

## Get it Right!

### Giving the appropriate place to gender and human rights in the Common Security and Defence Policy

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The present article argues that it is only when human rights and gender aspects are effectively considered throughout a CSDP mission – from its initial planning to its implementation and evaluation – can one “get it right”, that is, plan and implement a CSDP mission successfully. While doing this importantly corresponds to the legal obligations of the EU and its political objectives, systematic consideration of human rights and gender brings about non-deniable operational advantages and increases a mission’s efficiency and effectiveness. While in different missions, depending on their focus and nature, different kinds of approaches to human rights and gender issues are called for, the present article argues that there are no missions, whether civilian or military, to which these aspects would not be relevant.

Although the EU has since 2005 elaborated a robust policy on human rights and gender in CSDP, the picture is mixed if one looks at the Joint Actions establishing the current CSDP missions. A clear reference to human rights and gender aspects at this level would, however, be very important. Today, all the ongoing CSDP missions have human rights and/or gender advisers or focal points; however several amongst them are “double-hatted” between missions or tasks. Although the missions are implementing a number of interesting, specific actions related to human rights and gender, the impact of these should be systematically evaluated in order to further institutional learning. The setting up of the new European External Action Service (EEAS) in 2011 has a potential to further strengthen the human rights and gender mainstreaming in CSDP, and this opportunity will hopefully be fully embraced. Considering the EU’s limited capacity to deploy simultaneous missions across the world, it needs to carefully weigh the different elements of a given situation before deciding to launch CSDP action. The protection of human rights should play a strategic role in this decision making, including as triggers for initiating or for discontinuing EU action.

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<sup>1</sup> This article is written on a personal basis. The views reflected are those of the author only.

# 1 Introduction

The Common Security and Defence Policy (CSDP) in its current format is a young EU policy. It was only in 2001 that the EU declared the European Security and Defence Policy (ESDP) – using the nomination employed before the 2009 Lisbon Treaty – operational, and in 2003 that the General Affairs and External Relations Council (GAERC) declared that “the EU now has operational capability across the full range of Petersberg tasks” in the military sphere. In the same year the EU dispatched its first ESDP mission<sup>2</sup> to Bosnia and Herzegovina (EUPM, still ongoing). Since 2003, it has launched 24 missions, of which currently 13 are active (see Table 1).

The EU has, since 2005 elaborated specific human rights and gender equality related policies for CSDP. Four main strands have emerged: human rights in general, children’s rights

(particularly: children and armed conflict<sup>4</sup>), gender equality and women’s rights (particularly: implementation of United Nations Security Council Resolution 1325 and subsequent resolutions on women, peace and security) and protection of civilians. Furthermore, specific guidance has been elaborated on the international humanitarian law. Also, *the Generic Standards of Behaviour for ESDP Operations* of 2005 contain, among other things, language prohibiting sexual exploitation and sexual abuse by staff deployed in missions<sup>5</sup>.

This article argues that it is only when human rights and gender aspects are effectively considered throughout a CSDP mission – embedded from its initial planning to its implementation and evaluation – can one “get it right”, that is, plan and implement a CSDP mission successfully. It

**Table 1: Ongoing CSDP Missions and Operations<sup>3</sup>**

- EUPM: EU Police Mission in Bosnia and Herzegovina (since 2003)
- EUFOR: Althea European Union military operation in Bosnia and Herzegovina (since 2004)
- EUBAM: EU Border Assistance Mission to the Republic of Moldova and Ukraine (since 2005)
- EUBAM Rafah: EU Border Assistance Mission for the Rafah Crossing Point (since 2005)
- EUJUST LEX-Iraq: EU Integrated Rule of Law Mission for Iraq (since 2005)
- EUSEC Congo: EU mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (since 2005)
- EUPOL COPPS: EU Police Mission for the Palestinian Territories (since 2006)
- EUPOL Afghanistan: EU Police Mission in Afghanistan (since 2007)
- EUPOL RD Congo: EU police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (since 2007)
- EULEX Kosovo: EU Rule of Law Mission in Kosovo (since 2008)
- EUMM Georgia: EU Monitoring Mission in Georgia (since 2008)
- EUNAVFOR Somalia or Operation Atalanta (since 2008)
- EUTM Somalia: EU military mission to contribute to the training of Somali security forces (since 2010)

2 This article utilises the term “mission” interchangeably for both civilian and military missions and operations.

3 See more on CSDP missions and operations at <<http://consilium.europa.eu/showPage.aspx?id=261&lang=en>>.

4 The EU human rights guidelines on children and armed conflict were first adopted in 2003 (15634/03) but were not specific to ESDP.

5 EU document 8373/3/05.

**Table 2: Some examples of relevant human rights and gender aspects for different types of missions<sup>6</sup>:**

|   |  |
|---|--|
| <b>Police reform</b> (e.g. EUPM Bosnia and Herzegovina, EUPOL RD Congo)       | <ul style="list-style-type: none"> <li>• Improving local police capacity to respond to violence against women and children</li> <li>• Access to both men and women to employment in police forces</li> <li>• Codes of conduct and policies on discrimination, harassment and violence</li> <li>• Vetting police officers</li> <li>• Community policing</li> </ul>  |
| <b>Justice reform and Rule of Law</b> (e.g. EUJUST LEX-Iraq, EULEX Kosovo)    | <ul style="list-style-type: none"> <li>• Ensuring that states meet their human rights responsibilities under international law</li> <li>• Securing access to justice for both men and women</li> <li>• Access to both men and women to employment in the justice system</li> <li>• Juvenile justice</li> <li>• Complementarity between national, regional and international courts (particularly ICC)</li> <li>• Drafting of new legislation in a way that corresponds to the international obligations of the state</li> <li>• Harnessing possibilities for new legislation promoting more equal participation of men and women in decision making</li> </ul> |
| <b>Maritime security/fighting against piracy</b> (e.g. EUNAVFOR Somalia)      | <ul style="list-style-type: none"> <li>• Respect of the relevant international human rights norms during detention on board</li> <li>• Treatment of suspected pirates under 18 years of age</li> <li>• Dealing with people in distress, asylum seekers and trafficked persons</li> <li>• Respect of the relevant international human rights norms in the conduct of judicial proceedings</li> </ul>  |
| <b>Monitoring the implementation of a peace agreement</b> (e.g. EUMM Georgia) | <ul style="list-style-type: none"> <li>• Identifying and reporting human rights violations by parties to the peace agreement</li> <li>• Gender-disaggregated monitoring</li> <li>• Missing persons</li> <li>• Human rights issues deemed in direct relation to the conflict dynamics such as minority rights, freedom of movement</li> <li>• Access to both local men and women and to the information they submit</li> </ul>  |
| <b>Securing and stabilising a region</b> (e.g. EUFOR Tchad/RCA)               | <ul style="list-style-type: none"> <li>• Protection of civilians, particularly the most vulnerable</li> <li>• International Humanitarian Law</li> <li>• Access to both local men and women as sources of information (getting the entire security picture)</li> </ul>  |
| <b>All missions</b>   | <ul style="list-style-type: none"> <li>• Intentional or unintentional human rights violations of staff, misconduct, sexual exploitation and abuse etc.</li> <li>• Staff's understanding of human rights and gender and the mission's role</li> <li>• Including human rights and gender aspects in reporting</li> </ul>   |

also argues that while doing this importantly corresponds to the legal obligations of the EU and its political objectives set at the highest level, systematic consideration of human rights and gender aspects actually brings about non-deniable operational advantages and increases a mission's efficiency and effectiveness. While in different missions, depending on their focus and nature, different kinds of approaches to these issues are called for, the present article argues that there are no missions, whether civilian or military, to which these aspects would not be relevant (see Table 2).

The first chapter of this article analysis human rights protection as a legal obligation and a political commitment for the EU. The second chapter explains the advantages that successful human rights and gender mainstreaming brings to a CSDP mission. In the third chapter, the article analysis the issue of internal conduct of a mission and the need to avoid human rights violations by CSDP staff as well as to enhance accountability. The fourth chapter describes the policies the

EU has enacted on human rights and gender in CSDP, as well as gives examples of results achieved and shortcomings still persisting. In the final chapter, the article proposes a number of conclusions and perspectives for future, including with regard to the upcoming creation of the EEAS.

This article refers to "gender" as the socially constructed differences, as opposed to the biological ones, between women and men; this means differences that have been learned, are changeable over time, and have wide variations both within and between cultures. Gender roles and relations are often altered during and after armed conflict.<sup>7</sup> The article generally considers the specific children's rights related issues, where these are not specifically referred to, as part of its general discussion on human rights.

<sup>6</sup> See also Instraw/DCAF 2008.

<sup>7</sup> EC 2008.

## 2 Human rights protection as legal obligation and political commitment

Essentially, the protection of human rights within the European Union's external action is a legal obligation. First of all, the Charter of the United Nations in its articles 55 and 56, charges states with the promotion of universal respect for, and observance of, human rights. The Universal Declaration of Human Rights and a range of human rights treaties the Member States of the European Union have all ratified, restate this obligation.<sup>8</sup>

Since the Treaty of Rome established the European Communities in 1957, human rights have been one of the defining principles of European integration, and with the Maastricht Treaty on the European Union of 1992, human rights became an objective of the Union's Common Foreign and Security Policy (CFSP). The Treaty is unambiguous in this respect, and states in its current Article 3(5) that

(...) in its relations with the wider world, the Union (...) shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.<sup>9</sup>

These objectives also cover the CSDP, due to the fact that it is part of the CFSP.

The Maastricht Treaty defines the scope of CSDP action, which includes joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. In addition, the Treaty makes the link to the fight against terrorism by specifying that "all these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories." It is within all these tasks, considered by many

practitioners as "hard" security matters versus what many regard as "soft" human rights and gender matters, that the EU is committed to the protection of human rights. There is thus no contradiction between "hard" and "soft" issues but one (human rights) should support and be included in the other (CSDP) as an essential part of the CFSP.

Other legal obligations to consider in this context, as listed for example by Frederik Naert<sup>10</sup> as well as Jana Arloth and Frauke Seidensticker<sup>11</sup>, include the obligations arising from the provisions of a peace agreement (where one exists), agreements entered into by the EU, such as the Status of Mission or Status of Forces Agreements (SOMA/SOFA<sup>12</sup>) with the host state, and obligations under customary international law, including customary international humanitarian and human rights law. The EU Member States are bound by the EU's human rights obligations when implementing EU Joint Actions, including those concerning CSDP operations.

The EU has taken important political commitments with regard to human rights in its security policy. *The 2008 Report on the Implementation of the European Security Strategy* (ESS) with its seven references to human rights on 12 pages, contains solid language on the importance of the promotion of human rights in the EU's security policy, stating for example that "we need to continue mainstreaming human rights issues in all activities in this field, including ESDP missions, through a people-based approach coherent with the concept of human security". It also specifically mentions the need to address "the appalling use of sexual violence as a weapon of intimidation and terror".<sup>13</sup> This is a strong political statement by the EU, particularly bearing in mind the European Security Strategy's significance as the first such comprehensive security policy orientation by the EU, covering the full spectrum of external

8 See Charter and Declaration at <http://www.un.org>.

9 Treaty of Maastricht on European Union 1992.

10 Naert 2008, 379.

11 Arloth & Seidensticker 2007.

12 SOFAs define the legal status of military operation personnel in the territory of the host state; and clarify the terms under which they are allowed to operate. Appropriate use of force is regulated in the so-called Rules of Engagement (ROE).

13 Report on the Implementation of the European Security Strategy 2008.

policy instruments including political, diplomatic, military and civilian, trade and development actions<sup>14</sup>.

Furthermore, the EU Council has in its bi-annual conclusions on CSDP proclaimed the importance of systematic consideration of human rights and gender. On 26 April 2010, it notably recalled "the importance of a continued and systematic consideration of human rights, gender and children affected by armed conflict aspects from the early planning of CSDP missions and operations, during their conduct, as well as in the subsequent 'lessons identified' processes."<sup>15</sup>

Other than those policy commitments that are specifically and exclusively directed to CSDP, it is important in this context to recall the overall EU policy framework on human rights in the CFSP, particularly as expressed in the various human rights guidelines as key human rights tools that the EU currently has at its disposal. These contain specific commitments in respect of issues such as the fight against death penalty and torture, the protection of human rights defenders, the prevention of violation and discrimination against women and girls (with particular accent on violence against women and girls), the respect for international humanitarian law and the promotion of children's rights.<sup>16</sup> EU crisis management missions, as implementers of the CSDP within the wider CFSP context, are fully concerned by these guidelines and should act in coherence with their provisions.

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14 ESS 2003.

15 Council of the European Union 2010.

16 EU Guidelines on Human Rights.

### 3 Human rights protection – operational imperative?

This article argues that in order to “get it right” in the planning and the implementation of CSDP crisis management missions, it is necessary pay full attention to human rights and gender aspects. There are various reasons for arguing this.

First of all, in order to understand and resolve conflict, it is necessary to analyse it from a human rights perspective, as human rights violations – including violations of women’s or of minority rights – in many cases figure prominently among the root causes of a conflict. Where human rights violations are persistent and go unpunished, they can create frustration and fuel rebellion movements and armed fractions. Long-lasting inequalities for example in the provision of housing or the access to work or in the use of natural resources are violations of economic and social rights that can contribute to create conditions favourable to instability. As an illustration of this, the Minority Rights Group’s assessment of 53 conflicts in 2002 found that over 71 per cent of the conflicts had an ethnic dimension<sup>17</sup>. Sexual violence feeds from deep-rooted inequality between women and men and negative attitudes towards women, and contribute to fuelling hatred and conflict between communities. This in fact constitutes an explicit objective of sexual violence when it is used as a weapon of war.

Applying a human rights approach is also called for in the ESS, which talks about a “cycle of conflict, insecurity and poverty” in which a number of countries and regions are caught, and states that “spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order.”<sup>18</sup>

Secondly, in most cases crisis management missions intervene in situations where important human rights violations have been committed recently or continue at the time of the action. In such contexts, human rights are an essential element of the operational context and an adequate response strategy needs to be prepared within the mission’s mandate. This is the case for example in Kosovo, where EULEX Kosovo judges and

prosecutors retain certain executive responsibilities. They work together with the local counterparts in mixed panels or mixed teams, seeking to ensure that human rights cases, among others of war crimes and inter-ethnic crimes, are properly investigated and prosecuted (see Table 3).<sup>19</sup>

In a conflict or in its aftermath, difficult human rights related questions come to the fore and need to be addressed by the intervening actors. In many situations highly complex – and even risky – decisions are called for. Issues such as the coverage (in time or in substance) of amnesty laws must be addressed, or specific policies must be developed for the demobilisation of child and women combatants. Wide-spread sexual violence taking place in the current operational context or before, as in the cases of the Democratic Republic of Congo and Bosnia and Herzegovina, requires adequate response strategies. Trafficking in human beings, including in women and children, across national borders, is exacerbated during armed conflict. Any intervention in the security sector would be directly concerned by this kind of questions, be it in respect to policing, providing security or ensuring access to humanitarian aid, rehabilitating justice or border management.

Tackling the human rights situation is furthermore important in order to provide comprehensive security to the local population, using a “human security” approach. As long

**Table 3: Human rights protection in EULEX Kosovo<sup>19</sup>**

On the Day of Missing Persons in Kosovo, Yves de Kermabon, Head of EULEX Kosovo, expressed the Mission’s commitment to help solve the issue of the missing: “Dealing with the legacy of past human rights violations is one of the many challenges facing Kosovo today. Initiatives undertaken to confront impunity and to promote the rule of law by investigating past abuses are important factors towards forging a justice system that advances international human rights standards, restores public confidence, fights impunity and strengthens the fabric of civil society.”

<sup>17</sup> Minority Rights Group International.

<sup>18</sup> ESS 2003.

<sup>19</sup> <http://www.eulex-kosovo.eu/en/news/000219.php>.



as human rights violations continue, even in the absence of open warfare the local population does not perceive that it is living in a security and can even be prone to consider an international peacekeeping mission more as a nuisance than an advantage.

This was, for example, the stated reason for which a group of women's organisations from the Northern Kivu province of the DRC requested, in June 2010, the withdrawal of international peacekeepers. In their letter the women's organisations explained that international peacekeepers had not been able to put a halt to human rights violations, particularly towards women, and that the money put into their operations should better be used elsewhere. In the Eastern DRC, the international community has not managed to halt human rights violations. As a consequence, the local population remains mistrustful of the international actors. This further undermines their capacity to operate successfully, considering that it is essential for any actor in crisis to be able to count on full cooperation and trust from the local population in order to be effective.

In some situations, CSDP missions are in a particularly strategic position to promote human rights protection as they deal directly with the groups of suspected perpetrators of human rights violations as their target groups or "clients". A case in point is the DRC, where the CSDP missions support the reforms of the army (EUSEC RD Congo) and the police (EUPOL RD Congo). At the same time, particularly in the East of the country, "men in uniforms" constitute the main group of perpetrators of sexual violence. The UN estimates that in 2009 more than 60% of sexual violence in the provinces of North and South Kivu was perpetrated by uniformed men<sup>20</sup>.

On the other hand, in the DRC the CSDP missions' "clients", particularly the police, are also in a strategic position with regard to the protection of the Congolese population, and notably initiate action to hold suspected perpetrators accountable for their crimes. The Congolese army (FARDC) could also play a role in the protection of local population, thus reflecting the role of an army as a security provider.

In other situations, CSDP action can itself give rise to important human rights considerations, even for missions which at the first glance might seem less concerned. An example of this is the EUNAVFOR, first CSDP naval operation, which aims to fight piracy off the Somali coast. Relevant human rights aspects would include the need to guarantee that detention of suspected pirates captured by the EU vessels is carried out according to the provisions of the relevant human rights law. Specific provisions would be necessary with regard to possible captured minors and their treatment.

As to the transfer of detainees to countries that have accepted to judge them, it is important to continue the follow

up to ensure that the judicial systems that are used guarantee the respect of the relevant international human rights norms, for example as contained in the International Covenant on Civil and Political Rights<sup>21</sup>. Suspects cannot be transferred to countries where they risk facing the death penalty<sup>22</sup>. Also, it needs to be considered that the mission has the obligation under the international law to rescue people in distress. Clear lines of action to the troops deployed on the European vessels are necessary for these kinds of situations in order to allow for them to uphold the high human rights standards the EU has committed to.

The issue of the public image of the EU should also not be underestimated in this context. CSDP missions, seeking to build up state institutions or to fight criminality in highly complex situations such as in Iraq, Afghanistan or Somalia, have (possibly under-utilised) potential to bring good publicity to the EU. Failure to address human rights questions in an adequate manner, leading for example to situations (in the example of EUNAVFOR) of prolonged detention of suspected pirates on EU vessels, to abandoning potential asylum seekers or persons in distress requesting protection on EU vessels or to killing of suspected pirates, could quickly lead to negative publicity and undermine the credibility of the EU. The reverse is also true, and adequate consideration of human rights by CSDP missions can bring value added and improve the EU's image and credibility as crisis management actor both locally in the host country and internationally. As Hadewych Hazelzet writes,

(...) failure to effectively integrate human rights and gender concerns into ESDP – and thus perhaps failure to adopt 'human security' as a concept – has a price tag both for the success and credibility of ESDP and for the security and stability in the host countries where ESDP missions are deployed.<sup>23</sup>

20 Although the bulk of these "uniformed men" are probably not in the ranks of the Congolese National Police (PNC) and army (FARDC), but consist of rebel groups such as the Mai Mai and FDLR, human rights observers such as those of the United Nations, frequently report on sexual violence and other human rights violations committed also by the FARDC and the PNC. See more at MONUSCO website: <http://monusco.unmissions.org>.

21 See <http://www2.ohchr.org/english/law/ccpr.htm>.

22 In Kenya, that has received 79 individuals for prosecution in the Kenyan national court, death penalty is still in the national law. However, the maximum sentence upon conviction for piracy offences in Kenya is life imprisonment; under Kenyan Law – and indeed as a precondition for suspected pirates being transferred by EUNAVFOR – capital punishment is not available.

23 Hazelzet 2010, 88.

## 4 Need to avoid human rights violations by those who should protect

It is particularly devastating for an organisation if its staff deployed abroad fails to respect the organisation's core principles with regard to human rights protection. As Arloth and Seidensticker note, misconduct committed by international staff in peace operations can have a devastating effect on the entire mission, and lead to loss of credibility, trust, respect and confidence among the population<sup>24</sup>.

This has since early 1990s been a challenge particularly to the UN, and human rights abuses perpetrated by its peacekeepers have done great damage to the organisation's credibility. One of the earliest reports of violence against local populations was recorded in Somalia in 1992. Since the *Save the Children* and the UNHCR reports of 2002 more attention has been drawn to the peacekeepers and humanitarian workers coercing young girls to have sex in exchange for food, money or shelter.<sup>25</sup>

Learning from the of UN's painful experience, it is important that the EU take the enforcement of its standards of behaviour very seriously. As the EU becomes increasingly active and visible through CSDP operations, its vulnerability grows as well and the need for strict enforcement of behaviour standards becomes even more important. A scandal related to human rights abuses by its deployed personnel would do serious, even irreversible, damage to the EU's credibility as crisis management actor.

The EU Generic Standards of Behaviour for ESDP Operations contain clear language prohibiting prostitution,

sexual exploitation and sexual abuse (see Table 4). One might, however, ask if there is not a "gray zone" between what could be considered equal sexual relations between a man and a woman and what is clearly sexual abuse and exploitation. Should local girlfriends or boyfriends be tolerated for short-term staff in situations where unequal living conditions between the deployed staff and the local population easily lead to the local partner benefiting from the relationship in terms of money or other advantages she or he would not otherwise have? Could some relationships be considered to constitute prostitution in disguise? Could it be detrimental to a CSDP mission's effectiveness and/or image if its staff, particularly those who are deployed for a short period, are seen to have local partners?

While it is not easy to come up with straight-forward answers to these questions, and while many would argue that consenting adults should be free to do what they want, they merit reflection and clear guidance to staff. The UN has tackled this question and in its *Comprehensive Strategy to eliminate future sexual exploitation and abuse* states that in certain situations it might be necessary for the Head of Mission to institute standards such as banning all sexual relations with the local population in all or part of the mission area. The Strategy further states that "this could be seen as an additional protective measure to protect the reputation and credibility of the mission and its ability to effectively and, in the eyes of the local population, impartially implement its mandate

**Table 4: Extracts from Generic Standards of Behaviour for ESDP Operations<sup>26</sup>**

Personnel should be aware that both prostitution and the pornographic industry have established links with organised crime and human trafficking. Not only will the patronage of either serve to undermine the moral standing of the ESDP operation, but it will ultimately make the mission more difficult to achieve.

Sexual exploitation and sexual abuse violate universally recognised international legal norms and standards. They constitute acts of serious misconduct and are therefore grounds for disciplinary measures. Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited.

<sup>24</sup> Arloth & Seidensticker 2007, 20.

<sup>25</sup> Kent 2005.

<sup>26</sup> Generic Standards of Behaviour for ESDP Operations 2005.



and to protect a local population that is highly vulnerable to exploitation and abuse.”<sup>27</sup>

In July 2010, the EU Council adopted 17 measurement indicators on the EU implementation of the UNSCR 1325 on women, peace and security, including an indicator on the number of cases of sexual abuse or exploitation by CSDP staff investigated and acted upon. As the document itself states, this indicator is an important measure of CSDP missions’ accountability on cases of misconduct, and shows that the EU takes seriously its commitments with regard to the standards of behaviour.<sup>28</sup> It is a positive sign that the EU has been willing to select such an indicator, measuring a sensitive aspect of its work. By doing so it signals its openness to being transparent about this issue, setting a good example for other organisations involved in crisis management, including peacekeeping. It would probably not be possible to completely rule out the possibility of sexual abuse and exploitation happening, but what is more essential is that it is dealt with in an adequate manner and that there are consequences to the staff member involved.

The legal issue of extra-territorial validity and applicability of international human rights conventions ratified by Member States participating in a peacekeeping or other type of crisis management mission is a highly relevant topic in this context, and seems to continue to be disputed by legal scholars. In general terms, international peacekeepers enjoy immunity of judicial proceedings in the country of operations and are subject to the jurisdiction of their sending countries. Wanda Troszczynska-van Genderen demonstrates, in the light of recent rulings by the European Court of Human Rights (ECtHR) on the inadmissibility of two cases related to human rights accountability of European peacekeeping forces in Kosovo, that there is a “lack of legal clarity as well as a legal lacuna prevailing in the field of accountability in peacekeeping, suggesting the limits of the jurisdiction of international

judicial bodies when it comes to international crisis response operations.”<sup>29</sup>

As the only CSDP mission this far (and also the only one with executive mandate), EULEX Kosovo has set up a specific Human Rights Review Panel (see Table 5) to deal with reported human rights violations committed by its own staff. Setting up such structures is not a straight-forward task, and even in Kosovo the Review Panel is not a judicial body. It is however setting an interesting precedent, not least in respect to signalling to the local authorities and population that the international staff is held liable for possible misconduct. This is essential, considering the negative perception, as described in a United Nations report, that “peacekeeping personnel who commit acts of sexual exploitation and abuse that constitute crimes under generally accepted standards (e.g., rape or sexual relations with young children) are not normally subjected to criminal prosecution, whether by court martial or by trial before a national criminal court, which would have been the inevitable result if they had committed such acts in their home countries.”<sup>30</sup>

In order to uphold a positive EU image in the host country, to avoid feelings of impunity and to gain the support of the local population, communicating back to the host government on measures taken in cases of misconduct is essential.

**Table 5: How to tackle accountability issues? Example of EULEX Kosovo<sup>31</sup>**

According to the usual practice for international and diplomatic missions, EULEX has been accorded immunity against local legal and administrative process. However, while local legislation cannot be enforced against EULEX or its staff members, these still must observe local legislation. If a EULEX staff member violates the law, his/her immunity might be waived and the person can be held criminally liable in their home country. Legal accountability, is ensured through the judicial mechanisms of the participating states. In this context, the mission is committed to informing about the results of such proceedings.

EULEX has an Internal Investigations Unit, and disciplinary boards and boards of inquiry are regularly convened to deal with violations of the staff rules and regulations, including the Code of Conduct, i.e. “unlawful conduct”. Additionally, a Human Rights Review Panel (HRRP) was set up on October 29, 2009 for complaints from any person claiming to be the victim of human rights violations by EULEX Kosovo in the conduct of its executive mandate.

When the Panel determines that a violation has occurred, its findings may include non-binding recommendations for remedial action by the Head of Mission. The recommendations of the Panel and the subsequent actions by the Head of Mission are published in the English, Albanian and Serbian languages on the Panel’s website.

27 UN document A/59/710 (2005), 20.

28 EU document 11948/10.

29 Troszczynska-van Genderen 2010, 8.

30 A UN document A/59/710 (2005), 24.

31 EULEX Accountability: <http://www.eulex-kosovo.eu/docs/Accountability/EULEX-Accountability-05.01.2010.pdf>; HRRP: <http://www.hrrp.eu/index.php>.

## 5 Should CSDP promote gender equality?

Is the analysis similar with regard to the promotion of gender equality? The answer is yes, considering that both women and men are equally entitled to all human rights, starting from the right to life and to physical integrity, and ranging to the right to participate fully in the political life or to have access to the public service of their country. Gender equality is thus fundamentally a human rights question.

However, sometimes the notion of “gender equality” seems to be narrowly interpreted, considering it as an objective, at best, suitable to be pursued in the (North) European context and limiting it to issues such as equal pay for equal work. There are many who wonder if gender equality is an objective that should at all be considered within CSDP. Many furthermore see gender equality as being relevant to development cooperation but not a pertinent matter to be considered within the security policy.

This article argues that this scepticism stems from not fully grasping the implications of gender inequality in a conflict of a post-conflict situation, where this inequality leads to phenomena such as escalation of sexual violence, reinforcing feelings of hatred and revenge and making it more difficult to achieve peace, or exclusion of women from peace talks, leading to peace agreements not considering issues important for women. In a nutshell, it is about not understanding gender equality as a security issue, nevertheless constituting the very basis for the different United Nations Security Council Resolutions on women, peace and security (see Table 6). As a consequence, the importance of considering both women’s and men’s security needs in the planning of crisis management actions and reconstruction projects, seems not yet to be adequately understood.

These sceptics fail to see the impact that considering gender aspects in a crisis management mission can have both in terms of allowing the mission to perform its duties more efficiently and therefore to attain its objectives better (the “enhancing the operational effectiveness” argument) as well as of ensuring the equal protection and participation of both men and women (the “human rights” or “gender equality” argument).

In fact, addressing gender equality can become a powerful means to enhance the operational effectiveness of crisis

management action. As a recent study of NATO operations in Afghanistan shows, the operation’s effectiveness<sup>32</sup> was improved in several areas when the content of UNSCR 1325 was incorporated in day-to-day operations. Examples given

**Table 6: United Nations Security Council Resolutions on Women, Peace and Security**

*United Nations Security Council Resolution 1325* (2000) was the first UN Security Council resolution to specifically address the impact of armed conflict on women, as well as to stress the importance of women’s involvement in conflict-resolution and post-conflict political processes and reconstruction.

In 2008, the UN Security Council adopted *Resolution 1820*, which explicitly links sexual violence as a tactic of war with the maintenance of international peace and security.

*UN Security Council Resolution 1888* (2009) restates the importance of increasing women’s representation in mediation and decision-making processes with regard to conflict resolution and peacebuilding. The resolution establishes new measures to address sexual violence in situations of armed conflict, such as the appointment of a Special Representative and a Team of Experts on the use of sexual violence in armed conflict.

*UN Security Council Resolution 1889* (2009) urges UN Member States (MS) and other actors to take further measures to improve women’s participation during all stages of peace processes, requests that UN bodies and MS collect data on, analyse and systematically assess particular needs of women in post-conflict situations and requests the UN Secretary-General to submit to the Security Council a set of indicators to track implementation of UNSCR 1325.

32 The study considers effectiveness primarily in terms of daily military operations to establish and maintain security and stability, but also in terms of projects related to reconstruction and development and strengthening the Governmental authorities.

included having more female soldiers to better reach the local population and collect intelligence, having expert support in the planning of operations, better handling issues of gender-based violence, better addressing women in civil-military cooperation (CIMIC) -projects and to better handling force protection issues.<sup>33</sup>

The study demonstrates how knowledge about differences in women's and men's situations and their respective behaviour during an armed conflict directly relates to the ability to understand and successfully conduct a peace operation in a conflict area. This knowledge can translate into more effective protection of the civilian population against violence. With regard to decision making processes, widening the target group resulted in the addition of more institutions, for example in health and education sectors, thus contributing to more inclusive processes. All Provincial Reconstruction Teams (PRT) interviewed for the study saw the need for female soldiers in order to be able to communicate with Afghan women.<sup>34</sup>

Another reason why it is important to pay specific attention to gender roles in a post-conflict context is that important windows of opportunities often emerge for new legislation that can reinforce women's participation in the decision making on the long run. In many situations this can be seen as a continuum to the roles women have taken on during the war when their spouses and other male relatives have been absent fighting. This window of opportunity was seized for example in the post-genocide Rwanda, where women's participation was boosted by enacting specific mechanisms, among them a constitutional guarantee, a quota system, and innovative electoral structures.<sup>35</sup> CSDP missions, through their essential role in providing advice, monitoring and mentoring, can play an important role in making sure that these entry points are effectively used.

Some of the misconceptions about the usefulness of a gender approach might result from the fact that its promoters often fail to see the two sides of the coin: how and on what basis both women and men interact and how both of them are affected by war. A lot of the gender agenda evolves around women's rights and needs without considering the role that men play in the respect or non, of these, or without considering the specific situations affecting both women and men. For example the discussions about sexual violence have long been very victim oriented, and whilst fully recognising the importance of emphasising the victims' perspective, this article calls for a more pronouncedly gender-sensitive approach to these issues, where one would also consider the specific situations of the perpetrators where these are male, and sexual violence committed against men and boys.

Interpreting the gender narrowly as only concerning women, or being a women's issue can even be counterproductive, as described by Maaria Ylänkö with regard to war-related sexual violence: "There is a risk that the claimed gender perspective marginalises sexual violence to a specific domain of a gender

affair or women's affair that does not integrate with the general attempts to strengthen Rule of Law."<sup>36</sup> A gender approach to issues such as gender-based and sexual violence should first of all consider that in a war both women and men fall victims of all kinds of violence, including sexual, and secondly, also be concerned about the reasons for which (in most cases) men and boys become perpetrators of sexual violence and the consequences of this violence on both women and men<sup>37</sup>.

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33 Olsson & Tejpar 2009, 4 & 126.

34 Ibid., 117.

35 Powley 2005, 155.

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36 Ylänkö 2009, 72.

37 See for example Ericsson & Stern 2010.

## 6 EU efforts to make it happen

To date, the EU has developed a substantial body of policy related to human rights and in particular to gender in the CSDP. The EU Council adopted the first specific policy paper related to the implementation of UNSCR 1325 in the CSDP in 2005, and in the following year it made corresponding commitments with regard to human rights in general. Two years later, in 2008, the EU Council under the Slovenian presidency adopted a specific checklist on children affected by armed conflict,<sup>38</sup> echoing the 2003 *EU human rights guidelines*<sup>39</sup> on the same subject. The Political and Security Committee (PSC) adopted a working document on the *protection of civilians*<sup>40</sup> in 2003 (this document is currently under revision).

The year 2008 saw further developments with regard to gender and CSDP, particularly during the French presidency. Notably, on 8 December 2008, the EU Council adopted the *Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security* (Comprehensive Approach)<sup>41</sup> as well as a *revised operational document on the implementation of these resolutions specifically within the CSDP*<sup>42</sup>. Furthermore, it adopted on the same day *EU human rights guidelines on violence and discrimination against women and girls*,<sup>43</sup> which

strengthened the role of women's rights within the EU's overall human rights policy.

The Comprehensive Approach of December 2008 broke new ground by cutting across the previous pillar structure and linking the CSDP firmly to other policy areas such as development cooperation, political dialogue or EU action within the UN. It explicitly states that it aims to "ensure full coherence between and within EC and CFSP/ESDP instruments and proper continuity in its crisis management initiatives and further reconstruction and development work."<sup>44</sup> Still at that time what was not straightforward to achieve, such as suggesting information sharing and consultation on women, peace and security issues between ESDP missions and EC delegations in a third country, is what the EU is now more generally aiming at within the implementation of the Lisbon Treaty. Thus, by the adoption of a cross-pillar approach, the Comprehensive Approach remains a valid document in today's post-Lisbon context (see Table 7).

In order to operationalise the policy commitments, the Comprehensive Approach set up an inter-institutional "Women, Peace and Security Task Force" to oversee its implementation. This task force, which has been meeting

**Table 7: Extract from Comprehensive Approach<sup>45</sup>**

A gender perspective, encompassing both women and men, should inform EU external actions in order to achieve a comprehensive response to the threats faced by the civilian population in times of conflict and in its aftermath. This is the premise for effective stabilisation, peace building, post-conflict reconstruction and institution building. Moreover, a strengthened commitment to gender issues in the EU activities, with regard to conflict prevention, crisis management, peace building and post-conflict reconstruction and institution building, can enhance efficiency and effectiveness. Furthermore women's peace initiatives and conflict resolution efforts are a valuable resource for the development of sustainable and inclusive approaches to peace and security.

38 EU document 9822/08.

39 EU Guidelines on Human Rights 2003.

40 Revised Guidelines on the Protection of Civilians in CSDP Missions and Operations.

41 EU document 15671/1/08.

42 EU document 15782/3/08.

43 EU document 16173/08.

44 EU document 15671/1/08, 4.

45 Ibid.

**Table 8: Extract from EU Concept for support to Disarmament, Demobilisation and Reintegration (DDR)<sup>51</sup>**

Efforts must be made to prevent the recruitment of children to armed forces and armed groups in violation of applicable international law and, where they are already recruited, they should be removed from armed forces and armed groups as early as possible in particular to avoid that they become a bargaining tool in the political process. Measures should also be taken to prevent their reinvolved in violent activities. Particular attention should be paid to separate effectively the children from the armed groups and demobilised chain of command. Immediate support should be offered to children to reintegrate into society, through community-based approaches.

periodically since early 2009, has an informal character and should not be mixed with the formal Council Working Groups, several of which are relevant in this context<sup>46</sup>. As shortcomings, the Comprehensive Approach did not include timelines for implementation, benchmarks or indicators, and did not define the responsible services for each of its action points. The definition of these would have made the document punchier and allowed a better level of accountability.

On the other hand, the document included a commitment to adopt, at a later stage, indicators to follow up its implementation. These *indicators* were adopted by the EU Council on July 27, 2010<sup>47</sup> and have the potential to allow for the tracking of implementation across the EU Member States and institutions as well as CSDP missions, and thus to improve EU accountability for its commitments in this field. This is a very rare example of actually measuring the implementation of EU policy commitments with regard to human rights and gender in the external relations field.

As a limitation the indicators remain focused on processes and as such will only bring limited information about the actual impact of EU action on the lives of women (and men) living in conflict affected countries. The indicators for example cover issues such as the deployment of gender advisors in CSDP missions or the number and percentage of women mediators and negotiators and women's civil society groups in peace negotiations supported by the EU but do not measure the actual impact of gender advisors' work or of the participation of women in peace negotiations in terms of the quality of the resulting peace agreement.

This being said, the indicators correspond to the actions the EU committed to in the Comprehensive Approach and cover a wide range of sectors across the EU foreign policy. Their actual usefulness should also be considered with regard to their potential to act as triggers of action by the different EU institutions and Member States. In order to better account for the actual impact, it would be useful to consider them in conjunction with other relevant efforts such as the *"global indicators" on Resolution 1325 developed by the UN* in April 2010<sup>48</sup>. In addition to measuring processes

and funding, these include measure issues such as maternal mortality and women's and girls' physical security. It might also be useful to complement the indicators with specific evaluations or descriptions on the impact of EU action on the final beneficiaries, both women and men.

The operational paper Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP, also adopted on 8 December 2008, builds on a previous document on and checklist on the same topic (dating from 2005 and 2006 respectively). Its value added is to be highly practical and to consider the entire planning and implementation cycle of CSDP missions and operations, as well as their follow up (particularly in the lessons identified processes).<sup>49</sup> It can be considered that this document and the Comprehensive Approach jointly form the two main pillars of the EU policy on women, peace and security.

In addition, the *EU Concept for support to Disarmament, Demobilisation and Reintegration (DDR)* from December 2006 includes substantial references to human rights, including to children's rights, as well as to gender (see Table 8).<sup>50</sup>

To summarise, the EU policy, as included in the above mentioned policy orientations, is constructed around the following six main principles<sup>52</sup>:

1. Human rights and gender should be considered throughout the mission "cycle", starting from the fact finding phase to the planning and implementation of activities and the subsequent lessons learned exercises. Relevant planning documents need to reflect this approach.
2. Relevant expertise, that is, advisors or focal points, needs to be included in planning teams and missions. The document Mainstreaming of Human Rights into ESDP<sup>53</sup> specifies that the human rights advisor needs to be close to the Operation or force Commander or Head of Mission (this was the case for the Aceh Monitoring Mission, AMM and EUFOR RD Congo). The Checklist on Children

46 Most importantly the Working groups such as Committee for Civilian aspects of crisis management (CIVCOM), United Nations Working Group (CONUN) and Council Working Party on Human Rights (COHOM), the Political Military Group (PMG) as well as the Political and Security Committee (PSC).

47 EU document 11948/10.

48 UN 2010.

49 EU document 15782/3/08.

50 EU document 16387/06.

51 Ibid., 9–10.

52 This list is non exhaustive, but seeks to capture the common main principles present in the relevant policy documents.

53 EU document 11936/4/06.



Affected by Armed conflict (CAAC)<sup>54</sup> calls for the designation of an expert designated for Child protection and CAAC issues for ESDP missions operating in the environment where the risk of grave violations of child rights is particularly high.

3. All CSDP staff should receive training on human rights and gender aspects, preferably prior to their deployment (notice that CSDP pre-deployment training is an EU Member State competence and thus it is the Member State that bears the responsibility for implementing this provision). Standard training guidelines or elements should be developed.<sup>55</sup>
4. Mission reporting should cover human rights and gender aspects. The operational document Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP<sup>56</sup> calls for the inclusion of gender related aspects, including information on sexual and gender based violence as well as local women's role as actors, in the regular and frequent reports by the European Union Special Representatives (EUSR), CSDP Heads of Missions or Commanders. The Checklist on Children Affected by Armed conflict makes a specific reference to monitoring and reporting in "full knowledge of, and coordination with, the reporting and monitoring system of the UN established through UNSC resolution 1539 and 1612."<sup>57</sup>
5. CSDP missions should coordinate their action with other EU initiatives and broader international community. The Comprehensive Approach on Resolutions 1325 and 1820 notably calls for a coordinated approach including CSDP missions, political dialogue, development cooperation, multilateral cooperation and humanitarian aid.<sup>58</sup>
6. In addition, Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP calls for contacts with local and international civil society organisations,<sup>59</sup> and the Checklist on Children Affected by Armed conflict mentions the need to collaborate with "child protection partners."<sup>60</sup>

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54 Document 9822/08.

55 See also Implementation of UNSCR 1325 and UNSCR 1820 in the context of training for the ESDP missions and operations – recommendations on the way forward (2009).

56 EU document 15782/3/08.

57 Document 9822/08.

58 EU document 15671/1/08, 4.

59 EU document 15782/3/08.

60 Document 9822/08.



## 7 Implementation of EU policies

Today, the EU has a robust policy in place, at least on paper, with regard to both human rights and gender in the CSDP, and has made additional, specific commitments on issues such as children's rights,<sup>61</sup> protection of civilians, transitional justice<sup>62</sup> and international humanitarian law. In addition, the various building blocks of the EU human rights policy, such as the human rights guidelines, provide further orientations. This is all grounded solidly in the legal basis and the laws governing the EU, which makes of the protection and the promotion of human rights both a legal and a political obligation to the EU.

The AMM, launched in 2005 to monitor the peace agreement signed by the Government of Indonesia and the Free Aceh Movement (GAM), was the first time the EU sent out specific human rights monitors in the context of a crisis management operation, with an explicit mandate to monitor the human rights situation, contribute to the process of reconciliation and provide assistance in this field. The 16-month mission mobilised around 190 international observers.

Another interesting example in this regard is the EUMM Georgia, whose mandate explicitly foresees that the mission should "monitor, analyse and report on the situation pertaining to the stabilisation process, centred on full compliance with the six-point Agreement, including troop withdrawals, and on freedom of movement and actions by spoilers, as well as on violations of human rights and international humanitarian law."<sup>63</sup> Many CSDP missions and operations do not, however, have such an explicit human rights focus.

While the Council Joint Actions establishing many of the ongoing missions (EUMM Georgia, EUPOL and EUSEC RD Congo, EULEX Kosovo, EUPOL Afghanistan and EUJUST LEX-Iraq) make specific reference to human rights, several of them (EUBAM and EUPOL COPPS in Palestinian territories, EUTM Somalia, EUFOR Althea and EUPM Bosnia and Herzegovina) remain completely silent about human rights. The Council Joint Action establishing EUNAVFOR does not include a general reference to human rights, but mentions however that transfers of detainees should be "consistent with relevant

international law, notably international law on human rights, in order to guarantee in particular that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment."<sup>64</sup>

The picture is bleaker with regard to gender, as the Council Joint Actions for only two missions, EULEX Kosovo and EUJUST LEX-Iraq, refer to it. The Council Joint Action on EULEX Kosovo requests that the mission "ensure that all its activities respect international standards concerning human rights and gender mainstreaming."<sup>65</sup> On EUJUST LEX-Iraq the Council Joint Action states that "activities should maintain a balanced representation of the Iraqi population, based on a human rights and gender equality approach."<sup>66</sup> The Council Joint Actions on EUPOL and EUSEC RD Congo do not mention gender but include specific references to the need to combat sexual violence (see Table 9).

One can conclude that despite the existence of the robust policy, the picture is mixed with regard to translating the policy objectives into concrete language in the Joint Actions establishing the current CSDP missions. A clear reference to human rights and gender aspects at this level would, however, be very important, both in order to make sure that these aspects are adequately considered in the planning documents of the missions that follow, notably the Concept of Operations (CONOPS) and Operational Plans (OPLAN), and in order to communicate both internally and externally about the importance of the EU's human rights and gender commitments. This is particularly important, considering that the further planning documents are not public.

Internally, inclusion of clear language on human rights and gender in the Joint Actions would support efforts further down the line, including by human rights and gender advisors, and externally, communicate to the host governments and to partners about the EU's commitment to these issues. It would reinforce accountability by setting unambiguous, human rights and gender related objectives to the missions from the

61 Document 10019/08

62 Check-list for transitional justice 2006.

63 Council Joint Action 2008/736/CFSP (2008).

64 Council Joint Action 2008/851/CFSP (2008).

65 Council Joint Action 2008/124/CFSP (2008).

66 Council Joint Action 2005/190/CFSP (2005).

**Table 9: Human rights and gender: CSDP missions in the Democratic Republic of Congo**

The two CSDP missions, EUPOL and EUSEC RD Congo, operate in a very challenging context with regard to the poor state of human rights protection in the DRC and the ongoing conflict and instability. The recent military operations against the FDLR by the Congolese Armed Forces (FARDC), supported by the UN operation in the DRC, MONUC (that became MONUSCO in July 2010), have further contributed to increasing human rights violations, including acts of sexual violence and rape. According to MONUC more than 1700 civilians were killed during military operations in 2009 and 6000 houses were burned. In 2009 the United Nations Population Fund (UNFPA) registered 15.297 cases of sexual violence in the country, of which 9.045 cases in the provinces of North and South Kivu.

Although according to the project on sexual and gender-based violence, implemented by UNFPA together with UNICEF and OHCHR, the proportion of violations carried out by civilian population is on the raise, it remains that in the Kivus in 2009, approximately 60% of presumed perpetrators were identified as "men in uniforms". Nevertheless, all figures need to be considered with utmost care as it is very difficult to get accurate information on the numbers of sexual violence cases.

Although Congolese tribunals have handed out an increasing number of judgements on sexual violence and rape, the judgements are hardly ever carried out thus leading to a de facto situation of complete impunity. In addition, although military tribunals play an important role, high-ranking FARDC officials are rarely brought to answer for their crimes and several continue in their activities despite having been sentenced. As a further impediment for rendering justice the penal system is in a very bad shape and most prisons, if there are some, do not allow for a secure imprisonment of convicted people – many of the detention facilities are even without doors or windows allowing for inmates to roam about freely.

Through its missions the EU has a privileged access to the groups that are in a key position with regard to protection of human rights in the DRC, including the fight against sexual violence. On the one hand, FARDC soldiers and Congolese police officers, who are the "clients" of EUPOL and EUSEC RD Congo, constitute one group of perpetrators of human rights violations. On the other hand, these groups could ideally be in a very strategic position and play a fundamental role with regard to the protection of the Congolese population from violence and the fight against impunity.

The mandates of both missions include specific reference to human rights:

*EUPOL:*<sup>67</sup>

"The particular objectives of the Mission shall be (...) to support the fight against impunity in the field of human rights and sexual violence."

"...by supporting the implementation of the Police Action Plan in order to enable the PNC to have at its disposal, to the largest extent possible, the instruments, decision-making processes and means to guarantee a proper keeping of public order, while fully respecting the fundamental freedoms granted in the Constitution as well as the international human rights standards..."

*EUSEC:*<sup>68</sup>

"The European Union (EU) is conducting a mission to provide advice and assistance for security sector reform (SSR) in the Democratic Republic of the Congo (DRC), hereinafter referred to as 'EUSEC RD Congo' or 'the mission', with the aim of assisting the Congolese authorities in setting up a defence apparatus capable of guaranteeing the security of the Congolese people, while respecting democratic standards, human rights and the rule of law, as well as the principles of good governance and transparency."

Both missions have sought to identify strategic actions in respect to human rights and gender, particularly fight against sexual violence. EUPOL RD Congo for example has sought to ensure that human rights and gender are taken into consideration in the Congolese police reform, particularly through the Police Reform Monitoring Committee (CSRP) overseeing the process. It has provided recommendations on issues such as the use of quotas to step up female participation and vetting of police forces. Furthermore, it has supported the Congolese authorities in drafting of bylaws on issues such as the child protection police. It has helped Congolese women's organisations to prepare joint position papers on the police reform. Another important element has been the training of the Congolese police on sexual violence and support to the specialised police units on family issues and violence against women, for example with regard to the use of suitable investigation techniques, building of protected areas for questioning victims and the elaboration of investigation reports.

EUSEC RD Congo has trained FARDC soldiers on human rights, humanitarian law and sexual violence as well as on the code of conduct, in addition to seeking to improve the living conditions of soldiers and their families by means such as supporting agricultural production in five military bases and helping to set up social activity centres in military camps.

In addition to these human rights specific activities, both missions' main components offer interesting opportunities for including human rights and gender considerations while planning and implementing actions. EUPOL RD Congo, for example, supports the Congolese police in preparing specific curricula on human rights in general, and sexual violence and children's rights in particular, to be used in the training of new police officers. EUSEC RD Congo, one of the main tasks of which has been the setting up of a reliable pay chain within the FARDC, could seek within this activity to also to facilitate the payment of family allocations to the widows of deceased FARDC soldiers, or to promote visible name plates in the soldiers' uniforms in order to make their identification easier (this could act as deterrent of human rights violations).

67 Council Decision 2010/576/CFSP (2010).

68 Council Decision 2010/565/CFSP (2010).

very moment of their initiation, and allow for the inclusion of human rights and gender in benchmarking.

With regard to staffing, all the ongoing CSDP missions have human rights and/or gender advisers or focal points (the latter have been appointed to carrying out these tasks among their other duties). It is important to note, however, that many advisers are “double-hatted”, meaning that they either cover two missions (the case of advisers for EUPOL and EUSEC RD Congo) or both human rights and gender. This hampers the work of the advisers concerned as these would be expected to manage a considerable workload considering the wide nature of issues involved. It also makes it more difficult for an adviser to ensure a daily presence in a given mission, which would almost seem a precondition for efficient work.

Some missions such as EUPOL RD Congo or EULEX Kosovo, have teams of several experts working on human rights and gender related issues. In June 2010, for example, the antenna of EUPOL in Goma, North Kivu, consisted of one police officer as head of antenna, three members of the mobile team on sexual violence and one human rights and one gender expert, both also covering EUSEC RD Congo. Human rights and gender related work comprised thus the bulk of the EUPOL RD Congo’s work in Goma at that point of time.

At the moment of the writing of this article, there was, however, only one specific children’s rights adviser (Juvenile/Child Rights Expert in EUPOL COPPS), despite the commitment on the deployment of a specific child protection expert in risky environments<sup>69</sup>, to which most, if not all, CSDP environments would belong.

On the basis of publicly available information, including on the missions’ web pages and on the EU Security and Defence News<sup>70</sup>, it is possible to make oneself an idea of some human rights and gender related activities conducted by CSDP missions. A non-negligible number of specific actions have taken place during the recent months, particularly in respect to training. CSDP missions have, for example, trained Somali soldiers on human rights and international humanitarian law, Congolese police on sexual violence, Afghan police on elections, Iraqi judges and prosecutors on fair trial standards and human rights and Afghan female police on security. In addition, the EUPM in Bosnia and Herzegovina, together with the BiH Agency for Gender Equality, has produced a report “Women in Police – Situation in BiH”.

The fundamental question remains, however, what is the overall impact of these actions, or how they change the mentalities of the trainees and the day to day experience women and men living in conflict affected countries and regions. No external, independent impact evaluations exist, and CSDP missions and operations are generally not subject to similar kind of external evaluation practices as for example European Commission’s development programmes. The missions would normally be evaluated periodically, through so

called “lessons learned” exercises, but these reports remain confidential.

As an example of the difficulty to assess impact, Troszczynska-van Genderen takes the case of training provided by EUJUST LEX in Iraq, and concludes that whereas human rights are adequately embedded in the training curricula of the mission, it has proved impossible to follow up the trained Iraqi interlocutors in order to assess how much of this has really been taken on board, what aspects of knowledge acquired have been further disseminated upon return to the country and what overall transformational impact the training has generated<sup>71</sup>. Although the situation of Iraq is particularly challenging in this respect, this shortcoming is probably not unique. A key challenge, for example, would be to follow up the Somali soldiers trained by the EUTM Somalia training mission, including in order to ensure that these will not use their newly required military skills to perpetrate human rights abuses.

At the EU member state level, the adoption to date of 10 national action plans on Resolution 1325, demonstrates of increasing awareness about the importance of the issue. Although the figure only represents less than 40% of EU Member States, these now account for approximately half of existing national action plans in the world, which is not a negligible result and reinforces the EU’s credibility as international actor in this field.

Several EU Member States have taken interesting initiatives to promote the implementation of Resolution 1325. Just to mention a few, Ireland has been partnering with Northern Ireland, Liberia and Timor-Leste in a cross-learning process on Resolution 1325 and has appointed a Special Envoy on women, peace and security.<sup>72</sup> Sweden has developed know-how particularly with regard to implementation of Resolution 1325 in its armed forces, including the organisation of courses for gender field advisors<sup>73</sup>. It is also the country which has sent out a large proportion of gender and human rights advisors to CSDP missions, thus allowing to build up their capacity. Finland has developed a Handbook on Human Rights and Crisis Management in the context of CSDP operations<sup>74</sup>. Austria has organised specific training courses on women, peace and security and child protection<sup>75</sup>.

Another positive development has been the setting up of a coordination mechanism (Women, Peace and Security Task Force) between the EU institutions and Member States, as well as the involvement of Brussels-based non-governmental

69 EU document 9822/08.

70 Available at <http://www.consilium.europa.eu/App/newsroom/loadbook.aspx?BID=80&LANG=1&cmsid=978>.

71 Troszczynska-van Genderen 2010, 21–22. At the time of her assessment, the mission had trained over 3.029 officials during 112 training courses and 21 work experience secondments mainly out of Iraq.

72 For more information, see <http://www.dfa.ie/home/index.aspx?id=82475>.

73 See more at Swedish Armed Forces International Centre: <http://www.forsvarsmakten.se/en/Organisation/Centres/Swedish-Armed-Forces-International-Centre>.

74 Forthcoming, see more at [www.formin.fi](http://www.formin.fi) and the Erik Castrén Institute of International Law and Human Rights: <http://www.helsinki.fi/eci/index.html>.

75 See more at Austrian Study Center for Peace and Conflict Resolution ASPR: <http://www.aspr.ac.at>.

organisations in its work. This coordination has potential to strengthen the EU's collective response and to make it more coherent.<sup>76</sup> There is no corresponding coordination structure that would cover human rights, however.

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<sup>76</sup> On criticism with regard to the EU policy on women, peace and security as it stood before 2008, see Sheriff & Barnes 2008, 71–85.

## 8 Conclusions and perspectives

The implementation of the EU commitments on human rights and gender mainstreaming in CSDP should be more systematic. Importantly, many Joint Actions establishing CSDP missions have been approved without specific references to these issues, despite the relevant declarations at the highest levels including the Foreign Affairs Council (previously the GAERG) and the PSC. Although the missions are implementing a number of certainly interesting, specific actions related to human rights and gender, the impact of these should be systematically evaluated in order to guide further planning and enhance institutional learning.

The EU should seek to negotiate human rights and gender benchmarks with its host governments in the countries in which it operates, and should not continue supporting institutions that persistently commit human rights violations. Otherwise the EU can be perceived as accomplice, as has already been the case for example for the UN in the DRC in its support to the Congolese Army. CSDP missions should be withdrawn from situations where the local government does not undertake sufficient efforts to improve its human rights record.

Can the EU afford deploying staff that has not been trained in its key policies, such as human rights and gender in CSDP? Closing the gaps still prevailing in respect to human rights and gender training of CSDP staff should be considered among the top priorities. Only personnel that know the EU human rights and gender policy as well as the international framework sustaining it, can be expected to actually implement it.

At present, human rights and gender training of CSDP staff remains sporadic<sup>77</sup>, with some Member States performing very well and providing systematic training and some others not providing any training at all. This leads to the newly recruited staff arriving to missions with wide variations in their level of knowledge. While human rights and gender advisors can manage to remedy to the lack of knowledge to a certain degree by providing induction training to newcomers, this is not an ideal solution considering that pre-deployment training is generally more efficient than training delivered in the theatre, where staff is less disposed to learning due to the

stress resulting from the operational environment. EU Member States should step up their training efforts and cross invite each other's staff to trainings. Training in human rights and gender should be mandatory for all staff sent out. Innovative approaches, such as web-based courses and platforms for sharing good practise, should be developed.

Focus on specific gender and human rights activities should not turn the attention away from the need to further mainstreaming of human rights and gender to the missions' core activities, as this is where the true potential for impact can be found. It is more effective and sustainable on the long run, for example, to increase women's participation in police forces by developing gender sensitive personnel administration policies from the outset for a national police, than by organising specific trainings courses for female police officers. Human rights and gender activities, and the advisors in charge of these, should not be isolated but part of the implementation of the missions' general actions and objectives, strategically positioned close to the Head of Mission or Commander. There are no CSDP missions where human rights and gender issues would not be relevant, although the methods that can be used vary according to the context and the mission's objectives.

There is only one CSDP mission to date, EULEX Kosovo, which has set up a specific structure to deal with complaints for human rights violations against the mission's staff. For others, there are no systems in place for receiving complaints against the mission. The setting up of such mechanisms for other missions, possibly by pooling resources or centralising efforts in Brussels, would merit urgent analysis, considering the high-risk environments in which the missions operate and the real possibility for serious mistakes, including with weapons.

A particularly large implementation gap seems to exist on children's rights, with only one specific child protection adviser deployed in the current missions despite ambitious commitments. Interesting examples of child-specific actions do exist, though, such as main awareness training in schools conducted by EUFOR Althea and the organisation of specific children's events by a EUMM Field Office, and could be used as good practise for other missions.

The personal commitment of Heads of Missions and Commanders cannot be under-estimated, and this is very

often mentioned as one of the most decisive aspects of successful human rights and gender mainstreaming in CSDP missions. It should not be taken for granted that they have the necessary knowledge about the relevant EU policies without receiving specific training and briefings, particularly in the beginning of their mandate but also periodically, as policies evolve. They should be held accountable by the instances they report to, particularly the PSC, for the implementation of the relevant EU policies, and regularly requested to provide related information as part of their reporting.

The setting up of the new EEAS in 2011 has a potential to further strengthen the human rights and gender mainstreaming in CSDP. It could for example do so by further reinforcing the working relations between the different actors involved within the institutions, such as the human rights unit, the Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC) as well as the European Union Military Committee (EUMC) and Staff (EUMS). All these structures should include human rights and gender expertise and focal points, preferably with field experience. It could be useful, in addition, to nominate a high-level personality to lead action, as was the case of the former Personal Representative for Human Rights of Javier Solana, Ms. Riina Kionka. The role of the European Union High Representative for Foreign Affairs and Security Policy remains, however, the most fundamental in terms of both ensuring visible commitment to these issues and requesting concrete results from the staff in Brussels and elsewhere.

CSDP has, since its beginning in 2003, been a high-growth sector of the EU. There is clearly scope and need for European crisis management, and willingness from the EU Member States to respond to this need. However, the EU's capacity to deploy simultaneous missions around the globe is limited, and the EU needs to carefully weigh the different elements of a given situation before deciding to launch CSDP action. It is in this decision making process, from the very beginning of the analysis, where the needs of human rights protection should play an important, strategic role, including as triggers for initiating or for discontinuing EU action.



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