and the fighters of the Free Aceh Movement by the Aceh Monitoring Mission (AMM) helped to resolve a conflict that had dragged on for decades. In DR Congo the deterrent presence of the military operation EUFOR RD Congo was a significant contributing factor in the largely peaceful conduct of the presidential elections in 2006, which represented an important step towards stabilising the country after years of dictatorship and military conflict.

Other ESDP deployments must be chalked up as modest successes at best. At the end of 2009, the civil mission EUPOL Afghanistan is still far from achieving its goal of making a substantial contribution to training the Afghan police. The civil monitoring mission at the Rafah border crossing between Gaza and Egypt played little role after June 2006 and has been suspended since mid-2007. The military operation EUFOR Tchad/RCA

was neither able to have an easing effect on the Darfur conflict nor to decisively improve the situation of refugees in Chad.

As these examples show, the picture is mixed for both civil and military deployments. In particular, civil missions are not more successful or better at achieving their goals than military operations. Nor can a specific type of mission be identified where the EU is especially capable. The assumption that the “civil power” Europe would be particularly good at institution-building and support for the rule of law is not borne out by the case studies. Nor do they support the converse supposition that the EU’s military operations would have more of a stabilising effect. Rather ESDP military operations also show a very mixed record as far as mandate implementation is concerned, as well as more broadly in terms of their contribution to lasting stabilisation. European states have sought to improve the interoperability of their civil and military capabilities in order to allow more comprehensive approaches to stabilisation in crisis areas and improve effectiveness and sustainability. Still, to date, a clear majority of deployments have been purely civil missions. Of the twenty-three missions conducted thus far fourteen were civil, three (at least in name) civil-military and six of a military nature. While military and civil deployments sometimes occur concurrently, coordinated planning and continued cooperation between the two is still in its infancy. Respective concepts developed jointly by the Council Secretariat and the Commission have yet to find their way into practice.

Factors Influencing Success

The factors that influence success or failure of ESDP engagements lie in the circumstances on the ground, the formulation of the mandate, the resources provided by the EU member states and the integration of the ESDP activities in a more comprehensive conflict management approach. The following factors can be identified as decisive for the success of the Aceh Monitoring Mission, EUFOR RD Congo and EUFOR Althea in Bosnia and Herzegovina. *Firstly*, in all three cases the EU was or is perceived as an independent and credible third party. *Secondly*, the three deployments were (or are) part and parcel of comprehensive European stabilisation efforts – in Aceh through active European mediation efforts, in DR Congo through a whole set of complementary deployments aimed at stabilising the country and in Bosnia and Herzegovina through the Stabilisation and Association Process. Not to be neglected is, *thirdly*, that in Aceh the principal reason why the EU was able to contribute to conflict resolution was that the parties were tired of war. While war-weariness is a factor over which the EU has little influence, an assessment of whether or not a conflict is “ripe” for resolution should always flow into the decision about an ESDP

deployment and into the drafting of the mandate, because it significantly influences the prospects of success.¹

The training of Iraqi security forces by EUJUST LEX Iraq can also be regarded as a success – at least when measured in terms of the programmes being conducted as planned. What cannot be assessed yet is what effect this training will have on the security situation on the ground. It is obvious, however, that without an accompanying reform of the security sector, including in particular the interior ministry, the measures will fall short of meaningful stabilisation. This point applies to other training measures too. In this context it must be noted – as illustrated by the case studies on Afghanistan, Bosnia and Herzegovina, Kosovo and the Palestinian Territories – that none of these missions has yet achieved meaningful progress in reforming the (civil) security sector above and beyond police training and equipment aid. Alongside case-specific causes for lack of progress, there is a more general reason why cadres in the local security apparatus are usually more than happy to take advantage of training and equipment aid but much less enthusiastic about structural reform: the latter threatens to reduce their powers, to tear holes in their patronage networks and to hamper their access to resources. In addition, there are cases where the security apparatus itself is partisan and takes sides in an internal power struggle, sometimes even a violent one. In such cases it is especially difficult to push through reforms aimed at transparency, clearly established competencies and recruitment on the basis of merit rather than political loyalty. In all these cases the EU will ultimately have to focus much more on strengthening local ownership of reforms if it wants to achieve lasting successes in establishing effective police institutions and the rule of law. In this, it must also take into account the population's needs as well as the interests of cadres at the centre and in the provinces.

EULEX Kosovo, the monitoring mission in Georgia and the police missions in Afghanistan and in the Palestinian Territories have encountered larger difficulties in implementing their mandates, some of which have been caused by the formulation of the mandate and the (lack of) resources provided by the member states. In Afghanistan, inadequate staffing and equipment and the absence of a clear implementation strategy have been especially obvious, while in Kosovo, it was mainly logistical difficulties and the failure of member states to provide personnel as pledged that hampered setting up the EU's largest civil mission to date. In other cases, difficult conditions on the ground and other actors' lack of cooperation are the main obstacles to progress. This has been striking in Georgia, where the EU monitoring mission has a de-escalating effect, but has no access to parts of the region it is supposed to monitor. Its presence in fact consolidates the de facto borders Russia has created.

There are also other cases where conditions on the ground made it difficult to implement the mandate: in Afghanistan the security situation

¹ I. William Zartmann, "Ripeness: The Hurting Stalemate and Beyond", in *International Conflict Resolution after the Cold War*, ed. Paul C. Stern and Daniel Druckman, 225–50 (Washington, D.C.: 2000).

drastically limits the radius of action of the European police mission; non-recognition of Kosovo's independence by some EU member states hampers the work of the EULEX mission there; and the continuing power struggle between Hamas and Fatah and the lack of progress on the road to independence undermine the legitimacy of the efforts of the European police mission in the Palestinian Territories. As a rule, the EU's leeway is especially limited when there are strong veto powers in the region or in the UN Security Council (Serbia in the case of Kosovo, Russia in the case of Georgia) who work against the mission's objectives or if the conflict parties withdraw their cooperation during the ESDP engagement (Israel and Egypt in the case of Rafah after Hamas took power in the Gaza Strip). The EU finds itself facing the dilemma of having to seek the consent of local and regional actors, but for that very reason often being so restricted in its freedom of action that the goals of the ESDP engagement become (almost) impossible to fulfil. If EU member states wish to pursue sustainable crisis management (as opposed to mere short-term crisis intervention) they must ensure that the mandate, resources and implementation strategy of each mission and operation are matched to the specific circumstances on the ground. They also need to find the right balance between the personnel and financial resources that are necessary to implement the mandate and those that are realistically available from the member states. In those conflicts where it does engage, the EU will also have to push much more strongly on the political level to achieve lasting conflict settlement. Conflict management as a surrogate for political and diplomatic efforts – in other words ESDP deployments that are not backed up by a political commitment to conflict settlement – promise little in the way of lasting success.

This point is underscored by the cases where missions have failed, seen little success or have not been in a position to fulfil their mandate. EU BAM Rafah, which is officially “dormant”, is a case in point. By late 2009 it is already two and a half years that the mission has been unable to make any contribution to a regular opening of the border crossing. The violent assumption of power by Hamas in Gaza in mid-2007, the comprehensive blockade imposed on the Gaza Strip and the resulting withdrawal of cooperation by important partners (the Palestinian Authority, Israel and Egypt) has kept the border almost completely closed. EUFOR Tchad/RCA restricted itself largely to addressing the symptoms of crisis in neighbouring Sudan, conflict management was not even part of the plan. Ultimately the operation was unable to achieve even the relatively modest objective of permitting the return of internally displaced persons. There are also grounds for scepticism about the prospects of EU NAVFOR Atalanta fulfilling its goal of winning the fight against piracy in the Gulf of Aden. In the end, it may have to transform into a long-term endeavour focussed mainly on protecting shipping routes.

The EU as a Strategic Actor?

Given the mixed record of ESDP deployments to date, one obvious question is whether the EU is actually yet a “strategic actor” in the security and defence field. A strategic actor is one that strives to achieve particular, clearly defined goals through long-term planning and coherent implementation of its activities. As outlined in the introduction, the ESDP should serve to enable the EU member states to achieve three main objectives defined in the European Security Strategy: averting security threats, stabilising the immediate neighbourhood, strengthening effective multi-lateralism. For sure, considered individually, each of the ESDP missions and operations conducted thus far can be assigned to one or more of those named objectives. Overall, however, we find that the EU still has a long way to go before becoming a strategic actor in the field of security and defence. This is illustrated clearly both by the way deployments are decided upon and by the way they are conducted.

Setting up missions and operations – strategic planning?

To this day there are no clear criteria for deciding which ESDP deployments to carry out and which to stand aside from. Whereas the missions and operations in the Balkans and in Georgia were self-evident in the context of the EU’s interest in the stability of its immediate neighbourhood, the great concentration of deployments to DR Congo seem less obvious (five ESDP deployments by late 2009) – especially given that events in DR Congo present no specific threat to European security and other crises and conflicts in sub-Saharan Africa (for example in Darfur or Somalia) pose just as great a risk of regional destabilisation and involve populations in great need of protection. In addition, ESDP deployments have been reactive rather than preventative, and driven by acute crises or external requests for support. The latter can come from the country in which the deployment takes place, arise out of an agreement between conflicting parties that provides for the EU to be third party (as in Aceh, Rafah), or stem from the United Nations or a regional organisation withdrawing from a conflict region and handing the mandate over to the EU (e.g. in Kosovo) or asking the EU to provide temporary support to bridge a resource gap (e.g. EUFOR RD Congo, EUFOR Tchad/RCA). Thus far, it appears EU member states have set themselves against agreeing priorities in relation to area of operation and type of mission, against preparing a corresponding catalogue of criteria, and against early planning. They have also neglected to focus more on crisis prevention rather than crisis management. Nor have they made any real attempt to find out in which type of activities they are strong and then try to improve and strengthen that component of the ESDP tool box. Rather, the priority has been to demonstrate global engagement and make use of all the instruments available. Strategic planning of deployments has not taken place in Brussels.

In many cases missions and operations have been initiated by one of the major EU member states. In itself that does not have to be a problem. But the case studies show that sometimes deployments are approved even when one or more member states have strong reservations or there is little enthusiasm outside the initiating state. As a consequence, cumbersome bargaining processes between EU member states are needed, which often produce a mandate so narrow (in timeframe or scope) that the EU can ultimately contribute little to conflict management (as the case of EUFOR Tchad/RCA shows) or puts the success of the operation at risk (EUFOR RD Congo). In addition, the member states which are less convinced of the engagement's necessity or aims often fail to supply enough personnel. EUFOR Tchad/RCA and EUPOL Afghanistan demonstrate clearly that other member states may fulfil a partner's wish for the EU to take action but at the same time expect that partner to bear the lion's share of the burden. Another problem that can arise in this connection is that if the mission or operation is strongly dominated by the personnel or interests of one member state – as was the case with EUFOR Tchad/RCA – the EU is not perceived as an even-handed third party, endangering the credibility and success of its activities. Furthermore, such deployments, whose operational necessity and timing are often unclear, generally lack public support. The detachment of some member states towards ongoing EU missions and operations does nothing to legitimise them and promote constructive discussion of the ESDP within European societies.

Designing the mandates

The case studies show that decisions about an ESDP commitment as well as its concrete objectives, staffing and equipment are often made without the EU Council Secretariat or the member states making adequate use of existing EU resources in the countries or areas of operation. Interestingly, the EU institutions that are most familiar with the situation on the ground – the EU Special Representatives (EUSRs) and the EU Delegations – are subordinate in the process of initiating missions and designing their mandates.² The EU has a Special Representative in almost every conflict region where it has deployed missions or operations in the ESDP framework. This institution was created in 1996 not only to represent the EU to conflicting and other third parties, but also in order to obtain information and assessments directly from the crisis regions. However, missions' mandates and plans of operation are usually devised in Brussels, without adequately drawing on the expertise of the Special Representatives and Delegation staff. It is precisely their expertise that could contribute to defining the goals of the respective ESDP engagement more realistically, identifying specific local actors for cooperation and creating coherence between

² Of course there are exceptions too, such as the involvement of Marc Otte, EU Special Representative for the Middle East peace process, in preparing the Agreement on Movement and Access, which named the EU as third party for the Rafah border crossing and ultimately formed the basis for the mandate of the European support mission.

measures conducted by ESDP deployments and those of the Delegation. According to Council staff this knowledge has often been left untapped, causing ESDP missions and operations to start on the basis of false or unrealistic assumptions about the political, economic and social situation in the area of operations or to set exaggerated goals.

Often the goals formulated in the mandates are vague (such as “to make a contribution to”), and no benchmarks or target dates are mentioned against which success could be measured. Also, there is often a lack of strategic clarity as to *how* the goals are to be achieved. While concept papers for different types of deployments exist, every mission and operation seems to be treated as a one-off case rather than drawing upon previous experience to assess the strengths and weaknesses of particular approaches and instruments. Systematic “lessons learned” processes and comparative situation analyses are woefully absent, and particularly so in the civil sphere. Yet comparative approaches would be such an obvious tool to use. For example before EUPOL Afghanistan was deployed the pros and cons of training police personnel outside Afghanistan could have been explored by comparison with the experience in Iraq of training police officers and judiciary staff in EU member states and in states in the region. Much more than in the past, those involved should draw the lessons of previous engagements and tease out the specific challenges with which the different types of missions and operations are confronted before new mandates are decided. Such an approach would without doubt improve the ability to assess the prospects of success of future deployments and to formulate mandates in which both the goals and the goal/means relation are defined more precisely and realistically.

Mandate implementation – rapid response?

Deficits in mandate implementation are another reflection of the lack of willingness on the part of EU member states to use the ESDP as a strategic instrument. If the EU wishes to avert threats effectively it must also put itself in a position to deploy its personnel quickly into the area of operations for rapid crisis response. In some cases the EU has indeed succeeded in deploying and being (at least partially) operational in less than four weeks time (from the date of the EU Council’s decision). This was the case with the monitoring missions in Aceh, Rafah and Georgia and with Operation Atalanta in the Gulf of Aden, as well as with Operation Artemis in DR Congo in 2003 (not dealt with in detail here). In fact, rapid deployment occurred in those cases where the start of the mission was *de facto* defined externally – where the EU was named as a third party for monitoring cease-fire agreements or border regimes – or where the member states were pursuing strong interests of their own and already had forces in the area (i.e. Gulf of Aden). On the downside, in some cases mandates have been prepared in such a rush that foreseeable questions had to be resolved later or remain open – in the case of Operation Atalanta how to deal with captured pirates.

Rapid deployment is not a general characteristic of ESDP deployments. Quite the opposite. Often the start of a mission or operation is considerably delayed by disagreement among member states concerning the mandate (the case with EUFOR Tchad/RCA, EUFOR RD Congo), by the necessity to first clarify the legal framework (EULEX Kosovo) or by difficulties in getting the planned personnel actually provided – whether because the member states lack enthusiasm (as with the operations in Chad and DR Congo), or because of the difficulty of finding sufficient qualified personnel, especially for rule of law missions (as for EULEX Kosovo).

In general, and not surprisingly, the process of setting up small deployments proceeds more smoothly and quickly than larger ones, regardless of whether these are civil missions or military operations. There are differences, though, with respect to the latter. On the one hand recruiting personnel for military operations is easier in principle as the member states have direct access to these personnel resources (at least when the political will is given), while civilian personnel cannot just be drafted and deployed (with additional difficulties in federal systems). On the other, recruiting and sending civilian staff is generally easier to justify to the member states' populations. The November 2008 Council decision to create a European pool of experts for security sector reform is a wise first step. Beyond that, EU member states should continue and intensify preparation courses and create incentives for civilian personnel to volunteer for ESDP missions, especially by improving promotion prospects on the basis of foreign deployments.

Coordination and coherence in implementation

Looking at mandate implementation, it is striking that the role of the Special Representatives in coordinating ESDP activities with measures of individual member states and the EU Delegation is conspicuously underdeveloped. Discussions with staff of the European institutions show that communication is inadequate even between different departments of the Council Secretariat. Also, the European institutional memory is extremely weak. The coordination of ESDP activities and Delegation activities, which could increase the efficacy of both, often turns out to be particularly difficult. Even if cooperation works well on the ground, institutional rivalry means that it is sometimes viewed with suspicion in Brussels and often undermined. This is especially problematic in those cases where ESDP activities encroach on the “classical” competencies of the Commission, for example in the field of the judiciary. At the same time it should be obvious that police training and security sector reform can only lead to sustained progress with regard to the security situation if they are accompanied by parallel measures in the justice sector aimed at improving the rule of law.

In some cases disagreements between Council and Commission have left ESDP missions without funds of their own, even though such resources can considerably improve the prospects of success. In fact, as some missions' experience underlines, a budget for “quick impact projects” would

put missions in a position to supplement training measures with equipment aid (for example communication equipment or other basic infrastructure for police stations). This would offer concrete incentives to local agencies and make the cooperation in reform efforts more attractive to them.

Follow-up by the member states

Once deployments have been set in motion they are subject to little critical follow-up by the member states. The regular reports of the Heads of Mission and Operation Commanders are noted in Brussels. However, as a rule the member states accept reports that generally talk up positive achievements while glossing over existing difficulties – even in the face of serious problems on the ground. Because of this lack of transparency the member states conduct little open discussion about progress, setbacks, blockades or need for modifications in the mandates or political action. Neither are ESDP deployments discussed publicly, nor are they scrutinised systematically by national parliaments or the European Parliament.

The need for ongoing critical appraisal is all the more pressing because many deployments have suffered through drastic changes in the circumstances on the ground. Thus a dramatic worsening of the security situation in Afghanistan, changes in the political constellation after the election victory of Hamas in January 2006 and its seizure of power in Gaza in mid-2007, and the contested interpretation and re-negotiation of the cease-fire agreement by Georgia and Russia heavily restricted the radius of action and curtailed the impact of EUPOL Afghanistan, the two missions in the Palestinian Territories and the monitoring mission in Georgia. Closer follow-up of the ESDP deployments by member states and experts could ensure a prompt response to such changes and allow the plans of operation to be modified to match the new conditions. In cases where mandate modifications were carried out quickly – for example adapting the mandate of the Aceh monitoring mission to include collecting and destroying weapons – this turned out to be an essential factor preventing the peace process from becoming bogged down and allowing the mission to achieve its overall objectives.

Altogether the EU has too rarely shown itself in a position to quickly and adequately respond to changes on the ground. A glance at the history of mandate extensions illustrates this point. As a rule mandates are prolonged without the text of the mandate being subjected to any thorough revision. Anyway the tasks stated in the mandate are often long-term assignments or too much to cope with in the time given (especially with rule of law and monitoring missions), making their extensions more or less inevitable. The practice of “voting with their feet” shows that many member states are plainly unhappy with this state of affairs. Where member states no longer share the goals of an ESDP mission or operation, or come to regard its prospects of success as too small, they pull their forces out or renege on personnel pledges they have given.

Cooperation with third states, regional organisations and the UN

As the case studies show almost across the board, ESDP deployments – civil and military – cooperate closely with third states. Often third states deploy staff as an integral part of the mission or operation. These are overwhelmingly but by no means exclusively European non-EU states; Turkey, Russia, Canada, the United States and others also participate in ESDP deployments in individual cases. Such “internal” cooperation seems to be mostly unproblematic,³ or at least no more so than cooperation between the personnel of the EU-27 which is also characterised by language difficulties and misunderstandings stemming from different police, justice and management cultures. It should be possible to reduce such problems by expanding and harmonising courses that prepare staff for deployment.

Beyond this kind of cooperation, however, few mandates contain an element that explicitly aims to strengthen regional organisations. One important case was the cooperation with ASEAN in the Aceh Monitoring Mission, which was fruitful for both sides and important to the success of the mission. It is particularly conspicuous that although there have been comparatively many deployments to sub-Saharan Africa (including Atalanta nine out of twenty-three) and although the EU has explicitly committed itself to strengthening the conflict-resolution capacities of the African Union (AU), only one of the ESDP engagements involved explicit cooperation with the AU, namely the small mission (with less than fifty police, military experts and military observers) supporting AMIS in Sudan (2005–07). Here the reason is less a lack of willingness to cooperate on the part of the EU, but rather that the AU is not present in most of the conflict regions and therefore offers no obvious opportunities for cooperation. Therefore, the EU should consistently support the strengthening of regional organisations like the AU, which will be decisive for future burden-sharing in crisis response.

Although the situation is better with regard to ESDP engagements that support the UN – with the missions and operations in the Balkans, EUFOR RD Congo’s support for the UN force MONUC and EUFOR Tchad/RCA’s cooperation with the UN force MINURCAT – a trend seems to be emerging that could undermine the peace-keeping capacity of the UN, especially in Africa: While EU member states supply today about 38 percent of all foreign troops deployed in sub-Saharan Africa, their share of the UN peacekeepers stationed there is just 1.8 percent (globally the EU member states still provide 13.4 percent of UN forces).⁴

³ As a rule, third states are not part of the bargaining process leading to the decision on the deployment of a mission and its mandate. So they usually have no influence on the drafting of the mandate and the plan of operation.

⁴ Center on International Cooperation at New York University, *Annual Review of Global Peace Operations 2009*, 5f, www.cic.nyu.edu/Lead%20Page%20PDF/GPO_2009.pdf (accessed 5 August 2009). On declining Western participation in UN missions and the danger of a general weakening of the UN see also Alex J. Bellamy and Paul D. Williams, “The West and Contemporary Peace Operations”, *Journal of Peace Research* 46, no. 1 (2009): 39–57.

Summary and Recommendations

A synopsis of the case studies shows that the EU is not yet a strategic actor in security and defence policy. Although it has proved its ability to respond to crises and deploy civil and military staff on a next to global scale and with a range of very different profiles, it does not pursue the goals defined in the ESS purposefully enough. What is lacking are less the operational capabilities than the willingness to plan ESDP engagements strategically, prepare them adequately, follow up thoroughly on their implementation, draw on all the EU's resources, adapt mandates and plans of operation to changing circumstances, and integrate ESDP deployments into comprehensive conflict management strategies. The December 2008 report on the implementation of the ESS rightly identified deficits in the fields of strategic thinking, efficient action and public support.⁵ It does not, however, address the most prominent deficits of the ESDP. Indeed, if the EU wants to effectively avert threats to European security, sustainably stabilise its immediate neighbourhood and cooperate effectively in multilateral crisis management then the member states should in particular:

- ▶ **Move towards long-term, strategic planning of deployments.** Of course, the EU will also in the future have to react to unforeseen crises. But it would be sensible to agree on priorities of deployment rather than simply making ad hoc decisions or acting on the interests of the largest member states. Only then can the available resources be deployed effectively in pursuit of European goals. Now that an initial phase of testing out the ESDP toolkit has been completed the EU should concentrate on carefully selected and well prepared deployments that begin as early as possible, are thoroughly implemented, and are part of a comprehensive conflict management approach. Such deployments promise the greatest success in dealing effectively with threats to European security. Criteria for prioritisation should *firstly* be derived from the goals of the ESS. That implies in particular further expanding cooperation with the UN without at the same time withdrawing personnel resources from it, especially with regard to its forces in sub-Saharan Africa. *Secondly*, the definition of a comprehensive or integrated approach needs to be honed, i.e. combining military and civil instruments adequately so as to suit the circumstances and incorporating ESDP deployments in an overall conflict management approach. ESDP deployments should not be a surrogate for politics, but must instead be backed up by a comprehensive diplomatic and development commitment. *Thirdly*, there is a need to focus more strongly on preventative action and to increase the readiness for rapid deployment for crisis management through early operational planning.

⁵ Council of the European Union, *Report on Implementation of the European Security Strategy: Providing Security in a Changing World*, Brussels, 11 December 2008, www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/reports/104630.pdf (accessed 19 August 2009). The report also identifies internet security, energy security and threats emanating from climate change as further challenges to European security.

- ▶ In advance of future decisions about initiating an ESDP mission or operation, enter into a **thorough and open exchange about whether the engagement lies in the interests of all EU member states and is actively supported by a sufficiently large number** rather than just being tolerated. This is the only way to ensure adequate and rapid staffing and put a stop to the practice of countries “voting with their feet” which undermines the success of missions and operations and weakens the EU’s credibility. At the same time European states should think about how to share the burden of ESDP deployments more fairly amongst themselves. One way to do this could be to provide a greater proportion of the costs of military operations from the Community budget than is the case today under the Athena mechanism and the principle of “costs lie where they fall”.
- ▶ **Set up a binding “lessons learned” mechanism** that feeds into the process of formulating new mandates and plans of operation and helps in adapting existing mandates to changing conditions. Lessons should be drawn from previous experiences in order to better assess the prospects of success of future deployments and formulate mandates that combine pragmatic goals with adequate resources. Such a process should extend in two points beyond the guidelines adopted in November 2008:⁶ it should, *firstly*, apply not only as planned to civil missions but also bring in the lessons learned from the military operations and the integrated civil-military deployments. It should, *secondly*, aim to considerably improve synergies between functional and geographical units in the Council Secretariat and make better use of the expertise of the Special Representatives, the EU Commission and the Delegations on the ground as well as of independent experts (rather than almost routinely creating new units or departments in the Council Secretariat). Similarly it would be advantageous, in view of the high personnel turnover in the Secretariat’s units and the missions and operations, to work on creating something like an “institutional memory”, for example in the guise of a systematic archiving system and binding handover procedures. Only with increased transparency and a comprehensive lessons learned process will EU member states stand a chance of critically following up on deployments, adapting mandates and rules of engagement quickly to changing circumstances, or shaping diplomatic efforts so as to change the circumstances in favour of success. To be able to do that they need to be regularly and openly informed about progress, difficulties and blockades and generate the courage and determination to critically and continuously examine their own actions.

⁶ Council of the European Union, *Guidelines for Identification and Implementation of Lessons and Best Practices in Civilian ESDP Missions*, 15987/08, Brussels, 19 November 2008.

- ▶ **Provide ESDP missions and operations with their own budgets**, in particular to back up training measures with equipment aid, so as to allow for more comprehensive approaches, enhance the potential impact in the area of operations and create greater incentives for local partners. In this context, the rivalry between Brussels institutions should be overcome in order to better match up and coordinate measures conducted by ESDP missions and EU Delegations on the ground. Here, a detailed examination is needed of which tasks are better taken on in the ESDP context and which by the Delegations. Better coordination between Council Secretariat, Special Representative, member states (as well as involved ministries within member states) and the Commission would also strengthen the EU's standing and pool its resources for generating pressure on local actors to cooperate and reform. This is especially important for those missions that pursue long-term crisis management through institution-building.
- ▶ Finally, **the EU's "trademark" police and security sector missions should be improved through genuinely integrated approaches** that incorporate the rule of law. Only then will it be possible to strengthen the civil security apparatus and make a lasting contribution to stabilisation in post-conflict countries. In this sense, training and equipment aid for police forces should always be accompanied by structural reforms in the security sector and the judiciary. If the EU wants to achieve lasting successes in building police institutions and establishing the rule of law it will have to devote a great deal more energy to generating local ownership of reforms. This primarily means addressing local populations' security needs and police cadres' concerns in the centre and the provinces.

<i>Name of Mission</i>	<i>Type and mandate</i>	<i>Legal basis</i>	<i>Start and duration of mandate</i>
EUFOR ALTHEA Bosnia and Herzegovina	Military operation Maintain a secure environment in Bosnia and Herzegovina; support the international community's High Representative	Council Joint Action 2004/570/CFSP (4 December 2004) UN mandate in SC Resolution 1575, noting main role of EU (22 November 2004)	Start: 1 December 2004, no end date
EUPM Bosnia and Herzegovina	Civil mission Build police structures according to "best European and international practice"	Council Joint Action 2002/210/CFSP (11 March 2002)	Start: 1 January 2003, 3 years Extended: 24 November 2005 by 2 years 19 November 2007 by 2 years
EULEX Kosovo	Civil mission Monitor and support in the field of rule of law, especially police, judiciary and customs Limited executive powers, especially in administration of justice and criminal investigations	Council Joint Action 2008/124/CFSP (4 February 2008) No explicit UN mandate	Start: 14 February 2008, 28 months
EUFOR RD Congo	Military operation Temporary support for the UN peace-keeping mission MONUC during the election process, conduct of evacuations	Council Joint Action 2006/319/CFSP (27 April 2006) UN mandate in SC Resolution 1671 (25 April 2006)	Start: 30 July 2006, 4 months
EUFOR Tchad/RCA	Military operation Protect civilian population, improve general security to support the work of humanitarian organisations, protect UN personnel and facilities	Council Joint Action 2007/677/CFSP (23 October 2007) UN mandate in SC Resolution 1778 (25 September 2007)	Start: 15 March 2008, 1 year

<i>Personnel planned/actual</i>	<i>Speed of deployment</i>	<i>Cooperation with regional organisations and UN</i>	<i>EUSR</i>
2,200 military personnel (as of June 2009)	Council decision: 12 July 2004 Start of operational phase: 1 December 2004	NATO (through Berlin Plus)	Valentin Inzko (High Representative and EUSR)
166 police, 35 civil staff and 220 local staff (as of March 2009)	Council decision: 11 March 2002 Start of operational phase: 1 January 2003	—	Valentin Inzko (High Representative and EUSR)
Planned: 3,000, of which 1,900 international and 1,100 Kosovan Actual: 1,710 international; 925 local (as of July 2009)	Council decision: 4 February 2008 Start of operational phase: 9 December 2008	According to UN Secretary-General EULEX is “under the umbrella” of UNMIK and covered by SC Resolution 1244 (of 10 June 1999)	Peter Feith (also International Civilian Representative)
2,276 military personnel, of which 1,425 in the capital of DR Congo, Kinshasa, 851 in neighbouring Gabon	Council decision: 27 April 2006 Start of operational phase: 30 July 2006	Supporting MONUC	Roeland van de Geer (EUSR for the African Great Lakes Region)
Planned: 4,300 military personnel No more than 3,700 deployed	Council decision: 23 October 2007 Start of operational phase: 17 March 2008	Military EUFOR facilities handed over to MINURCAT at end of mandate, also building of infrastructure for the military component of MINURCAT	Torben Brylle (EUSR for Sudan, mandate expanded in February 2008 to include the EUFOR mission)

<i>Name of Mission</i>	<i>Type and mandate</i>	<i>Legal basis</i>	<i>Start and duration of mandate</i>
EU NAVFOR Atalanta Gulf of Aden	Military operation Naval mission to fight piracy in the Gulf of Aden, escort vessels chartered by the World Food Programme, arrange convoys for commercial shipping	Council Joint Action 2008/851/CFSP (10 November 2008) UN mandate in SC Resolutions 1814 (15 May 2008), 1816 (2 June 2008), 1838 (7 October 2008) and 1846 (2 December 2008)	Start: 8 December 2008, 1 year
EU BAM Rafah Palestinian Territories	Civil mission Presence as third party at Rafah border crossing; monitor, support and verify Palestinian border management; contribute to communication between Israel, the PA and Egypt	Council Joint Action 2005/889/CFSP (12 December 2005) EU as third party according to Israeli-Palestinian Agreement on Movement and Access (15 November 2005)	Start: 25 November 2005, 1 year Extended: 13 November 2006 by 6 months 24 May 2007 by 1 year 10 November 2008 by 1 year Suspended: Since 15 June 2007
EUPOL COPPS Palestinian Territories	Civil mission Support and advise the civil police, build rule of law structures; support building and reforming the justice system	Council Joint Action 2005/797/CFSP (14 November 2005)	Start: 1 January 2006, 3 years Extended: 18 November 2008 by 2 years
Aceh Monitoring Mission (AMM) / Indonesia	Civil mission Monitor the demobilisation of GAM, the demilitarisation of Aceh, the human rights situation and the implementation of autonomy arrangements for Aceh	Council Joint Action 2005/643/CFSP (9 September 2005)	Start: 15 September 2005, 6 months Extended: 27 February 2006 by 3 months 7 June 2006 by 3 months 7 September 2006 by 3 months

<i>Personnel planned/actual</i>	<i>Speed of deployment</i>	<i>Cooperation with regional organisations and UN</i>	<i>EUSR</i>
Planned: 1,500 military personnel Actual: Unclear (as of August 2009)	Council decision: 10 November 2008 Start of operational phase: 8 December 2008	Coordination with NATO and OEF operations	—
20 EU and 7 local (as of March 2009)	Council decision: 12 December 2005 (EU agreed to role as third party already on 21 November 2005) Start of operational phase: 30 November 2005	—	Marc Otte (EUSR for the Middle East Peace Process)
38 police, of which 30 EU and 8 local (as of June 2009)	Council decision: 14 November 2005 Start of operational phase: 1 January 2006 (de facto only after 15 June 2007 and only in the West Bank)	—	Marc Otte
226 unarmed observers, of which 130 from the EU and 96 from ASEAN	Council decision: 9 September 2005 Start of operational phase: 15 September 2005 Initial Monitoring Presence began 15 August 2005 (date of cease-fire)	ASEAN	—

<i>Name of Mission</i>	<i>Type and mandate</i>	<i>Legal basis</i>	<i>Start and duration of mandate</i>
EUMM Georgia	Civil mission Monitor the stabilisation process in Georgia after the war of August 2008 between Russia and Georgia; contribute to stabilisation, normalisation and confidence-building following the cease-fire	Council Joint Action 2008/736/CFSP (15 September 2008)	Start: 1 October 2008, 1 year Extended: 27 July 2009 by 1 year
EUJUST LEX / Iraq	Civil mission Rule of law mission. Advise and support actors in the police, justice system and prison system. Courses held in EU member states, as of 11/2009 probably also in Iraq	Council Joint Action 2005/190/CFSP (7 March 2005)	Start: 1 July 2005, 1 year Extended: 10 June 2006 by 4 months 17 October 2006 by 14 months 22 November 2007 by 4 months 14 April 2008 by 2 months 23 June 2008 by 1 year 11 June 2009 by 1 year
EUPOL Afghanistan	Civil mission Support, advise and train the civil police; build rule of law structures; support building and reforming the justice system	Council Joint Action 2007/369/CFSP (30 May 2007)	Start: 15 June 2007, 3 years

<i>Personnel planned/actual</i>	<i>Speed of deployment</i>	<i>Cooperation with regional organisations and UN</i>	<i>EUSR</i>
350 civil staff, of which 250 as monitoring core (as of July 2009)	Council decision: 15 September 2008 Start of operational phase: 1 October 2008	Until summer 2009 cooperation with OSCE and UN missions (UNOMIG) with responsibility for Abchazia and South Ossetia	Pierre Morel (EUSR for the Crisis in Georgia) Peter Semneby (EUSR for the South Caucasus)
37 civil EU staff (as of June 2009)	Council decision: 7 March 2005 Start of operational phase: 1 July 2005	—	—
Planned: 400 EU police Actual: 245 EU and 169 Afghan staff (as of July 2009)	Council decision: 30 May 2007 Start of operational phase: 15 June 2007	—	Ettore Francesco Sequi (EUSR for Afghanistan and Pakistan)

Abbreviations and Acronyms

AFBiH	Armed Forces of Bosnia and Herzegovina
AMA	Agreement on Movement and Access (between Israel and the Palestinian Authority, 15 November 2005)
AMIS	African Union Mission in Sudan
AMISOM	African Union Mission in Somalia
AMM	Aceh Monitoring Mission
ANA	Afghan National Army
ANCOP	Afghan National Civil Order Police
ANP	Afghan National Police
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAR	Central African Republic
CARDS	Community Assistance for Reconstruction, Development and Stabilisation (EU)
CFSP	Common Foreign and Security Policy (EU)
CIAT	Comité international d'accompagnement de la transition (DR Congo)
CMC	Crisis Management Concept
CMI	Crisis Management Initiative (Finnish NGO that mediated in Aceh)
CONOPS	Concept of Operations
COSA	Commission of Security Arrangements (Aceh/Indonesia)
CPA	Coalition Provisional Authority (Iraq)
CPCC	Civilian Planning and Conduct Capability (at the General Secretariat of the Council of the European Union)
CPDC	Coordination des partis politiques pour la défense de la constitution (Chad)
CSTC-A	Combined Security Transition Command – Afghanistan
CTF	Combined Task Force (Gulf of Aden)
DDR	Disarmament, Demobilisation and Reintegration
DiCOSA	District Commission on Security Arrangements (Aceh/Indonesia)
DPKO	Department of Peacekeeping Operations (UN)
DRC	Democratic Republic of the Congo
EDA	European Defence Agency
EOM	Election Observation Mission (EU)
ESDP	European Security and Defence Policy
ESS	European Security Strategy
EU BAM Rafah	European Union Border Assistance Mission Rafah
EUFOR ALTHEA/BiH	European Union Force in Bosnia and Herzegovina
EUFOR RD Congo	European Union Force in DR Congo
EUFOR Tchad/RCA	European Union Force in Chad/CAR
EUJUST LEX/Iraq	European Union Integrated Rule of Law Mission for Iraq
EUJUST Themis/Georgia	European Union Rule of Law Mission in Georgia
EULEX Kosovo	European Union Rule of Law Mission (Kosovo)
EUMM Georgia	European Union Monitoring Mission (Georgia)
EU NAVFOR Atalanta	European Union Naval Force (in the Gulf of Aden)
EUPM/BiH	European Union Police Mission (Bosnia and Herzegovina)
EUPOL Afghanistan	EU Police Mission in Afghanistan
EUPOL COPPS	European Union Police Mission for the Palestinian Territories
EUSR	European Union Special Representative
FDD	Focused District Development (Afghanistan)
FRETILIN	Frente Revolucionária do Timor Leste Independente
GAM	Gerakan Aceh Merdeka (Free Aceh Movement)
GPPO	German Police Project Office (Afghanistan)
ICO	International Civilian Office (Kosovo)

ICR	International Civilian Representative (Kosovo)
IGAD	Intergovernmental Authority on Development (in Eastern Africa)
IMP	Initial Monitoring Presence (EU)
IOM	International Organisation for Migration
IPA	Instrument for Pre-Accession Assistance (EU)
IPCB	International Police Coordination Board (Afghanistan)
IPRM	Incident Prevention and Response Mechanism (Georgia)
IPTF	International Police Task Force (Bosnia and Herzegovina)
IPU	Integrated Police Unit (Bosnia and Herzegovina)
ISAF	International Security Assistance Force (Afghanistan)
JEM	Justice and Equality Movement (Sudan)
JMA	Joint Military Affairs (Bosnia and Herzegovina)
KFOR	Kosovo Force (NATO-led)
KPS	Kosovo Police Service
LoGA	Law on the Governing of Aceh
LOT	Liaison and Observation Team (Bosnia and Herzegovina)
MINURCAT	Mission des Nations Unies en République Centrafricaine et au Tchad
MMA	Monitoring, Mentoring, Advising
MONUC	Mission de l'Organisation des Nations Unies en République Démocratique du Congo
MoU	Memorandum of Understanding
MSC (HOA)	Maritime Security Centre (Horn of Africa)
NATO	North Atlantic Treaty Organisation
NAVCENT	U.S. Naval Forces Central Command
NSF	National Security Forces (Palestinian Territories)
NTM-A	NATO Training Mission Afghanistan
OECD	Organisation for Economic Cooperation and Development
OEF	Operation Enduring Freedom
OHQ	Operations Headquarters
OHR	Office of the High Representative (Bosnia and Herzegovina)
OSCE	Organisation for Security and Cooperation in Europe
PA	Palestinian Authority
PCPDP	Palestinian Civil Police Development Programme
PEGASE	Mécanisme Palestino-Européen de Gestion de l'Aide Socio-Economique
PG	Presidential Guard (Palestinian Territories)
PRT	Provincial Reconstruction Team (Afghanistan)
PSC	Political and Security Committee (EU)
RRM	Rapid Reaction Mechanism (EU)
RS	Republika Srpska
SAA	Stabilisation and Association Agreement (EU)
SFOR	Stabilisation Force (Bosnia and Herzegovina)
SIPA	State Investigation and Protection Agency (Bosnia and Herzegovina)
SNMG 2	Standing NATO Maritime Group 2
SRSG	Special Representative of the Secretary-General
SSR	Security Sector Reform
TFG	Transitional Federal Government (Somalia)
TIM	Temporary International Mechanism (Palestinian Territories)
TNI	Tentara Nasional Indonesia (national armed forces of Indonesia)
UFDD	Union of Forces for Democracy and Development (Chad)
UNAMID	United Nations African Union Mission in Darfur
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOMIG	United Nations Observer Mission in Georgia
USSC	United States Security Coordinators Team
WFP	World Food Programme

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