



Case study: Common Security and Defence Policy (CSDP)

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Executive Summary

The present Report entitled 'Case study: Common Security and Defence Policy (CSDP)' was written as part of Work Package 10 (WP 10) 'Human Rights Violations in Conflicts' of the FP7 project 'Fostering Human Rights Among European (External and Internal) Policies' (FRAME).¹ This report is aimed at providing an analysis of the the integration of human rights, humanitarian law and democracy/rule of law principles and tools into the European Union (EU) Common Security and Defence Policy (CSDP), with a focus on the protection of vulnerable groups. The report further assesses the complementarity of CSDP action with other EU external policies embedded in the EU's comprehensive approach to external conflicts and crises. Attention is also given to the cooperation and complementarity of EU action in the area of crisis management, with the relevant security actions of other multilateral actors on various policy levels.

The report is divided into seven parts. Chapter I outlines the scope and aim and explains the methodology used to conduct the research. Chapter II provides an overview of all CSDP missions and operations to date and places it within the framework of the EU's foreign policy and the EU comprehensive approach to external conflicts and crises. Chapter II places particular emphasis on the concept of 'human security' as a tool for a comprehensive approach for human rights and security linkages in EU foreign policy. As part of the EU comprehensive responses to crisis and conflict, the study covers the interaction between the EU with other international and regional institutions in the area of crisis management.

Chapter III analyses the CSDP legal and policy framework on the protection and respect for human rights and IHL and support to democracy and the rule of law with a focus on the protection of vulnerable groups and gender mainstreaming. Notably, the integration of the human rights and gender component in CSDP has been progressively materialised through the adoption of a set of guidelines on several human rights priority issues, as well as by the setting-up of different mechanisms aiming at strengthening respect for international standards in third countries. Despite all of this progress, the study unveils existing areas for improvement in terms of policy.

Chapter IV covers the integration of human rights and IHL in the CSDP decision-making and planning phases by providing a detailed analysis of the role of key actors and bodies involved. The protection of human rights should play a strategic role in this decision-making, whether as triggers for initiating or for discontinuing EU action. Once the Council decides to establish a CSDP mission or operation, the planning bodies play a key role in the effective operationalisation of the protection of human rights and the principles of democracy and the rule of law as part of the mandate (objectives and tasks), and in the prevention of human rights violations and breaches of international humanitarian law at the implementation stage.

Chapter V evaluates how human rights, IHL and support to democracy and the rule of law are to be integrated in the different types of mandate of CSDP, although each mission or operation has its own particularities that should be assessed on a case-by-case basis. Chapter V also covers the responsibility of the EU and its member states in the conduct of operations, and the difficulties that the procurement of

¹ See FRAME, <www.fp7-frame.eu> accessed 1 May 2016.

services from Private Military and Security Companies (PMSCs) poses in this regard. Chapter V reflects on the possible ways of enduring accountability, particularly in the event of wrongful acts committed by mission personnel.

Chapter VI includes three case studies, namely: EUTM Mali and EUCAP Niger in the framework of the EU Strategy for Security and Development in the Sahel and the military EUNAVFOR MED, renamed Operation Sophia as one component of the comprehensive approach towards both the refugee crisis and restoring stability in Libya. These case studies serve to examine issues such as the coherence and complementarity of the various policies and instruments of the EU in the framework of a comprehensive approach, the limits to the use of force and the applicability of IHL and the protection vulnerable groups in the course of operations.

The report concludes in Chapter VII with a summary of the main findings that serve to provide an understanding of the importance and the need to respect and integrate human rights, humanitarian law and democracy/rule of law principles and tools into the CSDP. The EU is strongly committed to promote and protect human rights and to support democracy worldwide but in the area of crisis management it also determines the success of the mission or operation and its long-lasting results. Overall, the report provides a broad foundation for the next stage of research in WP10, which will consist of the formulation of policy recommendations on how to foster coherence and efficiency of EU external policy related to all phases of crisis and conflict, in order to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/rule of law principles, and meet the challenges of protecting and promoting human rights in EU external policies.

List of abbreviations

ACP	African, Caribbean and Pacific Group of States
AMM	Aceh Monitoring Mission
AU	African Union
BiH	Bosnia and Herzegovina
CAAC	Children Affected by Armed Conflict
CAR	Central African Republic
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFSP	Common Foreign and Security Policy
CIVCOM	Committee of Civilian Aspects of Crisis Management
CJEU	Court of Justice of the European Union
CMC	Crisis Management Concept
CMPD	Crisis Management Planning Department
CoE	Council of Europe
COHOM	Human Rights Working Group
CONOPS	Concept of Operations
CPCC	Civilian Planning and Conduct Capability
CRC	UN Convention on the Rights of the Child
CSDP	Common Security and Defence Policy
DDR	Disarmament, Demobilization and Reintegration
DG	Directorate-General
DRC	Democratic Republic of the Congo
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice

ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EDF	European Development Fund
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
ENI	European Neighbourhood Instrument
ENPI	European Neighbourhood and Partnership Instrument
EP	European Parliament
ESDP	European Security and Defence Policy
ESS	European Security Strategy
EU	European Union
EUBAM	European Border Assistance Mission
EUCAP SAHEL Mali	European Capacity Building Mission in Mali
EUCAP SAHEL Niger	European Capacity Building Mission in Niger
EUFOR	European Union Force
EUJUST	European Justice Mission
EULEX Kosovo	European Union Rule of Law Mission in Kosovo
EUMAM RCA	European Union Military Advisory Mission in the Central African Republic
EUMAM	European Union Military Advisory Mission
EUNAVFOR	European Union Naval Force
EUPAT	European Union Police Advisory Team
EUPM BiH	European Union Police Mission in Bosnia and Herzegovina
EUPM	European Union Police Mission
EUPOL	European Union Police Mission
EUSR	European Union Special Representative
EUTM	European Union Training Mission
FPI	Foreign Policy Instruments

FRA	European Union Agency for Fundamental Rights
FRAME	Fostering Human Rights among European Policies
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FYROM	The former Yugoslav Republic of Macedonia
HoM	Head of Mission
HQ	Headquarters
HR/VP	European Union High Representative for Foreign Affairs and Security Policy and European Commission Vice-President
HRRP	Human Rights Review Panel
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRC	International Committee of the Red Cross
IcSP	Instrument contributing to Stability and Peace
IDP	Internally displaced person
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IfS	Instrument for Stability
IMO	International Maritime Organisation
IOM	International Organization for Migration
LOAC	Law of Armed Conflict
MNLA	Mouvement national de libération de l'Azawad (National Movement for the Liberation of Azawad)
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights

OPLAN	Operations Plan
OSCE	Organization for Security and Co-operation in Europe
PMG	Politico-Military Group
PoC	Protection of Civilians
PSC	Political and Security Committee
RCA	République centrafricaine (Central African Republic)
RELEX	Working Party of Foreign Relations Counsellors (EU)
RoE	Rules of Engagement
RoL	Rule of Law
SAR Convention	International Convention on Maritime Search and Rescue
SOFA	Status of Forces Agreement
SOLAS	Convention for the Safety of Life at Sea
SOP	Standard Operating Procedures
SSR	Security Sector Reform
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UNSMIL	United Nations Support Mission in Libya
WEU	Western European Union

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I. Introduction

A. Aim and scope of the study

The promotion and protection of human rights and support to democracy and the rule of law are some of the principal objectives of the foreign policy of the European Union (EU) – and thus of the Common Security and Defence Policy (CSDP). Work Package 10 (WP 10) ‘Human Rights Violations in Conflicts’ as part of the FP7 project ‘Fostering Human Rights Among European (External and Internal) Policies’ (FRAME) aims at providing a comprehensive assessment of the EU external policies in response to conflicts and crisis situations, exploring ways to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/rule of law principles. The previous FRAME report (Deliverable D. 10.1) entitled ‘Survey study on human rights violations in conflict-settings’ explores the various patterns of human rights violations related to conflict and violent crisis situations, with a specific focus on the rights of vulnerable groups, as well as on the role of non-state actors as key players in the context of new forms of violence and war.²

The FRAME ‘Report on applicable regulatory frameworks regarding human rights violations in conflicts’ (Deliverable 10.2) analyses and clarifies the relationship between the regulatory frameworks applicable in conflict situations: international human rights law (IHRL), humanitarian law (IHL) and the legal regime for humanitarian assistance, as well as international refugee law (IRL) and international criminal law (ICL) with particular attention given to vulnerable groups in conflict situations.

The present report (Deliverable D. 10.3) provides a critical assessment of the integration of human rights, humanitarian law and democracy/rule of law principles and tools into EU CSDP policy and missions. Therefore, the report looks into the instruments available to the EU to mainstream human rights, IHL and gender into crisis management operations and the safeguards that seek to prevent violations of human rights and IHL in the course of the mandate.

Over the course of the last decade, the EU has acquired an operational capability enabling it to deploy military and civilian crisis management missions in third countries in pursuit of its foreign and security policy. As a result of this development, the EU has launched more than thirty missions and operations since 2003, ranging from large-scale military and civilian deployments, to short-term support or deployments in support of missions led by other international security actors. At the moment there are seventeen ongoing CSDP missions and operations - eleven civil missions and six military operations - primarily on the African continent, in the Middle East and Eastern Europe.

Human rights aspects represent an integral part of the EU crisis management operations, in light of the fact that many of the settings in which the CSDP missions operate are marked by human rights and IHL violations. In the conduct of missions and operations, the EU and its Member States, which are bound by

² Carmen Márquez Carrasco (editor and main co-author), Laura Iñigo Álvarez, Nora Loozen and Elizabeth Salmón Gárate, ‘Report survey study on human rights violations in conflict-settings’ (2014) FRAME Report 10.1, 220-221 <<http://www.fp7-frame.eu/wp-content/materiale/reports/08-Deliverable-10.1.pdf>> accessed 20 April 2016.

human rights obligations, have to apply international human rights standards. This is problematic insofar as the EU itself is not party to international human rights treaties. However, customary international law provides the integration of human rights instruments into the Common Security and Defence Policy (CSDP) of the EU. Concrete references to the applicability of human rights in the mandate for a EU mission or operation, and a number of guidelines applicable to the area of crisis management, will serve to overcome these difficulties.

At the operational level, the EU's commitment to promote its core values and to ensure respect for human rights and humanitarian law in the field of crisis management, encounters a number of difficulties deriving from the EU's internal limitations resulting from the institutional framework, scarce and inadequate financial and human resources, as well as challenges posed by external factors. The enforcement of international human rights and humanitarian law has been hampered by the lack of sufficient knowledge and expertise at the operational level, insufficient training curricula, the lack of accountability mechanisms and the difficult access to justice for anyone whose rights are violated by the conduct of CSDP personnel. Over the years, since the origins of the CSDP, there has been a greater effort to integrate human rights instruments in each phase of the CSDP process as reflected in the present report.

The need for comprehensive responses is widely accepted as a means to address and consolidate sustainable development, peace and security, and this necessity has been shaping EU policy discourses and approaches to conflict and crisis. The EU has at its disposal a wide array of policies, tools and instruments to respond to conflicts and crises worldwide – covering the diplomatic, security, defence, financial, trade, development cooperation and humanitarian aid fields. The EU's crisis management efforts are designed to serve the larger purpose of the EU's foreign policy and to achieve results according to pre-established objectives. CSDP missions and operations are considered as a part of a complete set of actions by the EU itself and by the EU in relation to other actors in the field. For this reason, the study evaluates the complementarity of CSDP with the security and defence actions of other multilateral actors on various policy levels and with attention paid also to other EU policies, tools and instruments embedded in a common comprehensive strategy.

The main research questions of the present Deliverable D. 10.3 are summarised as follows:

- How has the integration of human rights and the corresponding legal bases into external relations evolved in the EU's CSDP?
- What actors are prominently involved in integrating human rights into external policies and CSDP in particular?
- How does the EU mainstream human rights into CSDP? What policy instruments and tools are at their disposal? How are human rights priorities developed with regards to the protection of vulnerable groups?
- How are human rights policies enforced through CSDP actions?

B. Methodology and structure

The research for this report is based on a set of different methodologies, in particular, the analysis of primary and secondary sources and data-gathering via semi-structured and confidential interviews. Primary sources analysed for this report consist mainly of EU official documents and secondary sources include published academic articles and books, working papers and policy reports. Semi-structured interviews were conducted with EU officials based in Brussels and on the ground, as well as with experts from institutions that are somehow involved in human rights and gender mainstreaming in EU crisis management, namely the European Peace Building Liaison Office (EPLO) and Folke Bernadotte Academy (FBA). The information gathered through various qualitative interviews serves to complement the desk research findings and combines insights from different perspectives. The main criterion for contacting and selecting interviewees has been to identify those in key positions or that carry out tasks on human rights and/or gender mainstreaming. Additionally, the research also takes account of the working experience of one of the authors of this third report at the European Union Rule of Law Mission in Kosovo (EULEX Kosovo).

The study is structured in seven chapters. Following Chapter I, that corresponds to the present introduction, Chapter II provides an overview of all CSDP missions and operations to date and places it within the framework of the EU's foreign policy and the EU comprehensive approach to external conflicts and crises. Chapter II places particular emphasis on the concept of 'human security' as an appropriate tool to address conflict and crisis moving away from traditional, state-centric conceptions of security to one that concentrates on the security of the individuals, their protection and empowerment. This second chapter covers the interaction between the EU with other international and regional institutions in the area of crisis management and the participation of third countries in CSDP missions and operations.

Chapter III analyses the CSDP legal and policy framework on the protection and respect for human rights and IHL and support to democracy and the rule of law, including a deeper analysis on the protection of vulnerable groups and gender mainstreaming. Notably, the integration of human rights and gender component in CSDP has been progressively materialised through the adoption of a set of guidelines on several human rights priority issues (eg women, children's rights, human rights defenders etc) as well as by the setting-up of different mechanisms aiming at strengthening respect for international standards in third countries. Despite all of this progress in terms of policy, the study unveils existing areas for improvement and groups in need of special attention (eg forcibly displaced people and minorities).

Chapter IV covers the integration of human rights and IHL at the CSDP decision-making and planning stages through a detailed analysis of the bodies and structures. The planning bodies are responsible for the effective operationalisation of the protection of human rights and the principles of democracy and the rule of law as part of the mandate, and for foreseeing mechanisms to prevent human rights violations and breaches of international humanitarian law at the implementation stage.

Chapter V evaluates the manner in which human rights, IHL and support to democracy and the rule of law are included in each of the different military and civilian mandates, although each mission or operation has its own particularities that have to be assessed on a case-by-case basis. Chapter V contains a section

on the responsibility of the EU and its member states in the conduct of operations and the difficulties that the procurement of services from Private Military and Security Companies (PMSCs) poses in this regard. Chapter V discusses the relevance of ensuring accountability of CSDP, particularly with regards to human rights violations committed in the course of the mission or operation.

Chapter VI includes three case studies: EUTM Mali and EUCAP Niger in the framework of the EU Strategy for Security and Development in the Sahel and the military EUNAVFOR MED, renamed as Operation Sophia as one component of the comprehensive approach towards both the refugee crisis and restoring stability in Libya. The case studies serve to examine issues such as the coherence and complementarity of various policies and instruments of the EU in the framework of a comprehensive approach, the limits to the use of force and the applicability of IHL and the protection vulnerable groups in the course of operations.

The study of EUTM Mali and EUCAP Niger is interesting in terms of analysing the complementarity of CSDP efforts as part of the wider EU Strategy for Security and Development, a regional strategy for the Sahel based on the assumption that development and security are mutually supportive. The Sahel is a region afflicted by conflict, food insecurity, malnutrition, epidemics and natural disasters, thereby attracting a wide range of humanitarian and development cooperation programmes managed by the Commission, EU Member States and other international and regional institutions.

Regarding the Central Mediterranean route, the use of a broad range of tools of different nature is crucial to addressing the increasing migratory flows and the growing threat of organised crime that has led to an unprecedented humanitarian crisis. EUNAVFOR MED Operation Sophia was established to contribute to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean. The case study examines the international rules applicable in the conduct of operations governing the use of force and the obligations concerning the protection of migrants and the most vulnerable people among them.

The report concludes in Chapter VII with a summary of the main findings that serve to understand the importance and the need to respect and integrate human rights, humanitarian law and democracy/rule of law principles and tools into the CSDP. The EU is strongly committed to promote and protect human rights and to support democracy worldwide but in the area of crisis management, this also determines the success of the mission or operation and long-lasting results. Overall, the report provides a broad foundation for the next stage of research in WP10, which will consist of the formulation of policy recommendations on how to foster coherence and efficiency of EU external policy related to all phases of crisis and conflict, prevent and overcome violence through the integration of human rights, humanitarian law and democracy/rule of law principles, and meet the challenges of protecting and promoting human rights in EU external policies.

II. CSDP in the framework of the EU's foreign policy

The focus of this chapter is on the framework governing the Common Security and Defence Policy (CSDP) of the European Union (EU) and its embeddedness into the EU foreign and security policy. This analysis takes due account of the implications of such developments for human rights and the principles of democracy and the rule of law.

Chapter II begins with an introduction to the origins and key events that have shaped the CSDD (section A). Section B introduces the EU's 'human approach' to security and the role of the CSDP. In this context, the European Security Strategy is also analysed. The chapter then deals with the EU human rights strategy in relation to the CSDP. Section C provides an overview of all CSDP missions and operations that have been established to date, as well as the main features of EU action in the field of crisis management.

Before turning specifically to the topic of EU crisis management, it is important to understand what exactly is meant by 'crisis management' action. As underlined by Thierry Tardy, there is an emerging understanding that crisis management can be defined in terms of 'preventing a crisis from occurring, responding to an on-going crisis, or assisting in the consolidation of peace (or order) once the acute phase of a crisis has passed. It is not necessarily per se about conflict resolution'.³ The crisis must have a security dimension regardless of whether the response is of a civilian, military or mixed nature. Military crisis management is characterised by being a non-coercive and consent-based action that entails the involvement of a third party. These responses to crises are multidimensional and complex, involving a wide range of policy tools to address the societal needs over a long period of time. Finally, crisis actors are not meant to act in substitution of local actors who remain in charge of public policies. Crisis management is characterised by its security focus, its multidimensionality and its complexity.⁴

A. Origins and evolution of the CSDP

The origins of the European security and defence architecture can be traced to the aftermath of World War II. The failure of the European Defence Community (EDC) project resulted in defence being omitted from the integration process. While economic integration was to proceed from the foundations established in the European communities, defence matters were to remain circumscribed to the transatlantic forum.

The idea of a common defence policy for Europe dates back to 1948 when the United Kingdom, France, and the Benelux countries signed the Treaty on Economic, Social and Cultural Collaboration and Collective Self-Defence, also known as the Treaty of Brussels. The agreement included a mutual defence clause laying down the foundations for the creation of the Western European Union (WEU), an international organisation and military alliance, which remained present until the late 1990s, together with the North Atlantic Treaty Organisation (NATO), the principal forum for consultation and dialogue on security and

³ Thierry Tardy, 'CSDP in Action: What Contribution to International Security?' (2015) EUISS Chaillot Papers no 134, 9 <http://www.iss.europa.eu/uploads/media/Chaillot_134_CSDP_missions.pdf> accessed 10 January 2016.

⁴ *ibid* 9-12.

defence in Europe. Following the end of the Cold War and subsequent conflicts in the Balkans, the EU assumed an enhanced role in the field of conflict prevention and crisis management.

The already established European Political Cooperation served as a foundation for the Common Foreign and Security Policy (CFSP) introduced in the Maastricht Treaty in 1993. Article J.4 of the Maastricht Treaty stated that the CFSP comprises 'all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.' The inclusion for the first time of defence in the Treaty of Maastricht was a historic event. The European Council decided to link the eventual framing of a common defence policy to the Western European Union (WEU), which until then had been excluded from the integration process.

The Petersberg tasks agreed upon at the Western European Union (WEU) Council of Ministers in Germany in June 1992 were incorporated into Article 17 of the Treaty of Amsterdam (adopted in June 1997 and entered into force in May 1999), defining the spectrum of military action and functions that the EU can undertake in its crisis management operations. The Petersberg tasks comprise humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.⁵

The implementation of these Petersberg tasks had to wait until the situation in Kosovo urged the UK and France to agree in 1998 in Saint Malo that the Union should have 'the capacity for autonomous action, backed up by credible military forces, the means to use them and a readiness to do so, in order to respond to international crises'.⁶ As such, the Kosovo crisis was both a catalyst and a wake-up call for the European Union to finally accept its international responsibilities. Before the entry into force of the Amsterdam Treaty on 1 May 2000, the Cologne European Council of 4-5 June 1999 was decisive to strengthen the CFSP through the development of a military crisis management capability. With this aim the EU Member States decided in Helsinki to build a Common European Security and Defense Policy (CESDP) backed by credible military forces and appropriate decision-making structures. This decision was a breakthrough in the European debate on security and defence, unthinkable in the years prior to its formation. Another key development was the adoption of the 'Berlin Plus Agreement' which gave the EU, under certain conditions, access to NATO assets and capabilities.⁷

In the 2000 Santa Maria Da Feira meeting the European Council reaffirmed 'its commitment to building a Common European Security and Defence Policy capable of reinforcing the Union's external action through the development of a military crisis management capability as well as a civilian one, in full respect of the

⁵ Cristina Churrucá, 'Strengthening the European Union's Common Foreign Policy: the European Council's decision to develop an autonomous military crisis management capability in the context of Petersberg tasks' (2000) 4 *Humanitäres Völkerrecht*, 206.

⁶ European Council, 'Joint Declaration issued at the British-French Summit, Saint-Malo 3-4 December 1998'. For a more elaborated analysis of the origins and evolution of CSDP from the late 40s to the St Malo Declaration see Panos Koutrakos, *The EU Common Security and Defence Policy* (Oxford University Press 2013), 5-21.

⁷ Cristina Churrucá, 'El desarrollo progresivo de la PESD' in Beatriz Pérez de las Heras (ed), *La Agencia Europea de la Defensa: su contribución al desarrollo de una capacidad militar autónoma de la Unión Europea* (Thompson/Aranzadi 2008), 29-43; Jochen Rehr and Hans-Bernhard Weisserth (eds), 'Handbook on CSDP: The Common Security and Defence Policy of the European Union' (Federal Ministry of Defence and Sports of the Republic of Austria, 2nd ed, 2008), 14-15, <http://www.eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/handbook_csdp_2_aufgabe-revised.pdf> accessed 15 January 2016.

principles of the United Nations Charter'.⁸ The conclusions of the presidency set the initial structure of EU civilian crisis management intervention, pragmatically defining the aims of such interventions: '[...] prevent[ing] the eruption or escalation of conflicts [...] consolidating peace and internal stability in periods of transition [...] ensuring complementarity between the military and civilian aspects of crisis management'.⁹ The civilian aspects of crisis management were developed in four priority areas: police, strengthening of the rule of law, strengthening civilian administration and civil protection.¹⁰

In 2003, the first ESDP mission EUPM BiH was launched in Bosnia and Herzegovina making the aforementioned provisions operational. Shortly after, in December 2003, the European Security Strategy (ESS) entitled 'A Secure Europe in a Better World' was formulated. This was a landmark in the development of the EU's foreign and security policy as the EU, for the first time, agreed on a joint threat assessment and set clear objectives for advancing its security interests, based on the EU core values.¹¹ The implementation of the document was revised in the 2008 report entitled 'Providing Security in a Changing World' which, without introducing significant changes to the ESS, mentions for the first time the concept of human security.¹² The ESS identified terrorism, proliferation of weapons of mass destruction, regional conflicts and State failure as key security threats and it highlighted the potential of the EU to respond to these threats. It did not, however, give clear concrete indications on how to respond to these threats. The ESS also ascertains the potential EU's actorness in conflict prevention, effective multilateralism, and to the rule of law, however none of these aims can actually be fostered without consideration of human rights.¹³

With the entry into force of the Lisbon Treaty on 1 December 2009, the ESDP was renamed as the Common Security and Defence Policy (CSDP). The Lisbon Treaty was a cornerstone in the development of the CSDP. First, incorporated in the Treaty is the notion of political and military solidarity among EU Member States via the inclusion of a mutual assistance clause in Article 42 (7) TEU and a 'solidarity clause' in Article 222 TFEU. Second, responsibility for guidance on the CFSP, including the CSDP, was transferred from the rotating presidencies of the Council of the EU to the High Representative for Foreign Affairs and Security Policy and the Vice-President of the European Commission (HR/VP), supported by the European External Action Service (EEAS). Furthermore, the two distinct functions of the newly created post give the HR/VP the possibility to bring all necessary EU assets together to apply a 'comprehensive approach' to EU crisis management. Lastly, Article 42(1) of the TEU formally endorses and extends the so-called 'Petersberg

⁸ European Council, 'Council Conclusions on the Santa Maria da Feira' (19-20 June 2000) <http://www.consilium.europa.eu/en/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en0.htm> accessed 22 January 2016.

⁹ *ibid* Annex I, Appendix III & Introduction.

¹⁰ *ibid*.

¹¹ European Council, 'A Secure Europe in a Better World: European Security Strategy' (12 December 2003)

¹² European Council, 'Report on the Implementation of the European Security Strategy: Providing Security in a Changing World' (11 December 2008) S407/08 <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/104630.pdf> accessed 22 January 2016.

¹³ See for instance Nicolas Hachez and Jan Wouters, 'Promoting the Rule of Law: A Benchmarks Approach' (April 2013) KU Leuven Centre for Global Governance Studies Working Paper no 105 <<http://www.fp7-frame.eu/wp-content/materiale/w-papers/WP105-Hachez-Wouters.pdf>> accessed 22 January 2016.

tasks' that now include 'joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation'. These tasks may contribute to the fight against terrorism, by 'supporting third states in combating terrorism in their territories'. The following provides a relation of key events in the development of the rules and procedures which led to the adoption of the framework governing the Common Security and Defence Policy (CSDP).

Box 1: CSDP Timeline¹⁴

Year	Event
1948	Signing of the Treaty of Brussels
1951	Signing of the Treaty of Paris establishing the European Coal and Steel Community
1954	Signing of the Modified Brussels Treaty formally creating the WEU
1957	Signing of the Treaties of Rome
1969	The Davignon Report introduces the idea of European Political Cooperation in the field of foreign and security policy
1992	Signing of the Treaty on European Union (in force 1993)
1997	Signing of the Amsterdam Treaty (in force 1999)
1998	Franco-British Joint Declaration on European Defence (St. Malo)
1999	Cologne and Helsinki European Council Meetings lay the foundations for ESDP
2000	Santa Maria da Feira European Council
2003	
2004	Adoption of the European Security Strategy (ESS) and the 'Berlin Plus' Agreement
2009	Headline Goal 2010/Civilian Headline Goal 2008 (updated in 2007 to CHG 2010) Entry into force of the Lisbon Treaty (ESDP becomes CSDP)

The focus of this chapter is on the development of the rules and procedures which led to the adoption of the framework governing the Common Security and Defence Policy (CSDP) of the European Union (EU) and its embedment into the so-called EU comprehensive approaches to conflict and crisis. This analysis takes due account of the implications of such developments for human rights and the principles of democracy and the rule of law.

B. The EU's 'human' approach to security and the role of CSDP

Following the end of the Cold War in the 90's, the process of globalization, as well as the rise of concerns regarding national identity and trans-national crimes lead to a broader understanding of security. Security became a multidimensional concept covering military, political, economic, environmental, and societal elements. This wider security agenda claimed security status for issues in the economic, environmental, and societal sectors in addition to the traditional military-political ones. Thus, security has to be understood in broader terms to encompass different aspects such as economic development, social

¹⁴ Maartje Rutten, 'From St-Malo to Nice: European Defence: core documents' (May 2001) EUISS Chaillot Papers no 47 <<http://www.iss.europa.eu/uploads/media/cp047e.pdf>> accessed 20 January 2016.

justice, environmental protection, democratisation, disarmament, respect for human rights and the rule of law. The need for a comprehensive and coordinated response to address sustainable development, peace and security has been increasingly accepted and institutionalised by international organisations and individual countries.¹⁵

The Preamble to the TEU clearly stresses the EU's commitment to promote security and progress in Europe and the world. The CFSP should enable the Union to make full use of the means at its disposal and to 'have an improved capacity to tackle problems at their roots in order to anticipate the outbreak of crises'.¹⁶ To cope with the challenges facing the EU, the treaty states that the objectives of the CFSP are to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the UN Charter; to strengthen the security of the Union in all ways; to preserve peace and strengthen international security; to promote international co-operation and to develop and consolidate democracy and the rule of law, the respect for human rights and fundamental freedoms.¹⁷

Since the adoption of the TEU, an EU distinctive approach to security has emerged.¹⁸ This approach is characterised by its focus on the treatment of root causes of instability and insecurity and its clear preference for international co-operation and partnership and compliance with the rule of law. It shows a distinctive European way in international relations, a reflection of the EU's identity as expressed in the TEU and its aim to project peace and security in Europe and in the world. This approach is not easy to grasp. The security debate in the EU has been characterised by 'ad hocery', intergovernmentalism and tension between the wide and narrow approaches to security supported by the Commission in the former case and the Council in the latter.¹⁹ This approach is based on the assumption, well-illustrated by the following quotation from a speech by the Development Cooperation Commissioner Joao de Deus Pinheiro on the future of CFSP, that: 'prevention is better than cure, and that problems of peace and security should not only be addressed in a situation of high tensions or when violence and war have already started to take their devastating toll. This is because most problems that constitute a threat to peace and security cannot be solved overnight'.²⁰

The best example of the EU's approach to security can be found in the EU Policy for Conflict Prevention. Conflict prevention has been a priority for all EU external action and is therefore an important element in all aspects of its external relations. The policy was defined in the Commission Communication on the

¹⁵ For a comparative analysis of EU and EU Member States comprehensive approaches see Volker Hauck and Camilla Rocca, 'Gaps between Comprehensive Approaches of the EU and EU Member States: Scoping Study' (2014) ECDPM <<http://ecdpm.org/wp-content/uploads/Gaps-Between-Comprehensieve-Approach-of-the-EU-and-EU-Member-States.pdf>> accessed 22 January 2016.

¹⁶ European Council, 'Presidency Conclusions, European Council in Lisbon' (26-27 June 1992) Annex I.

¹⁷ Art. 21 TEU

¹⁸ Cristina Churruca Muguruza, 'Criticizing the EU Security Strategy: The EU as a Regional Security Provider' (2005) 10 *Revista Electrónica de Estudios Internacionales* <[http://www.reei.org/reei%2010/C.Churruca\(reei10\).pdf](http://www.reei.org/reei%2010/C.Churruca(reei10).pdf)> accessed 20 April 2016.

¹⁹ Alesandro Politi, 'European Security: the New Transnational Risks' (1997) EUISS Chaillot Paper no 29, 22-26.

²⁰ Commissioner Joao de Deus Pinheiro, 'Can EU Development Assistance Contribute to Peace and Security?' (CESD/ISIS Conference on the Future of the CFSP, Brussels, 24 December 1998)

European Union and the issue of Conflicts in Africa: Peace-building, Conflict Prevention and Beyond (1996), the Commission Communication on Conflict Prevention (2001) and the EU Programme for the Prevention of Violent Conflict adopted by the European Council at its meeting in Göteborg in June 2001.²¹ This framework contains three main elements regarding the objective, the approach, and the definition of conflict prevention.²² The framework defines ‘structural stability’ as the overarching strategic objective that informs all levels of EU action in relation to conflict-prone areas. Structural stability can be described as a situation characterised by sustainable economic development, democracy, respect for human rights, viable political structures and healthy social and environment conditions, with the capacity to manage change without resorting to violent conflict.²³

The promotion and support of human rights, democracy, and the rule of law has been a key component of the EU’s approach to security policy. EU discourse is full of references to the importance of human rights and democracy as being the basis of security or, if threatened, the roots of instability. In this context, the approach benefits from the Union’s practice in developing a human rights and democracy policy since the early 1990’s.²⁴ The Union’s policy recalls the contribution of human rights to the establishment of conditions that are more conducive to peace, security, democracy and social and economic development and supports the approach of integrating human rights into the relevant activities of the UN and other international organisations.²⁵

However, the new context of insecurity and conflict and the growing criticism of what is perceived as a lack of capacity and willingness of the EU to manage crises led to the adoption of the European Security Strategy at the end of 2003 and a report on its revision in 2008 which incorporates the concept of human security. Furthermore, a comprehensive approach has been adopted to coordinate all EU instruments and actors involved. Neither the human security nor the comprehensive approaches are new but they show a renovated commitment to strengthen the EU’s role on the international scene.

1. EU security objectives and interests guiding CSDP missions and operations

Before considering the role of human rights and the principles of democracy and rule of law in crisis management operations, it is first necessary to identify the challenges and threats the CSDP is responding to, as well as the EU’s strategic security objectives.

²¹ Council of the European Union, ‘European Union Programme for the Prevention of Violent Conflicts’ (2001) 9537/1/01

²² Javier Nino-Pérez, ‘EU instruments for conflict prevention’ in Jan Wouters and Vincent Kronenberger (eds), *The European Union and Conflict Prevention: Policy and Legal Aspects* (TMC Asser Press 2004), 93-117

²³ European Commission, ‘Commission communication to the Council and European Parliament on linking relief, rehabilitation and development’ (1996) (COM (96)0153

²⁴ Martine Fouwels, ‘The European Union’s Common Foreign and Security Policy and Human Rights’ (1997) 15(3) *Netherlands Quarterly of Human Rights*, 291-324; Barbara Brandtner and Allan Rosas, ‘Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice’ (1998) 9 *European Journal of International Law*, 460-490

²⁵ European Council, ‘Council Conclusions on Luxembourg’ (12-13 June 1991) Annex V: Declaration on Human Rights point I.45; European Council, ‘Conclusions and Plan of Action’ (21 September 2001) SI (2001) 990, 1

The document entitled 'A Secure Europe in a Better World: European Security Strategy' (ESS), adopted by the Brussels European Council in December 2003, highlights the current global challenges and key security threats, identifies the EU's strategic objectives and draws on the policy implications for the Union.²⁶ It is the European Council's first attempt to give overall strategic direction to the Union's foreign and security policy.²⁷ The ESS recognises that Europe should be ready to share responsibility for global security, and in building a 'better world' should act together with the US. The ESS emphasises the strong link between security, human rights and the rule of law by stating 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'.²⁸ In order to do so, the strategy focuses on the need to be more active, more coherent and more capable. This is a call to match its objectives with its instruments, seen in the light of the various institutional reforms and consequences of enlargement, discussed in the European Convention and that is included in the Lisbon Treaty.

The strategy points out several global challenges that 'give rise to security concerns' and others that are considered 'key threats'. Terrorism, proliferation of weapons of mass destruction, regional conflicts, failed states, state failure and organised crime are identified as being key threats.²⁹ The strategy acknowledges that these five elements taken together could confront the European Union with a very radical threat. Conflict, poverty and disease - especially aids - competition for natural resources and energy dependence fall into the category of security concerns.³⁰ On the basis of these security challenges the strategy identifies as its first strategic objective addressing the threats. The other two objectives are building security in its neighbourhood and effective multilateralism.³¹ In order to be more capable, the strategy points out the actions underway to transform its military forces and strengthen the CFSP's civilian and military crisis management capabilities, the CSDP.³² The 2008 'Report on the Implementation of the European Security Strategy: Providing Security in a Changing World' confirmed the EU's need to be 'more capable, more coherent and more active' and highlights new challenges.

While the ESS recognises the changing nature of the security environment and the link between internal and external security, it fails to encompass wider concepts of human security and its subsequent policy implications. The focus of the strategy is not long-term preventive action but short-term crisis management: 'countering the threats'. It prioritises military response and the enhancement of military capabilities over civilian soft instruments which have traditionally defined the EU's international role. The CSDP plays an important role in countering internal security threats.³³ The three main priorities identified

²⁶ European Council, 'A Secure Europe in a Better World: European Security Strategy' (12 December 2003) 10

²⁷ Cristina Churrua Muguruza, 'Criticizing the EU security Strategy: The EU as a Regional Security Provider' (2005) 10 *Revista Electrónica de Estudios Internacionales*, 2-3

<[http://www.reei.org/index.php/revista/num10/archivos/C.Churrua\(reei10\).pdf](http://www.reei.org/index.php/revista/num10/archivos/C.Churrua(reei10).pdf)> accessed 20 April 2016.

²⁸ European Council, 'A secure Europe in a better world: European Security Strategy' (2003) 10

²⁹ *ibid* 13-4

³⁰ *ibid*.

³¹ *ibid* 7-10.

³² *ibid* 12.

³³ See Michał Narojek, 'CSDP/FSJ Link' in Jochen Rehr and Galia Glume (eds) 'Handbook on CSDP Missions and Operations: The Common Security and Defence Policy of the European Union' (Federal Ministry of Defence and

in the European Agenda on Security (EAS) are closely linked to the external security strategy, ie tackling terrorism and preventing radicalization, disrupting organised crime and fighting cybercrime.³⁴ This is especially the case with regards to Operation EUNAVFOR Med (later renamed Operation Sophia), launched in June 2015, to tackle human trafficking in the Southern Central Mediterranean,³⁵ or EUCAP Sahel Niger, to provide support to local authorities in the fight against terrorism.³⁶ These cases provide clear examples of where Brussels has brought its internal and external security agendas together to fight a common threat that is organised crime and the 'migration crisis', although an actual comprehensive response implies tackling the root causes, such as those pushing migrants and refugees to turn to smugglers.³⁷

The table below provides an overview of the EU strategy: the 2003 ESS which is currently in place (and the new elements included in the 2008 report), the main security challenges and key threats identified in the ESS and the objectives which should be pursued. As an example of how the CSDP has addressed and responded to these challenges and threats, some references to CSDP missions and operations are included.

Table 1: European security strategy: challenges, threats and strategic objectives (with examples of actions under the CSDP)³⁸

European Security Strategy	
Challenges³⁹	<ul style="list-style-type: none"> - Competition for natural resources - Energy dependence - Social and economic inequalities - Countering hybrid threats - Maritime security (<i>CSDP presence in the Horn of Africa</i>) - Cyber security - Border management (<i>CSDP missions in Libya, Ukraine/Moldova, Palestinian Territories</i>) - Space - Environmental and natural resources

Sports of the Republic of Austria, 2015) 50-55 <http://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/final_-_handbook_on_csdp_missions_and_operations.pdf> accessed 20 February 2016.

³⁴ European Commission, 'European Agenda on Security' (2015) COM(2015) 185 final

³⁵ Council Decision 2015/778/CFSP of 18 May 2015 on a European Union Military Operation in the Southern Central Mediterranean (EUNAVFOR MED)

³⁶ Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP Mission in Niger (EUCAP Sahel Niger)

³⁷ Thierry Tardy, 'Operation Sophia: Tackling the Refugee Crisis with Military Means' (2015) EUISS Brief Issue no 30 <http://www.iss.europa.eu/uploads/media/Brief_30_Operation_Sophia.pdf> accessed 15 February 2016.

³⁸ European Council, 'A Secure Europe in a Better World: European Security Strategy' (12 December 2003); European Council, 'Report on the Implementation of the European Security Strategy - Providing Security in a Changing World' (11 December 2008) S407/08; European Union External Action, 'The European Union in a Changing Global Environment: A more Connected, Contested and Complex world' (June 2015)

³⁹ New 'emerging security challenges' were included in the Brussels Council of the European Union, 'Report on the Implementation of the European Security Strategy - Providing Security in a Changing World' (11 December 2008) S407/08

Key threats	<ul style="list-style-type: none"> - Terrorism (<i>CSDP missions in the Sahel</i>) - Organized crime (<i>CSDP missions in Bosnia and Herzegovina, Somalia</i>) - Proliferation of weapons of mass destruction - Regional conflicts (<i>CSDP missions in the Balkans, Georgia, the Great Lakes region, the Horn of Africa, Sahel</i>) - State failure (<i>CSDP missions in Somalia, Kosovo, Iraq</i>)
Strategic objectives	<ul style="list-style-type: none"> - Countering the threats - Greater engagement with EU neighborhood (<i>CSDP missions in Ukraine, Moldova, Libya, the Balkans</i>) - Partnerships for effective multilateralism (<i>CSDP missions in cooperation with UN, NATO, AU, OSCE</i>)
Policy implications for the EU	<ul style="list-style-type: none"> - To be more active - To be more capable - To be more coherent - Working with partners

CSDP missions and operations have been established to respond to certain but not all threats and challenges contained in the ESS. CSDP responses are aimed at concerns related to maritime security, border management, terrorism, organised crime, regional conflicts and state failure. In responding to threats of a different nature and complexity, human rights, gender and the principles of democracy and the rule of law may have varying implications and significance in the framework of the specific mission mandates and activities.

The adoption of the ESS marked a milestone in the development of an autonomous European security and defence policy. However, 13 years after its adoption, the strategy is seen as being too broad (and outdated) to serve as a sufficient basis for CSDP activities. The idea to produce a ‘white book’ or sub-strategy on the CSDP has become a prominent feature in the on-going debate on the new EU Global Strategy,⁴⁰ which will be presented to EU leaders by June 2016.⁴¹

2. Human security as the objective of the EU’s crisis management operations

In recent years international consensus has been reached on two interrelated questions. The first is that security, human rights and development are interdependent and indispensable conditions for mutually reinforcing peace and sustainable development. This conception is enshrined in the concept of human security. The second is the recognition that these fundamental elements can only be achieved by

⁴⁰ Sven Biscop, ‘Out of the blue: a white book’ (European Geo Strategy, 22 November 2015) <<http://www.europeangeostrategy.org/2015/11/out-of-the-blue-a-white-book/>> accessed 20 January 2016.

⁴¹ The forthcoming ‘Global Security Strategy’ will address a different set of challenges and the necessary policy implications. See European Union External Action, ‘The European Union in a Changing Global Environment: A more Connected, Contested and Complex World’ (June 2015) <http://eeas.europa.eu/docs/strategic_review/eu-strategic-review_strategic_review_en.pdf> accessed 20 January 2016; Sven Biscop, ‘Global and Operational: A New Strategy for EU Foreign and Security Policy’ (July 2015) Working Paper no 15 <<http://www.egmontinstitute.be/wp-content/uploads/2015/09/iaiw1527-def.pdf>> accessed 20 January 2016.

observing the rule of law. The Security Sector Reform (SSR) is one of the areas that best illustrates this relationship.

Human security is commonly understood as prioritising the security of people, especially their welfare, safety and well-being, instead of that of states.⁴² The concept of human security initially featured in the United Nations Development Programme (UNDP) in its 1994 Human Development Report which defined human security as safety from chronic threats and highlighted seven dimensions: personal, environmental, economic, political, community, health and food security.⁴³ The main focus of this doctrine is on the protection of people while promoting peace and assuring sustainable continuous development as a security strategy.⁴⁴ As the UN Secretary General's Millennium Report noted in 2000, a 'new understanding of the concept of security is evolving,' one that emphasises the need for a 'human security' framework. A new dimension was addressed in the Report by stating that:

[H]uman security in the widest sense means much more than the absence of violent conflict. It also entails human rights, good governance, access to education and medical assistance and the certainty that each individual has opportunities and options for capitalizing on his or her potential. Any step in this direction means a step forward for reducing poverty, economic growth and conflict prevention. Freedom from want, freedom from fear and the freedom of future generations to inherit a healthy environment are all interdependent elements of human security and implicitly of national security.⁴⁵

The 2005 World Summit Outcome Document adopted by all UN Heads of State, endorsed for the first time the concept of human security and one of its main components, the 'responsibility to protect'. The acceptance of 'the right of people to live in freedom and dignity, free from poverty and despair' and of the responsibility of the state and the international community 'to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity' evidences the centrality of human security on the international agenda.⁴⁶

The concept of human security breaks with the traditional perception of security as being state-centered and it is defined in terms of the security of individuals and the communities in which they live.⁴⁷ Despite

⁴² Cristina Churruca Muguruza, 'Human Security as a Policy Framework: Critics and Challenges' (2007) *Anuario de Acción Humanitaria y Derechos Humanos/Yearbook on Humanitarian Action and Human Rights*, University of Deusto, 15-35.

⁴³ UNDP, 'Human Development Report 1994' (Oxford University Press 1994), 23-25 <http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf> accessed 20 January 2016.

⁴⁴ UNDP, 'Human Development Report 1994' (Oxford University Press 1994) <http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf> accessed 20 January 2016.

⁴⁵ United Nations Commission on Human Security, 'Final Report of the Commission on Human Security' (2003), 4 <<http://www.unocha.org/humansecurity/chs/finalreport/English/FinalReport.pdf>> accessed 25 January 2016.

⁴⁶ UN General Assembly, '2005 World Summit Outcome Document' (2005) A/RES/60/1 para 143.

⁴⁷ The Commission on Human Security, established in January 2001, in response to the UN Secretary-General's call at the 2000 Millennium Summit for a world 'free from want' and 'free from fear', defines human security in its final report on Human Security as a means 'to protect the vital core of all human lives in ways that enhance human

having been the subject of much debate, there is no commonly agreed upon definition of human security. Indeed the use and interpretation of the concept is a contentious issue which has generated diverse views. A common criticism of the concept of human security is that it is too idealistic and that 'securitising the human being' does not serve the victims of insecurity, but rather creates false priorities and hopes.⁴⁸ Others are of the view that the concept of security has been broadened towards other types of threats and that the term 'human security' has the potential to reconcile the concepts of individual security and state security.⁴⁹ Human security has also been understood as a 'rallying cry', as a merely academic concept or as a powerful foreign policy tool.⁵⁰

The Human Security Group, led by Mary Kaldor, has conducted prominent studies in the context of the EU in its the Barcelona⁵¹ and Madrid reports.⁵² The reports recommend that the EU should adopt the doctrine of human security in its foreign, security and defence policy, as an innovative approach to managing crises and conflicts around the world.⁵³ In contrast to the broader UNDP definition, the Barcelona and Madrid reports focus on 'violent situations' which involve a range of interrelated forms of violence such as armed conflict, human rights violations and organised crime, as well as the ways in which

freedoms and human fulfillment. Human security means protecting fundamental freedoms – freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.'

⁴⁸ See for example Yuen Foong Khong, 'Human Security: A Shotgun Approach to Alleviating Human Misery? (2001) 7 *Global Governance*, 231-236. The author claims that the 'policy rationale for securitising any given issue – the environment and individuals, for example – is to inform relevant audiences (...) that an issue has priority and that it is high on the policymakers' agenda.'

⁴⁹ Gerd Oberleitner, 'Human Security and Human Rights' (2002) European Training and Research Centre on Human Rights Occasional Paper Series 8, 8-9; Khatchik Derghoukassian, 'Human Security: A Brief Report of the State of the Art' (November 2001) The Dante B. Fascell North-South Center Working Paper Series no 3, 2 <https://www.ciaonet.org/attachments/11211/uploads2> accessed 5 February 2016; The International Commission on Intervention and State Sovereignty (ICISS), 'The Responsibility to Protect' (2001) <<http://www.iciss-ciise.gc.ca/report-e.asp>> accessed 10 February 2016.

⁵⁰ To some, human security has become a neat device to reach appropriate development aid for the purposes of foreign policy. In relation to the war on terrorism, the human security agenda has been transformed into a northern political and security agenda. It has also being criticised because it has had too little emphasis on empowerment, in particular on women's empowerment. Cristina Churruca Muguruza, 'Human Security as a Policy Framework: Critics and Challenges' (2007) *Anuario de Acción Humanitaria y Derechos Humanos/Yearbook on Humanitarian Action and Human Rights*, Universidad de Deusto, 15-35; Roland Paris, 'Human Security: Paradigm Shift of Hot Air?' (2001) 26(2) *International Security*, 87-102, 102; Gerd Oberleitner, 'Human Security and Human Rights' (2002) European Training and Research Centre on Human Rights, Occasional Paper Series 8, 1-6.

⁵¹ Study Group on Europe's Security Capabilities, 'A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe's Security Capabilities' (2004) <http://eprints.lse.ac.uk/40209/1/A_human_security_doctrine_for_Europe%28author%29.pdf> accessed 10 February 2016.

⁵² Human Security Study Group (HSSG), 'A European Way of Security: The Madrid Report' (2007) <<http://www.lse.ac.uk/Depts/global/PDFs/Madrid>> accessed 10 February 2016.

⁵³ Study Group on Europe's Security Capabilities, 'A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe's Security Capabilities' (2004), 29; Mary Martin, 'Human Security and the Search for a Normative Narrative' in Richard G. Whitman (ed), *Normative Power Europe: Empirical and Theoretical Perspectives* (Palgrave MacMillan 2011), 187-209, 199.

these have to be understood in terms of economic and social factors.⁵⁴ The Madrid report proposes the following approach:

The defining characteristics of a European approach include the commitment to effective multilateralism and human rights as well as the way the European Union combines military and civil assets and has pioneered civilian crisis management. A European Way of Security should focus on the protection of individuals and communities as well as the interrelationship between 'freedom from fear' and 'freedom from want'.⁵⁵

The Study Group concludes that the EU's external security capabilities should combine military and civilian forces, under a civilian command, aimed at contributing to global security and operating according to a set of principles differing from the classic conception of the use of military force.⁵⁶

Despite the absence of the concept of human security in EU official statements and documents, some claim that the EU is already promoting human security.⁵⁷ The human security doctrine is considered to have influenced the adoption of the European Security Strategy in December 2003, which refers to the so-called security and development nexus. Mary Kaldor suggests that the EU acts according to the concept of human security by means of CSDP actions on conflict prevention, crisis management and civil-military coordination⁵⁸ although there is also a risk of marking out a zone of action for EU CSDP.⁵⁹ The EU policy of support for the security sector reform (SSR) or security system reform reflects the multisectoral nature of the security system and the recognition that security, human rights and development are interdependent and indispensable conditions for mutually reinforcing peace and sustainable development and that these fundamental elements can only be achieved within the rule of law. In other words, the SSR demonstrates

⁵⁴ Human Security Study Group (HSSG), 'A European Way of Security: The Madrid Report' (2007), 8.

⁵⁵ *ibid.*

⁵⁶ *ibid* 4-5. The principles of human security are stated as follows: the primacy of human rights; legitimate political authority; a bottom-up approach; effective multilateralism; clear transparent civilian command; integrated regional approach.

⁵⁷ As asserted by Roulet, 'the EU can successfully promote human security, because without using the word, the European project has been promoting it for its own citizens since almost 50 years.' Luc Roulet 'The European Union, for the promotion of "Human Security"' (2005) <<http://www.newropeans-magazine.org/en/2005/04/05/the-european-union-for-the-promotion-of-human-security/>> accessed 5 February; Wolfgang Benedek, 'Mainstreaming Human Security in United Nations and European Union Peace and Crisis Management Operations: Policies and Practice' in Wolfgang Benedek, Matthias C. Kettmann and Markus Möstl (eds) *Mainstreaming Human Security in peace Operations and Crisis Management: Policies, Problems, Potential* (Routledge 2011), 13-31, 24; George Christou, 'The European Union's Human Security Discourse: Where are We Now?' (2014) 23(3) *European Security*, 364-381.

⁵⁸ Mary Kaldor, Mary E. Martin and Sabine Selchow, 'Human Security: a New Strategic Narrative for Europe' (2007) 83(2) *International Affairs*, 273-288, 274

⁵⁹ *ibid.* As underlined by Kaldor, Martin and Selchow '[h]uman security, as a term, can be understood to encompass the concepts of conflict prevention, crisis management and civil-military coordination, but it takes them further.' See also Stefano Silvestri, 'The Gradual Path to a European Defence Identity' in Álvaro de Vasconcelos (ed), *What Ambitions for European Defence in 2020*, (EUISS, 2nd edn, 2009), 97-105 <http://www.iss.europa.eu/uploads/media/What_ambitions_for_European_defence_in_2020.pdf> accessed 10 February 2016.

the existence of an interrelationship between human security and the rule of law. Most CSDP missions to date contribute more or less directly to the SSR.⁶⁰

In view of the reluctance to recognise human security as the framework for CSDP operations, the implementation of the EU comprehensive approach to crisis is seen as some form of endorsement of the concept of human security in a more flexible manner.⁶¹ The global challenges identified in the ESS go beyond military threats by mentioning poverty, diseases, food insecurity and poor governance. The ESS also calls for the use of instruments of a different nature for crisis management and conflict prevention, including political, diplomatic, military, civilian, trade and development activities. In practice, the EU has been deploying both military forces and civilian experts to prevent or end crises or conflicts and to create conditions for restoring peace and stability. These capabilities are provided by contributing Member States and are deployed together with the EU-funded programmes on humanitarian assistance and development aid. Deploying all these instruments together within the framework provided by the comprehensive approach to crisis management is the EU's flagship in the regions of the Horn of Africa and the Sahel.

At the institutional level, prior to the entry into force of the Lisbon Treaty in 2009, the fragmentation of EU external policy across the three pillars prevented the emergence of a holistic approach to crises. In the years that followed, the EU started to institutionalise the 'comprehensive approach' concept which entailed a combination of political, economic but also security instruments at its disposal to respond to international crises, aligning EU policy with those of the Member States and improving cooperation with other actors in the field.⁶²

Civil-military integration is a landmark in EU crisis management, advocating for a combination of diplomatic, economic, developmental and humanitarian tools.⁶³ Civil-military integration is one component of an EU comprehensive approach that has led to the establishment of integrated civilian-military planning within the European External Action Service (EEAS). However, concerns have been raised as to the risks that this civil-military integration entails as it could lead 'to the absorption of the civilian dimension into the military dimension'.⁶⁴ Further issues have been brought to attention, such as the potential 'militarisation' of civilian crisis management through the implementation of military concepts, approaches, tools and personnel to missions of a civilian nature. In reality, personnel with military

⁶⁰ Cristina Churrua Muguruza, 'European Union Support for Security Sector Reform: The Added Value of the EU as a Global Security Actor' (2008) 138(B) *Cuadernos de Estrategia*, 73-109

⁶¹ Henri Bentégeat, 'What Aspirations for European Defence?' in Álvaro de Vasconcelos (ed), *What Ambitions for European Defence in 2020?* (EUISS, 2nd edn, 2009), 97-105, 104

⁶² Eva Gross, 'EU and the Comprehensive Approach' (2007) Danish Institute for International Studies (DIIS) Report no 13, 7 <<https://www.ciaonet.org/attachments/10668/uploads>> accessed 12 February 2016.

⁶³ Nicoletta Pirozzi, 'The EU's Comprehensive Approach to Conflict Management' (June 2013) DCAF EU Crisis Management Paper Series, 7 <http://www.dcaf.ch/content/download/133240/2067752/file/Pirozzi_EU-CM.PDF> accessed 12 February 2016.

⁶⁴ European Peacebuilding Liaison Office, 'EPLO Statement on Civilian-Military Integration in European Security and Defence Policy' <http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/CSDP/EPLO_Statement_Civilian-Military_Integration_in_European_Security_and_Defence_Policy.pdf> accessed 15 February 2016.

backgrounds and experience are often recruited or seconded to civilian missions, particularly with regards to senior positions.⁶⁵

3. CSDP: the EU instrument for crisis management within the comprehensive approach

The EU has two categories of instruments for structural long-term prevention ('projecting stability') and short-term prevention ('reacting quickly to nascent conflicts'). The list of EU instruments directly or indirectly relevant to the projection of stability is long: development co-operation and external assistance, economic co-operation and trade policy instruments, humanitarian aid, social and environmental policies, diplomatic instruments such as political dialogue and mediation, as well as economic or other sanctions, CFSP instruments (joint actions, common positions and common strategies) and ultimately the CSDP.

The European Development Fund (EDF), established within the framework of an international agreement between the EU and its partner countries, funds cooperation activities in the fields of economic development, social and human development as well as regional cooperation and integration.⁶⁶ The EU is also widely engaged in providing emergency assistance through its Humanitarian Aid and Civil Protection department (DG ECHO), established in 1992, which aims to save and preserve life, prevent and alleviate human suffering and safeguard the integrity and dignity of populations affected by natural disasters and man-made crises. ECHO funds humanitarian projects through over 200 partners such as the Red Cross, NGOs or UN agencies.⁶⁷ The European Commission and the various European agencies may also be engaged in the domain of crisis management with active support from the European External Action Service (EEAS) created by the Treaty of Lisbon, the EU Special Representatives in priority regions and a network of over 140 EU Delegations around the world. The EU's view is that CSDP missions and operations are embedded in its wider responses to conflicts and crises.⁶⁸ However a crisis management response might not always be suitable and EU Member States may seek alternative ways of engagement, for example by providing support to non-EU capacity building missions rather than putting its 'boots on soil', or by imposing restrictive measures. Aside from the appropriateness to resort to CSDP action, it is also necessary to take into account in which manner would other EU policies contribute to the success of the mission or operation, for example with development and humanitarian programmes and/or political

⁶⁵ European Peacebuilding Liaison Office, 'Policy Paper on civilian CSDP', 10 <http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/EEAS/EPLO_PolicyPaper_CivilianCSDP.pdf> accessed 20 February 2016.

⁶⁶ European Commission, 'European Development Fund (EDF)' <https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/european-development-fund_en> accessed 15 February 2016.

⁶⁷ European Commission, 'About the EU Humanitarian Aid and Civil Protection department (ECHO)' <http://ec.europa.eu/echo/who/about-echo_en> accessed 15 February 2016.

⁶⁸ European Commission and High Representative of the European Union, 'Joint Communication to the European Parliament and the Council: The EU's Comprehensive Approach to External Conflict and Crises' (24 June 2013) JOIN(2013) 30 final, 5 <http://www.eeas.europa.eu/statements/docs/2013/131211_03_en.pdf> accessed 15 February 2016.

dialogue (EUSR and other forms of European diplomacy through EU Delegations or Member States' initiatives).⁶⁹

It is widely agreed that the EU is in a unique position to make a significant contribution to complex crisis management situations as it has a broad range of political, economic, civilian and military instruments at its disposal. The full range of instruments available provides the EU with a unique external capacity, but these numerous lines of action and the players involved need to ensure permanent coordination. The named comprehensive approach follows the so-called three Cs discussion on the need for coherence, coordination and complementarity between EU instruments, policies and those of the Member States. The effectiveness and impact of EU responses require a certain level of internal consistency and coordination with other external actors, Member States, EU Delegations and the European Commission. The 2013 Joint Communication on the 'comprehensive approach to external conflicts and crises' called for the EU's external action to be 'more consistent, more effective and more strategic' by 'drawing on the full range of instruments and resources'.⁷⁰ As the Council has noted, 'the starting point for the EU's comprehensive approach must be early, coordinated and shared analysis of each country and/or regional specific context, the conflict dynamics and the root causes of a crisis situation'.⁷¹ 'This early joined-up analysis should (...) bring together all relevant domains of EU external action, (...) as appropriate, humanitarian assistance, justice and migration, at headquarters and on the ground'.⁷² 'EU Delegations, Member States' representations and EU Special Representatives all have a central role in contributing to this joint analysis and making recommendations for EU action, including in the field of conflict prevention'.⁷³

The EU comprehensive approach consists of the integration of elements pertaining to three different categories: (i) the complementary integration of objectives (conflict prevention, peacekeeping, mediation, peacebuilding, development); (ii) integration among actors, both internal (EU bodies and structures, Member States) and external (other international organisations, third states, civil society organisations and others); (iii) integration of means of a different nature (civil and military). Indeed '[a] paradox of the comprehensive approach, and probably one of the major challenges, is to be inclusive and selective at the same time'.⁷⁴ A well-planned and tailored response to each crisis and setting common priorities is key to

⁶⁹ In the case of Kosovo, due to the fact that the member states do not share their stance vis-à-vis Kosovo's status, EULEX Kosovo is regarded as a 'status neutral' mission of a technical nature. The mission's objective to introduce the rule of law and an independent judiciary, which would effectively tackle corruption cases, is hampered by its limited engagement with local authorities. In this regard, the figure of the EUSR can potentially contribute through political engagement, as its mandate is more flexible.

⁷⁰ European Commission and High Representative of the European Union, 'Joint Communication to the European Parliament and the Council: The EU's Comprehensive Approach to External Conflict and Crises' (2013) JOIN(2013) 30 final, 2

⁷¹ Council of the European Union, 'Council Conclusions on the EU's Comprehensive Approach' Foreign Affairs Council Meeting (12 May 2014) Press <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/142552.pdf> accessed 8 March 2016.

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ Jean-Philippe Scherer, 'Cooperation and Coordination' in Jochen Rehl and Galia Glume (eds) 'Handbook on CSDP Missions and Operations: The Common Security and Defence Policy of the European Union' (Federal Ministry of

ensure success and effectiveness of EU external action. The CSDP is intended to be a short-term action in post-conflict scenarios, while cooperation development programmes are designed as long-term responses to be implemented in parallel and/or to take over or continue the work of CSDP missions and operation. Transition strategies for CSDP missions are important if one takes into consideration that CSDP is envisaged as short to medium-term activity to contribute to the stabilisation of a situation.⁷⁵

The idea of a comprehensive approach served as organising principle for EU action in the Horn of Africa, the Sahel and the Great Lakes even before being institutionalised as a generic EU strategy. The 2013 HR/VP Joint Communication entitled 'The EU's comprehensive approach to external conflict and crises' sets the principles governing the EU comprehensive approach for external action, putting special emphasis on conflict prevention and crisis resolution.

With regards to civil-military integration within the scope of crisis management, the EU has put significant efforts into enhancing the coherence and consistency of its actions. Civil-Military Coordination (CMCO) between the various EU instruments and capabilities is crucial for efficiently planning and implementing crisis management operations.⁷⁶ Civil-Military Co-operation (CIMIC) is deemed important for creating a secure environment.⁷⁷

C. CSDP missions and operations: an overview

The EU has gone through a profound transformation as an international security actor since the common security and defence policy became reality in 2003. To date, the EU had launched 34 operations and

Defence and Sports of the Republic of Austria, 2015) 43-49, 46 <http://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/final_-_handbook_on_csdp_missions_and_operations.pdf> accessed 5 March 2016.

⁷⁵ The EU avoids the use of the term 'exit strategy' instead of 'transition strategy' as the first may give the impression of the end of the EU's involvement in the host country. See Snowy Lintern, 'Transition strategies' in Jochen Rehr and Galia Glume (eds) 'Handbook on CSDP Missions and Operations: The Common Security and Defence Policy of the European Union' (Federal Ministry of Defence and Sports of the Republic of Austria, 2015) 68-72 <http://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/final_-_handbook_on_csdp_missions_and_operations.pdf> accessed 5 March 2016; Eva Gross, 'Exit Strategies: What's in a Name?' (July 2014) EUISS Brief Issue no 23 <http://www.iss.europa.eu/uploads/media/Brief_23_exit_strategies.pdf> accessed 5 March 2016.

⁷⁶ Council of the European Union, 'Civil-military Co-ordination' (2002) 12307/02, 10; Council of the European Union, 'Action plan for the further strengthening of civil-military co-ordination in EU crisis management' (2002) 13480/1/02 REV 1; Council of the European Union, 'Civil Military Co-ordination (CMCO)' (2003) 14457/03; Council of the European Union, 'Civil-Military Co-ordination: Framework paper of possible solutions for the management of EU Crisis Management Operations' (2006), 8926/06; Council of the European Union, 'Civil-Military Co-ordination (CMCO): Possible solutions for the management of EU Crisis Management Operations - Improving information sharing in support of EU crisis management operations' (2006) 13218/5/06 REV 5; Council of the European Union, 'EU Concept for Civil-Military Co-operation (CIMIC) for EU-led Military Operations' (2009), 11716/08 REV 1, para 15; Council of the European Union, 'Civil-military co-operation (CIMIC) concept for EU-led crisis management operation' (2008) 11716/08 REV 1, para 16.

⁷⁷ Council of the European Union, 'EU Concept for Civil-Military Co-operation (CIMIC) for EU-led Military Operations' (2009) 11716/08 REV 1.

missions, 10 of which were military, 23 civilian, and one mixed civil-military mission (see Table 1).⁷⁸ Among all the 34 CSDP missions and operations there are 10 military operations (Concordia, Artemis, EUFOR Althea, EUFOR DR Congo, EUFOR Tchad/RCA, EUNAVFOR Atalanta, EUTM Mali, EUFOR RCA, EUMAM RCA, EUNAVFOR MED Sophia), nine assistance/supporting missions (EUSEC RD Congo, EU support to AMIS Darfur, EUPAT FYROM, EUSSR Guinea-Bissau, EUCAP Sahel Niger, EUCAP NESTOR Horn of Africa, EUAVSEC South Sudan, EUCAP Sahel Mali and EUAM Ukraine), six police operations (EUPM BiH, EUPOL Proxima, EUPOL Kinshasa, EUPOL COPPS, EUPOL DRC, EUPOL Afghanistan), three rule of law missions (EUJUST THEMIS, EUJUST LEX, EULEX Kosovo), three border missions (EUBAM Rafah, EUBAM Ukraine/Moldova, EUBAM Libya), and two monitoring missions (AMM and EUMM Georgia).⁷⁹ The table below provides an overview of all CSDP missions and operations to date, according to their location, type and duration. At the time of writing, there are 18 ongoing missions and operations, 6 military operations and 12 civilian missions.⁸⁰

EU missions and operations take different forms. For instance, during the EUFOR RCA operation, military forces were tasked with peace enforcement work. The missions and operations deployed in FYROM (EUPAT FYROM; Concordia) played a key role in preventing escalation of tensions, while the principal objective of crisis management operations deployed in BiH were to maintain public order and control over organised crime in a post-conflict context. Missions such as EULEX Kosovo provide civilian support to restore the rule of law in the territory.

However it should be noted that most ESDP/CSDP operations have been of a civilian nature. The denomination of ‘civilian’ or ‘military’ reflects the nature of participating forces (police officers, judges or civilian experts, as opposed to military troops). Between 2006 and the first symptoms of the economic crisis in 2008, the number of EU crisis management operations peaked, while following the entry into force of the Lisbon Treaty in 2009 there were no new missions or operations launched for two years.

Table 2: CSDP missions and operations (2003-2016)⁸¹

Name	Location	Nature	Type	Duration
EUPM	Bosnia	Civilian	Police	Jan 2003 - Jun 2012
EUFOR Concordia	FYROM	Military	Military	Mar - Dec 2003
Artemis	RD Congo	Military	Military	Jun - Sep 2003

⁷⁸ For an outline of all missions with a description of their mandates see Maria Julià Barceló, *Las Misiones de paz de la Unión Europea. Origen, desarrollo y procedimiento de creación y seguimiento* (Tirant Lo Blanch 2015), 149-480.

⁷⁹ See ISIS Europe, ‘Mission Chart’ <<http://www.csdpmap.eu/mission-chart>> accessed 20 December 2015.

⁸⁰ European External Action Service, ‘Ongoing Missions and Operations’ (October 2015) <<http://www.eeas.europa.eu/csdp/missions-and-operations/>> accessed 20 December.

⁸¹ *ibid.*

EUJUST Themis	Georgia	Civilian	Rule of law	Jul 2004 - Jul 2005
EUPOL Proxima	FYROM	Civilian	Police	Dec 2004 - Dec 2005
EUFOR Althea	Bosnia	Military	Military	Since Dec 2004
EUJUST LEX	Iraq/Brussels	Civilian	Rule of law	Feb 2005 - Dec 2013
EUSEC	RD Congo	Civilian	SSR	Since Jun 2005
EU support to AMIS (Darfur)	Sudan	Civil-Military	Assistance	Jul 2005 - Dec 2007
AMM	Aceh/Indonesia	Civilian	Monitoring	Sep 2005 - Dec 2006
EUBAM	Ukraine/Moldova	Civilian	Border	Since Oct 2005
EUBAM Rafah	Palestinian Territories	Civilian	Border	Since Nov 2005 (suspended since June 2007)
EUPOL Kinshasa	RD Congo	Civilian	Police	Dec 2005 - Jun 2007
EUPAT	FYROM	Civilian	Police	Dec 2005 - Jun 2006
EUPOL COPPS	Palestinian Territories	Civilian	Police	Since Jan 2006
EUFOR	RD Congo	Military	Military	Jul - Nov 2006
EUPOL	RD Congo	Civilian	Police	Jul 2007 - 2014
EUPOL	Afghanistan	Civilian	Police	Since Jun 2007
EUFOR	Tchad/RCA	Military	Military	Mar 2008 - Mar 2009
EU SSR	Guinea-Bissau	Civilian	SSR	Jun 2008 - Sep 2010
EUMM	Georgia	Civilian	Monitoring	Since Oct 2008
EULEX	Kosovo	Civilian	Rule of law	Since Dec 2008
EUNAVFOR Atalanta	Gulf of Aden	Military	Military	Since Dec 2008

EUTM	Somalia/Uganda	Civilian	Training	Since Apr 2010
EUFOR ⁸²	Libya	Military	Military	(Apr 2011)
EUAVSEC	South Sudan	Civilian	Advisory and training	Jun 2012 - Apr 2014
EUCAP Nestor	Horn of Africa	Civilian	Advisory and training	Since Jul 2012
EUCAP Sahel	Niger	Civilian	Advisory and training	Since Aug 2012
EUTM	Mali	Military	Training	Since Apr 2013
EUBAM	Libya	Civilian	Border	Since May 2013
EUFOR	RCA	Military	Military	Jan 2014 - Mar 2015
EUAM	Ukraine	Civilian	SSR	Since Jul 2014
EUCAP Sahel	Mali	Civilian	Advisory and training	Since Apr 2015
EUMAM	RCA	Military	Advisory	Since Mar 2015
EUNAVFOR MED Sophia	Southern Central Mediterranean	Military	Military	Since Jun 2015

As reflected in Table 1, the majority of CSDP missions deployed to date have been of a civilian nature, covering areas such as police training and the rule of law. Civilian missions can be classified as strengthening missions, monitoring missions and executive missions (only EULEX Kosovo). Military CSDP operations are generally labelled as training or advisory operations. Only EUFOR RCA has deployed combat units in an executive operation.

While the ESS clearly identifies a number of security challenges, threats and strategic objectives, an evaluation of the EU's experience in the field of crisis management suggests that there are a number of factors that carry more weight than others for establishing a CSDP mission or operation and for deciding on how it will be formulated (whether it will be civilian or military in nature, its type and timeframe).⁸³

⁸² EUFOR Libya was tied to a request of deployment made by the UN Office for the Coordination of Humanitarian Affairs (OCHA), to be deployed with the aim of contributing to the safe movement and evacuation of displaced persons and of supporting the delivery of humanitarian aid however the mission was never launched.

⁸³ See above section B(2) in this chapter.

Those factors conditioning EU CSDP responses also determine the significance of human rights, democracy/the rule of law in the decision and in the configuration of crisis managements responses.

The EU has consolidated an autonomous policy on security and defence but it also pledges to promote effective multilateralism and reliance on a solid legal bases. While EU military operations tend to be oriented towards cooperation with the UN and/or to act under authorisation of Security Council resolutions, a formal invitation from the local authorities is sufficient for the establishment of civilian missions. However the latter does not mean that civilian missions act autonomously or against UN guidelines and mandates; on the contrary, they have established mechanisms for coordination and cooperation between the two organizations and also on the ground.⁸⁴

From a geopolitical perspective, EU security interests are manifest in view of the number of missions and their intensity in the African continent (particularly in former EU Member States' colonies) and neighbouring countries.⁸⁵ EU Member States have shown their preference for civilian missions to be deployed in low-risk security contexts in response to specific challenges and threats covered by the ESS such as regional conflicts, social inequality, organised crime and failed states, while others have not received much attention, such as the proliferation of weapons of mass destruction, competition for natural resources and energy dependence.⁸⁶

Those threats that are perceived as having a greater impact on the EU's internal security (terrorism, irregular migration, drug trafficking etc) are more likely to prompt an EU response: EUCAP Niger was a civilian CSDP mission aimed at providing assistance in support of the fight against terrorism in the Sahel; EUNAVFOR MED aimed at disrupting the business model of human smuggling and trafficking networks; the prime focus of EUPM BiH was on the fight against organised crime and corruption at the front door of European countries. The box below lists the main key determining factors in the area of EU CSDP.

Box 2: CSDP key determining factors⁸⁷

- Low risk scenarios and minimisation of risk
- Preference for civilian and non-coercive missions
- Long-term civilian missions v short-term military operations
- Legitimacy of the mandate through UNSC Resolutions (military operations) or consent of the state (civilian missions)
- Geographic areas of interest (neighbouring countries or the former African colonies of EU Member States)
- - The presence of threats that directly affect EU internal security (terrorism, irregular migration, drug trafficking etc)

⁸⁴ Francisco Rubio Damián, 'Condicionantes de las intervenciones exteriores de seguridad de la Unión Europea' (2012) 28 *Anuario Español de Derecho Internacional*, 361.

⁸⁵ *ibid* 362.

⁸⁶ *ibid*.

⁸⁷ Francisco Rubio Damián, 'Condicionantes de las intervenciones exteriores de seguridad de la Unión Europea' (2012) 28 *Anuario Español de Derecho Internacional*, 374-388

1. CSDP and the promotion of human rights through effective multilateralism

A comprehensive security approach means not only drawing on all EU strengths, but also working closely with international and regional organisations and third states. Article 21 of the TEU recalls that multilateralism is at the core of the EU's external action. The ESS lists the EU's adherence to multilateral treaty regimes among its main strategic objectives, as well as seeking multilateral cooperation in international organisations and through partnership with key actors.⁸⁸ In line with the idea of effective multilateralism, the EU is committed to developing an effective and balanced partnership with third states, particularly the US,⁸⁹ including the conclusion of agreements for the involvement of non-EU states in CSDP missions and operations. The EU also attempts to engage with international and regional organisations in the area of crisis management such as the UN, the AU and the OSCE, among others. This subsection focuses on EU partnership with international organisations and the contribution of third states to the CSDP by providing an overview of the formal arrangements in place aimed at enhancing cooperation in the field of crisis management.

a) CSDP cooperation with crisis management actors

In most crisis management scenarios, CSDP missions and operations work in close partnership with other major conflict prevention and crisis management actors. The EU and its partners can reciprocally benefit from each other's knowledge, expertise and capabilities.⁹⁰

(1) EU - UN partnership in crisis management

The potential added value of EU-UN partnership in the area of crisis management is given by the UN's pro-active and innovative character in developing practical approaches to human rights, gender and particularly civilian protection through concepts, guidelines and training tools.⁹¹ The organisation is of the conviction that the ability or inability to protect the civilian population has an impact on the effectiveness of each mission and on the legitimacy of the UN as a whole. In short, the UN sees the protection of civilians

⁸⁸ Council of the European Union, 'European Security Strategy: A Secure Europe in a Better World' (2003), 9

⁸⁹ Rafał Domisiewicz and Eva Gross, 'Breaking New Ground: EU-US Cooperation in Crisis Management' (May 2014) EUISS Briefing no 15 <http://www.iss.europa.eu/uploads/media/Brief_15_EU_US_cooperation_in_crisis_management.pdf> accessed 23 December 2016.

⁹⁰ See Elisa Norvanto, Jari Mustonen and Kirsi Hyttinen, 'Review of civilian and military synergies' (2015) D 1.3 IECEU <<http://www.ieceu-project.com/wp-content/uploads/2016/02/D1.3%20M6%20Review%20Civil-Military%20Synergies.pdf>> accessed 1 May 2015.

⁹¹ See Jeannette Boehme, 'Human Rights and Gender Components of UN and EU Peace Operations' (Deutsches Institut für Menschenrechte 2008) <http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/study_human_rights_and_gender_components.pdf> accessed 1 May 2016.

as an end in itself,⁹² and in order to operationalise this objective, most multi-dimensional peace operations have a human rights team.⁹³

The EU human rights approach and methodology of human rights promotion in the context of crisis management has been strongly influenced by the lessons learned from previous UN missions.⁹⁴ The progressive development of the concept of 'integrated missions' has further strengthened the status of human rights, with UN missions being mandated both to protect⁹⁵ and actively promote human rights in all their operations.⁹⁶

Cooperation between the EU and the UN has been relatively strong since the EU launched Operation Artemis in the Democratic Republic of the Congo in 2003 to support to the United Nations Mission in the Democratic Republic of Congo (MONUC) and when EUPM BiH took over policing Bosnia and Herzegovina from the United Nations International Police Task Force (UNIPTF).⁹⁷ The EU-UN co-operation in crisis management is mutually beneficial for both organisations: while the EU gains political legitimacy from the United Nations Security Council resolutions, the UN receives capability and financial support by the EU.⁹⁸

⁹² Stian Kjeksrud, Jacob Aasland Ravndal, Andreas Øien Stensland, Cedric de Coning, Walter Lotze and Erin A. Weir, 'Protection of civilians in armed conflict: comparing organisational approaches' (1 November 2001) Norwegian Defence Research Establishment (FFI) FFI-rapport 2011/01888, 12 <<https://www.ffi.no/no/Rapporter/11-01888.pdf>> accessed 15 December 2016.

⁹³ For example MONUSCO (DR Congo), UNAMID (Darfur), UNMISS (South Sudan), UNMIL (Liberia), UNOCI (Côte d'Ivoire), MINUSTAH (Haiti) and UNAMA (Afghanistan) United Nations Peacekeeping, 'Human rights' <<http://www.un.org/en/peacekeeping/issues/humanrights.shtml>> accessed 10 January 2016.

⁹⁴ For the most commonly used definition of human rights-based approach or human rights mainstreaming by the UN, see OHCHR, 'Frequently Asked Questions on Human Rights-Based Approaches' (2006) <<http://www.ohchr.org/Documents/Publications/FAQen.pdf>> accessed 10 January 2016. In his 1997 report to the UN General Assembly, the UN Secretary-General Kofi Annan requested that human rights dimensions be enhanced and integrated into a range of the organisations activities; see UN Secretary-General, 'Report of the Secretary-General on Reviewing the United Nations: A Programme for Reform' (1 July 1997) A/51/950 <https://www.globalpolicy.org/images/pdfs/renewing_the_united_nations.pdf> accessed 10 January 2016.

⁹⁵ In addition to one of the three purposes in the UN Charter to 'promote and encourage respect for human rights and for fundamental freedoms for all', the OHCHR is mandated to play an active role in the Security Council deliberations to ensure that the nexus between security, development and human rights is taken into account.

⁹⁶ Kathleen M. Jennings and Anja T. Kaspersen, 'Introduction: Integration Revisited' (2008) 15(4) *International Peacekeeping*, 443-452, 445.

⁹⁷ In strict terms, EU CSDP interventions do not qualify as a 'crisis response' as they are mostly oriented towards institution-building and prevention. Hadewych Hazelzet, 'The added value of CSDP operations' (September 2013) EUISS Brief Issue no 31, 2 <http://www.iss.europa.eu/uploads/media/Brief_31.pdf> accessed 10 January 2016.

⁹⁸ For an overview on EU-UN relations in crisis management see Carmen-Cristina Cirlig, 'EU-UN cooperation in peacekeeping and crisis management' (November 2015) European Parliament Briefing <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572783/EPRS_BRI\(2015\)572783_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572783/EPRS_BRI(2015)572783_EN.pdf)> accessed 12 January 2016; Wanda Hummel and Tobias Pietz 'Partnering for Peace: Lessons and Next Steps for EU-UN Cooperation on Peace Operations' (February 2015) Zentrum für Internationale Friedenseinsätze Policy Briefing <http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_Policy_Briefing_Hummel_Pietz_EU-UN-Partnerships_ENG_Feb2015.pdf> accessed 12 January 2016; Jan Wouters and Tom Ruys, 'The European Union, the United Nations and crisis management: the road to partnership' (July 2005) KU Leuven Institute for International Law Working Paper no 80 <<https://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP80e.pdf>>; Thierry Tardy,

The relation of cooperation between the EU and the UN in crisis management was consolidated⁹⁹ through the 2003 Joint Declaration and the June 2007 Joint Statement.¹⁰⁰ The main areas of coordination identified in the area of crisis management are in planning, training, communication and exchange of best practices and lessons learned. Additionally, a joint consultative mechanism named the 'EU-UN Steering Committee on Crisis Management' was created in 2003 that brings EU and UN senior representatives together.¹⁰¹ The EU has adopted several policy documents setting more concrete actions to enhance EU CSDP support to UN peacekeeping.¹⁰²

Table 3: EU and UN missions and operations deployed in parallel (in March 2016)

Area of deployment	EU missions and operations	UN missions and operations
Afghanistan	EUPOL Afghanistan	UNAMA
Central African Republic	EUMAM RCA	MINUSCA
Democratic Republic of Congo	EUSEC RD Congo	MONUSCO
Israel/Palestinian Territories	EUBAM Rafah EUPOL COPPS	UNSCO UNTSO
Kosovo	EULEX Kosovo	UNMIK
Libya	EUBAM Libya	UNSMIL
Mali	EUTM Mali EUCAP Sahel Mali	MINUSMA
Somalia	EUCAP NESTOR Somalia EUNAVFOR Atalanta EUTM Somalia	UNSOM

'Partnering in crisis management: Ten years of UN-EU cooperation' (2013) EUISS Brief Issue no 30 <http://www.iss.europa.eu/uploads/media/Brief_30.pdf> accessed 20 January 2016.

⁹⁹ EU Delegation to the UN - New York, 'Summary: September 24, 2003: Joint Declaration on UN-EU Co-operation in Crisis Management (New York)' (2003) <http://eu-un.europa.eu/articles/en/article_2768_en.htm> accessed 20 January 2016.

¹⁰⁰ Council of the European Union, 'Joint Statement on UN-EU cooperation in Crisis Management' (7 June 2007) Press <<http://www.consilium.europa.eu/uedocs/cmsUpload/EU-UNstatmntoncrsmngmnt.pdf>> accessed 20 January 2016.

¹⁰¹ Meetings take place twice a year, with the possibility of additional meetings where necessary.

¹⁰² Council of the European Union, 'Actions to enhance EU CSDP support to UN peacekeeping' (24 November 2011) 17497/11 <<http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2017497%202011%20INIT>> accessed 20 February 2016; Council of the European Union, 'Plan of Action to enhance EU CSDP support to UN peacekeeping' (14 June 2012) 11216/12 <<http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/eu-eeas-csdp-un-peacekeeping-june-2012.pdf>> accessed 20 February 2016. The modalities of cooperation include: Clearing House and Bundling Member States Contributions, EU Providing EU Component to UN Operation, EU Autonomous Civilian Deployment in Support of UN, EU Autonomous Military Deployment in Support of UN, Strengthen Assistance to AU and Other Regional Organizations, Cross-Cutting Areas. Council of the European Union, 'Strengthening the UN-EU Strategic Partnership on Peacekeeping and Crisis Management: Priorities 2015-2018' (23 March 2015) 7632/15 <<http://data.consilium.europa.eu/doc/document/ST-7632-2015-INIT/en/pdf>> accessed 20 February 2016.

Operational cooperation in crisis areas can take the form of ‘bridging operations’ (EUFOR RCA), parallel complementary deployment, or support to the other organisation’s activities. From the very beginning of the EU CSDP, EUPM BiH took over the mandate of the International Police Task Force (IPTF) from the UN, and Operation Artemis was deployed to DR Congo to support the UN’s MONUC mission. These are examples of close cooperation. There are also cases of parallel, but largely separate, deployments in Afghanistan (EUPOL and UNAMA), DR Congo (EUSEC/EUPOL and MONUSCO), Somalia (EUNAVFOR and UNPOS), and Georgia (UNOMIG and EUMM). Some exceptions are in Kosovo where EULEX took over a range of tasks from UNMIK¹⁰³ and in Chad where EUFOR Tchad/RCA prepared and supported the deployment of MINURCAT.¹⁰⁴

(2) EU - NATO cooperation in crisis management

The EU-NATO strategic partnership in the area of crisis management rests on the so-called ‘Berlin Plus’ Agreement adopted in December 2002, which provide the basis for EU-led operations to make use of NATO's collective assets and capabilities, including command structures and assistance in operational planning.¹⁰⁵ These arrangements first came to use in spring 2003 for Operation Concordia in FYROM and EUFOR Althea in BiH. The EU-NATO partnership is a complementary partnership of interest for both organisations as ‘the EU does not have the range of planning capabilities that NATO has, and NATO is less equipped with regard to the civilian expertise that adds value to many missions.’¹⁰⁶

¹⁰³ Karnitschnig, 2006. The United Nations and the European Union in Kosovo – The Challenges of Joint Nation-Building. In J. Wouters, F. Hoffmeister, & T. Ruys, eds. *The United Nations and the European Union: An Ever Stronger Partnership*. The Hague: T.M.C. Asser, pp. 323-351

¹⁰⁴ Tobias Pietz, ‘The European Union and UN Peacekeeping: Half-time for the EU’s Action Plan’ (October 2013) Zentrum für Internationale Friedenseinsätze Policy Briefing, 2-3 <http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_Policy_Briefing_Tobias_Pietz_Oct_2013_ENG.pdf> accessed 20 February 2016.

¹⁰⁵ NATO, ‘EU-NATO Declaration on ESDP’ (2002) Press Release 142 <http://www.nato.int/cps/en/natolive/official_texts_19544.htm> accessed 20 February 2016.

¹⁰⁶ Florence Gaub, Olivier de France and Daniel Fiott, ‘EUISS Yearbook of European Security 2014’ (2014) European Union Institute for Security Studies, 78 <<http://www.iss.europa.eu/uploads/media/YES2014.pdf>> accessed 14 January 2016; Arjen Boin, Magnus Ekengren, Mark Rhinard, *The European Union as Crisis Manager: Patterns and Prospects* (Cambridge University Press 2013), 69-70. NATO and EU representatives meet on a regular basis at different levels to discuss issues of common interest involving NATO’s military and non-military staff, as do EU officials from the EEAS, the European Defence Agency (EDA), the Commission and the European Parliament. NATO, ‘NATO-EU: a strategic partnership’ (2015) <http://www.nato.int/cps/eu/natohq/topics_49217.htm> accessed 14 January 2016. A NATO Permanent Liaison Team - with the EU Military Staff - and an EU Cell at SHAPE (Supreme Headquarters Allied Powers Europe, NATO’s strategic command for operations in Mons, Belgium) were established to contribute to EU-NATO coordination. NATO, ‘NATO-EU: a strategic partnership’ (2015) <http://www.nato.int/cps/eu/natohq/topics_49217.htm> accessed 14 January 2016. Nonetheless, despite these efforts for enhanced strategic cooperation there is still room for improvement as regards getting common views to be brought into practice. See inter alia Simon John Smith, ‘EU–NATO cooperation: a case of institutional fatigue?’ (2011) 20(2) *European Security*, 243-264; Theo Sommer, ‘NATO no longer fits the bill. We need more European Alliance’ (June 2012) Körber Policy Paper no 15 <http://www.koerberstiftung.de/fileadmin/user_upload/internationale_politik/pdf/2012/Koerber%20Policy%20Paper%20No%20%2015.pdf> accessed 20 January 2016.

Unlike the UN, EU or AU, NATO is not particularly engaged in developing specific strategies, concepts or policies on human rights mainstreaming. Nevertheless, NATO has actively sought to develop strategies and mechanisms to integrate a gender perspective in its work.¹⁰⁷ With regards to the protection of civilians in the conduct of its military operations, NATO is of the view that this is a secondary aspect and part of a larger strategy where the main objective is to counter or support an insurgency. NATO's perspective on the protection of civilians is rather understood in terms of 'how not to kill, rather than on how to directly protect'.¹⁰⁸

(3) EU - African Union partnership in crisis management

The EU has also developed close co-operation in the field of crisis management with other regional actors, such as the African Union (AU), the Organisation for Security and Co-operation in Europe (OSCE), the Association of South-East Asia Nations (ASEAN) to the mention the most relevant.

Since the emergence of the AU from the Organisation of African Unity (OAU) in 2002, the continent has had a politically significant organisation that is able to take on the numerous tasks in the field of peace and security. Within the framework of the African Peace and Security Architecture (APSA), the AU and other African regional organisations aim to provide the continent with a better basis for the prevention, management and transformation of conflicts and crises. The African continent has been the primary focus of CSDP missions and comprehensive strategies, but EU-AU cooperation is also strong in building up African capacities to tackle crises on the continent.¹⁰⁹ The EU partnership with the AU focuses on strengthening the political dialogue, making the African peace and security architecture operational and making funding available for the AU-led peacekeeping operations.¹¹⁰ The Joint Africa-EU Partnership adopted in 2007 has laid the foundations for a long-term strategic partnership based on a shared vision and common principles.¹¹¹

¹⁰⁷ NATO, 'NATO/EAPC Policy for the implementation of UNSCR 1325 on Women, Peace and Security and related resolutions' <http://www.nato.int/cps/en/natohq/official_texts_109830.htm?selectedLocale=en> accessed 24 January 2016. Additionally the NATO Military Committee established the Committee on Women in the NATO Forces (CWINF) early in 1976.

¹⁰⁸ Stian Kjeksrud, Jacob Aasland Ravndal, Andreas Øien Stensland, Cedric de Coning, Walter Lotze and Erin A. Weir, 'Protection of civilians in armed conflict – comparing organisational approaches' (1 November 2001) Norwegian Defence Research Establishment (FFI) FFI-rapport 2011/01888, 28.

¹⁰⁹ Ulrich Karock, 'The African Peace and Security Architecture: Still under construction' (March 2014) DG EXPO/B/PolDep/Note/2014_47

<[http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522335/EXPO-SEDE_SP\(2014\)522335_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522335/EXPO-SEDE_SP(2014)522335_EN.pdf)> accessed 20 January 2016; Nicoletta Pirozzi, 'EU support to the African security architecture: funding and training components' (February 2009) EUISS Occasional Paper no 76, 23-29 <<http://www.iss.europa.eu/uploads/media/op76.pdf>> accessed 20 January 2016.

¹¹⁰ See The EU-Africa Partnership, 'African-led Peace Support Operations' <<http://www.africa-eu-partnership.org/en/priority-areas/peace-and-security/achievements-and-milestones/african-led-peace-support>> accessed 20 January 2016; Nicoletta Pirozzi (ed), Strengthening the Africa-EU Partnership on Peace and Security' (2012) IAI Research Papers <http://www.iai.it/sites/default/files/iairp_06.pdf> accessed 25 January 2016.

¹¹¹ Council of the European Union, 'The Africa-EU Strategic Partnership' (2007) 16344/07 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/97496.pdf> accessed 22 January 2016.

African-led peace operations have been widely supported by means of financial contribution to cover allowances for troops and officers, while military equipment, weapons or ammunitions are excluded.¹¹² The provision of military equipment has received particular attention in the framework of the EU-AU partnership; both parties stress the importance of enhancing partner countries' capabilities through the supply of equipment, either as a complement to CSDP operations or as a separate measure.¹¹³ The experiences from CSDP training missions (EUTM Mali and EUTM Somalia) and the work on the African Peace and Security Architecture (APSA) 'have shown that in many cases, lasting and effective results are not achieved due to a lack of basic equipment in the partner country.'¹¹⁴ The ongoing debate on the 'train-and-equip' initiative¹¹⁵ could greatly benefit the AU's ability to provide security and protection in the African continent once the legal obstacles to its financing have been solved.¹¹⁶

(4) EU – OSCE partnership in crisis management

Based on the ten fundamental principles of the Helsinki Final Act signed in August 1975, the OSCE embraces a comprehensive notion of security covering three dimensions': the politico-military, the economic and environmental and the human security dimension.¹¹⁷ The Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw deals with the practical implementation of the objectives of the Human Dimension.¹¹⁸ The EU maintains close working relations with the OSCE at a high level through the EU Delegation in Vienna representing the Union at the OSCE and with the OSCE field operations, particularly those operating in the same area as CSDP missions operations (Caucasus, Balkan and Eastern European regions).¹¹⁹ On 3 November 2003, the Political and Security Committee agreed on a set of

¹¹² Minke Meijnders and Dick Zandee, 'The CSDP in Africa' in Dick Zandee (ed), *The EU as a security actor in Africa In-depth study Clingendael Monitor 2016* (December 2015) Netherlands Institute of International Relations 'Clingendael', 31-35 <http://www.clingendael.nl/sites/default/files/EU_as_a_security_actor_in%20Africa_In-depth_study_Clingendael_Monitor_2016.pdf> accessed 22 January 2016.

¹¹³ The High Representative and the Commission were tasked to further work on the issue. European Commission and High Representative of the European Union, Joint Communication to the European Parliament and the Council, 'Capacity building in support of security and development -Enabling partners to prevent and manage crises' (28 March 2015) JOIN(2015) 17 final.

¹¹⁴ Hans Merket, 'The EU's comprehensive approach' in Dick Zandee (ed), *The EU as a security actor in Africa In-depth study Clingendael Monitor 2016* (December 2015) *Netherlands Institute of International Relations 'Clingendael'*, 27 <www.clingendael.nl/sites/default/files/EU_as_a_security_actor_in%20Africa_In-depth_study_Clingendael_Monitor_2016.pdf> accessed 20 January 2016.

¹¹⁵ In a non-publicly available document entitled 'Train and Equip- Leveraging the impact of CSDP missions and operations training activities to enhance crisis management capacity in third countries and regional organisations', the EEAS presents its recommendations for an improvement of efforts in the field of training in third countries.

¹¹⁶ Thierry Tardy, 'Enabling partners to manage crises. From 'train and equip' to capacity-building' (November 2015) EUISS Brief Issue no 18 <www.iss.europa.eu/uploads/media/Brief_18_Train_and_Equip.pdf> accessed 20 January 2016.

¹¹⁷ Conference on Security and Co-operation in Europe - Final Act ('Helsinki Final Act') (1975) <www.osce.org/mc/39501?download=true> accessed 20 January 2016.

¹¹⁸ OSCE, 'What is the human dimension?' <www.osce.org/odihr/109087> accessed 20 February 2016.

¹¹⁹ EEAS, 'EU relations with the Organisation for Security and Cooperation in Europe (OSCE)' <http://eeas.europa.eu/organisations/osce/index_en.htm>. See ab overview of EU-OSCE cooperation on regional conflicts, human rights and related areas Emmanuel Fanta, 'Mapping of EU's Global Cooperation' (February 2010) EU-GRASP Working Paper no 5, 33-38 <http://cris.unu.edu/sites/cris.unu.edu/files/WP05_Mapping_of_EU_Global_Cooperation_01.pdf> accessed 20 February 2016.

Conclusions on EU-OSCE cooperation in conflict prevention, crisis management and post-conflict rehabilitation.¹²⁰ The Conclusions recognised the ‘role of the OSCE as a valuable instrument for the promotion of peace and comprehensive security’ and calls for cooperation in specific areas and at different levels (at the political, field and staff-to-staff levels and through EU representation in Vienna).¹²¹ The Conclusions note the ‘possible contribution by the EU to the OSCE’s operational efforts in crisis management,’ and the possibility of ‘EU crisis management operations following a request from the OSCE.’¹²² In practice, the interaction between EU and OSCE operations has tended to be ad hoc and informal. For example, in Kosovo, enhanced interaction between the OSCE Mission in Kosovo and EULEX resulted from the downsizing of the UNMIK, particularly in areas of potential overlap in their mandates on the monitoring of courts and aspects of police training.¹²³ Informal cooperation between the OSCE Mission to Georgia and EUMM Georgia is also deemed successful.¹²⁴

(5) EU-ASEAN interaction in crisis management

The EU-ASEAN relationship is an evolving one, which advances as the two organisations develop.¹²⁵ Similarly to the EU, ASEAN intends to enhance security, prosperity, and regional stability, however, both follow different approaches.¹²⁶ Human rights are traditionally seen as a source of friction in relations between Southeast Asian and European governments. Southeast Asian states’ greater emphasis on national sovereignty is reflected in their approach to conceptualising and implementing human rights, according to their own ‘cultural’ norms.¹²⁷ Despite the state-centric security approach among Southeast Asian states, rather than broadening security to incorporate human security and non-traditional security

¹²⁰ European Council, ‘Draft Council Conclusions on EU-OSCE Cooperation in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation’ (10 November 2003) 14527/1/03 REV 1, 10 <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014527%202003%20REV%201>> accessed 20 February 2016.

¹²¹ *ibid* 2-4.

¹²² *ibid* 5.

¹²³ Dov Lynch, ‘ESDP and the OSCE’ in Giovanni Grevi, Damien Helly and Daniel Keohane, *European Security and Defence Policy: the first ten years (1999-2009)* (European Union Institute for Security Studies 2009), 143 <www.iss.europa.eu/uploads/media/ESDP_10-web.pdf> accessed 25 February 2016.

¹²⁴ *ibid* 144

¹²⁵ European Commission, Joint Communication to the European Parliament and the Council ‘The EU and ASEAN: a partnership with a strategic purpose’ (18 May 2015) JOIN(2015) 22 final <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015JC0022&from=EN>> accessed 25 February 2016; Eva Pejsova, ‘The EU and ASEAN in 2016’ (2016) EUISS Issue Alert no 1 <www.iss.europa.eu/uploads/media/Alert_1_ASEAN.pdf> accessed 23 February 2016.

¹²⁶ Amaia Sánchez-Cacicedo, ‘Peacebuilding in Asia: refutation or cautious engagement?’ (November 2010) EUISS Occasional Paper no 86, 20-23 <www.iss.europa.eu/uploads/media/op86_Peacebuilding_in_Asia.pdf> accessed 20 February 2016.

¹²⁷ As observed by Amartya Sen, the thesis of ‘Asian values’ stresses the culture and value differences between Asia and the West. The thesis of ‘Asian values’ places states before individuals and is more concerned with order and discipline than freedom. Amartya Sen, Human Rights and Asian Values (1997) Sixteenth Morgenthau Memorial Lecture on Ethics & Foreign Policy <www.carnegiecouncil.org/publications/archive/morgenthau/254.html/_res/id=sa_File1/254_sen.pdf> accessed 25 February 2016; Howard Loewen, ‘Democracy and Human Rights in the European-Asian Dialogue: A Clash of Cooperation Cultures?’ (December 2008) GIGA Working Papers no 92 <www.ciaonet.org/attachments/13591/uploads> accessed 25 February 2016.

issues, the EU and ASEAN have had previous experience working together in the area of peacekeeping and peace-building. AMM Aceh, launched in 2005,¹²⁸ brought EU and ASEAN personnel together to monitor the security aspects of the Memorandum of Understanding (MOU) agreed between Indonesia and the Free Aceh Movement (GAAM).¹²⁹ The AMM was the first EU-led mission in Asia and was the first co-operation with ASEAN member states of this kind. ASEAN member states have also participated in CSDP missions and operations in other parts of the world. In recent years, ASEAN and the EU have agreed to intensify human rights (and security) cooperation and policy dialogues.¹³⁰

b) Participation of third states in CSDP missions and operations

EU relations with third countries are relevant, particularly with regards to its relations vis-à-vis countries where a CSDP mission or operation is deployed. Moreover, a number of third states have contributed to CSDP missions. Non-EU NATO Allies and candidate countries are among the most active contributors to CSDP activities. Some third countries have concluded a Frame Participation Agreements (FPA)¹³¹ with the EU in order to provide a legal basis to the participations and contributions in/to CSDP missions and operations. Whilst the contributions of partner countries may provide targeted responses to the EU's shortfalls, they can also be problematic in the conduct of operations, particularly in terms of effective promotion of values and respect for human rights and IHL. The main risk that the participation of third states in CSDP missions and operations entails is that they may not adhere to the same human rights standards and legal instruments, or they may not share the same conception of democracy and rule of law as EU Member States. The risk of human rights violations committed by mission personnel may be higher for military operations, particularly those with a robust mandate, or missions with an executive mandate (eg EULEX Kosovo). By way of example, Ukrainian frigates have been patrolling within EUNAVFOR Atalanta; Georgia is committed with a high proportion of military personnel to the CSDP operation EUFOR RCA; and Norway or Canada have provided a significant amount of civilian personnel to a number of CSDP missions.¹³² The table below provides an overview of third countries that have contributed or participated to CSDP missions and/or have concluded FPA, allowing for future engagement.

¹²⁸ Council Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM)

¹²⁹ The five ASEAN countries involved in the mission included Brunei, Malaysia, the Philippines, Singapore and Thailand. See inter alia Pierre-Antoine Braud and Giovanni Grevi, 'The EU mission in Aceh: implementing peace' (December 2005) EUISS Occasional Paper no 61 <www.iss.europa.eu/uploads/media/occ61.pdf> accessed 20 February 2016.

¹³⁰ European Commission, Joint Communication to the European Parliament and the Council 'The EU and ASEAN: a partnership with a strategic purpose' (18 May 2015) JOIN(2015) 22 final, 13-14.

¹³¹ The CMPD is mandated to develop CSDP partnerships with different partners in the crisis management field such international organizations (UN, NATO, African Union, OSCE) or third states.

¹³² Thierry Tardy, 'CSDP: getting third states on board' (March 2014) Brief Issue 6 <www.iss.europa.eu/uploads/media/Brief_6_CSDP_and_third_states.pdf> accessed 25 February 2016.

Table 4: Contribution of third states to CSDP missions and operations¹³³

Third states	CSDP operations
Europe/North America	
Albania*	EUFOR Althea, EUFOR Tchad/RCA, EUTM Mali
Canada*	EUFOR Althea, EULEX Kosovo, EUPM BiH, EUPOL COPPS; EUPOL Kinshasa, EUPOL Afghanistan, Artemis (DRC)
FYROM*	EUFOR Althea
Georgia*	EUCAP Nestor, EUTM Mali, EUBAM Libya, EUFOR RCA
Iceland*	EUPM BiH, Concordia
Moldova*	-
Montenegro*	EUNAVFOR Atalanta, EUTM Mali
Norway*	EUFOR Althea, EULEX Kosovo, EUPM BiH, EUPOL Afghanistan, EUNAVFOR Atalanta, EUPOL COPPS, EUPOL Proxima, Concordia, AMM Aceh, EUJUST LEX; EUCAP Nestor
Russia	EUPM BiH, EUFOR TChad/RCA
Serbia*	EUNAVFOR Atalanta, EUTM Somalia, EUTM Mali
Switzerland	EUFOR Althea, EULEX Kosovo, EUPM BiH, EUPOL Proxima, EUFOR RD Congo, EUPOL RD Congo, AMM Aceh, EUTM Mali
Turkey*	EUFOR Althea, EULEX Kosovo, EUPM BiH, EUPOL Proxima, Concordia, EUFOR RD Congo, EUPOL Kinshasa
United States*	EULEX Kosovo, EUSEC RD Congo, EUPOL RD Congo
Ukraine*	EUPM BiH, EUPOL Proxima, EUNAVFOR Atalanta
Latin America	
Argentina	EUFOR Althea
Brazil	Artemis (DRC)
Chile*	EUFOR Althea
Colombia*	-
Dominican Republic	EUFOR Althea
Africa	
Angola	EUPOL Kinshasa, EUPOL RD Congo
Mali	EUPOL Kinshasa
Morocco	EUFOR Althea
South Africa	Artemis (DRC)
Asia/Oceania	
Brunei	AMM Aceh
Malaysia	AMM Aceh
New Zealand*	EUFOR Althea, EUPOL Afghanistan
Philippines	AMM Aceh
Singapore	AMM Aceh
South Korea*	-
Thailand	AMM Aceh

* Countries which have signed an FPA with the EU.

¹³³ *ibid*; EUTM Mali, 'EUTM Mali' (23 December 2015) Press File <www.eutmmali.eu/wp-content/uploads/2015/12/Press-kit-EUTM-Mali-engl-DEC-2015-1.pdf> accessed 26 February 2016.

The participation of third states may pose additional obstacles for the achievement of mission objectives in full respect of international standards and in promoting EU values that they might not share or interpret in the same terms as EU Member States. EU Member States have advanced significantly in ensuring the enjoyment of high 'European standards' with their accession to European Convention on Human Rights (and the protection provided by the European Court on Human Rights) and the adoption of the Charter of Fundamental Rights of the EU. Remarkably, some of the listed EU partners have systematically registered poor human rights records and their governments have often been implicated in human rights violations.¹³⁴ While some countries such as Norway, Switzerland and New Zealand are among the highest-ranking democratic countries, others such as Morocco, Armenia or Russia continuously fall short with regards to democratic standards.¹³⁵ The US, a key partner of the EU, has not ratified a considerable number of international human rights instruments.¹³⁶

2. The operationalisation of the human security approach in CSDP

As noted, for its content, the concept of human security has a close link with human rights, understood as freedom from fear and freedom from want. Human security, therefore, is about individual safety, integrity of the person and protection from violence. Both the concept of human security and human rights place the individual human being at the centre.¹³⁷ However, the concept of human security is rather limited in restoring or creating conditions of livelihood to an acceptable level of human dignity, as it requires that it act on the basis of concrete policies and activities that directly relate to people's dignity. The issue of human security is also a concern with regards to situations of massive flows of refugees or humanitarian disaster, thus also linked to refugee and international criminal law.¹³⁸

The HR/VP and European Commission Joint Communication on 'The EU's comprehensive approach to external conflict and crises' explicitly states that 'a shared analysis should set out the EU's understanding about the causes of a potential conflict or crisis (...) It must also identify the EU interests and objectives and our potential role to contribute to peace, security, development, human rights and the rule of law, taking into account existing EU resources and action in the country or region in question.'¹³⁹ This

¹³⁴ HRW, 'World Report 2015: Turkey Events of 2014' <www.hrw.org/world-report/2015/country-chapters/turkey> accessed 27 February 2016; HRW, 'World Report 2015: Brazil Events of 2014' <www.hrw.org/world-report/2015/country-chapters/brazil> accessed 26 February 2016.

¹³⁵ David F. J. Campbell, Paul Pözlbauer, Thorsten D. Barth and Georg Pözlbauer, 'Democracy Ranking 2015 (Scores) (2015)' <http://democracyranking.org/ranking/2015/data/Scores_of_the_Democracy_Ranking_2015_A4.pdf> accessed 26 February 2016.

¹³⁶ See Annex V.

¹³⁷ On the difference between human rights and human security, 'human security is thus a broader concept, comprising fundamental rights as well as basic capabilities and absolute needs. Human security, in contrast to human rights, seems to comprise threats that human rights are not primarily concerned with' G. Oberleitner, 'Human Security and Human Rights,' 8 European Training and Research Centre on Human Rights Occasional Paper Series 2002, 19. Gerd Oberleitner, 'Human Security and Human Rights' (2002) European Training and Research Centre on Human Rights Occasional Paper Series no 8, 6-7.

¹³⁸ *ibid* 7.

¹³⁹ European Commission and High Representative of the European Union, Joint Communication to the European Parliament and the Council 'The EU's comprehensive approach to external conflict and crises' (2013), JOIN(2013) 30 final, 5.

statement asserts that human rights are one of the key objectives when launching missions in third countries and in determining the appropriate instruments of response. Conversely military objectives should be understood as just one element within a wider set of mission objectives.

The security environment, as well as the EU, has undergone a profound transformation since the adoption of the ESS in 2003 and its review in 2008. The EU's direct neighbourhood has deteriorated significantly and the transboundary nature and magnitude of the current security threats have further highlighted the relationship between external and internal security. The upcoming EU Global Strategy for foreign and security policy, that will be presented by the HR Federica Mogherini in June 2016, could shed some light on the new global realities and contribute to reinforcing the EU's ability to act in a comprehensive manner.¹⁴⁰

Even when human rights are not (arguably) explicitly regarded as a specific objective in themselves, they are regarded as providing significant guidance in the planning and conduct of crisis management operations as demonstrated by the existence of a wide range of policy documents addressing eg the protection of civilians, children in armed conflict, women's rights and gender-equality. The more specific operational documents and rules of engagement designed for a mission or operation are better suited to provide a tailored response to the human rights and humanitarian aspects of a concrete crisis and to focus on the individuals. Starting from the premise of Member States' different understandings of what type of security the CSDP should support, focusing exclusively on state security may limit the contribution of the CSDP to sustainable peace. The adoption of a human security focus to crisis management requires first, an understanding of people's perception of security with attention to the different groups within a society (eg women, children, forcibly displaced people, minorities etc).¹⁴¹ Secondly, the crisis management operation has to address the security needs of the population with due consideration given to the different degrees of vulnerability among the groups.¹⁴²

By broadening the scope of 'security' from state-centred to human-centred, it is also necessary to extend the accountability of CSDP missions and operations towards the local population. A CSDP missions or operations engagement with a broad range of civil society actors contributes to an increase in the transparency of its activities and serves towards guaranteeing accountability towards the local society. Civil society should be considered a valuable source of knowledge, expertise and analysis that allows

¹⁴⁰ At the time of writing this report human rights lack visibility in the development of the preparatory work of the upcoming Global Strategy. See EEAS, 'European Union Global Strategy' (2015) <<http://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>> accessed 26 February 2016; EEAS, 'The European Union in a changing global environment. A more connected, contested and complex world' <http://europa.eu/globalstrategy/sites/globalstrategy/files/about/eu-strategic-review_executive_summary_en.pdf> accessed 1 March 2016.; Sven Biscop, Jo Coelmont, Margriet Drent and Dick Zandee, 'European Strategy, European Defence, and the CSDP' Clingendael Report (November 2015) <www.clingendael.nl/sites/default/files/European%20Strategy%2C%20European%20Defence%20and%20the%20CSDP.pdf> accessed 1 March 2016.

¹⁴¹ Christine Bennett and Saferworld, 'Public perceptions of safety and security in Kosovo: Time to Act' (May 2011) <www.saferworld.org.uk/downloads/pubdocs/Kosovo_tracker_survey_2011_English_reduced.pdf> accessed 1 March 2016. The study also includes an analysis on public perceptions of EULEX performance. The results show differences between Kosovars Albanians and Kosovar Serbians.

¹⁴² EPLO, 'Policy Paper on civilian CSDP', 3-4.

missions and operations 'to work more effectively as they would receive information about the conflict situation across the country and the impact of their activities. This is particularly important in contexts where the government's ability to provide security to the population is limited due to issues such as a lack of legitimacy or capacity.'¹⁴³

Conflict sensitivity is a key aspect to be considered in the implementation of a human security approach in the field of crisis management. Conflict sensitivity is defined as the capacity of an organisation to: (i) understand the context in which it operates; (ii) understand the impacts of its activities in the context; and (iii) act upon the understanding of this interaction in order to avoid negative impacts and maximise positive impacts on the context.¹⁴⁴ A conflict sensitivity approach benefits the EU CSDP actions in the identification of opportunities to promote peace in a particular context by, for instance, including the perspectives of vulnerable groups.¹⁴⁵

¹⁴³ *ibid* 4.

¹⁴⁴ *ibid* 5.

¹⁴⁵ Anisa Doty, 'Conflict Sensitivity as a Framework for Developing Civilian Crisis Management' in Senja Korhonen and Johanna Sumuvuori (eds), *From Conflicts to Development – An Introduction to EU Civilian Crisis Management* (KATU – Civil Society Conflict Prevention Network 2006), 195-206. For example, EUBAM Rafah raised concerns about the conflict sensitivity of EU missions and operations. EUBAM Rafah is understood as being under considerable influence of the Israeli authorities. The aim of the mission was to contribute to the opening of the Rafah Border Crossing and building confidence between the Government of Israel and the Palestinian Authority. Neither of these objectives was being achieved and the mission's operations were suspended in July 2007 following the closure of the crossing point QCEA, 'The European Union Crisis Management Missions in the Occupied Palestinian Territories' (February 2012), 12 <www.qcea.org/2012/03/bp-meu-crisis-missions-palestine/> accessed 1 March 2016.

III. The EU's legal and policy framework on the promotion and respect for human rights, IHL and democracy and rule of law in CSDP missions

This chapter aims to set out the overall EU legal and policy framework on human rights, IHL, rule of law and democracy and its main features. Starting with EU foreign policy goals (A), the applicability of IHL and IHRL to EU crisis management operations (b) followed by a section on the objectives and priorities that guide the EU human rights policy and the concrete actions to ensure that also CSDP contributes to this end (C). Section (D) will describe the policy framework applicable to CSDP in the promotion of IHRL, IHL, with special emphasis on the mainstreaming of human rights and gender, distinguishing those pertaining to protection of vulnerable groups. The last section (E) is centred on the policy framework for the promotion of the principles of democracy and the rule of law in the domain of EU crisis management.

This section on the EU's legal and policy framework on the promotion and respect for human rights, IHL and democracy and rule of law in CSDP missions connects with the findings of the previous FRAME 'Report on applicable regulatory frameworks regarding human rights violations in conflicts'. The main principles and legal instruments analyse pertain to human rights and international humanitarian law.

A. Human rights, democracy and rule of law as a foreign policy goals of the European Union

Human rights, democracy and the rule of law are core values of the EU embedded in its founding Treaty of the European Union (TEU) which entered into force in 2009. Prior to that, the first textual reference to respect for human rights is to be found in 1992, when Article J.1 (2) of the then new EU Treaty of Maastricht included as a Common Foreign and Security Policy (CFSP) goal, *inter alia*, 'to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'. The Treaty of Maastricht formalized the jurisprudential recognitions of human rights and fundamental freedoms. The jurisprudence of the European Court of Justice (ECJ) has stated that human rights laws are binding for the former European Community, affirming that 'fundamental Human Rights are part of the Community Law'.¹⁴⁶ This statement was made in light of the lack of reference to human rights in previous Union treaties, and consolidates one of the EU's sources of obligation: the general principles of EU Law.

From the early days of the European project, 'the protection of human rights by EU institutions has grown to become a concern alongside each further transfer of powers to the EU, since the organization lacked any clear legal framework'.¹⁴⁷ The protection of human rights in Europe reached its peak with the adoption of the European Convention on Human Rights (ECHR) in 1950 and the development of a regional system of protection established by the Council of Europe however, initially the EU seemed to keep it apart from this first European system of protection. This disaffection from the European system of human rights protection undermined the EU's credibility in fostering a human rights and democracy among its external policies. With the entry into force of the Lisbon Treaty in 2009, the EU has filled this gap to some extent

¹⁴⁶ ECJ, Case 29-69 *Erich Stauder v. Stadt Ulm - Sozialamt* [1969] ECR 419, 425 para 7.

¹⁴⁷ ECJ, Case 2/94 *Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [1996] ECR I-01759.

with references to respect for human rights in a number of articles that constitute a more solid source of obligations.¹⁴⁸ These new provisions have also opened the path towards better judicial protection of the individuals against the breaches committed within the EU framework, as Article 6 establishes the duty of the EU to accede to the ECHR.

References to human rights in the TEU can be found in the Preamble, supporting the adherence of the EU to human rights and in Article 2, where human rights are considered one of the values on which the EU is founded. Article 3(5) of the EU Treaty now states that in its relations with the wider world, the Union shall contribute to ‘the protection of human rights (...) as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.’ Additionally, Article 6 TEU confirms the sources for human rights protection identified by the ECJ in its resolutions and brings new obligations to the EU:

‘The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.’

The general human rights clauses (Articles 2, 3 and 6 of the TEU) were conceived to increase the effectiveness of the EU human rights foreign policy. The Lisbon Treaty more specifically affirms that human rights are part of the Common Foreign and Security Policy (CFSP) framework, as set out in Article 21(1) subparagraph 1 of the TEU:

The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

From the above mentioned legal bases it is possible to infer that the EU has endorsed a dual commitment to respect and promote human rights, and crisis management operations abroad are to comply with this premise.¹⁴⁹ The key provisions of the constituent EU instruments indicate that the ‘EU is subject to its own

¹⁴⁸ Gloria Fernández Arribas, ‘International Responsibility of the European Union for the Activities of its Military Operations. The issue of effective control’ (2013-2014) 33 *Spanish Yearbook International Law*, 34.

¹⁴⁹ As stated ‘the inclusion of human rights concerns has a double effect: all EU policies, including foreign policy, are subject to human rights standards, thus enshrining respect for human rights as a limit; and human rights promotion, on the international level, is an important goal of foreign policy’ See Susanne Fraczek, Beáta Huszka, Claudia Hüttner, Zsolt Körtvélyesi, Balázs Majtényi and Gergely Romsics, ‘Report on mapping, analysing, and implementing instruments’ (2015) FRAME D 6.1 <<http://www.fp7-frame.eu/wp-content/materiale/reports/11-Deliverable-6.1.pdf>> accessed 1 March 2016. See also Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operations: A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 6 <www.asser.nl/media/1635/cleer-working-paper.pdf> accessed 1 March 2016; Lorand Bartels, ‘The EU’s Human Rights Obligations in Relation to Policies with Extraterritorial Effects’ (2014) 25(4) *The European Journal of International Law*, 1071–1091, 1074-1075 <<http://ejil.oxfordjournals.org/content/25/4/1071.full.pdf+html>>

legal obligations to respect human rights and fundamental freedoms in addition to the obligations binding its Member States'.¹⁵⁰ The catalogue of fundamental rights is included in the EU Charter of Fundamental Rights, which has to be observed by the EU institutions in their actions and by Member States when implementing EU law. It is accepted that such is the case when Member States act on a mandate under a Council Decision setting up a CSDP mission. Furthermore, according to Article 6(3) TEU the ECHR is also a source of EU fundamental rights to be observed by the EU and Member States.¹⁵¹ The founding Treaties also express a broader political commitment on the part of the Union to conduct its external activities in a manner that upholds the highest human rights standards. In this respect, it should be noted that the promotion of human rights at the international level is one of the principal foreign policy objectives of the EU's external action as a whole.¹⁵² EU crisis management missions can make a significant contribution to this objective by, for instance, deploying military forces in order to contribute to the establishment of a secure environment in which the humanitarian needs of local populations can be addressed.¹⁵³

The Treaty also encourages the EU to 'build partnerships with third countries, regions or global organizations which share' those principles, thus tacitly denying full legitimacy to enter into negotiations of any kind – for this provision applies to all wings of its external policy – with countries openly acting against such principles. The Lisbon Treaty has also provided the European Court of Justice (ECJ) with jurisdiction over the general provisions on external action, but not specifically over the CFSP.¹⁵⁴

Article 21(2)(b) places the consolidation and support of democracy, the rule of law, human rights and the principles of international law among the goals, which the common policies and actions must pursue 'in all fields of international relations'. The Treaty on the EU also stresses that human rights promotion should happen through a high level of international cooperation.¹⁵⁵ This obligation applies to areas specifically mentioned in the Treaties on the Functioning of the European Union, like foreign commercial policy, development, financial and technical cooperation and humanitarian aid.

accessed 5 March 2016. Bartels defends that the Treaty does not include, strictly speaking, the principle of respect for human rights itself.

¹⁵⁰ Aurel Sari and Ramses A. Wessel (eds) *Human Rights in EU Crisis Management Operations: A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 7 <www.asser.nl/media/1635/cleer-working-paper.pdf> accessed 5 March 2016.

¹⁵¹ See Eva-Maria Poptcheva, 'Breach of EU values by a Member State' (2013) 130633REV2 <www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130633/LDM_BRI%282013%29130633_REV2_EN.pdf> accessed 1 March 2016.

¹⁵² Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operations: A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 7.

¹⁵³ See inter alia Council Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic, OJ [2007] L 279/2.

¹⁵⁴ Art. 24(1) subparagraph 2.

¹⁵⁵ Art. 21(2) TEU.

B. Applicability of human rights and humanitarian law instruments to CSDP missions and operations

The EU is subject of obligations and duties¹⁵⁶ deriving from the general rules of international law, EU law or international agreements to which the EU is a party.¹⁵⁷ The ECJ has asserted in several decisions that the EU is subject to general rules of international law and has recognised the binding force of international customary law as source of EU law.¹⁵⁸ The legal framework applicable to the EU can be divided into the internal legal framework (EU law) and the external legal framework (international law and, to a certain extent, the national law of the host country).¹⁵⁹ Additionally, general principles and instruments of international law applicable to EU CSDP missions and operations could also fall under both internal and external legal frameworks, 'since they may to some extent be considered to be part of EU law, but at the same time retain their separate existence.'¹⁶⁰ Simultaneously, the external framework of international law governing EU crisis management operations draws on several areas of international law (IHRL, IHL, IRL and ICL). This section focuses on the applicability of general international law principles and instruments of international human rights and humanitarian law to EU crisis management operations.¹⁶¹

It is necessary to consider that the multidimensional character of the EU CSDP action poses difficulties in the determination of the specific obligations and responsibilities for human rights abuses and violations of IHL.¹⁶² EU crisis management 'involves action by a multitude of entities - including the EU, its Member States and any contributing third States and international organisations - subject to diverse instruments

¹⁵⁶ The International Court of Justice (ICJ) originally dealt with the notion of subject of International Law or international personality of an international organisation in a Advisory Opinion of 11 April 1949, *Reparation for injuries suffered in the service of the United Nations* <www.icj-cij.org/docket/files/4/1835.pdf> accessed 15 March 2016.. The notion of 'international legal status of international organisations' and the notion of 'subject of international law' are matters of extensive doctrinal debate. See Frederik Naert, *International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Intersentia 2010), 261-268; C.F. Amerasinghe, *Principles of the International Law of International Organizations* (Cambridge University Press 2005), 69.

¹⁵⁷ ICJ, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, ICJ Reports 1980, para 37; Christian Tomuschat, 'The International Responsibility of the European Union' in Enzo Cannizzaro (ed), *The European Union as an Actor in International Relations* (Kluwer Law International 2002), 177-191.

¹⁵⁸ See *inter alia* Joined Cases 21-24/72, *Internationale Fruit Company v. Produktschap voor Groenten en Fruit*, [1972] ECR 1219; Case C-286/90, *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* [1992] ECR I-6019; Case T-115/94, *Opel Austria v Council* [1997] ECR II-39; Case 162/96, *Racke v Hauptzollamt Mainz* [1998] ECR I-3655. See also *inter alia* Allan Rosas, 'The European Court of Justice and Public International Law' in Jan Wouters, Andre Nollkaemper and Erika De Wet (eds), *The Europeanisation of International Law* (TMC Asser Press 2008), 71-85, 79-78.

¹⁵⁹ See Frederik Naert, 'Legal Aspects of EU Operations' (2011) 15 *Journal of International Peacekeeping*, 218-242.

¹⁶⁰ Gentian Zyberi, 'The Applicability of General Principles and Instruments of International Law to Peace Missions of the European Union' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 21-37.

¹⁶¹ *ibid.*

¹⁶² See Ramses A. Wessel, 'Division of international responsibility between the EU and its Member States in the area of foreign policy, security and defence policy' (2011) 3(3) *Amsterdam Law Forum*, 34-48.

and obligations (international, regional and domestic).¹⁶³ Another aspect to be taken into consideration is the multidimensional nature of CSDP missions and operations activities that can also predetermine the applicable legal framework. CSDP missions and operations' mandates range from ensuring adherence to the rule of law, police, security sector reform, border assistance or monitoring to peacekeeping and potentially peace enforcement. Certainly the rules applicable to a monitoring mission such as EUMM Georgia may not be necessarily the same as for military operations with a robust mandate such as EUFOR RCA. The attribution of executive powers to the implementation of the mandate entails specific duties and responsibilities¹⁶⁴ because of the greater risk of potential abuses being committed by mission personnel in the performance of functions that should otherwise be carried out by the local authorities. Related to this is the necessity to ensure the right to a remedy and reparations for potential victims.

1. The applicability of International Human Rights Law

Since the entry into force of the Lisbon Treaty, the EU is an international organisation with legal personality under Article 47 TEU and therefore has the capacity to bear rights and obligations under international law.¹⁶⁵ In this capacity, the EU recently signed the United Nations Convention on the Rights of Persons with Disabilities. Title V TEU (provisions on the Common Foreign and Security Policy - CFSP) contains references to the principles of international law and in particular to the respect of human rights to guide EU external action.¹⁶⁶ Nevertheless, the applicability of international human rights law is surrounded with uncertainty. These difficulties stem from the fact that the EU, as such, is not a party to most international human rights treaties. Even though the TEU asserts the applicability of general principles of international law to the EU, and that human rights are to guide the EU's external action, it is still questionable to what extent IHRL applies to CSDP missions and operations. As stated above, an added difficulty is involvement of different actors in CSDP operations ranging from EU bodies, Member States and third contributing parties.

The principles of international human rights law applicable to EU peace missions derive from treaties to which EU Member States are party and from customary international law.¹⁶⁷ Along this line, the ECJ has

¹⁶³ Aurel Sari and Ramses A. Wessel, 'Introduction. Human rights in EU crisis management operations: A duty to respect and to protect?' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 8.

¹⁶⁴ To date EULEX Kosovo is EU's only civilian mission with an executive mandate.

¹⁶⁵ Some scholars have asserted that the EU already had de facto legal personality before the entry into force of the Lisbon Treaty. See for instance, Katie Verlin Laatikainen, 'Multilateral Leadership at the UN after the Lisbon Treaty' (2010) 14(4) *European Foreign Affairs Review*, 475-493; Jan Wouters, Dominic Coppens and Bart De Meester, 'The European Union's External Relations after the Lisbon Treaty' in Stefan Griller and Jacques Ziller (eds), *The Lisbon Treaty. European Constitutionalism Without a Constitutional Treaty?* (Springer 2008), 143-203.

¹⁶⁶ Arts. 21 and 22 TEU.

¹⁶⁷ Frederik Naert, 'Binding International Organisations to Member State Treaties or Responsibility of Member States for Their Own Actions in the Framework of International Organisations' in Jan Wouters, Eva Brems, Stefaan Smis and Pierre Schmitt (eds), *Accountability for Human Rights Violations by International Organizations* (Intersentia 2010), 129-168.

ruled that the EU must respect international customary law,¹⁶⁸ and some rules of international humanitarian law would appear to be covered by EU human rights provisions. Moreover, EU Member States are party to the most relevant human rights treaties, which may lead to the conclusion that there exists a variety of ‘regional customary international law’ applicable to the EU.¹⁶⁹ Under this reasoning, the EU becomes an addressee of the rights and obligations deriving from international human rights norms.¹⁷⁰ Particularly relevant is the principle of security and liberty of persons (including the principle of due process that states that no one shall be subjected to unlimited arrest or detention and that the accused have the right to be heard before any condemnation);¹⁷¹ the prohibition of torture and inhuman treatment; the prevention and repression of (sexual) violence, exploitation, and abuse in the context of peace operations and the principle of non-discrimination. Many of these principles, particularly those related to the administration of justice, are an integral part of EU missions’ work in supporting and strengthening law enforcement structures in host countries.¹⁷²

The applicability of human rights ‘as a matter of law’ remains controversial in some respects, such as the extraterritorial application of the European Convention on Human Rights,¹⁷³ the question of derogation in times of emergencies, the interrelation between human rights and international humanitarian law and the impact of UN Security Council mandates on human rights. However, at least ‘as a matter of policy’ and practice, human rights law provides guidance in EU operations and in practice as observable in a number of EU policy documents.¹⁷⁴

The ECHR occupies a prominent place in the EU legal order. All EU Member States are parties to the ECHR and Article 6 TEU provides for the EU’s commitment to accede to the Convention. The main consequence of the EU’s formal accession to the ECHR is that the European Court of Human Rights shall, in principle,

¹⁶⁸ See ECJ, Case C-286/90, *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* [1992] ECR I-6019, para 9; ECJ, C-308/06 *International Association of Independent Tanker Owners (Intertanko) and others v Secretary of State for Transport* [2008], para 51.

¹⁶⁹ Erika De Wet, ‘The emergence of international and regional value systems as a manifestation of the merging international constitutional order’ (2006) 19 *Leiden Journal of International Law*, 631- 632. This works not only for the EU, but with other international organisation such as the UN. See Jordan J. Paust, ‘The UN is bound by human rights: understanding the full reach of human rights, remedies and non-immunity’ (2010) 51 *Harvard International Law Journal Online* <www.harvardilj.org/wp-content/uploads/2010/09/HILJ-Online_51_Paust.pdf> accessed 9 March 2016.

¹⁷⁰ See for instance Frederik Naert, *International Law Aspects of the EU’s Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Intersentia 2010)

¹⁷¹ These principles have been identify by Hadewych Hazelzet, ‘Common security and defence policy: What nexus between human rights and security?’ in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 11-20.

¹⁷² *ibid.* See inter alia Jean-Paul Jacqu , ‘Review of the EULEX Kosovo mission’s implementation of the mandate with a particular focus on handling of the recent allegations’ (31 March 2015) <http://eeas.europa.eu/statements-eeas/docs/150331_jacque-report_en.pdf> accessed 1 February 2016.

¹⁷³ The extraterritorial application of human rights instruments and customary international law is largely uncontroversial in the case of international organisations as they by definition have no state territory as indicated by Frederik Naert, *International Law Aspects of the EU’s Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Intersentia 2010), 564-566.

¹⁷⁴ *ibid.*

have jurisdiction over human rights violations committed in the context of CSDP. Yet the legal effect and applicability of the ECHR would be troublesome in certain areas, with regards to, for example, determining the jurisdiction of the Court, the distribution of responsibility between participating states and the EU and the relationship between the rights contained in the ECHR and IHL. In this respect two decisions of the ECtHR deserve special attention, particularly considering their implications in the area of EU crisis management. The *Al Skeini* and *Al Jedda* cases deal with the extraterritorial application of the ECHR and the attribution of responsibility and interplay between human rights and IHL respectively.¹⁷⁵

In the *Al Skeini* case the Court dealt with the extraterritorial applicability of the ECHR to UK troops involved in security operations in Iraq in 2003. The Court found a jurisdictional link between the British military activities and the killing of five Iraqi civilians in the course of security operations for the purposes of Article 1 of the Convention.¹⁷⁶ The Court also found that the UK had failed to conduct an independent and thorough investigation into the circumstances of the death of the applicants in breach of Article 2 of the Convention.¹⁷⁷ According to Article 1 ECHR, the Convention is applicable to all citizens within the jurisdiction of the contracting states, with some exceptions.¹⁷⁸ The *Al Skeini* case is a landmark judgment in respect of the universal application of human rights. It has, however, raised some criticism, particularly with regards to the fact that the Court has failed to develop a coherent system for the extraterritorial application of the Convention. Unlike in previous cases,¹⁷⁹ in the *Al Skeini* case the Court made clear that the applicability of the Convention is not restricted to the legal space of the contracting parties but that it may, under certain circumstances apply.¹⁸⁰ The Court held that the UK had jurisdiction in the particular events examined in the case, as the UK 'assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government [...] it had assumed authority and responsibility for the maintenance of security in South East Iraq [...] which it exercised through its soldiers engaged in security operations in Basrah.'¹⁸¹ The *Al Skeini* judgement has important implications for EU crisis management operations as EU Member States' forces are subject to their respective national jurisdictions. This is particularly the case where EU mission personnel exercises public power taken over from the local government or military operations, the EU forces therefore being responsible for the maintenance of security.

Another aspect that deserves attention is the attribution of responsibility for human rights violations to the EU and the interaction between the ECHR and IHL. The *Al Jedda* case addresses issues such as the dual attribution of responsibility to states and to international organizations and the relationship between the

¹⁷⁵ Heike Krieger, 'EU Missions and the European Convention: Recent Cases' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 51-62.

¹⁷⁶ *Al-Skeini and others v the United Kingdom* [2011] ECHR App no 55721/07, para 149.

¹⁷⁷ *Al-Skeini v UK*, para 177.

¹⁷⁸ The ECtHR sets some exceptions to this rule: the acts of diplomatic and consular agents abroad; the exercise of public powers which would normally be exercised by the local government; when state agents abroad take a person into custody, and; and, when a state exercises effective control over another's territory and individuals.

¹⁷⁹ See *Loizidou v Turkey* [1996] ECHR App no 15318/89, para 78; *Bankovic and Others v Belgium and Others* [2001] ECHR App no 52207/99, para 80.

¹⁸⁰ *Al-Skeini v UK*, para 141 et seq.

¹⁸¹ *Al Skeini v UK*, para 149.

ECHR and other sources of international law. The *Al Jeddah* findings are particularly relevant to EU missions backed by an authorisation of the UN Security Council. Here the issue arises as to whether acts committed by mission personnel might be fully or partly attributable to the UN. Second, there is also the possibility that IHL may become applicable to EU missions or operations if EU-led forces become party to a conflict. In the case of *Behrami and Saramati*, the Court held that the acts of KFOR soldiers were attributable to the UN and that, therefore, the participating states party to the Convention could not be held responsible for such acts under the ECHR.¹⁸²

The Court's judgment in the *Al Jeddah* case examines the lawfulness of UK detention practice under the ECHR; the applicant, an Iraqi national, was detained for over three years at a British military facility in Iraq but no criminal charges were brought against him.¹⁸³ Even though Security Council Resolution 1546 (2004) authorised the presence of the UK in Iraq, the Court held that responsibility for the applicant's detention was not attributable to the United Nations as the UN Security Council has neither effective control nor ultimate authority over the acts and omissions of the troops deployed in Iraq.¹⁸⁴ The Court rejected the Government's argument that UNSC Resolution 1546 allowed for the applicability of IHL to detention in the course of security operations.¹⁸⁵ The Court concluded that first, the Resolution did not contain specific references to the applicability of IHL and that IHL does not per se overrides international human rights law in its entirety. The Court found that the UK had violated the applicants' rights under Article 5 ECHR.¹⁸⁶ Therefore, lawful forms of detention require explicit authorisations by means of a Security Council Resolution or must constitute a derogation in time of war or other public emergency threatening the life of the nation under Article 15 ECHR.¹⁸⁷

2. The applicability of International Humanitarian Law

The changing landscape of warfare and international relations explains why the EU is deploying many of its operations in increasingly high-risk and violent conflict-settings. Since Operation Concordia was launched in 2003, the EU has deployed a number of CSDP missions and operations with mandates ranging from advisory and military training mandates to those including elements of peace enforcement. Article 42(1) TEU states that the CSDP shall provide the Union with a military and civilian operational capacity for 'missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the [UN] Charter'. These EU-led missions shall comprise, inter alia, 'peace-keeping tasks [and] tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation.' The operations tasked with peace enforcement activities and those with robust mandates raise the question of the applicability international humanitarian law to operations under EU

¹⁸² *Behrami and Saramati v France and Norway* [2007] ECHR App no 71412/01 and 78166/01, para 134.

¹⁸³ *Al-Jedda v the United Kingdom* [2011] ECHR App no 27021/08, paras 59 and 98.

¹⁸⁴ *Al Jeddah v UK*, paras 60 and 84.

¹⁸⁵ *Al Jeddah v UK*, para 105.

¹⁸⁶ *Al Jeddah v UK*, para 107.

¹⁸⁷ Heike Krieger, 'EU Missions and the European Convention: Recent Cases' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 56-72.

command.¹⁸⁸ The applicability of IHL to peace operations is a controversial matter, and the same applies to EU military operations.¹⁸⁹ The UN has already shed some light on this issue and has reaffirmed the applicability of the fundamental principles and rules of IHL to UN peace-keeping forces.¹⁹⁰

IHL applies generally in situations of armed conflict (and occupation). The qualification of a situation as an 'armed conflict' is a contentious matter, as there is no a common definition nor are there criteria that would qualify a situation as such. The problem of defining the threshold of armed conflict is more challenging for internal conflicts.¹⁹¹ In principle, IHL imposes obligations on the parties to the conflict and does not, therefore, necessarily apply to any CSDP mission or operation by the mere fact of being deployed in a conflict setting.¹⁹² To date, most EU operations have been deployed in post-conflict scenarios.¹⁹³ Thus, another prerequisite for the applicability of IHL to CSDP operations is that the mission forces get involved as combatants or parties to the conflict.¹⁹⁴ Article 43 TEU explicitly envisages the possibility of 'tasks of combat forces in crisis management, including peace-making and conflict-stabilization'. The wording of Article 43 TEU would suggest a type of operation that could well be engaged in an armed conflict as a party.¹⁹⁵ Indeed it is usually the UN and not the EU that is at the forefront of more robust peace-enforcement operations. This is partly as a result of the reluctance of some Member States to take part in military operations outside the purview of the UN or NATO, setting aside budgetary constraints affecting military expenses. The military interventions in Afghanistan and Libya showed that

¹⁸⁸ Marten Zwanenburg, 'The duty to respect International Humanitarian Law during European Union-led operations' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 63.

¹⁸⁹ See in relation in relation to UN peacekeeping operations and NATO operations Finn Seyersted, *Common Law of International Organizations* (Martinus Nijhoff 2008); Moshe Hirsch, *The Responsibility of International Organizations toward third parties: some basic principles* (Martinus Nijhoff 1995); Marten Zwanenburg, *Accountability of Peace Support Operations* (Martinus Nijhoff 2005). Among the issues they raise are legal and humanitarian challenges related to multinational operations, including: the applicability of international humanitarian law and other legal regimes, the legal classification of situations involving multinational forces, the status of peacekeepers, interoperability difficulties, detention, attribution of responsibility, as well as humanitarian engagement with multinational forces. See ICRC, 'Multinational operations and the law' (2013) 95(891/892) *International Review of the Red Cross* <<https://www.icrc.org/eng/resources/international-review/review-891-multinational-operations-and-the-law/review-891-892-all.pdf>> accessed 1 March 2016.

¹⁹⁰ United Nations, Secretary-General's Bulletin (1999) ST/SGB/1999/13 on the observance by United Nations forces of international humanitarian law <<https://www.icrc.org/eng/resources/documents/misc/57jq7l.htm>> accessed 1 March 2016. The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions or in peacekeeping operations when the use of force is permitted in self-defence.

¹⁹¹ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (March 2011) 93(881) *International Review of the Red Cross*, 5-7.

¹⁹² Gloria Fernández Arribas, 'International Responsibility of the European Union for the Activities of its Military Operations. The issue of effective control' (2013-2014) 33 *Spanish Yearbook International Law*, 38.

¹⁹³ EUFOR RCA and EUTM Somalia could be considered as been deployed in a context that qualified as 'armed conflict'.

¹⁹⁴ Marten Zwanenburg, 'The duty to respect International Humanitarian Law during European Union-led operations' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 64.

¹⁹⁵ *ibid* 65.

EU Member States prefer to tackle situations that are of a high level of insecurity and gross violations of human rights under the auspices of the NATO.¹⁹⁶ To date, the EU has mainly intervened in post-crisis situations and always under a UN mandate. The legal basis for deploying CSDP missions and operations do not include specific references to the applicability of IHL to the mission itself. There are two exceptional cases where the status agreements for non-EU missions were made applicable to a EU mission: the AMIS Supporting Mission via the African Union SOMA and the EUFOR DR Congo¹⁹⁷ via the MONUC SOFA.¹⁹⁸

Another issue of concern with regards to peacekeeping missions is the determination of responsibility for violations of IHL. As stated before, a multitude of actors contribute to EU military operations and there are differing views on the criteria to establish responsibility for potential violations of IHL. There is, however, a presumption that the EU would be in effective control, as has been stated in the Decisions that have established an operation: 'under the responsibility of the Council, the PSC shall exercise the political control and strategic direction of the EU military operation.'¹⁹⁹ So far, military operations under EU command have never been involved in armed conflict as combatants²⁰⁰ and only a few of them were granted robust Rules of Engagement (RoE).²⁰¹ Nonetheless, as the situation in the mission area evolves, the EU and its Member States should acknowledge the potential obligations of EU-led forces under IHL.

All EU Member States are party to the Geneva Conventions and their Additional Protocols and are therefore under an obligation to abide by them. Regarding the EU, the Geneva Conventions do not directly apply to it as they bar international organisations from becoming parties.²⁰² It has, however, been generally recognised that the rules of the Geneva Conventions are part of customary international law. The ECJ has held that the EU is bound to observe international law including customary international law.²⁰³ Furthermore, following the practice of the UN, the EU could be bound by IHL obligations as a matter

¹⁹⁶ Gentian Zyberi, 'The Applicability of General Principles and Instruments of International Law to Peace Missions of the European Union' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 27.

¹⁹⁷ Council Decision 2006/412/CFSP of 12 June 2006 on the launching of the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo)

¹⁹⁸ Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (2011) KU Leuven Institute for International Law, Working paper 151, 13.

¹⁹⁹ See e.g. Council Joint Action of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (2006/319/CFSP), Art. 6.

²⁰⁰ For instance, ARTEMIS RD Congo and EUFOR TCHAD, are two examples of escalation of violence. Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (2011) KU Leuven Institute for International Law, Working paper 151, 13.

²⁰¹ Marten Zwanenburg, 'The duty to respect International Humanitarian Law during European Union-led operations' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 65.

²⁰² Maria Luisa Sanchez Barrueco, 'The promotion and protection of Human Rights during European Security and Defence Policy operations: in-between a spreading state of mind and an unsolved concern' in Jan Wetzel (ed), *The European Union as a global player in the field of Human Rights* (Routledge 2012), 167.

²⁰³ ECJ, C-366/10, *Air Transport Association of America and others v. Secretary of State for Energy and Climate Change* [2010]

of treaty law by including explicit references in the agreements concluded between the EU and third parties, eg the SOFAs concluded by the EU and host states.²⁰⁴

There is no explicit mention of international humanitarian law in the TEU, although it is generally understood that this branch of international law is covered by the references that are made to the more general term international law.²⁰⁵ In this regard, Zwanenburg ascertains that the reference to ‘fundamental rights’ which appears in Article 6(3) TEU is not necessarily the same as ‘human rights’, and that, therefore, IHL norms may also qualify as ‘fundamental rights’.²⁰⁶ Article 21(1) TEU could also be interpreted in broad terms whereby, if the Union’s action on the international scene is guided by the principles which have inspired its own creation, ‘international law’ would comprise IHL.²⁰⁷ In contrast to these assertions, other authors such as Van Vooren and Wessel support the idea that these provisions amount to mere declarations of intent without legal substantive implications for EU institutions and Member States.²⁰⁸

Another source of obligation may also arise from considering EU unilateral acts as Council decisions (formerly joint actions).²⁰⁹ For example, some Council Joint Actions pertaining to operation EUNAVFOR Atalanta²¹⁰ refer to a number of UN Security Council Resolutions as the basis for its operation. In turn, the UN Security Resolution in question allows States to enter and use the territorial waters of Somalia to fight against piracy in a manner consistent with ‘relevant international law’ which in the case of an armed conflict would be international humanitarian law.²¹¹

Furthermore the EU as all other international subjects is also bound by the norms of *jus cogens*.²¹² However, there is no consensus about which norms can be categorised as *jus cogens*. The norms that

²⁰⁴ See e.g. Daphna Shragaa, ‘The United Nations as an Actor Bound by International Humanitarian Law’ (1998) 5(2) *International Peacekeeping*, 64-81, 64; Marten Zwanenburg, *Accountability of Peace Support Operations* (Martinus Nijhoff Publishers 2005), 165-166. The SOFA applied provisionally by virtue of UN Security Council Resolution 1671 (2006) to EUFOR RDC was an exception as it referred to IHL obligations. This SOFA was the previously concluded between the UN and the DRC for MONUC.

²⁰⁵ Frederik Naert, ‘The Application of Human Rights and International Humanitarian Law in Drafting EU Missions’ Mandates and Rules of Engagement’ (2011) KU Leuven Institute for International Law, Working paper 151, 4.

²⁰⁶ Marten Zwanenburg, ‘The duty to respect International Humanitarian Law during European Union-led operations’ in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 69.

²⁰⁷ *ibid* 70.

²⁰⁸ Bart Van Vooren and Ramses A. Wessel, ‘External Representation and the European External Action Service: Selected Legal Challenges’ in Steven Blockmans and Ramses A. Wessel (eds), *Principles and practices of EU external representation Principles* (T.M.C. Asser Institute 2012), 59-82.

²⁰⁹ Ramses A. Wessel, *The European Union’s Foreign and Security Policy. A Legal Institutional Perspective* (Martinus Nijhoff Publishers 1999), 193-195.

²¹⁰ Council Joint Action 2008/749/CFSP of 19 September 2008 on the European Union military coordination action in support of UN Security Council resolution 1816 (2008) (EU NAVCO)

²¹¹ Council Joint Action 2008/749/CFSP of 19 September 2008 on the European Union military coordination action in support of UN Security Council resolution 1816 (2008) (EU NAVCO); Council Joint Action 2008/851/CFSP of 10 November 2008 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.

²¹² International Law Association, ‘Berlin Conference (2004).Accountability of International Organizations’; Marten Zwanenburg, *Accountability of Peace Support Operations* (Martinus Nijhoff Publishers 2005), 145.

commonly considered as peremptory are the fundamental norms of humanitarian law, derived from the Geneva Conventions, and can be identified by taking into account the prohibition of derogatory agreements the structure of denunciation clauses, the criminalization of breaches and the limits on reciprocity. Hence, norms such as the prohibition of war crimes, crimes against humanity and genocide can be considered peremptory norms.²¹³

In policy terms, EU Member States accept that if EU-led forces become engaged in an armed conflict, IHL will fully apply to them.²¹⁴ While IHL could have become applicable if the situation had escalated in some of these operations, especially Artemis (DRC)²¹⁵ and EUFOR Tchad/RCA²¹⁶, this did not happen. Nevertheless, the EU and its Member States remain fully aware of the potential obligations of EU-led forces under IHL, in particular when the situation escalates. An interesting point of debate which emerged in the framework of operation EUFOR Libya (never launched) was whether forces from a member state, participating in NATO's Operation Unified Protector (involved in armed conflict), could contribute to an EU-led operations. The main concern was that the member state's involvement in NATO operation might compromise the position of the EU-led operation precisely aimed at supporting humanitarian assistance.²¹⁷ This is a question that might arise in the future and pose serious difficulties in the determination of the applicable legal framework as well as affect the legitimacy and credibility of the EU as a relevant actor in the field of conflict and crisis management.

As stated by Naert, when IHL does not apply, the EU primarily looks towards human rights law as the appropriate standard for the conduct of EU military operations.²¹⁸ Indeed even if IHL applies, international human rights law remains relevant as it applicable in times of armed conflict.²¹⁹ Also, he considers that States' different treaty obligations in the field of IHL can create problems of 'legal interoperability' in multinational operations. However, the importance of such divergences is limited by the fact that a significant body of IHL rules has become part of customary international humanitarian law. Actually all 28 EU Member States are parties to the 1949 Geneva Conventions, the two 1977 Additional Protocols and the Statute of the International Criminal Court, as well as to the 1980 Convention on Certain Conventional

²¹³ Alexander Orakhelashvili, *Peremptory Norms and International Law* (Oxford University Press 2007)

²¹⁴ Frederik Naert, 'Observance of international humanitarian law by forces under the command of the European Union' (2013) 95(891/892) *International Review of the Red Cross*, 640.

²¹⁵ Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo.

²¹⁶ Council Decision 2008/101/CFSP of 28 January 2008 on the launching of the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR Tchad/RCA)

²¹⁷ Frederik Naert, 'Observance of international humanitarian law by forces under the command of the European Union' (2013) 95(891/892) *International Review of the Red Cross*, 637–643; Ola Engdahl, 'Multinational peace operations forces involved in armed conflict: who are the parties?' in Kjetil Mujezinović Larsen, Camilla Guldahl Cooper and Gro Nystuen (eds), *Searching for a 'Principle of Humanity' in International Humanitarian Law* (Cambridge University Press 2013) 233–271.

²¹⁸ Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (2011) KU Leuven Institute for International Law, Working paper 151, 13.

²¹⁹ See inter alia *Varnava and Others v Turkey* [2009] App no 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, para 185 and *Al-Jedda v UK*, para 107. See also Council of the European Union, 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL)' (2009) OJ C 303, 12.

Weapons and the 1993 Chemical Weapons Convention. Yet even within the EU, if one looks at all IHL treaties, there are still differences because of differentiated ratifications, reservations or divergent interpretations of common obligations.

C. The promotion of IHRL, IHL, democracy and the rule of law in third States: the role of CSDP in the EU human rights strategy

The referred provisions in the TEU the promotion of human rights and democracy have been reinforced by the policy commitments expressed in the Strategic Framework on Human Rights and Democracy and the Action Plan for its Implementation adopted on 25 June 2012.²²⁰ The Strategic Framework establishes the basics of the EU policy on human rights and democracy, its objectives and its priorities. The main premises stated are: (i) 'Human rights are universally applicable legal norms'; (ii) 'Democracy is a universal aspiration' and (iii) 'Sustainable peace, development and prosperity are possible only when grounded upon respect for human rights, democracy and the rule of law'.²²¹ The main objectives of the Strategic Framework are the promotion of the human rights and democracy in the EU's external action. The following areas of action are defined:

- Pursuing coherent objectives in the internal and external areas of EU's action.
- Promoting human rights in all EU's external policies.
- Implementing EU priorities on human rights.
- Working with bilateral partners.
- Working through multilateral institutions.
- Working together within the EU.

Under the heading 'Implementing EU priorities on human rights' the Strategic Framework sets themes and groups that shall receive special attention in the EU's external action. Some of these human rights priorities include *inter alia* the eradication of torture and other cruel, inhuman or degrading treatment or punishment, the promotion and protection of rights of children and women, and protection against gender-based violence, the promotion of compliance with IHL, ensuring accountability and the promotion of respect of the rights of persons belonging to minorities.²²² With regards to the administration of justice, the Heads of Mission (HoMs) should ensure that important human rights related trials are properly monitored, particularly trials against human rights defenders.²²³ However a comparative analysis of the Strategy and the Action Plans reveals some inconsistencies. The Action Plan does not foresee actions

²²⁰ Cristina Churruca and María Nagore noted that '[a]lthough the Strategic Framework is on human rights and democracy, the emphasis throughout the document is on human rights, not on democracy. While there is a clear position on the EU's understanding of human rights, democracy is an "aspiration" that is not defined.' Cristina Churruca and Maria Nagore, 'The EU's Framework for the Promotion of Human Rights and Democracy Support' (2015) 53 *Cuadernos Europeos de Deusto - The European Union's Policy for Human Rights and Democracy support: a critical assessment*, 28-29.

²²¹ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (2012) 11855/12, 1.

²²² Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (2012) 11855/12. Action no 19, 20, 21, 27, 28.

²²³ *ibid* Action no 26.

towards reinforcing the protection of vulnerable groups such as refugees and migrants.²²⁴

The first Action Plan (2012-2014) foresees a reinforcing the integration of human rights in conflict prevention and crisis management activities. More concretely, it aims to systematically include human rights, child protection, gender and IHL 'where relevant' in the mandates, include benchmarks, planning and evaluation of EU missions and operations and to make operational the EU comprehensive approach on implementing UNSC resolutions 1325 and 1820 on Women, Peace and Security. The Action Plan also provides for the inclusion of human rights indicators in the EU early warning system and aims to devise a mechanism for accountability in case of possible breaches of the Code of Conduct by operation or mission staff.²²⁵ Other relevant actions in the domain of EU crisis management include the commitment to build a genuine partnership with civil society, particularly the HoMs and Operation Commanders, who shall work closely with local human rights NGOs active in the countries of deployment.²²⁶ Further, EU policies are to contain appropriate references to relevant human rights instruments aimed at greater policy coherence.²²⁷ A culture of human rights and democracy in EU external action is to be achieved by providing training on human rights and democracy for all staff (including missions and operations) and by creating a network of focal points on human rights and democracy in EU Delegations and CSDP missions and operations.²²⁸

The new Action Plan on Human Rights and Democracy (2015-2019) 'Keeping human rights at the heart of the EU agenda' translates the commitments pursued in the EU Strategy Framework into more concrete actions for the CSDP. These actions relate to the mainstreaming of human rights into all phases of CSDP planning, review and conduct and to support compliance with IHL.²²⁹ Under the same section, it also aims to act in early-warning as well as preventive action, enhancing the capacity to address conflicts and crises and to promote and support accountability and transitional justice (TJ).²³⁰ Further, the new Action Plan fills previous gaps in the initial Action Plan with concrete actions aimed at tackling migration, trafficking of human beings, smuggling of migrants and asylum policies.²³¹

The Action Plans refer to the majority of actions and instruments available for the implementation of the EU policy on human rights and democracy with third countries. The table below shows the main policy

²²⁴ Cristina Churruga and Maria Nagore, 'The EU's Framework for the Promotion of Human Rights and Democracy Support' (2015) 53 *Cuadernos Europeos de Deusto - The European Union's Policy for Human Rights and Democracy support: a critical assessment*, 30. Other actions are not identified in the plan such the promotion of ESC rights, non-discriminatory access to basic services or engagement with civil society.

²²⁵ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (2012) 11855/12. Action no 12.

²²⁶ *ibid* Action no 2.

²²⁷ *ibid* Action no 8(c)

²²⁸ *ibid* Action no 5.

²²⁹ European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, 'Action Plan on Human Rights and Democracy (2015-2019), keeping human rights at the heart of the EU agenda', Joint Communication to the European Parliament and the Council, 28 April 2015, JOIN(2015) 16 final, Action no 20 and 22.

²³⁰ Action Plan (2015-2019), Action no 18, 19, 21.

²³¹ Action Plan (2015-2019), Action no 23.

frameworks and instruments for its implementation and evaluation.

Table 5: Human and Democracy Policy Framework²³²

FORMULATION			
Strategic Framework on Human Rights and Democracy	Human rights guidelines	Human rights country strategies	Mainstreaming human rights and democracy into other policies
IMPLEMENTATION			
Specific human rights and democracy instruments		Other instruments contributing to the promotion of human rights and democracy	
<ul style="list-style-type: none"> - Financial instrument: European Instrument for Democracy and Human Rights - Human rights clauses - Human rights and democracy focal points - EU Special Representative for human rights (and human rights and democracy tasks in other EUSR's mandates) - Human rights dialogues and consultations - Election support - European endowment for democracy 		<ul style="list-style-type: none"> - Action in multilateral for a - Bilateral political dialogue - Démarches and declarations - CFSP joint actions, common positions and strategies and CSDP decisions. - Restrictive measures - Thematic financial instruments - Geographic financial instrument 	
EVALUATION			
EU Annual Report on Human Rights and Democracy in the World		Other reports with reference to the EU promotion of human rights and democracy	

CSDP missions and operations pertain to the category of 'other instruments contributing to the promotion of human rights and democracy'. While the primary purpose of EU crisis management operations is to promote stabilisation and security, human rights and gender constitute an integral part of the operations and missions' tasks. A CSDP operation or mission can play a direct role in the protection of human rights and/or in support of the responsibility of the host state. Human rights violations, including ethnic-motivated and gender-based discrimination, are frequently among the root causes of conflict and crisis. The EU's contribution to security in third countries may also enable people to exercise and enjoy their rights and freedoms. Nonetheless it is often argued that the focus is rather on the fact that insecurity and conflict occurring outside EU borders can spill over onto its shores in the form of threats such as organised crime, terrorism, trafficking of human beings, smuggling of weapons and drugs, irregular migration etc.²³³

²³² Cristina Churruca and Maria Nagore, 'The EU's Framework for the Promotion of Human Rights and Democracy Support' (2015) 53 *Cuadernos Europeos de Deusto - The European Union's Policy for Human Rights and Democracy support: a critical assessment*, 26.

²³³ See particularly on EU securitisation of migration Henk Van Houtum and Roos Pijper, 'The European Union as a Gated Community: The Two-faced Border and Immigration Regime of the EU' (2007) 39(2) *Antipode*, 291-309; Jef Huysmans, *The politics of insecurity: fear, migration and asylum in the EU* (Routledge 2006); Jef Huysmans, 'The European Union and the Securitization of Migration' (2000) 38(5) *Journal of Common Market Studies*, 751-777.

D. The policy framework for the promotion of IHL and IHRL in CSDP missions and operations

1. EU policy framework on IHRL and IHL

The integration of human rights has, to some extent, been considered in all EU external policies and it has been progressively materialised in a set of human rights guidelines and mechanisms promoting respect for human rights in third countries.²³⁴ Human rights guidelines address issues such as: the death penalty (2013); torture and other cruel, inhuman or degrading treatment or punishment (2012); the promotion and protection of freedom of religion or belief (2013); human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons (2013); human rights dialogues with third countries (2009); children and armed conflict (2008); human rights defenders (2008); IHL (2009); the rights of the child (2007); violence against women and girls and discrimination against them (2008); and, freedom of expression (2014). It should be noted that there are some priority areas and groups identified in the EU Strategic Framework that have not received much attention in terms of policy, such as persons belonging to minorities, indigenous peoples, refugees and migrants and in relation to the fight against impunity, particularly relevant in scenarios where CSDP actions are implemented.²³⁵ The Guidelines foresee a number of recurring tools such as tasking the HoMs with monitoring, assessment and reporting tasks on the subject matter concerned and specific training for the staff in the field and in the headquarters.²³⁶

The Council started by making a number of statements on the integration of human rights into the CSDP that will later translate into more concrete actions.²³⁷ CSDP-specific guidelines, concepts and other related documents have been developed on concrete areas such as the protection of civilians, the mainstreaming of human rights and gender into all stages of CSDP missions and operations, generic standards of behaviour and disciplinary procedures for mission and operation personnel and more recently on transitional justice. However, despite the solid basis for the respect and promotion of human rights in the EU founding treaties, the EU human rights guidelines are more oriented towards the promotion of human rights and IHL in third countries rather than ensuring the EU's own compliance with these norms. This

²³⁴ See all updated EU Human Rights Guidelines in EEAS, 'EU Human rights guidelines' <http://eeas.europa.eu/delegations/council_europe/more_info/eu_human_rights_guidelines/index_en.htm>.

²³⁵ Cristina Churrucá and Maria Nagore, 'The EU's Framework for the Promotion of Human Rights and Democracy Support' (2015) 53 *Cuadernos Europeos de Deusto - The European Union's Policy for Human Rights and Democracy support: a critical assessment*, 33. Interview with EPLO Officer.

²³⁶ See inter alia Guidelines tasking the HoM of civilian missions: 'Guidelines on violence against women and girls', para 3.2.5.; 'Guidelines on children and armed conflict', para 11; 'Guidelines on Human Rights Defenders'. Some of the Guidelines also refer to Operations Commanders and EUSRs such: 'Guidelines on children and armed conflict', para 11; Guidelines on the promotion of compliance with International Humanitarian Law (IHL)', para 15(b); 'Guidelines on Freedom of Religion and Belief', para 47.

²³⁷ Council of the European Union, 'EU Annual Report on Human Rights – 2005' (3 October 2005), 18-21 <www.consilium.europa.eu/uedocs/cmsUpload/HR2005EN.pdf> accessed 1 March 2016.

approach means that EU officials' obligations are restricted to simply reporting tasks on the human rights and humanitarian situation.²³⁸

The 'Generic Standards of Behaviour for ESDP operations' adopted in 2005²³⁹ requires staff to treat the local population with dignity and respect and places emphasis on the duty of mission personnel to report any alleged violation of human rights and international humanitarian or international criminal law committed by mission personnel such as organised crime, corruption, trafficking of human beings and child abuse.²⁴⁰ The integration of human rights has also progressively materialised through the EU's policy on mainstreaming of human rights and gender in CSDP missions and operations. The mainstreaming of human rights 'may be defined as a strategic process of deliberately incorporating human rights considerations into processes or organisations which are not explicitly mandated to deal with human rights.'²⁴¹ The mainstreaming of human rights is aimed at achieving greater coherence and consistency within the EU's external action and foreign policy, engaging with civil society, enhancing the transparency and the accountability of CSDP missions and operations, and improving coordination with relevant actors. Thus, three dimensions can be identified in this mainstreaming policy: internal, in bilateral relations with third countries and at the multilateral level.²⁴² The main policy basis is provided by the 2006 'Mainstreaming human rights across CFSP and other EU policies'²⁴³ and 'Mainstreaming Human Rights into ESDP' endorsed by the Political and Security Committee (PSC) in 2006.²⁴⁴ The 2010 document 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' endorsed by the Council delivers a set of recommendations to improve the integration of human rights and gender into CSDP.²⁴⁵

More concrete actions on human rights mainstreaming are identified in the document 'Mainstreaming Human Rights into ESDP'.²⁴⁶ However, the outcome reports of the ATLAS project proposed – already in 2012 – a revision and updating of the document 'Mainstreaming human rights across CFSP and other EU policies, in order to suppress expressions such as 'where relevant' or 'where appropriate' and to set up a

²³⁸ Frederik Naert, 'The Application of International Humanitarian Law and Human Rights Law in CSDP Operations' in Enzo Cannizzaro, Paolo Palchetti and Ramses A. Wessel (eds), *International Law as Law of the European Union* (Martinus Nijhoff Publishers 2011), 210.

²³⁹ Council of the European Union, 'Generic Standards of Behaviour for ESDP Operations' (2005) 8371/3/05.

²⁴⁰ *ibid* 7-9.

²⁴¹ Florence Benoit-Rohmer, Horst Fischer, George Ulrich, Wolfgang Benedek, Carmen Marquez Carrasco, Zdzislaw Kedzia, Michele Grigolo, Gerd Oberleitner, Christian Pippan, Chadi Sidhom, Matthias C. Kettmann and Markus Möstl, 'Human Rights Mainstreaming in EU's External Relations' (2009) EXPO/B/DROI/2008/66, 15.

²⁴² Jan Wouters, Laura Beke, Anna-Luise Chané, David D'Hollander and Kolja Raube, 'A Comparative Study of EU and US Approaches to Human Rights in External Relations' (2014) EXPO/B/DROI/2014/27, 17.

²⁴³ Council of the European Union, 'Mainstreaming human rights across CFSP and other EU policies' (2006) 10076/06.

²⁴⁴ Council of the European Union, 'Mainstreaming Human Rights into ESDP' (2006) 11936/4/06.

²⁴⁵ Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' (2010) 17138/1/10.

²⁴⁶ *ibid* 3-5.

specific working group including representatives of the Council of Europe, the ICRC, NGOs, EU Member States, the European Parliament and the European Commission to prepare the work of COHOM.²⁴⁷

The implementation of the Guidelines faces a number of difficulties and challenges due to the lack of knowledge or understanding by mission personnel on the ground. Knowledge of the Guidelines varies greatly from mission to mission, depending on the background knowledge of the officers.^{248,249} Staff previously holding a post at the national level as police officers, and other civilian or military posts (particularly seconded national experts) may not be familiar with the large number of EU policy documents, not to mention the concepts of human rights or gender mainstreaming.²⁵⁰ Other facts such as the lack of dissemination or lack of interest from senior officers and head of units impede the use of the guidelines in a consistent manner.²⁵¹

One of the first initiatives has been to develop a consolidated list of relevant human rights related documents and concepts in the context of CSDP to serve as guidance at the planning stage and to develop a standard field manual concerning human rights for CSDP missions and operations.²⁵² In 2008, the General Secretariat of the Council prepared a compilation of relevant documents entitled 'Mainstreaming Human Rights and Gender into European Security and Defence Policy'.²⁵³ There is no official field manual to date although some Member States have developed a number of handbooks on CSDP that include sections on human rights in CSDP.²⁵⁴

The human rights mainstreaming document for CSDP also envisages the incorporation of human rights elements into the full range of planning documents for CSDP missions, including CONOPS, OPLAN and rules of engagement. 'These documents should incorporate elements related to both respect for human rights by [CSDP] missions and the way in which the mission should promote respect for human rights in

²⁴⁷ Milena Costas Trascasas, 'Transversal Analysis on the Integration of the Human Rights Component and Recommendations' in Milena Cosas Trascasas (ed), *Mainstreaming human rights in EU CSDP missions: a transversal analysis* (Low Cost Books 2012) 458.

²⁴⁸ Interview with EEAS official [April 2016, Brussels]

²⁴⁹ Interview with EEAS official [April 2016, Brussels]

²⁵⁰ With regards to the implementation of the Guidelines on Human Rights Defenders Bennett's study found out that the recommendations laid down in the Guidelines are not systematically implemented by all Member States and that implementation is inconsistent. Karen Bennett, 'European Union Guidelines on Human Rights Defenders: a review of policy and practice towards effective implementation' (2015) 19(7) *The International Journal of Human Rights*, 908-934.

²⁵¹ *ibid* 914-915. See also Jan Wouters and Marta Hermez, *EU Guidelines on Human Rights as a Foreign Policy Instrument: an Assessment* (2016) Leuven Centre for Global Governance Studies and the Institute for International Law, KU Leuven Working Paper no 170, 16-17 <https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp161-170/wp-170-wouters-hermez-web.pdf>.

²⁵² For compilation all relevant EU documents and provides some examples of best practices see Council of the European Union, 'Mainstreaming Human Rights and gender into European Security and Defence Policy' (2008)

²⁵³ *ibid*.

²⁵⁴ Jochen Rehr and Galia Glume (eds), 'Handbook on CSDP Missions and Operations. The Common Security and Defence Policy of the European Union' (Federal Ministry of Defence and Sports of the Republic of Austria 2015); Jochen Rehr and Hans-Bernhard Weisserth, 'Handbook on CSDP: The Common Security and Defence Policy of the European Union' (2nd ed) (Federal Ministry of Defence and Sports of the Republic of Austria 2008)

the mission area.²⁵⁵ It is also envisaged that a model/template for generic key human rights elements will be developed and inserted into planning documents and reviews of CSDP missions and operations. It is difficult to assess to what extent human rights and IHL elements are considered in these operational documents as they are classified. There is some evidence that human rights and other related issues such as rules on the use of force are integral parts of some of the operational documents (eg AMM Aceh, EUPOL Afghanistan, EULEX Kosovo) although these are classified.²⁵⁶

The effective integration of human rights into CSDP partly depends on recruiting skilled, competent and well-trained personnel. Training standards have been developed with the aim of preparing civilian, police and military staff for the work in EU crisis management operations. Yet the EU still faces the challenge of ensuring that all personnel working in field missions or at the headquarters have received appropriate training, including on human rights. While all staff members deployed on ground undertake common 'in-mission or induction training', pre-deployment training remains the responsibility of the participating Member States particularly for seconded personnel. Moreover, the fact that pre-deployment training is provided by different Member State agencies or institutions means that the quality and content of the training curricula may differ from one to another, including the aspects of concern in this report (human rights, IHL, gender or other related aspects). There have been some initiatives to harmonise the training programmes among Member States and within the EU and to ensure that minimum standards are met.²⁵⁷ The EU has adopted several policy instruments on training to promote the creation of a European security culture under the CSDP. The EU Training Concept in ESDP adopted in 2004 defines the EU training cycle.²⁵⁸ Additionally, various institutions have contributed to the harmonisation of CSDP education: the European Security and Defence College (ESDC) with a focus on civil and military personnel, the European Police College (CEPOL) and the European Union Police Services Training (EUPST) for law enforcement officers and Europe's Training Initiative for Civilian Crisis Management (ENTRi) for civilian personnel.²⁵⁹ In December 2010 basic CSDP standard training elements were developed and agreed upon by the PSC in the 'Package of three draft concepts containing minimum standard training elements on Human Rights,

²⁵⁵ Council of the European Union, 'Mainstreaming Human Rights into ESDP' (2006) 11936/4/06, 3.

²⁵⁶ Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' (2010) 17138/1/10, 12-15.

²⁵⁷ Interview with EEAS official.

²⁵⁸ Council of the European Union, 'Draft EU Training Concept in ESDP' (2004) 11970/04, 12-13. The EU Training Concept identifies four phases: planning, conduct, evaluation and assessment. The lessons learnt are to be taken into account when starting the new cycle. The annual assessment is done through the Comprehensive Annual Reports on CSDP and CSDP-related Training (CART) with the involvement of ESDC, CEPOL, EEAS, CSDP Missions, European Commission, EDA and Member States. See latest CART available to the public as follows Council of the European Union, '2011 Comprehensive Annual Report on CSDP and CSDP-related training (2011) 17438/11.

²⁵⁹ The ESDP is a network college to give the CFSP a training and education instrument which actively promotes a European security culture established in 2005. The CEPOL is an EU agency dedicated to providing training and learning opportunities to law enforcement officers on issues vital to the security of the European Union and its citizens since 2000. The EC-funded EUPTS is aimed at building up police capabilities in the areas of interoperability, harmonisation and the international police network for participation in crisis management operations of the European Union, the United Nations, the African Union and other international organisations. Europe's Training Initiative for Civilian Crisis Management (ENTRi) is a programme that was initiated in 2011 on the preparation and training of civilians that are either going to, or already working in, crisis management missions led by the EU, UN, OSCE, AU and other international crisis management missions.

Gender and Child Protection in the context of CSDP'.²⁶⁰ Based upon the foregoing, targeted training packages, modules and minimum standard training elements are developed with the support of Member States' training institutions and other EU agencies such as ESDC and CEPOL. There are also efforts in place to build a common understanding on how learning and training may best serve the evolving needs of CSDP. Several EU Member States have taken the initiative to offer training for all personnel, regardless if they are seconded or contracted, in which human rights, gender and cultural awareness are a core part of the training curricula.²⁶¹ Nonetheless the mere inclusion of modules on human rights, IHL, gender or related issues may not suffice if the training programme (either in-mission or prior to deployment) is not adapted to the specific circumstances of the mission area.²⁶² The focus should not only be on mission personnel gaining knowledge of human rights as abstract and ethical ideas, but to develop their capacity to apply this knowledge in the performance of their functions. The human rights mainstreaming document also pledges for the inclusion of human rights aspects into CSDP exercises²⁶³ and to offer seminars and workshops for planners or personnel working in the field with the participation of external officials such as UN DPKO, UN OHCHR and UNICEF.²⁶⁴

Another key action in the integration of human rights in CSDP is the appointment of human rights experts to missions and operations both at the headquarter and theatre levels, and during all phases from preparatory activities - such as fact finding missions and planning teams - to the implementation of the mandate.²⁶⁵ At present most CSDP missions and operations have appointed a human rights advisor/officer who is responsible for internal mainstreaming within the mission (providing training on issues such as human rights at the in-mission training or on the use of force; legal analysis of any aspects that may arise in the conduct etc.) and for external mainstreaming by engaging with key stakeholders in the field such as local authorities and civil society organisations. These human rights advisors/officers should also ensure that the mission-specific reporting procedures and lessons learned processes take due account of the human rights situation in the mission area.²⁶⁶ If deemed appropriate a staff member close to the Commander or HoM (political or legal advisor) could be appointed as a focal point for human rights in the mission or operation, which will serve to enhance the impact of its work at senior levels in the mission or

²⁶⁰ Not available, Council of the European Union, 'Package of three draft concepts containing minimum standard training elements on Human Rights, Gender and Child Protection in the context of CSDP' (2010) 17209/10.

²⁶¹ Some EU Member States have supported the improvement of training and the inclusion of specific modules on human rights and gender issues through institutions the Folke Bernadotte Academy (FBA), Sweden; Scuola Superiore Sant'Anna (SSSUP), Italy; Center for International Peace Operations (ZIF), Germany; Crisis Management Centre (CMC), Finland; and Centre for European Perspective (CEP), Slovenia. See inter alia Folke Bernadotte Academy, 'Pre-Deployment Training for CSDP Missions' <<https://fba.se/en/how-we-work/courses/all-courses/pre-deployment-training-for-csdp-mission-staff/>>.

²⁶² Interview with EEAS official.

²⁶³ Council of the European Union, 'Mainstreaming Human Rights into ESDP' (2006) 11936/4/06, 4.

²⁶⁴ *ibid* 3.

²⁶⁵ *ibid* 4.

²⁶⁶ *ibid* 4-5.

operation.²⁶⁷ Often human rights officers are part-time or double-hatted between missions or human rights and gender tasks, which has been highly criticised by experts within and outside the area of CSDP.²⁶⁸

COHOM is the body tasked to oversee the implementation of the human rights and gender mainstreaming document.²⁶⁹ The EU Annual Report on Human Rights and Democracy in the World usually contains a section devoted to 'Reflecting human rights in conflict prevention and crisis management activities' which summarises the latest developments on human rights and gender mainstreaming in the area of the CSDP.²⁷⁰ Nevertheless, given the significant number of issues that the COHOM must deal with, CSDP-specific follow-up is not given much attention on its agenda.²⁷¹

It is interesting to note that despite all EU efforts in mainstreaming human rights and gender on the ground, less attention has been given to the strategic planning and structures. CSDP missions and operations will only be able to achieve their objectives if human rights, gender and protection of vulnerable groups are effectively considered from the outset.²⁷² The decision-making and planning structures in Brussels have to be provided with sufficient and accurate information on aspects related to human rights, gender and existing vulnerable groups to make the strategic level better equipped to address them in tailored mandates and operational documents. This should ideally be based on the UN resolutions and accurate information on human rights and gender provided by EU actors (eg EU Delegations), Member States (eg embassies) and other relevant stakeholders such as international organisations, NGOs or local CSOs.²⁷³ In practice the quality and quantity of the information available will depend on the capacity and willingness of the personnel involved (eg joint EEAS-Commission fact-finding missions or regular contact with EU Delegation staff).²⁷⁴

2. EU policy framework on gender mainstreaming

This section focuses on the gender policy that has been gradually developed in the area of Women, Peace and Security and incorporated into EU crisis management operations. The EU has adopted a comprehensive policy on Women, Peace and Security covering humanitarian aspects, development,

²⁶⁷ Upon the proposal made by the Head of the former Human Rights and Gender Office at EULEX Kosovo, the gender component was reshaped as single autonomous unit at a higher level in the mission's organigram: This serve to reinforce the gender component by granting more autonomy to externally engage with women's civil society networks, and more power to influence senior level officers. Interview to EULEX Kosovo gender officer.

²⁶⁸ Interview with EEAS, FBA and EPLO officers.

²⁶⁹ The Council of the European Union Working Group on Human Rights (COHOM) is responsible for human rights issues in the EU's external relations Council of the European Union, 'Working Party on Human Rights (COHOM)' <www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/> accessed 20 March 2016.

²⁷⁰ See inter alia the latest report Council of the European Union, '2014 EU Annual Report on Human Rights and Democracy in the World' <http://eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf>.

²⁷¹ Interview with EEAS official [April 2016, Brussels]

²⁷² See Kati Leinonen, 'Get it right! Giving the appropriate place to gender and human rights in the Common Security and Defence Policy' (2010) 4 *Civilian Crisis Management Centre Finland Yearbook 2010*, 76-98.

²⁷³ The planning of the CSDP missions deployed in the Sahel region is seen as successful example of cooperation between the EEAS and Commission structures both in Brussels and in the field.

²⁷⁴ Interview with EEAS official.

security and foreign relations, from crisis management to long-term reconstruction.²⁷⁵ The adoption of a gender perspective is crucial to understanding and addressing the causes and consequences of conflict, particularly with regards to sexual violence against girls and women. The EU has described gender as follows:

[T]he socially constructed differences, as opposed to the biological ones, between women and men; this means differences that have been learned, are changeable over time, have wide variations both within and between cultures. Gender roles and relations are often altered during and after armed conflict. It is important to note that gender is not only about women, but about gender roles of both sexes, and that a gender perspective thereby also concerns the role of men.²⁷⁶

Sexual violence has received considerable attention as both a human rights and security concern and consequently, it has been grounded in UN peacekeeping work and subsequently in EU crisis management. The UN Security Council has adopted seven resolutions on Women Peace and Security so far.²⁷⁷ The 2000 UN Security Council Resolution 1325 on Women, Peace and Security calls for the adoption of a gender perspective when negotiating and implementing peace agreements and to ensure the inclusion of a gender component in field operations.²⁷⁸ The UNSC Resolution 1325 was the first resolution to address the impact of war on women and their potential contribution to conflict resolution and sustainable peace.²⁷⁹ In 2008, the Security Council adopted Resolution 1820 which reinforces Resolution 1325 and

²⁷⁵ See Giji Gya, 'Gender Mainstreaming and Empowerment of Women in the EU's External Relations Instruments' (2009) EXPO/B/AFET/2008/67. The protection of women's rights has not been included under the heading of 'protection of vulnerable groups' as the gender policy covers but it is not limited to it. Gender in crisis management is a broader concept that encompasses other dimensions that are not necessarily human rights-related. i.e. the empowerment of women in crisis and post-crisis environments.

²⁷⁶ See the definitions on 'gender', 'gender mainstreaming' and 'gender-based violence' in Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' (2008) 15671/1/08 REV 1, 5-6. For critiques of these definitions see Giji Gya, 'Implementation of EU Policies Following the UN Security Council Resolution 1325' (2010) European Parliament EXPO/B/DROI/2009/26, 37.

²⁷⁷ UN, 'Women, peace and security. We are mandated to address gender through specific Security Council Resolutions on Women Peace and Security' <www.un.org/en/peacekeeping/issues/women/wps.shtml> accessed 20 March 2016.

²⁷⁸ UNSC Resolution 1325 (2000)

²⁷⁹ The binding nature of this UNSC resolution adopted under Chapter VI is contested and furthermore there is not mechanism to enforce it. There is an ongoing debate about the legally binding nature of 1325. See *inter alia* Cornelia Weiss, 'Barely Begun: the Inclusion of Women as Peacemakers, Peacekeepers, and Peacebuilders in International Law and Practice' in Cecilia Marcela Bailliet and Kjetil Mujezinović Larsen (eds) *Promoting peace through international law* (Oxford University Press 2015), 274-296; Torunn L. Tryggestad, 'Trick or treat? The UN and implementation of security Council resolution 1325 on women, peace, and security' (October 2009) 15(4) *Global Governance*, 539-557; Hilikka Pietilä, 'The Unfinished Story of Women and the United Nations' (UN NY & Geneva 2007) NGLS Development Dossier, UN Non-Governmental Liaison Service (UNCTAD/NGLS/2007/1) 34; Kwadwo Appiagyei-Atua, 'United Nations Security Council Resolution 1325 on Women, Peace, and Security — Is it Binding?' (2011) Human Rights Brief 18, no 3 <<https://www.wcl.american.edu/hrbrief/18/3atua.pdf>>. Besides its contested binding nature many scholars and practitioners have allege that UNSC Resolution is too broad, lacking implementation guidelines, Giji Gya, 'Implementation of EU Policies Following the UN Security Council Resolution 1325' (2010) European Parliament EXPO/B/DROI/2009/26, 9.

deserves special attention as it asserts that sexual violence in conflict constitutes a war crimes.²⁸⁰ Further, it calls for a zero tolerance policy regarding sexual exploitation and abuse committed by peacekeeping personnel²⁸¹ and to revise all stakeholder structures and relevant thematic processes to promote women's participation such as disarmament, demobilisation and reintegration (DDR) and security sector reform (SSR).²⁸² The UNSCR 1888 adopted in 2009 and UNSCR 1889 in 2009 constitute a follow-up to UNSCR 1325 and 1820 respectively.

The EU, as other international organisations,²⁸³ has expressed its commitment 'to promote the role of women in peace building and to enhance the implementation of UNSC Resolution 1325 in its external actions.'²⁸⁴ The gender policy is informed by the three Ps (protection, prevention and participation) both externally in the mission area and internally to ensure that the mission has the capacity to integrate gender in the implementation of the mandate through analysis, planning, reporting and evaluations, funding, training and recruitment for CSDP missions. The chart below shows the basic premises for the integration of a gender component and to ensure gender equality in the conduct of the mission, both in its internal and external dimension.

Table 6: Dimensions of the gender mainstreaming policy²⁸⁵

	Integration	Participation
External (addressing the external situation in order to achieve the mandated objectives)	Mandate interpretation and execution <ul style="list-style-type: none"> - Interpretation of assignments to include gender specific issues - Execution of tasks - Adaptation to developments in the mission area 	Cooperation, support and representations <ul style="list-style-type: none"> - Interaction, cooperation and support to women's organisations in the host country - Information collection and distribution
Internal (internal work organisation of the mission)	Work structure of the mission <ul style="list-style-type: none"> - Analysis - Planning - Reporting/evaluation - Funding - Training 	Recruitment of mission personnel <ul style="list-style-type: none"> - Employment of male and female personnel taking into account all functions and levels - Work environment

²⁸⁰ Art. 1 and 4, UNSC Resolution 1820 (2008)

²⁸¹ Art. 7, UNSC Resolution 1820 (2008)

²⁸² Art. 10, UNSC Resolution 1820 (2008)

²⁸³ Strategic EU partners such as NATO, the OSCE and African Union have also created their own policies and strategies to enhance the implementation of UNSCR 1325 which is of high value in terms of common understanding and cooperation in the field.

²⁸⁴ Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' (2008) 15671/1/08, 4. On EU policy documents cross-referencing with UNSCR see Table 3 – outline of 1325 and EU documents (full table with 1820 and including cross-comparison in Annex 3), Giji Gya, 'Implementation of EU Policies Following the UN Security Council Resolution 1325' (2010) European Parliament EXPO/B/DROI/2009/26, 23.

²⁸⁵ Louise Olsson and Karin Sundström, 'European Union's Gender Policy for CSDP Missions: Contents and Gaps. An assessment of existing policy on 'Women, peace and security' with examples from EUPOL COPPS, EUMM Georgia, EULEX Kosovo and EUPOL RD Congo' (2013) Folke Bernadotte Akademin, 12.

		- Standards of behaviour and follow-up of breaches of the Code of Conduct
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The EU has put UNSCR 1325 and gender mainstreaming on the agenda of the CSDP. The first indications for gender mainstreaming were provided by the 2005 Generic Standards of Behaviour²⁸⁶ and the 2006 'Checklist to ensure gender mainstreaming and implementation of UNSCR 1325 in the planning and conduct of ESDP missions'.²⁸⁷ In 2008 the Council adopted the 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security',²⁸⁸ the 'EU guidelines on violence against women and girls and combating all forms of discrimination against them'²⁸⁹ and the 'Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP'.²⁹⁰ Building on the Comprehensive Approach, a EU Task Force on Women, Peace and Security was established to increase inter-institutional coordination and to promote a coherent approach to gender issues, encouraging the sharing of information among the parties involved regardless the chain of command.²⁹¹ The Task Force is composed of staff working on both gender equality and security issues across the relevant Council Secretariat and Commission services and is open to participation and dialogue with EU Member States and civil society organisations. The table below provides a more exhaustive list of the main international and EU policy documents applicable to EU-led crisis management operations.

²⁸⁶ Council of the European Union, 'Generic Standards of Behaviour for ESDP Operations' (18 May 2005)

²⁸⁷ Council of the European Union, 'Checklist to ensure gender mainstreaming and implementation of UNSCR 1325 in the planning and conduct of ESDP Operations' (2006) 12068/06.

²⁸⁸ Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' (2008) 15671/1/08 REV 1.

²⁸⁹ Council of the European Union, 'EU guidelines on violence against women and girls and combating all forms of discrimination against them' (2008)

²⁹⁰ Council of the European Union, 'Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP' (2008) 15782/08.

²⁹¹ Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' (2008), 15.

Box 3: The gender policy basis applicable to CSDP missions and operations

- UN Security Council Resolutions on Women, Peace and Security: 1325 (2000); 1820 (2008); 1888 (2009); 1889 (2009); 1960 (2010); 2106 (2013); 2122 (2013)²⁹²
- Generic Standards of Behaviour for ESDP Operations (2005)
- Checklist to ensure gender mainstreaming and implementation of UNSCR 1325 in the planning and conduct of ESDP Operations (2006)
- Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security (2008)
- Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP (2008)
- EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008)
- Implementation of UNSCR 1325 and UNSCR 1820 in the context of training for the ESDP missions and operations – recommendations on the way forward (2009)
- Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions (2010)
- Indicators for the Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security (2010)
- Report on the EU-indicators for the Comprehensive Approach to the EU implementation of the UN Security Council UNSCRs 1325 & 1820 on Women, Peace and Security (2011)

In terms of policy, the EU has developed an extensive and comprehensive framework applicable to its domain of crisis management. Some mandates have included explicit reference to gender issues although most of them result from the review of initial mandates ('second and third mandates').²⁹³ At the headquarter level in the EEAS, a human rights and gender advisor within the CMPD in Brussels works to ensure that a gender perspective is integrated into the strategies and CSDP policy-making process.²⁹⁴

²⁹² UN Security Council Resolutions on Women, Peace and Security: UNSCR 1325 (2000) on women, peace and security and the incorporation of a gender perspective into peacekeeping missions; UNSCR 1327 (2000) on the role of women in conflict prevention and resolution and peacebuilding; UNSCR 1366 (2001) on DDR in UN peacekeeping and peacebuilding mandates; UNSCR 1408 (2002) on civil society initiatives in the region, particularly gender-focus initiative, and their contribution towards regional peace. ; UNSCR 1820 (2008) on sexual violence in conflict and post-conflict situations and asking the Secretary-General for a report with information on the systematic use of sexual violence in conflict areas and proposals to minimize the prevalence of such acts; UNSSCR 1888 (2009) strengthening efforts to end sexual violence against women and children in armed conflict; UNSCR 1889 (2009) to ensure that women's protection and empowerment is taken into account during post-conflict needs assessment and planning; UNSCR 1960 (2010) establishing a monitoring, analysis and reporting mechanism on conflict-related sexual violence; UNSCR 2106 (2013) on accountability for perpetrators of sexual violence in conflict and stressing women's political and economic empowerment; UNSCR 2122 (2013) addressing persistent gaps in the implementation of the women, peace and security agenda.

²⁹³ See Table 6 'CSDP missions past and present, showing instances of reference to/guidance on human rights or UNSCR 1325/gender perspectives in Giji Gya, 'Implementation of EU Policies Following the UN Security Council Resolution 1325' (2010), 57-58. Those CSDP missions and operations with explicit references to gender are EU support to AMIS (Darfur), EUPM BiH, EUBAM Rafah and EULEX Kosovo (initial mandate) and EUFOR Tchad/RCA, EUPOL COPPS, EUPOL DR Congo, EUPOL Afghanistan and EUMM Georgia (second mandate) and EUSEC RD Congo and EUJUST LEX Iraq (third mandate)

²⁹⁴ Interview with EEAS officials.

Additionally, gender issues have been incorporated into lessons learned processes, reporting mechanisms and training of CSDP missions.²⁹⁵

As stated above, since 2008 nearly all CSDP missions have appointed a gender advisor or double-hatted human rights/gender experts²⁹⁶ who regularly meet in Brussels to exchange views and good practices.²⁹⁷ Gender experts ensure the promotion of gender equality and gender mainstreaming in the context of CSDP,²⁹⁸ although their specific role and tasks may vary from mission to mission as made explicit in the OPLAN and CONOPS documents.²⁹⁹ The fact that most gender experts incorporate human rights into their work has been deemed counterproductive due to lack of time and resources to provide sufficient support.³⁰⁰

As human rights experts appointed to the mission, gender advisers/officers ensure that a gender perspective is adequately integrated in the monitoring, institution-building, capacity-building and other tasks of the mission or operation. Gender experts on the ground are particularly well-placed to monitor the impact of the mission activities on the local population. Ideally, they promote the establishment of partnerships with local women's groups and civil society organisations and support the local authorities in integrating gender perspectives into the areas where the mission or operation operates (judiciary, security forces, policy makers) although their workload may not always allow for such proactive engagement.³⁰¹ Additionally, gender experts within the mission or operation are generally responsible for providing training for staff to ensure that they integrate a gender perspective into their work. As stated before, standard modules on human rights and gender have been developed at the EU level and by some Member States.³⁰²

²⁹⁵ Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' (2010)

²⁹⁶ See Giji Gya, 'Implementation of EU Policies Following the UN Security Council Resolution 1325' (European Parliament 2010) 59-63, including a table of CSDP missions with gender/human rights advisors.

²⁹⁷ The Council Secretariat organised the first meeting of gender advisors and CSDP contacts in Brussels in November 2009 and since then they meet on a yearly basis.

²⁹⁸ Art. 7 of CEDAW establishes the obligation of guaranteeing women participation in political life in their country and equality with men in political and public life and Art. 3 CEDAW implies a general obligation to undertake gender mainstreaming measures including legislation, 'to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.'

²⁹⁹ For instance in EUFOR RD Congo and EULEX Kosovo the gender advisors had a direct contact with the Head of the Mission as they were placed in a higher hierarchy level. Interview with EEAS officials.

³⁰⁰ Interview with EEAS official and FBA Gender experts [April 2016, Brussels]

³⁰¹ See Gender Force Sweden, 'Good and Bad Examples: Lessons Learned from Working with United Nations Resolution 1325 in International Missions' (2007) <http://old.kvinnatillkvinna.se/sites/default/files/Good_and_bad_examples_English_A4.pdf>.

³⁰² Interestingly some studies found that these modules were not viewed as having a significant impact on mission personnel. Nonetheless, human rights and gender modules oriented to the peculiarities of a specific area of deployment were well received. Anne Mäki-Rahkola and Annika Launiala, 'A gender perspective in civilian crisis management. Experiences of Finnish experts from the field' (2012) 6(2) CMC Finland Working Papers <www.cmcfinland.fi/download/41597_WP-2012-2_1325_survey.pdf?d29c022b83c4d088> accessed 26 March 2016.

The implementation of EU policy commitments on gender encounters significant difficulties, particularly with regards to translating 'gender' to actions at the operational level.³⁰³ While the concept of 'human rights mainstreaming' has been well received and (better) understood, the notion gender is widely understood as a women's issue, particularly by the military personnel, that interpret gender as relating solely to the physical protection of women in conflict settings.³⁰⁴ Increasing women's participation in CSDP missions and operations remains a major challenge, particularly with regards to military operations.³⁰⁵ 'Gender balancing' was initially conceived as an equal rights issue, which evolved to a 'functionalist argument about improved operational effectiveness of crisis management and sustainability of conflict resolution.'³⁰⁶ An adequate representation of female personnel and their appointment to senior positions is considered crucial to effectively address sexual violence, promote gender awareness among local actors and to secure a lasting and sustainable impact on peace and the protection of human rights.³⁰⁷ Nonetheless the sole dimension of women's participation in CSDP has attracted considerable attention at the expense of a more cross-cutting understanding of gender or other important objectives of UNSCR 1325.³⁰⁸

3. The EU policy framework on the protection of civilians

Today's armed conflicts are longer in duration, broader in regional impact and more violent than those in the past. Internal conflicts or non-international armed conflicts opposing one or more non-state armed groups or these groups against-the state have become the norm. The asymmetrical nature of recent conflicts has prompted inferior militarily groups to resort to acts prohibited by international law, including deliberately targeting civilians. In turn, military forces are increasingly expected to protect civilians from violence as part of their strategy and not simply by avoiding collateral damage.³⁰⁹

³⁰³ See Louise Olsson and Karin Sundström, 'European Union's Gender Policy for CSDP Missions: Contents and Gaps. An assessment of existing policy on 'Women, peace and security' with examples from EUPOL COPPS, EUMM Georgia, EULEX Kosovo and EUPOL RD Congo' (2014) <https://fba.se/contentassets/bcfe134c7ace454c964c1cf68f856474/fba_csdp_rapport_s5_web_141217.pdf> accessed 27 March 2016.

³⁰⁴ Interview with EEAS official.

³⁰⁵ See Maline Meiske, 'Gender balancing in CSDP missions' (November 2015) EUISS Alert Issue no 53 <http://www.iss.europa.eu/uploads/media/Alert_51_Gender_in_CSDP.pdf> accessed 27 March 2016.

³⁰⁶ *ibid* 1.

³⁰⁷ *ibid* 2. A small number of female personnel assume a 'direct combat role' in military operations and constitute a small number of senior officers, both in Brussels and in the field. Likewise, only one woman has been appointed as Head of Mission for EUPOL Afghanistan.

³⁰⁸ Interview with EEAS official.

³⁰⁹ See Carmen-Cristina Cirlig, 'Protecting civilians in armed conflict. International framework and challenges' (January 2016) European Parliamentary Research Service Briefing <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573917/EPRS_BRI\(2016\)573917_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573917/EPRS_BRI(2016)573917_EN.pdf)> accessed 22 March 2016; Marina Mancini, 'Report of the Conference on New Conflicts and the Challenge of the Protection of the Civilian Population', Conference Report, Rome, 14 December 2010 <<http://www.iihl.org/wp-content/uploads/2015/12/New-Conflicts-and-the-Challenge-of-the-Protection-of-Civilian-Populations.pdf>> accessed 23 March 2016. See Security Council Report, 'UN Documents for Protection of Civilians: Secretary-General's Reports' <<http://www.securitycouncilreport.org/un-documents/search.php?IncludeBlogs=10&limit=15&tag=%22Secretary->

Although the concept of the protection of civilians (PoC) as such has not been explicitly mentioned in the mandates of CSDP missions and operations, their tasks are seen as contributing to improved protection by means of contribution to enhancing the rule of law and a secure environment. The protection of civilians has been particularly significant in the EU's military operations such as EUFOR Artemis that addressed large scale attacks against civilians, and EU support to AMIS (Darfur) that is aimed at improving the security and humanitarian situation; EUFOR Tchad/RCA providing a safe and secure environment for refugees and internally displaced people (IDPs) and EUFOR Althea BiH that has contributed to a safe and secure environment. EU civilian missions also contribute to the protection of civilian populations in conflict and post-conflict situations by developing and strengthening an independent justice system adhering to internationally recognised standards (EULEX Kosovo), monitoring and reporting (EUMM Georgia, AMM Aceh) and police reform (EUPOL RD Congo), etc.³¹⁰

The EU has adopted specific guidelines on the PoC and other groups in the area of the CSDP. However, the organisation has acquired little experience and has learned little from its own operations. In 2003, the EU developed the 'draft Guidelines on Protection of Civilians for CSDP missions' that were revised in 2010³¹¹ to articulate the need to integrate protection of civilians in the initial assessment, planning and strategies for all CSDP actions. EU attempts to provide guidance on the protection of civilians in crisis management are also found in the 2015 'Concept on Protection of Civilians (PoC) in EU-led Military Operations'³¹² and other relevant documents on the use of force³¹³ and the promotion of IHL.³¹⁴ Despite these efforts in terms of policy, there is still a lack of understanding on how PoC can be operationalised.³¹⁵

General%27s%20Reports%22+AND+%22Protection%20of%20Civilians%22&ctype=Protection%20of%20Civilians&rttype=Secretary-General%27s%20Reports&cbtype=protection-of-civilians> accessed 25 March 2016.

³¹⁰ One of the aims of the 2010 Draft Guidelines was to take account of previous work on PoC in CSDP mission and operations. Council of the European Union, 'Draft Revised Guidelines on the Protection of Civilians in CSDP Missions and Operations' (31 August 2010) 13047/10, 3-4 <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2013047%202010%20INIT>> accessed 19 March 2016.

³¹¹ *ibid.*

³¹² Council of the European Union, 'Concept on Protection of Civilians (PoC) in EU-led Military Operations' (2 March 2015) 6730/15 <<http://data.consilium.europa.eu/doc/document/ST-6730-2015-INIT/en/pdf>> accessed 19 March 2016.

³¹³ See the partially declassified version in Council of the European Union, 'EU Concept for the Use of Force in EU-led Military Operations' (2 February 2010) 17168/2/09 <<http://data.consilium.europa.eu/doc/document/ST-17168-2009-REV-2-EXT-2/en/pdf>> accessed 19 March 2016.

³¹⁴ Council of the European Union, 'Updated EU Guidelines on promoting compliance with International Humanitarian Law (15 December 2009) OJ C 303.

³¹⁵ See Victoria Holt, Glyn Taylor and Max Kelly, 'Protecting Civilians in the Context of UN Peacekeeping Operations Successes, Setbacks and Remaining Challenges' (2009) UN DPKO and OCHA <<https://docs.unocha.org/sites/dms/Documents/Protecting%20Civilians%20in%20the%20Context%20of%20UN%20Peacekeeping%20Operations.pdf>>; Bellamy, Alex J. Bellamy Paul D. Williams, 'Protecting Civilians in Uncivil Wars', (2009) Asia-Pacific Centre of the Responsibility to Protect Working Paper no 1 <https://www.polity.co.uk/up2/pdf/protecting_civilians_in_uncivil_wars.pdf> accessed 19 March 2016; Paul D. Williams, 'Enhancing Civilian Protection in Peace Operations: insights from Africa' (2010) Africa Center for Strategic Studies Research Paper no 1; , Alison C. Giffen, 'Enhancing the Protection of Civilians in Peace Operations: From Policy to Practice' (2011) Asia Pacific Civil-Military Centre of Excellence <<https://www.acmc.gov.au/wp-content/uploads/2014/09/Giffen-CMAC.pdf>> accessed 19 March 2016. The FFI has issued a number reports to provide guidance and to fill the 'implementation gap', i.e. the fact that civilians do not receive sufficient attention in the planning and conduct of military operations despite the strategic importance attached to their protection.

Indeed, there is a great deal of confusion about the concept of PoC. Whilst the draft EU guidelines do not provide an official definition, the EU bases its understanding of the PoC on IHL and human rights law and refers to the definition from MONUC, the UN operation in the DRC which defines protection as encompassing:

all activities aimed at ensuring the safety and physical integrity of civilian populations, particularly children, women, and other vulnerable groups, including IDPs; preventing the perpetration of war crimes and other deliberated acts of violence against civilians; securing humanitarian access; and ensuring full respect for the rights of the individual, in accordance with relevant national and international bodies of law, i.e. human rights law and international humanitarian law.³¹⁶

Although it seems like the EU is leaning towards the UN approach to protection, on a deeper level, the EU has developed its own narrower understanding of protection.³¹⁷ According to the relevant UN agencies, protection refers to 'all activities aimed at ensuring full respect for the rights of the individual in accordance with human rights law, IHL and refugee law'.³¹⁸ Thus, a wide range of actors and institutions - and not only military forces - play a role in protecting civilians in armed conflict or in other situations of violence.³¹⁹ The EU has adopted the separate concept of 'Civil Protection' as a response to natural and man-made disasters, while the PoC is understood in narrower terms as relevant to military operations operating in high-risk scenarios.³²⁰

The UN has been at the forefront of developing guidelines, strategies, concepts, planning tools and training modules and including the PoC in UN peacekeeping operations' mandates, which has had an

Alexander William Beadle and Stian kjeksrud, 'Military planning and assessment guide for the protection of civilians' (2014) Norwegian Defence Research Establishment (FFI) FFI-rapport 2014/00965 <<https://www.ffi.no/no/Rapporter/14-00965.pdf>> accessed 19 March 2016; Alexander William Beadle, 'Protection of civilians – military planning scenarios and implications' (2014) Norwegian Defence Research Establishment (FFI) FFI-rapport 2014/00519 <<https://www.ffi.no/no/Rapporter/14-00519.pdf>> accessed 19 March 2016; Anders Skeibrok Våge, 'Violence against civilians: case-studies of perpetrators' (2014) Norwegian Defence Research Establishment (FFI) FFI-rapport 2014/00520 <<https://www.ffi.no/no/Rapporter/14-00520.pdf>> accessed 19 March 2016; Anders Skeibrok Våge and Alexander William Beadle, 'Assessing protection of civilians in military Operations' (2014) Norwegian Defence Research Establishment (FFI) FFI-rapport 2014/00966 <<http://www.ffi.no/no/Rapporter/14-00966.pdf>> accessed 19 March 2016.

³¹⁶ Council of the European Union, 'Draft Revised Guidelines on the Protection of Civilians in CSDP Missions and Operations' (31 August 2010) 13047/10, 4.

³¹⁷ Interview with EPLO officer.

³¹⁸ OCHA, 'Thematic Areas: Protection' <<http://www.unocha.org/what-we-do/policy/thematic-areas/protection>> accessed 23 March 2016.

³¹⁹ Sorcha O'Callaghan and Sara Pantuliano, 'Protective action: incorporating civilian protection into humanitarian response' (2007) HPG Policy Brief 29 <<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1712.pdf>> accessed 23 March 2016.

³²⁰ Interview with EEAS officer; Stian Kjeksrud, Jacob Aasland Ravndal, Andreas Øien Stensland Cedric de Coning, Walter Lotze and Erin A. Weir. 'Protection of civilians in armed conflict – comparing organisational approaches' (2011) Norwegian Defence Research Establishment (FFI), 18. Civil Protection refers to assistance that is delivered in the immediate aftermath of a disaster. European Commission, 'Civil protection' <http://ec.europa.eu/echo/what/civil-protection_en> accessed 23 March 2016.

impact on the EU's approach.³²¹ The EU Draft Guidelines, however, are not very clear as to what their main purpose is, as they include both guidance and an assessment of previous experiences and measures on the implementation of PoC in CSDP missions and operations.³²² The 2015 concept of PoC for EU-led military operations provides concrete actions for the integration of PoC in all phases of CSDP military operations, however it does not provide a definition of PoC.³²³ From the military perspective, PoC-operations are qualitatively different from both traditional warfare and peacekeeping efforts.³²⁴ The protection of civilians or vulnerable groups from violence may require high-intensity combat to deter or confront armed groups, but other forms of protection involve non-combat operations in direct or indirect support of international actors, local authorities or forces and civil society actors in a host nation.³²⁵

4. The EU policy framework on the protection of vulnerable groups

On the basis of a comprehensive analysis, the first FRAME Deliverable 10.1 revealed that some groups of population - such as women and children - experience and act differently in the context of violence and post-conflict reconstruction. Some individuals or groups may even experience multiple forms of vulnerability. Nonetheless, in order to ensure long-term and sustainable stability, individuals considered as belonging to vulnerable groups should not only be viewed as victims or mere recipients of assistance, but also as key actors in peace processes and the wider conception of governance. As outlined in the aforementioned FRAME Deliverable 10.2 on applicable regulatory frameworks regarding human rights violations in conflicts, over the years the protection and promotion of the human rights of certain categories of persons has gained increasing attention in legal and policy terms. Children and women are clearly identified in a number of EU policy documents in the area of crisis management. However, other 'priority' groups identified in the EU Strategy and Action Plans on Human Rights and Democracy have not been considered to the same extent.

a) Children

Children, due to their nature, are especially affected by the direct and indirect causes of armed conflicts, particularly due to new tactics in the conduction of hostilities, in which the use of indiscriminate attacks on civilian areas through explosives and air strikes, has become increasingly common and that therefore bears a heavy toll on millions of children.³²⁶ The EU Strategic Framework on Human Rights and Democracy 2012 has stated its commitment to the promotion of the rights of children. Similarly, the new Action Plan (2015-2019) identifies children's rights protection as a priority group. The EU's policy to protecting

³²¹ *ibid.*

³²² *ibid* 32.

³²³ Council of the European Union, 'Concept on Protection of Civilians (PoC) in EU-led Military Operations' (2 March 2015) 6730/15 <<http://data.consilium.europa.eu/doc/document/ST-6730-2015-INIT/en/pdf>>.

³²⁴ See Alexander William Beadle, 'Finding the 'utility of force to protect' – towards a theory on protection of civilians' (2011) Norwegian Defence Research Establishment (FFI) FFI-rapport 2011/01889.

³²⁵ Stian Kjeksrud, Jacob Aasland Ravndal, Andreas Øien Stensland Cedric de Coning, Walter Lotze and Erin A. Weir. 'Protection of civilians in armed conflict – comparing organisational approaches' (2011) Norwegian Defence Research Establishment (FFI), 7-8.

³²⁶ UN General Assembly-Security Council, Report of the Secretary-General on Children and Armed conflict (2014), A/68/878-S/2014/339, para 6 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 23 March 2016.

children is developed in the EU Guidelines on the Rights of the Child,³²⁷ adopted in 2007 and the EU Guidelines on Children Affected by Armed Conflict (CAAC), adopted in 2003 and revised in 2008.³²⁸ The Guidelines on CAAC reads as follows:

In countries where the EU is engaged with crisis management operations, and bearing in mind the mandate of the operation and the means and capabilities at the disposal of the EU, the operational planning should take into account, as appropriate, the specific needs of children, bearing in mind the particular vulnerability of the girl child. In pursuit of the relevant UNSC resolutions, the EU will give special attention to the protection, welfare and rights of children in armed conflict when taking action aimed at maintaining peace and security.³²⁹

In view of the deficient implementation of these guidelines on the rights of the child and CAAC, in 2006 the EU issued a Strategy for implementing the Guidelines (revised in 2010).³³⁰ The EU's strategy on CAAC is targeted at a group of priority countries, a list that has been harmonised with the UN selection of priority countries regarding children and armed conflict.³³¹ Furthermore, the implementation of the strategy on CAAC relies on the country-specific strategies.³³²

³²⁷ Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' (2007)

³²⁸ Council of the European Union, 'Update of the Guidelines on Children and Armed Conflict' (2008). The documents 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions', the 'Guidelines on Protection of Civilians in CSDP Missions and Operations' and in the 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' also include provisions on the protection of children's rights.

³²⁹ *ibid* 5, para 16.

³³⁰ Council of the European Union, 'Revised Implementation Strategy on Children and Armed Conflict' (2010) 17488/10. The 2010 revision of the Implementation Strategy took into account the outcomes of a number of documents on children's rights issued during the Slovenian Presidency. These outcomes are included in the EPLO, Conference report. Ljubljana, 17-18 April 2008, 'Increasing the Impact on the Ground: EU and NGO Cooperation in the Thematic Area of Children Affected by Armed Conflict' <http://www.eplo.org/assets/files/3.%20Resources/EPLO%20Publications/_Report_Conference_Increasing_the_Impact_on_the_Ground.pdf> accessed 23 March 2016; Andrew Sherif, 'Enhancing the EU Response to Children Affected by Armed Conflict, With particular reference to development policy' (2007) Study for the Slovenian EU Presidency. ECDPM Discussion Paper no 82, <http://reliefweb.int/sites/reliefweb.int/files/resources/28247A73EAFB7143C125745800250F07-Sherriff_CAAC%20study_dp82.pdf> accessed 28 March 2016.

³³¹ The Annual Report of the UN Secretary General on Children and Armed Conflict presents information about grave violations committed against children in 23 conflict situations in Afghanistan, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Iraq, Israel and Palestinian Occupied Territories, Lebanon, Libya, Sudan, South Sudan, Mali, Myanmar, Somalia, Syria, Yemen, India, Pakistan, Colombia, Nigeria, Thailand and Philippines. UN Secretary-General, 'Annual report of the Secretary-General on Children and Armed Conflict' (2015) A/69/926-S/2015/409 <http://www.un.org/ga/search/view_doc.asp?symbol=A/69/926&Lang=E&Area=UNDOC> accessed 23 March 2016. Out of 16 CSDP ongoing missions and operations, 11 are deployed in countries where children are particularly affected by violence, some of them listed as priority countries, though not necessarily in response to CAAC issues: EUBAM Libya, EUPOL Afghanistan, EUPOL COPPS and EUCALP Rafah in the Palestinian Territories; EUCAP Sahel and EUTM Mali; EUTM Somalia, EUCAP Nestor and EU NAVFOR; EUSEC RD Congo and EUBAM RCA.

³³² Council of the European Union, 'Revised Implementation Strategy on Children and Armed Conflict' (2010) 17488/10.

A 'Checklist for the Integration of the protection of Children affected by Armed Conflict in [CSDP] Operations', revised in 2008³³³ seeks to integrate the protection of children in mandates of CSDP missions and operations from the early planning through its implementation. The 2008 revised Checklist document includes a definition of child protection, foresees the inclusion of children affected by armed conflict issues in the training of mission personnel, improves monitoring, reporting and communication between the field and Brussels, increases visibility of EU action and the possibility of having experts in the field.³³⁴ Pursuant to the commitments included in the Checklist, a set of minimum standards on child protection for pre-deployment training has been developed in collaboration with the NGO Save the Children.³³⁵ Even though mandates do not contain explicit mention of CAAC issues, there are examples of integration of mission activities aimed at the protection of children's rights in the context of CSDP work:

Box 4: The protection of children in CSDP missions and operations

- **Police reform** (EUPOL Afghanistan, EUPM Bosnia, EUPOL RD Congo): improving local police capacity to respond to violence against children; codes of conduct and policies on violence; community policing.³³⁶
- **Security sector reform** (EUSEC RD Congo): Promoting disarmament, demobilisation, and reintegration (DDR) of child soldiers.³³⁷
- **Justice reform and the rule of law** (EUJUST LEX Iraq, EULEX Kosovo): ensuring states meet their responsibilities under international law, particularly human rights; juvenile justice; complementarity between courts at national, regional and international level, significantly the ICC.³³⁸

³³³ Council of the European Union, 'Checklist for the Integration of the Protection of Children Affected by Armed Conflict into ESDP operations' (2006) 9767/06; Council of the European Union, 'General review of the Implementation of the Checklist for the Integration of the Protection of Children affected by Armed Conflict into ESDP Operations' (2008) 9822/08.

³³⁴ Ann-Charlotte Nilsson, *Children and Youth in Armed Conflict* (Martinus Nijhoff Publishers 2013), 493.

³³⁵ EEAS, 'EU Annual Report on Human Rights and Democracy in the World in 2013' (2014), 69.

³³⁶ On EUPOL Afghanistan see EEAS, 'Seminar on policy development and review through gender perspective' <<http://www.eupol-afg.eu/taxonomy/term/28>> accessed 28 March 2016; Jane Anttila, 'Human Rights and Gender in CSDP Missions and Operations' in Jochen Rehl (ed), *Handbook for decision makers. The Common Security and Defence policy of the European Union* (Directorate for Security Policy of the Federal Ministry of Defence and Sports of the Republic of Austria 2014), 68 <<http://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/handbook-for-decision-makers.pdf>> accessed 28 March 2016; on EUPOL COPPS see EEAS, 'EUPOL COPPS - Police and Rule of Law Mission for the Palestinian Territories' <http://www.europarl.europa.eu/meetdocs/2014_2019/documents/sede/dv/sede051114factsheeteupolcopps/_sede051114factsheeteupolcopps_en.pdf> accessed 28 March 2016; on EUPOL RD Congo see EEAS, 'EU Police Mission for the DRC (EUPOL RD Congo)' <http://www.eeas.europa.eu/csdp/missions-and-operations/eupol-rd-congo/pdf/factsheet_eupol_rd_congo_en.pdf> accessed 28 March 2016.

³³⁷ Laura Davis, 'Small steps, large hurdles. The EU's role in promoting justice in peacemaking in the DRC' (2009) Initiative for Peacebuilding (IfP), 18 <http://www.initiativeforpeacebuilding.eu/pdf/Smal_steps_large_hurdles.pdf> accessed 28 March 2016.

³³⁸ Jochen Rehl, *Handbook for decision makers. The Common Security and Defence policy of the European Union* (Directorate for Security Policy of the Federal Ministry of Defence and Sports of the Republic of Austria 2014), 68 <<http://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/handbook-for-decision-makers.pdf>>; on EULEX Kosovo see EEAS, 'Improving Justice for Juveniles' (29 April 2009) <<http://www.eulex-kosovo.eu/en/news/000161.php>> accessed 27 March 2016.

- **Maritime security** (EUNAVFOR Atalanta): upholding relevant international human rights norms during detention on board; treatment of suspected pirates under 18 years of age; dealing with people in distress, asylum seekers and trafficked persons.³³⁹
- **Monitoring and implementation of peace agreements** (EUMM Georgia): monitoring and reporting on violations of human rights and international humanitarian law as part of the stabilisation process.³⁴⁰
- **Security and stability** (EUFOR Chad/RCA) protection of civilians, particularly the most vulnerable; upholding relevant IHL norms.³⁴¹

The agreements concluded between the EU and third countries may also refer to specific obligations regarding the protection of children's rights and the EU's commitment to support their fulfilment in accordance with the mission's mandate. The agreement between the EU and the Central African Republic on the transfer of detainees by EUFOR RCA, for example, outlines special treatment conditions for minors.³⁴²

b) Refugees, IDPs and other vulnerable groups

There are other groups that have been addressed in EU policy documents, particularly refugees, internally displaced people (IDP), Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons and human rights defenders. It is these groups that will be briefly examined in this sub-section.

A refugee is someone who has been forced to flee his or her country of origin and is unable or unwilling to return due to fear of persecution. The 1951 UN Convention relating to the Status of Refugees gives refugees legal protection under international refugee law. An internally displaced person (IDP) is someone who was forced to flee his or her home for similar reasons, but who did not cross a state border. IDPs benefit from the legal protection of international human rights law and, in armed conflict, international humanitarian law. Indeed, IDPs may be in a more vulnerable position as they remain near the conflict-ridden areas.³⁴³ Many missions and operations include provisions relevant to the protection of refugees and internally displaced persons (EUFOR Tchad/RCA, EUFOR RCA). The EU's draft guidelines on the

³³⁹ Jochen Rehr, Handbook for decision makers. The Common Security and Defence policy of the European Union (Directorate for Security Policy of the Federal Ministry of Defence and Sports of the Republic of Austria 2014), 68.

³⁴⁰ *ibid.*

³⁴¹ *ibid.*

³⁴² Council Decision 2014/537/CFSP of 3 July 2014 on the signing and conclusion, on behalf of the European Union, of the Agreement between the European Union and the Central African Republic concerning the detailed arrangements for the transfer to the Central African Republic of persons detained by the European Union military operation (EUFOR RCA) in the course of carrying out its mandate, and concerning the guarantees applicable to such persons, Art. 4(3)

³⁴³ ICRC, 'Enhancing Protection for Civilians in Armed Conflict and other Situations of Violence' (2012), 21 <<https://www.icrc.org/eng/assets/files/other/icrc-002-0956.pdf>> accessed 1 April 2016.

protection of Civilians in EU-led Crisis Management Operations place special emphasis on refugees and IDPs and other vulnerable groups within the population in need of special protection and assistance³⁴⁴:

[I]n close co-operation with the relevant international organisations and, whenever possible, with the host government, special protection and assistance should be afforded to *internally displaced persons* in conformity with the relevant obligations under IHL and the Guiding principles on internal displacement and to refugees, in particular to the most vulnerable groups.

However, the human rights focus on vulnerable groups such as refugees and IDPs should not be limited to merely providing protection, but should also aim to ensure and enhance their participation, as is the case in the peacebuilding process.³⁴⁵ Furthermore, by their very nature, refugee movements regionalise the effects of conflict as they spill over into neighbouring territories. Therefore, securing the protection and promotion of the rights of refugees and IDPs constitutes a way of prevention and therefore increases the effectiveness of CSDP action.

Another potentially vulnerable group that lacks visibility in the EU human rights policy framework - and particularly in the area of CSDP - are minorities.³⁴⁶ Despite the fact that many CSDP missions and operations have been deployed in contexts where the root causes of conflict and tensions had an ethnic-minority component (Kosovo, Ukraine, RCA, FYROM etc.) there is no comprehensive policy framework to provide guidance and concrete actions to address the special needs of these groups.

In 2013, the Foreign Affairs Council of the European Union adopted the 'Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons.'³⁴⁷ The Council recognises that 'LGBTI persons constitute a vulnerable group, who continue to be victims of persecution, discrimination, bullying and gross ill-treatment, often involving extreme forms of violence, including torture and murder.'³⁴⁸ The EU aims to promote and protect all human rights of LGBTI

³⁴⁴ Council of the European Union, 'Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations' (2003), 9, para 20.

³⁴⁵ See inter alia Maja Janmyr, 'Refugees and Peace' in Cecilia Marcela Bailliet and Kjetil Mujezinovic Larsen (eds) *Promoting Peace Through International Law* (Oxford University Press 2015), 265-273. In April 2016, the European Commission, in association with the European External Action Service (EEAS), adopted a new development-led approach to forced displacement, aimed at harnessing and strengthening the resilience and self-reliance of both the forcibly displaced and their host communities however there is no mention to CSDP. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Lives in Dignity: from Aid-dependence to Self-reliance. Forced Displacement and Development' (2016) COM(2016) 234 final, <http://ec.europa.eu/echo/files/policies/refugees-idp/Communication_Forced_Displacement_Development_2016.pdf> accessed 1 April 2016.

³⁴⁶ Interview with EPLO officer.

³⁴⁷ Eva Maria Lassen (ed), Monika Mayrhofer, Mandana Zarrehparvar, Hans-Otto Sano, Kristoffer Marslev, Anja Møller Pedersen, and Peter Vedel Kessing, 'Report on in-depth studies of selected factors which enable or hinder the protection of human rights in the context of globalisation' (2015) FRAME D 2.2, 18-19 <<http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-2.2-Submitted-30-June-2015.pdf>> accessed 1 April 2016.

³⁴⁸ Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons' (2013)

persons on the basis of existing international legal standards in this area, including those set by the United Nations and the Council of Europe,³⁴⁹ through the different tools available within its external action including CSDP. The Guidelines to Promote and Protect the Enjoyment of all Human Rights by LGBTI contains indications for the EU Heads of Mission (HoMs) to include in their periodic reports the following information:³⁵⁰

(...) an analysis of the situation of LGBT people as well as the occurrence of violations of human rights towards LGBT people and human rights defenders.

Identify individual cases of apparent violations of the human rights enjoyed by LGBT people.

Detail measures (e.g. démarches, raising the issue in political dialogue, financing) that have been taken or planned to combat alleged or proven violations (any action on an individual case should only be carried out if the person concerned gives his or her agreement).

The EU Guidelines on Human Rights Defenders also include specific tasks for Heads of Mission to address the situation of human rights defenders in their periodic reports, noting in particular the occurrence of any threats or attacks against them, taking into consideration the UN Declaration on Human Rights Defenders. They are also requested to deal with the situation of human rights defenders at meetings of local working groups on human rights, make recommendations to COHOM for possible EU action, and may decide to conduct urgent local action to support human rights defenders who are at immediate or serious risk. The specific risks faced by women human rights defenders should be given particular attention.³⁵¹

E. EU policy framework on the promotion of democracy and the rule of law

EU Member States have declared the principle of democracy and the rule of law core values of the EU in its founding Treaty.³⁵² The principles of democracy and the rule of law cannot be understood as separated from human rights. As stated in the preamble to the Universal Declaration of Human Rights of 1948, 'human rights should be protected by the rule of law.' While human rights focus is rather on the substance of the rights and freedoms, the rule of law has to do with their effective protection and promotion. Therefore the principle of the rule of law should be considered intrinsic to human rights legal instruments,

³⁴⁹ For instance the EULEX mission and the Kosovo state prosecutor charged three people for inflicting bodily harm and inciting hatred during the launch of magazine Kosovo 2.0's 'sexuality' in Kosovo in December 2012. Human Rights Watch, 'Kosovo' (January 2014), 4 <https://www.hrw.org/sites/default/files/related_material/Kosovo_0.pdf> accessed 1 April 2016.

³⁵⁰ Council of the European Union, 'Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People' (2010) 11179/10.

³⁵¹ Council of the European Union, 'Ensuring protection – European Union Guidelines on Human Rights Defenders' (2008), para 8-9.

³⁵² See on the differing national conceptions of rule of law in Europe and the supranational pan-European concept Ricardo Gosalbo-Bono, 'The significance of the rule of law and its implications for the European Union and the United States' (2010) 72 *University of Pittsburgh Law Review*, 240-271.

resolutions and declarations and international case law, setting for instance, standards for judicial procedures to substantiate and guarantee the right to a fair trial.

The EU Treaty places rule of law and democracy amongst the values upon which the EU is founded,³⁵³ and Article 21 of the TEU explicitly states that both the Union's security and the rule of law need to be safeguarded and supported by external actions. The 2003 ESS emphasised the importance of promoting the rule of law internationally in order to strengthen international order and the EU's citizen's security. However, the rule of law is a universal ideal that is very difficult to define. EU Member States may not share the same understanding of democracy and the rule of law as the concept is influenced by different forms of attribution of sovereignty, constitutional mechanisms, and mechanisms of protection of individual rights.³⁵⁴ As set by the UN Secretary-General in his report 'The rule of law and transitional justice in conflict and post-conflict societies' the rule of law:³⁵⁵

It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.³⁵⁶

There are two conceptions of the rule of law: the formal notion of rule of law consists on the mere commitment to the law in force while the material conception of rule of law involves the more general notion of justice.³⁵⁷ Despite de fact that both terms 'rule of law' and 'justice' are often used as synonyms (the latter also referred to as 'justice system/judiciary' or 'justice chain')³⁵⁸ a more precise definition reveals existing nuances and the inter-connection between the rule of law and the operation of the justice sector. For example, the UN considers the concept of justice as 'substantive and procedural protections

³⁵³ Art. 2 TEU.

³⁵⁴ The EU has not adopted its own definition and has not yet developed a specific policy for justice sector support and reform, aside from the CSDP.

³⁵⁵ See Council of the European Union, 'EU concept for CSDP Justice Missions (within the Rule of Law framework)' (2011) 18173/10.

³⁵⁶ UN Secretary-General, Report on 'The rule of law and transitional justice in conflict and post-conflict societies' (2004) S/2004/616, 4 <<http://www.unrol.org/files/2004%20report.pdf>> accessed 3 April 2016.

³⁵⁷ Maïke Kuhn, 'The System of EU Crisis Management – From Bringing Peace to Establishing Democracy' (2009) 13 *Max Planck Yearbook of United Nations Law*, 262.

³⁵⁸ See *inter alia* Council of the European Union, 'Comprehensive EU concept for missions in the field of Rule of Law in crisis management, including annexes' (2002) 14315/02, and its reviewed version 'EU Concept for CSDP Justice Missions (within the Rule of Law Framework)' (2010) 18173/10. The Feira European Council 2000 identified the 'Rule of Law' as one of four priority areas for civilian crisis management equal to 'justice (reform)' used in recent terminology.

and guarantees for civil, political, economic, and social rights, and protection from unjust penal sanctions.³⁵⁹ The justice sector should both uphold the rule of law, and function according to its principles.

Beyond the statement that democracy and rule of law constitute guiding principles,³⁶⁰ the Action Plan on Human Rights and Democracy for the period 2015-2019, does not include any specific reference to the promotion of rule of law and/or democracy in the domain of EU crisis management.³⁶¹ Despite the absence of concrete provisions in the Action Plan, the rule of law plays a key role in the CSDP and it is conceived either as a 'rule of law-type' mission³⁶² or as an integral part of the mandates.³⁶³ On 19 and 20 June 2000, the European Council in Feira set rule of law (alongside police, civilian administration, and civil protection) as one of the priority areas for the civilian aspects of the EU's crisis management. The EU has made rule of law a priority and has elaborated a concept for missions in this field:

- Strengthening the rule of law [...] to educate, train, monitor and advise with the aim of bringing the local legal system up to international standards, in particular in the field of human rights.
- Substitution for local judiciary/legal system [...] to carry out executive functions, notably where local structures are failing (or no existing), to consolidate rule of law in a crisis situation and thereby restoring public order and security.³⁶⁴

The general objective of this rule of law missions 'is to provide for complete and sustainable judiciary and penitentiary systems under local ownership and meeting rule of law and human rights standards in the mission area and to improve these systems' capacities in accordance with the demands of a democratic society.³⁶⁵ The EU has set specific principles and elaborated concepts relating to the rule of law in missions covering diverse state functions and policy fields within the broader notion of rule of law. The main concepts are 'Comprehensive Concept for ESDP Police Strengthening Missions (Interface with Broader Rule of Law)', the 'Comprehensive Concept for Police Substitution Missions – Revised Version', and the 'EU Concept for ESDP Support to Security Sector Reform (SSR)'.³⁶⁶

³⁵⁹ See the UN Secretary General, Guidance Note 'The UN Approach to Rule of Law Assistance' (2008) <<http://www.unrol.org/files/RoL%20Guidance%20Note%20UN%20Approach%20FINAL.pdf>> accessed 5 April 2016.

³⁶⁰ European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, 'Action Plan on Human Rights and Democracy (2015-2019), keeping human rights at the heart of the EU agenda', Joint Communication to the European Parliament and the Council, 28 April 2015, JOIN(2015) 16 final, 2.

³⁶¹ *ibid* Action no 20 on Supporting compliance with International Humanitarian Law (IHL), (b) and (c); Action no 22 on Mainstreaming Human Rights into all phases of CSDP planning, review and Conduct.

³⁶² EUJUST Themis Georgia, EULEX Kosovo and EUJUST Lex Iraq.

³⁶³ For instance EUAM Ukraine, EU Advisory Mission for civilian security sector reform (EUAM Ukraine) aimed at strengthening rule of law and EUPOL COPPS or EUPOL Afghanistan have an important rule of law component, these missions have a specific rule of law unit.

³⁶⁴ Council of the European Union, 'Comprehensive EU concept for missions in the field of Rule of Law in crisis management, including annexes' (2002) 14513/02, 4-5.

³⁶⁵ *ibid* 10.

³⁶⁶ Council of the European Union, 'Comprehensive Concept for ESDP Police Strengthening Missions (Interface with Broader Rule of Law)' (2010) 18173/10; Council of the European Union, 'Comprehensive Concept for Police

The EU has considerably developed its capacities to carry out greater scale rule of law-type missions to promote a comprehensive idea of rule of law. However the 'European conception of the rule of law' cannot simply be exported to a third country. The rule of law concept has to be adapted to the cultural background of a specific country although there is certain level of consensus on the centrality of international human rights standards.³⁶⁷ Also it is often highlighted that 'the change of a despotic state into a state which respects the rule of law needs decades but EU missions have a limited time frame.'³⁶⁸ Consequently some advocate for 'less a less ambitious but feasible crisis management missions instead of morally stringent but complex policies.'³⁶⁹

Substitution Missions – Revised Version' (2010) 8655/5/02 REV 5; Council of the European Union, 'EU Concept for ESDP Support to Security Sector Reform (SSR)' (2005) 12566/4/05.

³⁶⁷ *ibid* 263.

³⁶⁸ Maïke Kuhn, 'The System of EU Crisis Management – From Bringing Peace to Establishing Democracy' (2009) 13 *Max Planck Yearbook of United Nations Law*, 262.

³⁶⁹ *ibid*.

IV. Integration of HR and IHL in CSDP

Since the EU declaration on the operational capability of the CSDP at the Laeken Council in 2001,³⁷⁰ the increasing recourse to CSDP missions and operations has demanded further development of its institutional architecture in all its phases from the decision-making and planning stage to the conduct of missions and operations. The structures provided at the outset of the CSDP were later complemented with the establishment of advisory bodies, Council working groups, an integrated strategic military and civilian planning process and reinforced command and control structures, including permanent headquarters for civilian CSDP missions in Brussels.

EU Member States retain the final decision and exert political and strategic control over CSDP missions and operations. As foreseen in Article 26(1) of the TEU '[t]he European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.' The Council of the EU is responsible for framing 'the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council.' The Council together with the HR/VP shall ensure the unity, consistency and effectiveness of EU external action.³⁷¹ The ESS adopted by the European Council in 2003 is the main framework for EU action in the field of CFSP/CSDP and the Strategic Framework on Human Rights and Democracy with regards to external policy on human rights.

A comprehensive planning procedure is crucial to ensuring the effectiveness of the CSDP, to avoid overlapping and to take advantage of synergies. The institutionalisation of the EU comprehensive approach response to crisis has brought profound changes into the crisis management structures. The majority of the EU's instruments for external action, previously spread across the Council Secretariat and the European Commission, were brought together in the EEAS which was established in 2011. The EEAS is headed and coordinated by the HR/VP. Altogether EU crisis management structures rely on bodies composed of representatives from EU Member States, CSDP structures and other entities within the EU.

A. The CSDP mission decision-making and planning process

The decision to resort to CSDP action and the planning of missions should be informed by detailed conflict analysis, setting out the causes, actors and dynamics of conflicts within their context. This analysis serves to ensure that missions have a positive impact on the conflict dynamics and to minimise the risk of exacerbating existing tensions. The assessments and reports carried out within the EEAS and the European Commission are valuable sources, helping inform the planning and review of new or ongoing CSDP missions or operations. Furthermore, the EU has at its disposal early-warning tools such as the Early

³⁷⁰ Council of the European Union, 'Declaration on the Operational Capability of the Common Foreign and Security Policy' (2001) <<http://www.consilium.europa.eu/uedocs/cmsUpload/Declaration%20on%20operationality%20-%20Laeken%20European%20Council.pdf>> accessed 7 March 2016.

³⁷¹ Art. 26(2) TEU.

Warning System (EWS).³⁷² Within the EEAS, the EUMS serves as a coordinating platform for Member States' military intelligence, whilst the EU Intelligence Analysis Centre (EU INTCEN)³⁷³ handles Member States' civilian intelligence.³⁷⁴ The periodical reports issued by the Heads of Mission or Delegation constitute valuable sources of information on human rights (and gender) in relation to their area of action.

1. CSDP decision-making

In the case of existing crisis situations, at the request of the UN or the initiative of one of the Member States, the Commission, the HR/VP and PSC will discuss whether, and in what way, the EU could contribute to stabilise the situation, either autonomously or by supporting international or regional actors. The Political and Security Committee (PSC), the body that ensures political control and strategic direction of crisis management operations, requests advice from the pertinent Council Working Groups, while a joint fact finding mission of the Council Secretariat and the European Commission is deployed in the respective country or region to issue recommendations on potential risks and the most appropriate form of action.³⁷⁵ In the course of these events, the EU INTCEN reports on the situation in the country or region on a daily basis while military and civilian personnel at the Council Secretariat work on the strategic planning of the CSDP mission or operation. The Crisis Management Planning Directorate (CMPD) within the Council Secretariat is tasked with drafting the Crisis Management Concept (CMC), which outlines the EU's political interests, objectives and civilian and military strategic options for responding to the crisis, supported by the relevant units within the European Commission. The integration of references to human rights, gender and IHL (when appropriate) in the CMC is crucial to ensuring that these issues will be taken into account in the subsequent planning stages. This means that if the CMC does not provide a solid and concrete basis in this regard, one can hardly expect that human rights, gender or IHL would have any significance during the operational planning as it is the CMC sets the limit of the EU's action towards a conflict or crisis.³⁷⁶

Simultaneously, to the drafting the CMC, the PSC requests the Committee for Civilian Aspects of Crisis Management (CIVCOM) to develop Police Strategic Options (PSO) and Civilian Strategic Options (CSO). It also requests that the European Union Military Committee (EUMC) develop Military Strategic Options

³⁷² The Early Warning System (EWS) is a consultative process based in Brussels that involves staff from the EEAS, including CSDP, relevant services of the Commission and Member States through the PSC and geographical working groups. At country level, EU Delegations, CSDP missions and operations, EUSR teams and Member State embassies also contribute to the EWS.

³⁷³ The EU INTCEN's, (the successor of the EU Situation Centre (SITCEN)), is mandated to provide intelligence analyses, early warning and situational awareness to the HR/VP and the EEAS. The Centre does this by monitoring and assessing focusing particularly on sensitive geographical areas, terrorism and the proliferation of weapons of mass destruction and other global threats.

³⁷⁴ However, the comprehensiveness of the information supplied by Member States cannot be guaranteed as these are voluntary contributions.

³⁷⁵ See Jana Arloth and Frauke Seidensticker, 'The ESDP Crisis Management Operations of the European Union and Human Rights' (Deutsches Institut für Menschenrechte 2007) <http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/study_the_esdp_crisis_management_operations_of_the_eu_and_human_rights.pdf> accessed 5 March 2016.

³⁷⁶ Interview with EUMS officer.

(MSO). The PSC evaluates all these strategic options taking into account the Commission's view. Later, the PSC agrees upon the final CMC to be forwarded to the Council of Ministers for approval.

All EU CSDP missions and operations are established by the Council of the EU acting by unanimity under Article 42 TEU and following the crisis management procedures reviewed in 2013. The 2013 crisis management procedures also introduced a 'fast track' planning process that has been used for the establishment of EUFOR RCA. Another instrument implemented to speed up the planning process is the adoption of a Political Framework Crisis Approach (PFCA) which consists of an abroad political assessment of specific situations and the appropriateness of a CSDP mission or operation in this regard. The PFCA has been drafted in four cases: Ukraine, RCA, Libya and Boko Haram.³⁷⁷ The Council adopts two formal decisions. The first establishes a mission or operation on the basis of the CMC which marks the beginning of the planning phase. The second decision, for launching the mission or operation, is adopted once the planning and force generation³⁷⁸ of the missions or operations have been concluded.

2. CSDP planning

The main objective at this stage of the planning process is to bridge the political aims and objectives on the one hand and the operational means and resources on the other. This dynamic also applies to the periodic reviews of missions and operations. Once the Council has adopted the decision to resort to CSDP action to respond to a conflict or crisis, the PSC initiates the operational planning phase which will be managed by different bodies depending on the military or civilian nature of the mission or operation. The operational planning phase should be understood as being subdivided into two dimensions: *advance planning* and *crisis response planning*. *Advance planning* consists of continuous planning for potential crisis scenarios and includes monitoring, early warning, drawing up generic concepts and guidelines and identifying the capabilities available for CSDP missions and operations. *Crisis response planning* concerns the development of a response to an actual crisis.³⁷⁹ Human rights, IHL, gender and the principles of democracy/rule of law are to be taken into account in both advance and crisis response planning activities. For this purpose necessary to place the necessary expertise in the planning structures and bodies.³⁸⁰ The next subsection analyses in more detail how human rights, gender and IHL are taken into account and who is responsible within the different planning bodies and structures.

³⁷⁷ See Council of the European Union, 'Suggestions for crisis management procedures for CSDP crisis management operations' (2013) 7660/2/13; Council of the European Union, 'Concept for Military Planning at the Political and Strategic Level' (2008) 10687/08. A third type of action is provided by Art. 44 TEU where the Council may 'entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task'. See Thierry Tardy, 'In groups we trust Implementing Article 44 of the Lisbon Treaty' (2014) EUISS Brief Issue no 27 <http://www.iss.europa.eu/uploads/media/Brief_27_Article_44.pdf> accessed 5 March 2016.

³⁷⁸ See Council of the European Union, 'EU Concept for Force Generation' (2008) 10690/08.

³⁷⁹ Alexander Mattelaer, 'The CSDP Mission Planning Process of the European Union: Innovations and Shortfalls' (2010) 14(9) European Integration online Paper, 4 <<https://eiop.or.at/eiop/pdf/2010-009.pdf>> accessed 5 March 2016.

³⁸⁰ As rightly noted by Hazelzet '[l]essons identified from past operations show that expertise that was not included in the beginning was difficult to make up for later.' Hadewych Hazelzet, 'Human Rights Aspects of EU Crisis Management Operations: From Nuisance to Necessity' (2006) 13(4) *International Peacekeeping*, 573.

The first step for military operations is to designate the Operations Headquarters and to appoint an Operations Commander. For civilian operations the Head of the CPCC acts as Civilian Operations Commander until a Head of Mission is appointed. Since the adoption of the 2013 Crisis Management Procedures, human rights and gender are to be considered systematically during the planning process in all new missions and operations. An analysis of the situation of human rights and gender issues shall be reflected in the planning documents (eg EUMAM Ukraine or EUFOR RCA).³⁸¹ The whole planning process,³⁸² ends with the adoption of the Concept of Operations (CONOPS), the Operation Plan (OPLAN), and the Rules of Engagement (ROE) where appropriate.³⁸³ The CONOPS and the OPLAN are very similar in structure but different in meaning; the first refers to what objectives stated in the CMC are to be achieved while the second details how the HoM or Operations Commander will fulfill them.

Box 5: Overview of the CSDP strategic and operational documents³⁸⁴

Military operations	Civilian missions
Crisis Management Concept (CMC)	Crisis Management Concept (CMC)
Military Strategic Options	Civilian/Police Strategic Options
Council Decisions (former Joint Action)	Council Decisions (former Joint Action)
Concept of Operations (CONOPS)	Concept of Operations (CONOPS)
Operation Plan (OPLAN)	Operation Plan (OPLAN)
Rules of Engagement (RoE)	

The Civilian or Military Operations Commander is responsible for the drafting of the Concept of Operations (CONOPS). The designated Head of Mission and his/her core team, as well as the relevant EEAS services, are associated with the CPCC planning team. A CPCC-led technical assessment mission (TAM) is established to develop the CONOPS on the basis of standard documents for civilian missions that already contain references to EU values. The CONOPS and OPLAN for military operations may be more diverse and less standardised, as it is the Military Operations Commander and his/her core team who lead the process (instead of a standing body such as the CPCC). The EUMC personnel provide guidance and suggestions to the Operations Commander, which includes guidance on human rights and gender by the respective focal point within the EUMC.³⁸⁵ Additionally, the CONOPS for military operations will include

³⁸¹ EEAS, Union, 'EU Annual Report on Human Rights and Democracy in the World in 2014' (2015) 10152/15, 17-18.

³⁸² See Council of the European Union, 'Suggestions for procedures for coherent, comprehensive EU crisis management' (2003) 11127/03.

³⁸³ The ROE is requested by the Operation Commander and authorised by the Council, based on the EU's policy on the use of force.

³⁸⁴ Hylke Dijkstra, *Policy-Making in EU Security and Defence: An Institutional Perspective* (Palgrave Macmillan 2013), 83.

³⁸⁵ Interview with EUMC officer. It is reported that due to the wide range number of operational issues on which the EUMC staff has to inform the Operations Commander it is somewhat difficult to convey the importance and details of integrating human rights and gender perspectives. The Operations Commander presents the CONOPS and OPLAN and requests the human and material capabilities necessary to achieve the objectives of the operation (e.g. advisors/experts on human rights, gender and/or vulnerable groups)

guidelines on the use of force. The CONOPS is presented to the PSC who forwards it to the Council for approval.

The OPLAN is developed by the Operation Commander in the case of military missions, or the Head of Mission in the case of civilian missions. The OPLAN contains the specifics of the operation and annexes on the use of force, the Code of Conduct, outreach activities, disciplinary mechanisms, gender policies etc. amongst others (e.g. EULEX Kosovo, EUPOL Afghanistan). The OPLAN should clarify as much as possible with regards to the applicable law and specify whether IHL and/or human rights law apply either as a matter of law and/or as a matter of policy.³⁸⁶ In the absence of any reference to the applicability of IHL, the Operation Commander, for military operations, would, to some extent, have to determine it him or herself.³⁸⁷

The Rules of Engagement (ROE) are drafted for military operations where the use of force is authorised beyond self-defence.³⁸⁸ The ROE provide instructions based on the EU's concept of the use of force³⁸⁹ although Member States may impose additional restrictions to their contingents that may result from a Member State's domestic law or specific treaty obligations or interpretations.³⁹⁰ All use of force in EU-led crisis management operations, both in self-defence and under the Rules of Engagement (ROE), must always be in conformity with international standards.³⁹¹ General references to the 'applicable' rules of IHL or human rights law may not suffice to specify which of those rules are applicable and under which circumstances. It is also true that more general provisions allow for more flexibility as the situation may evolve.³⁹² Nonetheless, a clearly defined framework is important for military missions with a robust mandate deployed in conflict settings (e.g. Artemis, EUFOR Tchad/RCA, EUFOR RCA) especially as regards being able to specify under which circumstances IHL will apply to the operation if the situation escalates into armed conflict and EU-led armed forces engaged in combat as a party.³⁹³ To date, EU-led forces have

³⁸⁶ Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (October 2011) KU Leuven Institute of International Law, Working Paper no 151, 17 <<https://www.law.kuleuven.be/iir/nl/onderzoek/wp/wp151e.pdf>> accessed 5 March 2016.

³⁸⁷ *ibid.*

³⁸⁸ See Hans F.R. Boddens Hosang, 'Personal Self-Defence and its Relationship to Rules of Engagement' in Terry D. Gill and Dieter Fleck (eds) *Handbook of the International Law of Military Operations* (Oxford University Press 2010) 429-443; Frederik Naert, 'The application of human rights and international humanitarian law in drafting EU missions' mandates and rules of engagement' in Mariano J. Aznar Gómez and Milena Costas Trascasas (eds), *The Integration of the Human Rights Component and International Humanitarian Law in Peacekeeping Missions Led by the European Union* (CEDRI/ATLAS 2011), 61-71.

³⁸⁹ Council of the European Union, 'EU Concept for the Use of Force in EU-led Military Operations' (2011) 17168/2/09 REV2 EXT2.

³⁹⁰ Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (October 2011) KU Leuven Institute of International Law, Working Paper no 151, 10.

³⁹¹ Council of the European Union, 'EU Concept for the Use of Force in EU-led Military Operations' (2011) 17168/09 EXT 1 of 2, 6.

³⁹² Frederik Naert, 'Observance of international humanitarian law by forces under the command of the European Union' (2013) 95 (891/892) *International Review of the Red Cross*, 643.

³⁹³ Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (October 2011) KU Leuven Institute of International Law, Working Paper no 151, 17.

become engaged in combat as a party to an armed conflict in any of the EU's military operations, but this possibility cannot be ruled out in the future.³⁹⁴

Difficulties may arise at this planning stage with regards to the applicability of IHL as Member States will not always agree on the qualification of a situation as an armed conflict and thus on the applicability of IHL.³⁹⁵ For this reason, EU Member States have often opted for common policies to overcome their differing legal views. These policies are facilitated by meetings of the EU Military Committee Working Group with the support of legal experts. To mention one example, Finland accepted that its forces would not use anti-personnel mines in EU military operations even though Finland was not bound under international humanitarian law until 2012.³⁹⁶ Another means of bridging the differences among Member States' obligations and positions and ensuring interoperability is the possibility for them to issue caveats to the OPLAN and the ROE. These caveats will only consist of the imposition of further restrictions on the use of force to their own troops without affecting the forces of other contributing parties.³⁹⁷

In order to include and to analyse all these aspects, legal expertise is available within the Council's General Secretariat (Council Legal Service), in the EEAS (EUMS and CPCC) and Member States legal services, that presumably also get involved in the review of these documents prior to their approval.³⁹⁸ Moreover, the more specific legal aspects of the daily work of any mission or operation will be further developed in internal standard operating procedures (SOPs) which are drafted by legal or human rights experts within the mission. All EU missions and operations have their own legal experts, although the number and concrete area of expertise depends on the size of the mission and type of mandate.³⁹⁹

B. Relevant actors in the integration of human rights and IHL in CSDP

Comprehensive planning is crucial to ensure the effectiveness of the mission or operation, to avoid overlapping with other actors' activities and to take advantage of possible synergies. The CSDP planning process has evolved; it has become more complex and more actors are now involved. The deployment of EUPM BiH and Operation Althea was an important learning experience that brought to light a number of shortcomings at its planning stage. At present, the planning stage constitutes a semi-integrated process

³⁹⁴ Frederik Naert, 'Observance of international humanitarian law by forces under the command of the European Union' (2013) 95 (891/892) *International Review of the Red Cross*, 637-643, 639 <<https://www.icrc.org/eng/assets/files/review/2013/irrc-891-892-naert.pdf>> accessed 5 March 2016.

³⁹⁵ Frederik Naert, *International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Intersentia 2010), 535.

³⁹⁶ Frederik Naert, 'Legal Aspects of EU Military Operations' in Ludovica Marchi Balossi-Restelli (eds) *An EU Innovative External Action?* 133-160 (Cambridge Scholars Publishing 2011), 148.

³⁹⁷ Frederik Naert, 'Observance of international humanitarian law by forces under the command of the European Union' (2013) 95 (891/892) *International Review of the Red Cross*, 643. As noted the OPLAN and ROE cannot require Member State's forces to act contrary to their national law.

³⁹⁸ Frederik Naert, 'The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement' (October 2011) KU Leuven Institute of International Law, Working Paper no 151, 17.

³⁹⁹ In the case of EULEX Kosovo, despite significant downsizing rounds there is an equal number of local and international human rights, legal and gender officers. Additionally there are (local and international) legal experts in scattered in different units and divisions.

involving civil and military personnel. This section presents and examines in more detail the role of the bodies and actors in the planning and decision-making processes of CSDP, and their contribution to the integration of human rights and gender perspectives.

1. Relevant organs within the Council

The Council preparatory bodies, composed of representatives from EU Member States, lead CSDP the decision-making process. At this stage, the EU Members States have the opportunity to bring into discussion any aspect, including human rights concerns. The Council Secretariat and the HR/VP have the main responsibility for the integration of 'human rights provisions in guiding documents and reviews of [C]SDP missions and operations where relevant, inter alia by making use of the human rights fact sheet and seeking advice of relevant UN agencies and NGOs'.⁴⁰⁰

The European Council defines the general political direction and priorities of the EU and agrees by unanimity on common strategies that set the objectives, duration and means for EU crisis management. The Council of the European Union, in its configuration as the 'Foreign Affairs Council' (FAC), is particularly relevant to CFSP and CSDP although all Council configurations can decide on all issues.⁴⁰¹ This Council configuration, unlike the other nine Council configurations, is chaired by the HR/VP instead of the EU presidencies. Member States' ambassadors meet in the Committee of the Permanent Representatives (COREPER), which deals with institutional, legal and budgetary aspects of CFSP/CSDP and prepares the Council Decisions to launch CSDP missions and operations.

The Political and Security Committee (PSC) is the key policy-making body of the CFSP/CSDP. The PSC is authorised, under Article 38 TEU to take political control and strategic direction of EU operations, including the decision to amend the planning documents, including the Operation Plan, the Chain of Command and the Rules of Engagement.⁴⁰² The PSC keeps track of the international situation, and helps to define policies within the CFSP and the CSDP. The PSC receives advice and recommendations on military and civilian matters from the European Union Military Committee (EUMC)⁴⁰³ and the Committee for Civilian Aspects of Crisis Management (CIVCOM) respectively. The Council Working Group on Human Rights (COHOM), which has under purview all human rights aspects of the EU's external relations, as further described below, also covers CSDP.⁴⁰⁴

The EUMC is the highest military body within the Council and it is composed of the chiefs of defence of the EU Member States, who are regularly represented by their permanent military representatives. The

⁴⁰⁰ Council of the European Union, 'Mainstreaming human rights across CFSP and other EU policies' (2006) 10076/06, para 29.

⁴⁰¹ The military CSDP operation ARTEMIS was formally decided by the ministers of justice in their Council configuration Justice and Home Affairs. Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo.

⁴⁰² Council Decision of 22 January 2001 setting up the Political and Security Committee (2001) OJ L 27/1.

⁴⁰³ EEAS, 'European Union Military Committee (EUMC)' <http://www.eeas.europa.eu/csdp/structures-instruments-agencies/eumc/index_en.htm> accessed 1 April 2016.

⁴⁰⁴ Council Decision of 22 January 2001 setting up the Political and Security Committee (2001) OJ L 27/1.

EUMC provides military advice and recommendations to the PSC and monitors the proper execution of the military missions and operations.⁴⁰⁵

The Politico-Military Group (PMG) carries out preparatory work in the field of CSDP for the PSC which covers political aspects of EU military and civil-military issues. The PMG prepares Council Conclusions and issues recommendations for the PSC, monitors their effective implementation, contributes to the development of horizontal policy and facilitates exchanges of information. The PMG has a particular responsibility regarding partnerships with non-EU countries and other organisations, including EU-NATO relations.⁴⁰⁶

The CIVCOM is a consultative body composed of national representatives and officials from the Commission and the Council Secretariat. CIVCOM formulates recommendations and gives advice to the PSC on civilian aspects of crisis management. CIVCOM is also involved in the elaboration of planning documents for civilian missions and deals with the development of strategies for civilian crisis management and for civilian capabilities.⁴⁰⁷

The COHOM was established by the Council in 1987 to address all human rights aspects of the EU's external relations and to support the Council's decision-making process.⁴⁰⁸ COHOM helps to identify EU strategic priorities on thematic and specific geographic issues and coordinates the positions of EU Member States in multilateral human rights fora, such as the UN General Assembly and the UN Human Rights Council. Additionally COHOM promotes the development and oversees the implementation of EU policy in the field of human rights and democracy, in particular the EU guidelines on human rights and human rights dialogues with third countries.⁴⁰⁹ COHOM also engages with the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) to contribute to coherence between the external and internal action of the EU in the field of human rights. However, it should be noted that given the wide range of areas that the COHOM covers, CSDP-related human rights issues are at best discussed once a year.⁴¹⁰ Rather, the work of COHOM focuses on broad human rights policies.⁴¹¹ The former research project ATLAS recommended 'setting up a specific Working Group including

⁴⁰⁵ Council Decision 2001/79/CFSP of 22 January 2001 setting up the Military Committee of the European Union (2001) OJ L 27/4.

⁴⁰⁶ EEAS, 'Structure, Instruments and Agencies' <<http://www.eeas.europa.eu/csdp/structures-instruments-agencies/>> accessed 22 March 2016.

⁴⁰⁷ Council Decision of 22 May 2000 setting up a Committee for civilian aspects of crisis management (2000) OJ L 127/1; Mai'a K. Davis Cross, 'Cooperation by Committee: The EU Military Committee and the Committee for Civilian Crisis Management' (February 2010) EUISS Occasional Paper no 82 <http://www.iss.europa.eu/uploads/media/op82_CooperationbyCommittee.pdf> accessed 1 April 2016.

⁴⁰⁸ The 1987 COHOM Mandate, Mandate for the EPC – Working Group on Human Rights, Annex I and see the 1999 Extension Annex II, and December 2003: extended mandate.

⁴⁰⁹ Council of the European Union, 'Working Party on Human Rights (COHOM)' <<http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/>> accessed 25 March 2016.

⁴¹⁰ Interview with EEAS Officials.

⁴¹¹ See Wanda Troszczyńska-Van Genderen, 'Human rights challenges in EU civilian crisis management: the cases of EUPOL and EUJUST LEX' (August 2010) EUISS Occasional Papers, 15 <<http://www.iss.europa.eu/uploads/media/OccasionalPaper84.pdf>> accessed 5 March 2016.

representatives of the Council of Europe, the ICRC, NGOs, the EC, the EP and EU Member States, to prepare the work of the COHOM (...) [and to] be specifically in charge of follow-ups to implementation of the 'Mainstreaming' document (...) as well as proposing further action for the effective mainstreaming of human rights and gender into CSDP.⁴¹²

The Working Party of Foreign Relations Counsellors (RELEX) is responsible for discussing the legal and financial aspects of CFSP and its instruments, including CSDP. It prepares the Council Decisions and related financial instruments allowing the deployment of CSDP engagements in close cooperation with the Foreign Policy Instrument (FPI) – the Commission service responsible for implementing the CFSP budget. Furthermore, a Civilian and Military Planning Cell operational since 2005 was created within the Council Secretariat to conduct strategic planning and enhance the coherence of civilian and military instruments.

2. European Commission

The Commission is responsible for administering the CFSP budget and cooperates with the Council in decision-making in order to promote coherence and synergies between CSDP operations and the activities of the Commission. The relationship between the EEAS and the Commission is crucial to ensure a transversal overview of human rights and coordination in the field, particularly in relation to bodies and institutions in charge of the implementation of security-related programmes.

The European Commission's service for Foreign Policy Instruments (FPI) supports the attainment of the EU CFSP, in particular with regards to peace and conflict prevention. The FPI is, under the authority of the HR/VP, responsible for the operational and financial management of the CFSP budget, the Instrument contributing to Stability and Peace (IcSP), the Partnership Instrument (PI), Election Observation Missions (EOMs) and press and public diplomacy activities. Additionally, the FPI is also tasked with the implementation of Foreign Policy Regulatory Instruments: restrictive measures, the Kimberley Process certification scheme and the 'Anti-torture regulatory measures', that prevent trade in goods that could be used for capital punishment or torture. The FPI works closely with the EEAS and the Commission's DG presented below.

The European Commission's DG for International cooperation and Development (DG DEVCO) coordinates development cooperation programmes and addresses issues closely linked to the EEAS/CSDP work such as human rights and democracy, election monitoring and combating terrorism. The DG for Neighbourhood and Enlargement Negotiations (DG NEAR) also has programming experience and competences when it comes to SSR and providing support to complying with the rule of law in the framework of the enlargement process. DG Enlargement holds funding instruments that can be used to support SSR such as the Instrument for Pre-accession Assistance (IPA) that, amongst other activities, funds police reform, border management and rule of law projects such as those undertaken in Bosnia and Herzegovina and

⁴¹² Milena Costas Trascasas, 'Transversal analysis on the integration of human rights component in CSDP' in Milena Costas Trascasas (coord) *Mainstreaming human rights in EU CSDP missions a transversal analysis* (Low Cost Books 2012), 458.

Kosovo.⁴¹³ The DG for Migration and Home Affairs (HOME) is responsible for EU policies on security, migration, border security and anti-terrorism measures which are strictly linked to the broader European Security Strategy. The main working areas are in internal security (combatting crime, anti-terrorism measures), immigration and asylum policy (visa policy, Schengen area), migration and borders and cooperation with other countries and organisations in the field of security and migration. Cooperation between DG HOME and DG Justice and Consumers (JUST) is perceived as being less fruitful. This is because external action is not seen as a priority and the internal decision-making structures are seen as being different from the ones in the EEAS.⁴¹⁴ The DG for Humanitarian Aid and Civil Protection (ECHO) ensures rapid and effective delivery of EU relief assistance. However, ECHO focuses on the financing of humanitarian aid while the practical implementation is mainly carried out by the UN, the Red Cross or NGOs. In view of the limited operational capacity of the ECHO, its main competence lies in its considerable network and the expertise that its personnel possesses.⁴¹⁵ Additionally, other programmes, such as the European Instrument for Democracy and Human Rights (EIDHR) and the Instrument for Stability (IfS), are under the responsibility of the Commission.

3. EU Member States

The Member States remain central to EU security and defence policy; they take the ultimate decision to launch and extend the mandate of CSDP missions and operations. As noted above, the main decision-making organs within the Council are composed EU Member States representatives. However the main challenge arises from the fact that EU Member States do not share the same vision in the areas of defence and security, and CSDP is not equally supported by all.⁴¹⁶ Likewise, some Member States have proved more decisive in advocating for different aspects of the European security policy, including human rights, particularly taking advantage of their term holding the EU Presidency. To mention some examples, the trio presidency of Germany, Portugal and Slovenia (2007-2008) contributed to the production of a handbook on Mainstreaming gender and human rights into ESDP; the 2009 French EU Presidency focused on Sexual and Gender-Based Violence (SGBV); the 2009 Swedish, 2010 Spanish and 2011 Hungarian EU Presidencies put efforts into training for CSDP; the 2010 Belgian EU Presidency pushed for the development and implementation of the EU indicators on the implementation of the UNSC Resolution 1325,⁴¹⁷ and, the

⁴¹³ Eva Gross, 'Assessing the EU's Approach to Security Sector Reform (SSR)' (2013) European Parliament EP/EXPO/B/SEDE/FWC/2009-01/Lot6/19, 9.

⁴¹⁴ Jan Wouters, Laura Beke, Anna-Luise Chané, David D'Hollander and Kolja Raube, A Comparative Study of EU and US Approaches to Human Rights in External Relations (2014), European Parliament EXPO/B/DROI/2014/27, 23.

⁴¹⁵ Teresa Åhman, Claes Nilsson and Stefan Olsson, 'The Community Mechanism for Civil Protection and the European Union Solidarity Fund' in Stefan Olsson (ed), *Crisis Management in the European Union: Cooperation in the Face of Emergencies* (Springer 2009), 89.

⁴¹⁶ See Daniel Fiott (ed), *The Common Security and Defence Policy: National Perspectives* (May 2015) Egmont Paper no 79 <<http://www.egmontinstitute.be/wp-content/uploads/2015/05/ep79.pdf>> accessed 1 April 2016; Federico Santopinto and Megan Price (eds), *National Visions of EU Defence Policy - Common Denominators and Misunderstandings* (Groupe de recherche et d'information sur la paix et la sécurité 2013)

⁴¹⁷ Giji Gya, 'Women, Peace and Security in EU Common Security and Defence Policy' (2011) EU-CSO Expert Meeting on Women, Peace and Security (WPS) in EU Common Security and Defence Policy Missions and Operation on 21 June 2011
<<http://www.eplo.org/assets/files/2.%20Activities/Civil%20Society%20Dialogue%20Network/Policy%20Meetings/>

2007 Slovenian and 2010 Belgian Presidency drew particular attention to the issue of children in armed conflict.⁴¹⁸ Moreover, certain EU Member States are very active in supporting research, training and developing good practices in the CSDP.⁴¹⁹

National Parliaments and civil society organisations (CSOs) play a modest role in the making of CSPD. The parliamentary control mechanisms over foreign policy differ from one Member State to another. Most Member States' national parliaments carry certain political weight in overseeing and shaping foreign policy including CFSP/CSDP decision-making processes. Prior parliamentary approval is required to send troops abroad in some EU Member States (Germany, Sweden, Luxembourg, Finland, Ireland), while in other Member States, National Parliaments are merely consulted (United Kingdom, France, Belgium, Poland, Portugal) or do not hold any substantive powers towards the CSDP (Czech Republic, Greece, Bulgaria, Romania).⁴²⁰ 'Consequently, given the wide variation of legislative powers and substantial differences of practices in controlling CSDP as well as the limited formal controlling functions of the EP, a lack of collective oversight can be observed and neither EU national parliaments nor the EP itself are able to effectively control the EU's foreign and security policy'.⁴²¹

An Inter-Parliamentary Conference on CFSP/CSDP, a forum for Inter-Parliamentary Cooperation, was set up in 2012.⁴²² 'The Conference is meant to serve as a framework for the exchange of information and best

Women%20Peace%20and%20Security%20in%20CSDP%20Missions/EPLO_Background_Paper_CSDN_Meeting_WP_S_in_CSDP.pdf> accessed 15 March 2016.

⁴¹⁸ See inter alia studies with a focus on specific groups such as Andrew Sherriff, 'Enhancing the EU response to children affected by armed conflict with particular reference to development policy. Study for the Slovenian EU Presidency' (2007) ECDPM Discussion Paper no 82 <http://reliefweb.int/sites/reliefweb.int/files/resources/28247A73EAFB7143C125745800250F07-Sherriff_CAAC%20study_dp82.pdf>; Andrew Sherriff with Karen Barnes, 'Enhancing the EU response to woman and armed conflict with particular reference to development policy. Study for the Slovenian EU Presidency' (2008) ECDPM Discussion Paper no 84 <<http://www.europarl.europa.eu/document/activities/cont/200805/20080507ATT28495/20080507ATT28495EN.pdf>> accessed 22 March 2016.

⁴¹⁹ Some EU Member States have supported the development of minimum training standards and the inclusion of specific modules on human rights and gender issues through their national institutions such as the Folke Bernadotte Academy (FBA) in Sweden; the Scuola Superiore Sant'Anna (SSSUP) in Italy; the Center for International Peace Operations (ZIF) in Germany; the Crisis Management Centre (CMC) in Finland; and, the Centre for European Perspective (CEP) in Slovenia.

⁴²⁰ Camille Lépinay, 'European Defence: Out of (Parliamentary) Control?' (18 October 2011) Nouvelle-Europe 2 <<http://www.nouvelle-europe.eu/en/node/1266>> accessed 22 March 2016; Dirk Peters, Wolfgang Wagner and Nicole Deitelhoff, 'Parliaments and European security policy: Mapping the Parliamentary Field. Paper prepared for presentation at the RECON Workshop 'Beyond intergovernmentalism and the quest for unity: Democracy or efficiency?' (Istanbul, 13-14 November 2008), 148 <http://www.sv.uio.no/arena/forskning/publikasjoner/arena-publikasjoner/rapporter/2008/ARENAreport0708_online.pdf> accessed 5 April 2016.

⁴²¹ Péter Bajtaj, 'Shaping and controlling foreign policy Parliamentary diplomacy and oversight, and the role of the European Parliament (2015) European Parliament, 14-15 <[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549045/EXPO_STU\(2015\)549045_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549045/EXPO_STU(2015)549045_EN.pdf)> accessed 5 April 2016.

⁴²² The Conference is composed of 6 delegates per Member State and 16 delegates from the EP. Moreover, EU candidate countries and European member countries of NATO (excluding EU Member States) can be represented by a delegation of 4 observers each. The HR/VP is also invited.

practices in the areas of CFSP and CSDP. It allows national parliaments and the EP to exercise their parliamentary scrutiny function on CFSP/CSDP in a joint and coordinated manner.⁴²³ The Inter-Parliamentary Conference on CFSP/CSDP has also dealt with human rights issues through dialogue between the EP, national parliaments, and HR/VP about the effective implementation of the Strategic Framework on Human Rights and its meeting conclusions evidence the forum's concern with human rights.⁴²⁴

4. HR/VP, the European External Action Service, EU Heads of Mission and Delegations and Operation Commanders

The HR/VP is responsible for ensuring coordination among all EU external policies, including the human rights domain. The European External Action Service (EEAS) assists the HR/VP in the conduct of foreign and human rights policies. There are five departments covering different geographic areas and other separated departments for human rights, global and multilateral issues, response to crises, and administrative and financial matters. There are human rights focal points in all geographic directorates which are tasked with mainstreaming human rights.⁴²⁵ The 'Human Rights Strategy and Policy Implementation' division within the department on 'Human Rights, Global and Multilateral Issues' is tasked with developing generic guidelines and policy documents on specific areas of CFSP/CSDP such as human rights, IHL and gender, among others. This division works closely with the human and gender advisor within the CMPD and the Chair of the COHOM.⁴²⁶ This unit elaborates the guidelines on human rights, gender and IHL applicable to the EU external policies, including CSDP. The experts working within this division ensure that human rights, gender and IHL are taken into account in the standardised planning documents for CSDP mission and operations.⁴²⁷ Children and women are systematically addressed as vulnerable groups in these standardised documents, leaving other vulnerable categories to be included on the basis of the specific context of deployment of the mission or operation.⁴²⁸

The Crisis Management and Planning Directorate (CMPD) is in charge of the political-strategic planning of CSDP civilian missions and military operations and ensures coherence and effectiveness of EU crisis management as part of a wider strategy. The CMPD develops the CSDP partnerships, policies, concepts

⁴²³ Wanda Troszczyńska-Van Genderen, 'The Lisbon Treaty's provisions on CFSP/CSDP State of implementation' (2015) European Parliament DG EXPO/B/PolDep/Note/2015_263, 8-9; Jan Wouters, Laura Beke, Anne-Luise Chané, Nicolas Hachez and Kolja Raube, 'Enhancing cooperation between the European Parliament and EU national Parliaments on EU human rights policy' (2014) European Parliament EXPO/B/DROI/2013/20, 18; Jan Wouters and Kolja Raube, 'Seeking CSDP Accountability Through Interparliamentary Scrutiny' (2012) 47(4) *The International Spectator: Italian Journal of International Affairs*, 149-163.

⁴²⁴ Inter-Parliamentary Conference, Conclusions of the Inter-Parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defense Policy (September 2013 <http://www.lrs.lt/intl/presidency.show?theme=279&lang=2&p_eventguid=1ce0171a-1309-477c-ae0c-a784d73fd8aa> accessed 3 April 2016.

⁴²⁵ Interview with EEAS official.

⁴²⁶ Interview with EEAS official.

⁴²⁷ Interview with EEAS officials.

⁴²⁸ Interview with EEAS officials.

and capabilities.⁴²⁹ The CMPD leads the process of planning up to the drafting of the CMC that lays down the strategic objectives of CSDP missions and operations from both civilian and military perspectives. The CMPD also develops lessons learned reports on missions and operations or on specific topics such as human rights⁴³⁰ or disarmament, demobilisation and reintegration to improve performance of CSDP actions.⁴³¹ These reports provide valuable feedback into the strategic planning process.⁴³² Nevertheless, the human rights and gender expertise at the planning stage is limited to a double-hatted human rights and gender advisor within the CMPD that works closely together with two officers, one within the CPCC and another within the EUMS that have been appointed as human rights and gender focal points. Thus, there is only one full-time human rights and gender advisor (also dealing with IHL and CAAC) within the CSDP planning structures, while the tasks assigned to the CPCC and EUMS officers respectively are not reflected anywhere in their job descriptions and are additional to their position tasks.⁴³³ In contrast to human rights and gender mainstreaming efforts on the ground (focal points, advisors, training modules etc) efforts to mainstream human rights and gender at the headquarters are relatively weak. A revised version of the 'Mainstreaming' document would serve to put more emphasis on human rights and gender mainstreaming in the CSDP planning and decision-making structures.

The European Union Military Staff (EUMS), under the direction of the EUMC, coordinates military operations and missions requiring military support and the creation of military capability. The main activities of the EUMS include: early warning, situation assessment, strategic planning, communications and information systems, concept development, training and education, and support of military partnerships.⁴³⁴ As stated above, there is one EUMS officer appointed as a human rights and gender focal point to cover human rights and gender issues at this stage of the operational planning process. The officer dealing with these issues, if any, will act on a voluntary basis, relying on his or her own professional experience and expertise.⁴³⁵

The Civilian Planning and Conduct Capability (CPCC) is part of the CMPD and is responsible for the operational conduct of civilian CSDP operations and ensures the effective planning and conduct of civilian CSDP crisis management operations, as well as the proper implementation of all mission-related tasks.⁴³⁶ As in the case of the EUMS, a CPCC officer is generally appointed as a 'focal point' to deal with human

⁴²⁹ EEAS, 'Crisis Management and Planning Directorate (CMPD)' <http://www.eeas.europa.eu/csdp/structures-instruments-agencies/cmpd/index_en.htm> accessed 1 April 2016.

⁴³⁰ See Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' (2010) 17138/1/10 REV 1.

⁴³¹ Council of the European Union, 'CSDP Civilian Lessons Learned and Best Practices Concept' (2012) 11120/12 (classified document); Council of the European Union, 'EU Military Lessons Learned (LL) Concept' (2012) 12322/1/11 REV1.

⁴³² Elisa Dari, Megan Price, Jense Van Der Wal, Marlene Gottwald and Nicole Koenig, 'CSDP Missions and Operations: Lessons Learned Processes' (2012) European Parliament EXPO/B/SEDE/FWC/2009-01/Lot6/16, 31.

⁴³³ Interviews with EEAS officials.

⁴³⁴ EEAS, 'EU Military staff' <http://www.eeas.europa.eu/csdp/structures-instruments-agencies/eu-military-staff/index_en.htm> accessed 25 March 2016.

⁴³⁵ Interview with EEAS official.

⁴³⁶ EEAS, 'Civilian Planning and Conduct Capability (CPCC)' <http://www.eeas.europa.eu/csdp/structures-instruments-agencies/cpcc/index_en.htm> accessed 1 April 2016.

rights and gender issues in relation to civilian missions at the operational level. According to the views expressed by some EEAS officers, the tasks assigned to the appointed 'human rights and gender focal points' constitute a small part of their work and it would be desirable to be able to count on full-time officers to deal with these aspects.⁴³⁷

Other relevant entities within the EEAS that work on crisis management are the Crisis Management Board, geographical, multilateral and global EEAS managing directorates, the Security Policy and Conflict Prevention Directorate, the EU Intelligence Analysis Centre (INTCEN) and the European Union Operations Centre (EU OPCEN).⁴³⁸

The Head of Missions and Operation Commanders have reporting obligations with due regard for human rights and gender issues. Their input is crucial for the review of mandates. As stated above, explicit references to human rights and gender appear more often in 'second and third mandates'. This trend carries with it the risk of creating confusion in the interpretation of the objectives and tasks. The principle of 'learning by doing' should be avoided in the field of crisis management and adequate and sufficient information on the human rights situation should be taken into consideration at an early stage.

5. EU Special Representatives

EU Special Representatives (EUSRs) have been deployed since 1996 in order to contribute to the EU's crisis management efforts in various troubled regions and countries. The EUSRs play an active role in the EU's support to consolidate peace, stability and the rule of law and in efforts aimed towards a more effective, more coherent and more consistent external policy. They are viewed as a flexible policy instruments at the disposal of EU Member States due to their autonomy from both the EEAS and the European Parliament, although they are placed under the authority of the HR/VP.⁴³⁹ Their work implies obtaining and analysing information on various conflicts to contribute to developing a common EU policy towards specific crisis areas. EUSR's mandates require close coordination with Member States' diplomats, special representatives from international and regional organisations and EU actors on the ground, including existing CSDP missions and operations. There are currently 9 EUSRs that provide the EU with an active political presence in key countries and regions.⁴⁴⁰ Most EUSRs are based in Brussels, except for the EUSRs in Afghanistan, Bosnia and Herzegovina and Kosovo which have been double-hatted as EUSR and Head of

⁴³⁷ Interview with EEAS official. Both EUMS and CPCC appointed focal points affirm that human rights and gender tasks amount to approximately a 10% of their work.

⁴³⁸ Jochen Rehr and Galia Glume (eds) 'Handbook on CSDP Missions and Operations: The Common Security and Defence Policy of the European Union' (Federal Ministry of Defence and Sports of the Republic of Austria, 2015) 26 <http://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/final_-_handbook_on_csdp_missions_and_operations.pdf> accessed 1 April 2016.

⁴³⁹ See Dominik Tolksdorf, 'The role of EU Special Representatives in the post-Lisbon foreign policy system: A renaissance?' (June 2012) Institute for European Studies Issue 2012/02 <http://www.ies.be/files/2012-02%20PB_0.pdf> accessed 1 April 2016.

⁴⁴⁰ The current EUSRs cover the following countries or regions: Central Asia, Middle East Peace Process, Afghanistan, Bosnia and Herzegovina, Kosovo, the South Caucasus and the crisis in Georgia, Horn of Africa, Human Rights and the Sahel.

the relevant EU Delegation. At present all EUSRs with limited geographic mandates concur with CSDP missions and operations deployed in the same area (except for the EUSR for Central Asia).

It is interesting to note that the EU has opted for an explicit, transversal Special Representative on Human Rights. In 2012, Stavros Lambrinidis was appointed EUSR for Human Rights with the aim to enhance the effectiveness and visibility of the EU's human rights policy, although some believe that the appointment of this Special Representative entails a risk of relegating 'human rights to a separate activity, secondary to mainstream Diplomacy'.⁴⁴¹ The mandate is 'based on the policy objectives of the Union regarding human rights as set out in the Treaty, the Charter of Fundamental Rights of the European Union, as well as the EU Strategic Framework [and] Action Plan on Human Rights and Democracy'.⁴⁴² The EUSR for Human Rights is tasked with human rights mainstreaming in EU external action and, in particular, to 'contribute to better coherence and consistency of the Union policies and actions in the area of protection and promotion of human rights notably by providing input to the formulation of relevant policies of the Union'.⁴⁴³

While the EUSRs does not intervene directly in the planning process of CSDP missions and operations, research suggests that when the EUSR's mandates are in place, their content and geographical scope will determine, to some extent, the formulation of new mandates for CSDP missions and operations.⁴⁴⁴ On the other hand, the tendency to integrate human rights issues within the mandate of the EUSR (eg EUSR for Kosovo, EUSR for Sudan, EUSR for the crisis in Georgia) appears to be a way to compensate the omission of the human rights component within the legal basis and the specific tasks of the EU crisis management operations.⁴⁴⁵

As noted elsewhere, despite the fact that EUSRs are often mandated with engaging or supporting others in peace processes and/or talks and conflict prevention (eg EUSRs for Great Lakes, EUSR for South-Caucasus and the crisis in Georgia and the EUSR for the Middle East) only a few have been expressly mandated to support the work of international courts such as the International Criminal Court (ICC) (EUSR for Sudan, EUSR for the Sahel) or the International Criminal Tribunal for the former Yugoslavia (ICTY) (EUSR for BiH) while other EUSRs have supported the work of the ICC despite its absence within these mandates. Consequently, where EUSRs mandates do not include strong references to support international courts,

⁴⁴¹ Rosa Balfour, 'The Role of EU Delegations in EU Human Rights Policy' (2013), European Parliament EXPO/B/DROI/2012/21, 11.

⁴⁴² Council decision 2012/440/CFSP of 25 July. 2012 appointing the European Union Special Representative for Human Rights, OJ L200/21, Art. 2.

⁴⁴³ *ibid.* As noted the act that the EUSR for Human Rights' mandate is subject to annual renewal by a Council decision undermines its credibility vis-à-vis third countries and other external actors. A longer term of mandate corresponding to the duration of the mandate the HR/VP would be ideal to reinforce its presence. Jan Wouters, Laura Beke, Anna-Luise Chané, David D'Hollander and Kolja Raube, *A Comparative Study of EU and US Approached to Human Rights in External Relations* (2014) European Parliament EXPO/B/DROI/2014/27, 74.

⁴⁴⁴ Laura Davis, *EU Foreign Policy, Transitional Justice and Mediation: Principle, Policy and mediation. Principle, policy and practice* (Routledge 2014), 79-125.

⁴⁴⁵ Milena Costas Trascasas, 'Transversal analysis on the integration of human rights component in CSDP' in Milena Costas Trascasas (coord) *Mainstreaming human rights in EU CSDP missions a transversal analysis* (Low Cost Books 2012), 481.

CSDP missions and operations are more unlikely to contribute to this aim as provisions of this type are more scarce within the legal basis of CSDP missions and operations.⁴⁴⁶

6. EU Delegations

The EU Delegations play an important role in political analysis and policy shaping. Most delegations are responsible for EU relations vis-à-vis a third countries, while a few of them oversee relations with a group of third countries or a region. EU Delegations play a leading role in the drafting of Human Rights Country Strategies due to their ability to connect with local actors and gather information on ground, placing them in a better position to support human rights diplomacy and to reach out to relevant actors.⁴⁴⁷ There are some EU Delegations dedicated to maintaining relations with multilateral or international organisations such as the African Union or the United Nations that contribute to enhancing cooperation between the EU and other international and regional security actors.⁴⁴⁸ The Lisbon Treaty introduced important changes that have empowered Delegations to carry out EU human rights policy. EU Delegations now legally represent the EU under the single authority of the HR/VP. These developments have also granted more autonomy to the EU Delegations in managing their human rights diplomacy vis-à-vis third countries. Furthermore, the substance of the work of EU Delegations has, in most cases, changed from having a strong focus on trade and aid to include more political and security-related work.⁴⁴⁹

The Human Rights Country Strategies resulted from cooperative work of the EU Delegations and Member States' Embassies with the involvement of the Head of CSDP missions where relevant. These local human rights strategies serve to identify human rights and democracy priorities and the needs of third countries in this respect. The EU Delegations bear the primary responsibility for the implementation and follow-up of these strategies.⁴⁵⁰ It is nevertheless unfortunate that these documents are classified, despite the EEAS having consulted Member States on several occasions as to whether these strategies should be partially declassified.⁴⁵¹

The EU Strategic Framework and the two Action Plans adopted in 2012 and 2015 respectively set a number of actions to strengthen the EU's Delegation activities in the implementation of the EU human rights strategy. The CSDP missions and operations' planning process benefit from EU Delegation's actions aimed at promoting stronger partnership with third countries' Civil Society Organisations (CSO)⁴⁵² and their

⁴⁴⁶ Laura Davis, *EU Foreign Policy, Transitional Justice and Mediation: Principle, Policy and mediation. Principle, policy and practice* (Routledge 2014), 106-107.

⁴⁴⁷ See Rosa Balfour, 'The Role of EU Delegations in EU Human Rights Policy' (2013), European Parliament EXPO/B/DROI/2012/21.

⁴⁴⁸ The EU Delegation to the UN in New York, the EU Delegation to the UN and other international organisations in Geneva and the EU Delegation to the African Union.

⁴⁴⁹ Rosa Balfour, 'The Role of EU Delegations in EU Human Rights Policy' (2013) European Parliament EXPO/B/DROI/2012/21, 10.

⁴⁵⁰ *ibid* 16.

⁴⁵¹ Rosa Balfour, 'The Role of EU Delegations in EU Human Rights Policy' (European Parliament 2013), EXPO/B/DROI/2012/21, 16.

⁴⁵² Action Plan 2015-2019, Action no 7.

support to Human Rights Defenders (HRDs).⁴⁵³ By engaging with relevant actors on the ground (CSOs and HRDs) the EU Delegation is in a better position to gather up-to-date information which is crucial for CSDP planners back in Brussels. The EU Delegations act as facilitators at the planning stage, by supporting fact-finding missions, once the mission or operation has been deployed, by inviting mission personnel to relevant meetings and mediating between them and the local authorities (eg EUCAP Sahel Niger, EUTM Mali).⁴⁵⁴ However, EU Delegations' engagement with missions and operations deployed in the same country or region differs from case to case, ranging from detailed cooperation procedures (eg Mali) to diffused perception about other EU actors' activities in related fields (eg Kosovo).⁴⁵⁵

Human rights focal points have been appointed in all EU Delegations who are tasked with the mainstreaming of human rights, both in the political and operational section. The annual meetings of human rights and gender focal points from Delegations and CSDP missions and operations, have contributed to improve contacts among them and an e-mail list has been established to facilitate the communication.⁴⁵⁶ However, in much the same way to CSDP missions and operations, Delegation performance remains highly dependent on the good-will and level of expertise of individuals, both in Brussels and on the ground.⁴⁵⁷

7. European Parliament

The EP contributes to the development of coherent human rights policies in several ways by drawing up reports on human rights situations, undertaking human rights missions to non-EU countries, sending delegations to UN Human Rights Council sessions. Furthermore, their assent is required in treaty making processes with third countries (treaties that usually have a human rights dimension). Human rights issues are addressed through resolutions, declarations and questions that are then submitted to the Council and to the Commission. Within the European Parliament there are a number of Committees that tackle human rights issues. The most prominent is the Subcommittee on Human Rights (DROI). The DROI deals with issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries and assists the Committee on Foreign Affairs.⁴⁵⁸ The Rules of Procedure also make it clear that 'members from other Committees and bodies with responsibilities in this field shall be invited to attend the meetings of the Subcommittee'.⁴⁵⁹

The European Parliament has a limited role in the framework of CFSP/CSDP, and is restricted to being regularly informed on the development of foreign and security policy. Since the entry into force of the

⁴⁵³ Action Plan 2015-2019, Action no 9. Rosa Balfour regrets the fact that the scope of EU outreach is limited in most cases to the capital cities of the third countries in which the Delegation is located. Rosa Balfour, 'The Role of EU Delegations in EU Human Rights Policy' (European Parliament 2013), EXPO/B/DROI/2012/21, 19.

⁴⁵⁴ Interview with EEAS Officer.

⁴⁵⁵ Interview with EUTM Officer and EU Delegation Officers.

⁴⁵⁶ Interview with EEAS Officer.

⁴⁵⁷ Rosa Balfour, 'The Role of EU Delegations in EU Human Rights Policy' (2013) European Parliament EXPO/B/DROI/2012/21, 19.

⁴⁵⁸ European Parliament, 'Rules of Procedure' (July 2014), 8th parliamentary term Annex VI, section I(8) <<http://www.europarl.europa.eu/sipade/rulesleg8/Rulesleg8.EN.pdf>> accessed 2 April 2016.

⁴⁵⁹ *ibid.*

Lisbon Treaty, the EP has gained slightly more power in the realm of the CFSP. The Treaty has mandated the HR/VP to ‘regularly consult the European Parliament on the main aspects and basic choices of common foreign and security policy and the common security and defence policy and inform it of how those policies evolve’. The European Parliament’s views must ‘be duly taken into consideration’ and the Parliament must be informed regarding ‘the main aspects and the basic choices of the common foreign and security policy (CFSP) and the common security and defence policy (CSDP) and [...] how those policies evolve’.⁴⁶⁰ The 2010 ‘Declaration on Political Accountability’ issued by High Representative Ashton, reaffirms the obligations of the HR/VP and the EEAS towards the EP and provides various channels and instruments to improve transparency and increase the democratic accountability of decisions in the area of CFSP/CSDP.⁴⁶¹ The declaration on political accountability grants the European Parliament greater engagement in EU crisis management. The declaration foresees *inter alia*⁴⁶²:

- Allowing MEPs in Joint Consultation Meetings (JCM) to meet officials from the Political and Security Committee (PSC), the Committee for Civilian Aspects of Crisis Management-CIVCOM, EEAS (Civilian Planning and Conduct Capabilities-CPCC, Crisis Management Planning Directorate-CMPD), and the Commission (Foreign Policy Instruments-FPI Unit) and discuss the on-going and planned civilian CSDP missions;
- Granting access to confidential information on CSDP missions and operations;⁴⁶³
- Facilitating the appearance of Heads of Delegations, EUSRs, Heads of CSDP missions and senior EEAS officials in relevant parliamentary committees and subcommittees in order to provide regular briefings and exchange views;
- Mandating the High Representative to appear before the European Parliament to report on CFSP/CSDP issues and answer questions.

Even though the EP does not exert strong control over CSDP decision-making, it facilitates discussions on CSDP among governmental and institutional officials, civil society, think tanks and academics. MEPs delegations occasionally make on-site visits to the operational areas to monitor the activities of CSDP missions and operations.⁴⁶⁴ The European Parliament exercises greater control over CSDP operations

⁴⁶⁰ Art. 36 TEU.

⁴⁶¹ High Representative of the European Union, ‘Declaration by the High Representative on Political Accountability’ (3 August 2010) OJ C 210/1.

⁴⁶² Wanda Troszcynska-Van Genderen, ‘The Lisbon Treaty’s provisions on CFSP/CSDP State of implementation’ (2015) European Parliament DG EXPO/B/PolDep/Note/2015_263, 8-9.

⁴⁶³ European Parliament and Council of the European Union, ‘Interinstitutional Agreement between the European Parliament and the Council Concerning Access by the European Parliament to Sensitive Information of the Council in the Field of Security and Defence Policy’ (23 October 2002) 2002/2130(ACI) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2002-0500+0+DOC+XML+V0//EN>> accessed 22 March 2016.

⁴⁶⁴ Wanda Troszczyńska-Van Genderen, ‘Human Rights in CSDP: a view from the European Parliament’ in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect* (2012) CLEER Working Papers 2012/6, 80; Dirk Peters, Wolfgang Wagner and Cosima Glahn ‘Parliaments at the Water’s Edge: The EU’s Naval Mission Atalanta’ in Ben Crum and John Erik Fossum (eds), *Practices of Inter-Parliamentary Coordination in International Politics: The European Union and Beyond* (ECPR Press in 2013), 118.

through scrutinising civilian CSDP expenditure, although the Parliament claims that there is lack of transparency in this regard.⁴⁶⁵

The European Parliament has shown its willingness to support the promotion and respect for human rights by condemning human rights violations worldwide and serving as a forum for human rights in scrutinising EU external action and promoting public debates.⁴⁶⁶ The human rights aspects of CSDP that are of particular concern include issues relating to the adherence to human rights and humanitarian law obligations, human rights impact and lessons learned processes, the level of a mission's awareness and expertise on human rights and the institutional accountability of the missions and operations.⁴⁶⁷ The EP has explicitly backed the use of CSDP missions and operations as a tool to advance its human rights agenda such as in the case of South Sudan, Libya or the Sahel.⁴⁶⁸

Despite the advancements made under the Lisbon Treaty and the Declaration on Political Accountability issued by the HR/VP in 2010 to facilitate the EP's access to security-related information, the EP acknowledges the existence of obstacles to the assessment of the performance of CSDP actions. For example, the participation of JCMs in the confidential information procedure remains quite restricted.⁴⁶⁹ Lack of information poses a risk for CSDP actions, in terms of it being more likely to be criticised and distrusted not only by the EP and national parliaments, but by local authorities and the population in the host state. 'As one cannot fully appreciate the overall climate and difficulties they experience, of both a political and a technical nature, their impact often remains insufficiently appreciated or its appreciation diminished due to the limited understanding of the objective difficulties.'⁴⁷⁰

⁴⁶⁵ *ibid.*

⁴⁶⁶ Richard Youngs, Manuel Manrique Gil, Kristina Kausch, Clare Castillejo, Susanne Gratius and Natalia Shapovalova, 'The impact of the resolutions and other activities of the European Parliament in the field of human rights outside the EU' (2012), European Parliament EXPO/B/DROI/2011/17.

⁴⁶⁷ Wanda Troszczyńska-Van Genderen, 'Human Rights in CSDP: a view from the European Parliament' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect* (2012) CLEER Working Papers 2012/6, 82.

⁴⁶⁸ *ibid* 89.

⁴⁶⁹ The attendance of the JCMs is restricted to the higher posts of AFET, BUDG, SEDE and only the members of the so-called 'special committee', a restricted group of MEPs, is allowed to access the Council confidential information on CSDP.

⁴⁷⁰ Wanda Troszczyńska-Van Genderen, 'Human Rights in CSDP: a view from the European Parliament' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect* (2012) CLEER Working Papers 2012/6, 85-86.

V. The operationalisation of HR, IHL, democracy and the rule of law in CSDP missions and operations

The extent to which CSDP missions pursue the promotion of human rights will depend very much on their mandate, capabilities and responsibility mechanisms in place. While the promotion of human rights, democracy and the rule of law may take different forms within the limits provided by the mandate, it is unquestionable that the EU has to respect human rights when establishing and deploying a CSDP mission or operation. This chapter addresses the mechanisms in place that ensure accountability of CSDP missions and operations and that respond to potential violations of human rights and IHL in the conduct of the operation. It also addresses the mandate-related tasks that potentially contribute to the enhancement of human rights in the mission area.

A. The incorporation of human rights in CSDP mandates

The document 'Mainstreaming of Human Rights into ESDP' requests the Council to 'integrate human rights provisions in guiding documents and reviews of [CSDP] missions and operations where relevant'.⁴⁷¹ Most of the Council Decisions establishing CSDP missions or operations do not include specific mention of IHL or human rights issues.⁴⁷² This tendency may create a great deal of confusion for CSDP personnel and for local authorities regarding the real object of the mission.⁴⁷³ Indeed, amendments made to the legal basis of CSDP missions and operations should only be decided on an exceptional basis (extension of the mandate or amendments to the funding of the mission). The former ATLAS research project proposed the 'systematic inclusion of a 'chapeau', listing the main human rights instruments (and IHL when relevant) applicable to the mission', to reinforce and give visibility to the applicable legal framework.⁴⁷⁴ Although a greater number of recent CSDP mandates include specific reference to human rights and IHL, this is not done in a systematic way.⁴⁷⁵

⁴⁷¹ Council of the European Union, 'Mainstreaming of Human Rights into ESDP' (2006) 11936/4/06 REV 4, 2.

⁴⁷² Eva Maria Lassen (editor), Monika Mayrhofer, Mandana Zarrehparvar, Hans-Otto Sano, Kristoffer Marslev, Anja Møller Pedersen, and Peter Vedel Kessing, 'Report on in-depth studies of selected factors which enable or hinder the protection of human rights in the context of globalisation' (2015) FRAME D 2.2, 127-132 <<http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-2.2-Submitted-30-June-2015.pdf>> accessed 5 May 2016.

⁴⁷³ Milena Costas Trascasas, 'Tranversal Analysis on the Integration of the Human Rights Component and Recommendations' in Milena Cosas Trascasas (ed), *Mainstreaming human rights in EU CSDP missions: a transversal analysis* (Low Cost Books 2012), 458-459.

⁴⁷⁴ Milena Costas Trascasas, 'Tranversal Analysis on the Integration of the Human Rights Component and Recommendations' in Milena Cosas Trascasas (ed), *Mainstreaming human rights in EU CSDP missions: a transversal analysis* (Low Cost Books 2012), 460. The proposed 'chapeau' in Article 1 'The Mission' reads as follows 'The mission (operation) shall fully comply with the applicable principles and rules stemming from international law on human rights (and international humanitarian law where relevant), in particular, those included in the 2000 EU Charter on Fundamental Rights and the 1950 European Convention on Human Rights and Fundamental Freedoms [and the four 1949 Geneva Conventions and Additional Protocols]. National Contingents are also to respect the laws of the Host State and the international human rights and humanitarian instruments to which the State of its nationality is party.'

⁴⁷⁵ See Annex II.

Explicit references to human rights in the mandates, if any, are scarce and vague and they can be found only in two out of the six ongoing military operations. This is the case in the Council Joint Action establishing EUNAVFOR ATALANTA that states that persons detained in the conduct of the operation shall not be transferred to a third State unless the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights. The Council Decision establishing EUNAVFOR MED states in its preamble that EU military operations will be conducted in accordance with international human rights law.⁴⁷⁶

Beyond the specific mention - or otherwise - of EU principles in the legal basis for CSDP missions and operations, it is also necessary to translate the promotion of human rights, IHL, and the principles of democracy and the rule of law into concrete actions. This section focuses on the significance of human rights in crisis management operations, and in relation to specific mandates. The integration of explicit references certainly serves to give visibility to the EU's commitment to promote and respect human rights, however, their absence does not mean that they should not be an integral part of the mandate. To some extent, CSDP missions and operations personnel perform human rights tasks as part of their work. In most cases it is the operational documents, the OPLAN, the CONOPS and the RoE, that include more specific and substantive provisions on IHRL, IHL, gender and other related aspects.⁴⁷⁷

Serious human rights violations often provoke and aggravate conflicts and humanitarian crises. Conflict-related deaths, disappearances, displacement, execution of prisoners, rape of women and girls, restriction of freedom of movement and torture constitute common breaches of human rights in conflict settings. The denial of fundamental rights such as the right to food, respect for cultural life or participation in society's decision-making processes are identified among the root causes of many conflicts and crises. Moreover, the collapse of basic institutions and infrastructures as a result of conflict negatively affect the enjoyment of civil, economic, political and social rights.⁴⁷⁸ Respect for human rights is essential to secure true and lasting peace. Statistical studies have proven that 'the risk of renewed escalation and outbreak of violence is ten times higher in a post-conflict situation than before a war; and although the risk of falling back into violence decreases within a decade, it remains significantly higher than in times prior to the conflict.'⁴⁷⁹

The EU, by supporting respect for and promotion of human rights through its wide range of policies and instruments, including crisis management operations, helps to prevent conflict and stabilise post-conflict situations. According to Hazelzet, the very aim of crisis management operations is 'to create stability and

⁴⁷⁶ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) Art. 2(b)

⁴⁷⁷ These operational documents are classified but some excerpts from EUPOL Afghanistan, EUFOR RD Congo are compiled in Council of the European Union, 'Mainstreaming Human Rights and Gender into European Security and Defence Policy' (2008) 14-17.

⁴⁷⁸ Carmen Márquez Carrasco, Laura Iñigo Alvarez, Nora Loozen and Elizabeth Salmón Gárate, 'Report on the survey study on human rights violations in conflict-settings' (2014) FRAME d 10.1, 60-63 <<http://www.fp7-frame.eu/wp-content/materiale/reports/08-Deliverable-10.1.pdf>> accessed 25 March 2016; Oskar N. Thoms and Jon Ron, 'Do Human Rights Violations Cause Internal Conflict?' (2007) 29 (3) *Human Rights Quarterly*, 674-705.

⁴⁷⁹ Jana Arloth and Frauke Seidensticker, 'The ESDP Crisis Management Operations of the European Union and Human Rights' (Deutsches Institut für Menschenrechte 2007), 28.

foster a safe environment in which people are respected and free' which at the same time, contributes to prevent future human rights violations and instability.⁴⁸⁰ Nevertheless, she acknowledges the complex reasoning behind the decision to establish a crisis management operation that is based on a broad range of factors, namely norms, institutions and interests. The protection of human rights is usually viewed as a 'normative factor' but Hazelzet proposes a new perspective to consider human rights protection an 'EU interest'.⁴⁸¹ Regardless of whether the protection of human rights is considered a 'normative factor' or an 'interest' of EU Member States, human rights are, to some extent, present in all CSDP missions and operations, although they may be integrated in a differing manners depending of the specific mandate, objectives, tasks and context of deployment. In this regard, the following two subsections analyse the role of human rights in military and civilian missions generally, without considering in detail all CSDP missions and operations deployed to date.

1. Human rights implications in military crisis management operations

Military intervention has been increasingly considered as legitimate, under certain circumstances, in situations where human rights are being abused and violated. This reasoning together with a broader internationalisation of defence and security has influenced the shaping of the CSDP. The notion of humanitarian intervention comes into view here, defined as 'the threat or use of force across state borders by a state or group of states aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied'.⁴⁸²

The EU has not set any criteria for decision-making on military intervention, nevertheless, the former EU High Representative for the Common Foreign and Security Policy Javier Solana placed military action under the 'values and principles' of the EU.⁴⁸³ The ESS does not provide a framework for decision-making on civil or military CSDP although it recognises that civilian instruments are the preferred means to strengthening the international order.⁴⁸⁴ The most internationally recognised set of criteria on military intervention have been developed by the International Commission on Intervention and State Sovereignty in its report 'The Responsibility to Protect'.⁴⁸⁵ The Study Group on Human Security, led by Mary Kaldor,

⁴⁸⁰ Hadewych Hazelzet, 'Human Rights Aspects of EU Crisis Management Operations: From Nuisance to Necessity' (2006) 13(4) *International Peacekeeping*, 564, 570.

⁴⁸¹ *ibid.*

⁴⁸² Holzgrefe J.L., 'The Humanitarian Intervention Debate' in Holzgrefe J.L. and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. (Cambridge University Press 2003), 18.

⁴⁸³ '(T)he Union has to be prepared to use military assets and resources [...] The deployment of troops will only ever be undertaken when the situation absolutely demands it. But our credibility in being able to offer a comprehensive response depends on our ability developing a military crisis management capacity at a European level [...]. We are not in the business of doing this for its own sake. But in support of the values and principles for which the European Union is respected worldwide'. See Javier Solana, 'Reflections on a Year in Office' (2000) speech at. Swedish Institute of International Affairs and Central Defence and Society Federation, 27. October 2000, Stockholm.

⁴⁸⁴ European Council, 'A Secure Europe in a Better World: European Security Strategy' (12 December 2003), 12

⁴⁸⁵ The Commission argues that when a sovereign state fails to protect its people from serious harm or is unwilling or unable to do so, the international community shall intervene provide protection under the following six criteria: right authority (under Security Council authorization); just cause (large scale loss of life or ethnic cleansing); right

developed a set of principles that serve to justify military intervention: the primacy of human rights, clear political authority, multilateralism, a bottom-up approach, regional focus (to prevent the spread of violence), the appropriate use of force and the use of legal instruments.⁴⁸⁶

Military intervention may be crucial for preventing or mitigating conflict and may also be required in the efforts made to protect the human rights of the civilians, whether by means of support to capacity building in military areas or by protecting of civilians from the violence of armed conflict through direct intervention (peace enforcement and/or peacekeeping).⁴⁸⁷

2. Human rights implications in civilian crisis management operations

Human rights in civilian operations are intrinsic to a multitude of activities, such as monitoring, reporting, capacity and institution-building, which may be closely interrelated.

There is no commonly agreed upon definition of monitoring, and terms such as verification, fact-finding, observation are used interchangeably. Monitoring is commonly understood as ‘documenting and recording matters systematically over time with a view to action being taken by the monitors, the Mission or organisation and by others.’⁴⁸⁸ Monitoring might be restricted to overseeing the implementation of border arrangements (EUBAM Rafah) ceasefire and peace agreements (AMM Aceh, EUM Georgia). Monitoring also relates to the human rights obligations of the state in question. It therefore includes examination of the implementation of the human rights conventions to which the state in question is part and its national laws and legal practice.⁴⁸⁹ The ultimate purpose of monitoring missions is to bring about an improvement in the human rights situation on the ground. In order to achieve this purpose it needs to be conducted on the basis of the fundamental principles of impartiality and accuracy, and it must also be perceived as impartial on the ground. Furthermore monitoring tasks contribute to crisis prevention through the identification of accelerators of gross human rights abuses and by issuing recommendations to avoid an escalation of violence. By way of example, the functions of EUMM Georgia Monitoring are to:⁴⁹⁰

intention (the main purpose must be to end human suffering); last resort; proportional means; and, reasonable prospects (a reasonable chance of success in stopping the violations)

⁴⁸⁶ Study Group on Europe’s Security Capabilities, ‘A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe’s Security Capabilities’ (2004)

⁴⁸⁷ Jana Arloth and Frauke Seidensticker, ‘The ESDP Crisis Management Operations of the European Union and Human Rights’ (Deutsches Institut für Menschenrechte 2007), 30.

⁴⁸⁸ Council of Europe, ‘Handbook for the European Union Monitoring Mission in Georgia’ (2009), 59 <<http://www.coe.int/t/dgi/hr-natimplement/publi/materials/1126.pdf>> accessed 28 March 2016.

⁴⁸⁹ Marit Mæhlum, ‘Monitoring Human Rights’ in Siri Skåre, Ingvild Burkey and Hege Mørk. (eds), *Manual on Human Rights Monitoring An Introduction for Human Rights Field Officers* (2001) Norwegian Institute of Human Rights, Chapter 6

<<http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/previous/chapter06.pdf>> accessed 26 March 2016.

⁴⁹⁰ Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia, Art. 3(1) and (2)

Monitor, analyse and report on the situation pertaining to the stabilisation process (...) as well as on violations of human rights and international humanitarian law.

(...) Monitor, analyse and report on the situation pertaining to the normalisation process of civil governance, focusing on rule of law, effective law enforcement structures and adequate public order. The Mission will also monitor (...) the political and security aspects of the return of internally displaced persons and refugees.

The main purposes behind EUMM Georgia monitoring are 'to contribute to stabilisation, normalisation and confidence building and informing European policy in support of a durable political solution for Georgia.'⁴⁹¹ As in the case of EUMM Georgia, the peace agreements or memoranda of understanding in force provide more precision and further limitations on the monitoring mandate, such as permission to investigate individual cases of violations and public information on the findings. These aspects are of great significance as they may have a considerable impact on the decisions and behaviour of local authorities and populations, and may therefore have an affect on the enjoyment and protection of fundamental human rights.⁴⁹² Finally, it should be noted that monitoring alone may not have a consolidated and lasting effect on the human rights situation in the country or region in question. Thus, '[r]eactive strategies such as monitoring and observation must be employed in tandem with more proactive strategies such as institution-building, which aims to sustain the protection of human rights.'⁴⁹³

Those missions contributing to institution-building provide assistance to post-conflict governments in the reform or development of national police forces, judicial and prison systems, and political and administrative institutions. Support to the reinstatement and reinforcement of the rule of law including an independent judicial system and fair criminal justice system is a guarantee for the long-term protection of human rights. Additionally the establishment of an independent national human rights institution or an ombudsman will contribute to the prevention of further human rights violations. In the field of EU external action institution-building implies cooperation with a key actor, the Commission.

Capacity building involves police training (including on human rights issues), human rights education programmes being provided to local lawyers and judges in an effort to prevent unfair trials and providing support for Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) to provide fora for civil society to bring and discuss human rights issues. Vulnerable groups can be supported by training and empowerment programs. Capacity building is a crucial and lasting contribution that replaces violent conflict by positive and constructive means of conflict resolution.

⁴⁹¹ Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia, Art. 3(3)

⁴⁹² Jana Arloth and Frauke Seidensticker, 'The ESDP Crisis Management Operations of the European Union and Human Rights' (Deutsches Institut für Menschenrechte 2007), 31.

⁴⁹³ Jo-Anne Bishop, 'Human Rights and Field Reports 1999' (1999) School of International Affairs. Ottawa, 53 <<http://www4.carleton.ca/cifp/app/serve.php/1059.pdf>> accessed 26 March 2016. As stated by Clapham and Martin, 'monitoring alone [does] not create the local expertise that needs to remain after the monitors are long gone', see Andrew Clapham and Florence Martin, 'Smaller Missions, Bigger Problems' in Alice H. Henkin (ed), *Honoring Human Rights: From Peace to Justice* (Washington, DC: The Aspen Institute, 1998), 312.

B. Responsibility of the European Union during the conduct of its CSDP mission and operations

As described above, international norms, EU Law and operational documents constitute the legal and operational framework of CSDP missions and operations. As suggested, responsibility in the conduct of CSDP operations can be assessed as constituting three dimensions that may concur depending on the specific situation: (i) international responsibility, of the EU and the participating states under international and EU law; (ii) individual or criminal responsibility under domestic, EU and/or international law; and, (iii) civil responsibility of natural and legal persons under domestic and international law.⁴⁹⁴ This section will focus on the first form of international responsibility, that is, that of the EU.

There are a number of situations that are more likely to give rise to international responsibility of the EU for human rights violations committed in the course of operations, including those resulting from use of force, detention, treatment, transfer of detainees, etc. Moreover, one same action may amount to a breach of other rules of international law, including IHL, the law of the sea, environmental law, etc.⁴⁹⁵ The multitude of (EU and non-EU) actors involved in CSDP Operations may give rise to multiple scenarios where more than one agent may be held responsible. According to Naert, responsibility for violations in the field of CSDP can give rise to different scenarios as presented in Box 5:⁴⁹⁶

Box 6: Possible scenarios for the international responsibility of the EU and other actors involved in CSDP missions and operations

- The provisions contained in the operational documents (Council Decision, OPLAN or ROE) may be contrary to international law – Responsibility of the EU and/or its Member States.
- An action taken in the conduct of an operation violates rules of international law and operational rules - Responsibility of the EU and/or its Member States.
- Forces of more than one contributing party, either Member States or a third state, may be involved in an incident – Attribution of responsibility to the states involved with consideration of the chain of command and control for CSDP engagement.
- EU military operations conducted with recourse to NATO assets (EUFOR Althea, Operation Concordia) – Responsibility of NATO and their respective Member States.
- EU crisis management operations may be backed by UN Security Council authorisation or invitation by the host state, with the direct involvement of local authorities – Responsibility of the UN and/or host country.
- EU operations deployed in parallel or sequentially and/or in cooperation with missions conducted by other international organisations (KFOR-EULEX Kosovo, Ocean Shield-EUNAVFOR Atalanta,

⁴⁹⁴ Frederik Naert, 'Responsibility of the EU Regarding its CSDP Operations' in Malcolm Evans, Panos Koutrakos (eds), *The International responsibility of the European Union. European and International Perspectives* (Hart Publishing 2013), 314.

⁴⁹⁵ Frederik Naert, 'Shared Responsibility in the Framework of the EU's CSDP Operations' forthcoming in André Nollkaemper and Ilias Plakokefalos (eds.), *The Practice of Shared Responsibility in International Law* (Cambridge University Press 2016), provided by the author.

⁴⁹⁶ Frederik Naert, 'Shared Responsibility in the Framework of the EU's CSDP Operations' forthcoming in André Nollkaemper and Ilias Plakokefalos (eds.), *The Practice of Shared Responsibility in International Law* (Cambridge University Press 2016), provided by the author.

AU's AMISOM-EUTEM Somalia) - Responsibility of other international organisations (AU, UN, NATO) and their respective Member States.

- Other states may be also be involved, that are not included in the above assumptions, eg states to which detainees in the course of an EU mission are transferred (The Republic of the Seychelles, Mauritius and Kenya in the framework of EUNAVFOR Atalanta activities) or states different from the host country, allowing mission activities to take place in their territory (Initially, EUTM Somalia provided training to Somalian soldiers in Uganda) – Responsibility other third parties involved.

The determination of international responsibility requires the existence of a violation of an international obligation in force and the attribution of that violation to a legal person. The attribution of responsibility for violations of international norms in multinational missions and CSDP raises additional difficulties as to the relationship between the EU and participating states. However, the EU seems to have overcome these difficulties as, irrespective of whether the conduct of such operations is attributed to the EU and/or to one or more Member States, they are subject to the same obligations when they implement EU Law.⁴⁹⁷ The attribution of an internationally wrongful act to the EU is governed in detail by the International Law Commission (ILC) Draft Articles on Responsibility of International Organizations (DARIO).⁴⁹⁸ Based either on Article 6 or Article 7 of the ILC Draft Articles, the EU may be held responsible for the internationally wrongful conduct of CSDP missions or its personnel. Thus the attribution of wrongful conduct to the EU requires either that CSDP missions or operations are considered as an EU organ/agent (Art. 6) or that the EU exerts effective control over the military troops and/or civilian personnel, either contracted or seconded by contributing states (Art. 7).

Article 340.2 of the TFEU states that the 'EU must compensate for any damage caused by its institutions or its servants in the performance of their duties.' However, the Court of Justice of the European Union (CJEU) does not have jurisdiction over CSDP to deal with cases of reparation for damages incurred during in the course of operations.⁴⁹⁹ Furthermore, it is dubious that this provision could apply to mission personnel on the ground as only EU staff members at headquarters may fall within the category of 'servants' of the EU.⁵⁰⁰ Despite the ambiguity of Article 340 TFEU, the EU has established a remedy mechanism, which relies on EU Member States courts and that is only applicable to those areas of EU external policy that fall outside the scope the jurisdiction of the CJEU, such as the CSDP domain.⁵⁰¹ Article 19(1) TFEU provides that 'Member states shall provide remedies sufficient to ensure legal protection in the fields covered by Union law', including the CSDP. Pursuant to Article 274 TFEU '[s]ave where jurisdiction is conferred on the [Court of Justice] by the Treaties, disputes to which the Union is a party

⁴⁹⁷ibid.

⁴⁹⁸International Law Commission, 'Draft Articles on Responsibility of International Organizations (DARIO)' (2011) <http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf>

⁴⁹⁹ Art. 24(2) TEU and Art. 275 TFEU.

⁵⁰⁰ Frederik Naert, 'Responsibility of the EU Regarding its CSDP Operations' in Malcolm Evans, Panos Koutrakos (eds), *The International responsibility of the European Union. European and International Perspectives* (Hart Publishing 2013),329-330.

⁵⁰¹ Art. 24(1) TEU and Articles 275, 340 and 19(1) TFEU.

shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.⁵⁰²

It is usual practice for the EU to foresee specific claims mechanisms on the Status of Force Agreement (SOFA) for military operations or a Status of Mission Agreement (SOMA) with the host nation under Article 37 TEU and Article 218 TFEU.⁵⁰³ There also exist SOFA-like transit agreements with states through which CSDP operations' forces have to transit to get to the area of deployment.⁵⁰⁴ The SOMA or SOFA agreements regulate the legal position of military forces and civilian personnel deployed by one or more states or by an international organisation in the territory of another state.⁵⁰⁵ These agreements on the status of forces or missions regulate issues related to the entry and departure of foreign personnel, the carrying of arms, taxation, the settlement of claims, and the modalities for the exercise of civil and criminal jurisdiction over members of the visiting force or mission.⁵⁰⁶ Exemptions from local jurisdiction contained in SOFAs and SOMAs should not necessarily lead to impunity for actions committed by mission personnel. These SOFA and SOMA agreements usually regulate the setting of claims mechanisms to provide compensation for damages resulting from on acts non-related to operational necessities or caused in connection with civil disturbances or the protection of the mission or operation.⁵⁰⁷

⁵⁰² Art. 343 and 274 TFEU and Protocol No 7 on the privileges and immunities of the EU

⁵⁰³ Frederik Naert, 'Legal framework governing the protection and promotion of human rights in EU missions— application of EU law principles and instruments' in Sari A and Wessel RA (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 46; Aurel Sari, 'The Conclusion of International Agreements by the European Union in the Context of the ESDP' (2008) 57(1) *International and Comparative Law Quarterly*, 53-86; Panos Koutrakos, 'International Agreements in the Area of the EU's Common Security and Defence Policy' in Enzo Cannizzaro, Paolo Palchetti and Ramses A. Wessel (eds), *International Law as Law of the European Union* (Martinus Nijhoff 2012), 157-187.

⁵⁰⁴ See for instance Council Decision 2008/178/CFSP of 28 January 2008 concerning the conclusion of the Agreement between the European Union and the Republic of Cameroon on the status of the European Union-led forces in transit within the territory of the Republic of Cameroon.

⁵⁰⁵ See Derek W. Bowett, 'Military Forces Abroad' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law* (Elsevier Science Publishers 1997), 388. See an exhaustive analysis of all these aspects contained in the SOFAs and SOMAs, Terry D. Gill and Dieter Fleck (eds), *The Handbook of the International Law of Military Operations* (Oxford University Press 2010)

⁵⁰⁶ *ibid.* Dieter Fleck, 'Are Foreign Military. Personnel Exempt from International Criminal Jurisdiction under Status of Forces Agreements?' (2003) 1 *Journal of International Criminal Justice*, 651-670.

⁵⁰⁷ Council of the European Union, 'Draft Model Agreement on the status of the European Union-led forces between the European Union and a host State' (2005), 8720/05, Art. 15(1); Council of the European Union, 'Draft Model Agreement on the status of the European Union Civilian Crisis Management Mission in a host State' (2005), 10564/05, Art. 16(1)

C. Responsibility of Private Military and Security Companies (PMSC) in the context of EU Crisis Management

Since the end of the Cold War, the use of Private Military and Security Companies (PMSCs) to support peace operations has been on the rise.⁵⁰⁸ The need to fulfil security capability needs alongside the budgetary constraints imposed thereon have led the EU and its Member States to increasingly rely on private contractors to provide some services to CSDP missions and operations. Even though the security and protection for civilian CSDP missions is the primary responsibility of the host state, the EU and its Member States have been employing PMSCs to secure the premises of EU civilian missions (EUPOL Afghanistan EUPOL RDS, EULEX Kosovo)⁵⁰⁹ or to provide a broad range of support services such as transport and logistics during military operations (Althea BiH, EUFOR Tchad/RCA).⁵¹⁰ Security outsourcing not only responds to the duty of care owed by the EU for the protection of its mission personnel.⁵¹¹ It also responds to shortages in the personnel supplied by member states to perform these functions. As a result of financial and personnel constraints, many participating states have considered hiring private security contractors as an option to fill urgent capability and personnel gaps and increase cost-efficiency and specialist expertise. As such, it is likely that the use of PSCs will further increase. In view of the growing presence of PMSCs in the area of CSDP, the EU and its Member States need to consider the possible impact that private security contractors can have on missions and the achievement of mission objectives and need to develop appropriate mechanisms to address the risks associated with their involvement. Delegating tasks to private contractors has detrimental consequences for the legitimacy of the EU and its Member States if its use is associated with the lack of transparency, accountability and control⁵¹² and if it creates perceptions of contractor impunity and insecurity among the civilian populations of host states.⁵¹³

⁵⁰⁸ See Hans Born, Marina Caparini and Eden Cole, 'Regulating Private Security Companies in Europe: Status and Prospects' (2007) Geneva Centre for the Democratic Control of Armed Forces (DCAF) Policy Paper 20, 1; Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press 2003), 9-11. Alyson J. K. Bailes and Caroline Holmqvist, 'The Increasing Role of Private Military and Security Companies' (2007) EP/EXPO/B/SEDE/FWC/2006-10/Lot4/09. The Montreux Document (2009) on the use of Private Military and Security Companies defines PMSCs as 'private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.'

⁵⁰⁹ Elke Krahnemann and Cornelius Friesendorf, 'The Role of Private Security Companies (PSCs) in CSDP Missions and Operations' (2011) European Parliament EXPO/B/SEDE/FWC/2009-01/LOT6/10/REV1, 6-7; European Defence Agency, 'Future Trends from the Capability Development Plan' (2008), 53 <https://www.eda.europa.eu/docs/documents/CDP_brochure> accessed 26 March 2016.

⁵¹⁰ Elke Krahnemann and Cornelius Friesendorf, 'The Role of Private Security Companies (PSCs) in CSDP Missions and Operations' (2011) EXPO/B/SEDE/FWC/2009-01/LOT6/10/REV1, 11-16.

⁵¹¹ See Andrea de Guttry, 'Duty of Care of the EU and Its Member States towards Their Personnel Deployed in International Missions' (2012) 7(1) *Studi sull'integrazione europea*, 263-294.

⁵¹² *ibid* 29; see also N.D. White and S. MacLeod, 'EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility' (2008) 19(5) *European Journal of International Law*, 965-988; Terry D. Gill and Dieter Fleck, 'Private Contractors and Security Companies' in Terry D. Gill and Dieter Fleck (eds), *The handbook of the international law of military operations* (Oxford University Press 2010), 489-493.

⁵¹³ Deane-Peter Baker and James Pattison, 'The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes' (2012) 29(1) *Journal of Applied Philosophy*, 1-18.

Private companies acting in the area of CSDP are bound to human rights and IHL as a matter of international and EU law, to the extent that the EU incorporates the relevant legal standards into its internal legal order. There are a set of international standards in place governing the activities of PMSCs that ensure respect for human rights and humanitarian law. The Montreux Document in 2008 defines how international law applies to the activities of PMSCs when they are operating in an armed conflict zone. The document contains a set of good practices designed to help contractors, as well as the EU and contributing states, to fulfil their obligations under IHRL and IHL.⁵¹⁴ The International Code of Conduct for Private Security Service Providers, created in 2010, defines industry rules and principles based on human rights and international humanitarian law.⁵¹⁵

The EU guidelines and other policy documents on the promotion and protection of human rights and IHL in CSDP are too ambiguous to serve as an appropriate framework for the PMSCs.⁵¹⁶ The operational planning documents and rules of engagement have laid down specific obligations for EU-led troops,⁵¹⁷ however, as these remain unavailable to the public it is not possible to assess whether they include any explicit reference to human rights and/or IHL or if they apply and in which terms to private contractors. The Generic Standards of Behaviour in ESDP Operations adopted in 2005 is the only CSDP-related regulatory document that explicitly stipulates the applicability of IHL and IHRL to internationally and locally contracted civilian personnel.⁵¹⁸ The Generic Standards of Behaviour notes that 'EU force commanders or EU Heads of Mission have full disciplinary jurisdiction over [locally contracted] personnel'.⁵¹⁹ In the SOFAs, SOMAs and ROEs, private contractors are explicitly excluded from its scope of application.⁵²⁰

⁵¹⁴ International Committee of the Red Cross, 'The Montreux document - on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict' (17 September 2008) <https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf> accessed 26 March 2016.

⁵¹⁵ International Code of Conduct for Private Security Service Providers' Association, 'International Code of Conduct for Private Security Service Providers' (2010), <http://www.icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf> accessed 26 March 2016.

⁵¹⁶ Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press 2011), 318-319.

⁵¹⁷ Frederik Naert, Presentation on 'The Implementation and the Respect of International Humanitarian Rules in Current International Peace Operations – An EU Perspective', at the seminar on 'International Peace Operations and International Humanitarian Law', organized by the International Institute of Humanitarian Law in cooperation with the Centro Alti Studi per la Difesa and the Società Italiana per l'Organizzazione Internazionale in Rome on 27 March 2008, 62 <<http://www.iihl.org/iihl/Documents/9729ipop.pdf>> accessed 26 March 2016. With regards to respect for IHL, only a few references are found, such in the case of AMIS supporting Mission via the AU SOMA, as acknowledged in Frederik Naert, 'ESDP in Practice: Increasingly Varied and Ambitious EU Security and Defence Operations' in Martin Trybus and Nigel White (eds), *European Security Law* (Oxford University Press 2007), 97.

⁵¹⁸ Council of the EU, 'Generic Standards of Behaviour for CSDP Operations', 18 May 2005.

⁵¹⁹ Council of the EU, 'Generic Standards of Behaviour for CSDP Operations', 18 May 2005, 10.

⁵²⁰ Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press 2011), 319. See *inter alia* Council Decision 2009/29/CFSP of 22 December 2008 concerning the conclusion of the Agreement between the European Union and the Somali Republic on the status of the European Union-led naval force in the Somali Republic in the framework of the EU military operation Atalanta Agreement between the European Union and the Somali Republic on the status of the European Union-led naval force in the

The lack of minimum standards, regulation and supervision poses a risk that PMSCs may operate inconsistently with EU values. There is still a substantial lack of information about the nature and scope of the operation of PMSCs, their relationships with host states, and the accountability measures if any.⁵²¹ There are a number of EU policies and documents applicable to PMSCs, however, they do not contain specific reference on the hiring and use of private contractors for CSDP missions and operations.⁵²² The determination of the eventual responsibility of the EU for the conduct of private contractors can only be understood as falling within the scope of Article 340.2 TFEU that formulates EU's non-contractual liability for any damage caused by its institutions and servants, thus including private contractors authorised to fulfil EU official duties.⁵²³

Under the present conditions, the EU and the contributing states to CSDP missions and operations should, in principle, refrain from outsourcing to PMSCs. Alternatively, the hiring procedures and the participation of PMSCs in CSDP should be regulated in more concrete terms to prevent impunity for possible acts of misconduct, including human rights and IHL violations.⁵²⁴ A possible solution would be to adopt self-regulatory acts applicable to PMSCs, or to formulate adequate provisions in future agreements with hosting and third contributing states as a guarantee of accountability and control of PMSCs activities.⁵²⁵ With regard to military operations, it has been suggested that PMSC personnel should be incorporated into the armed forces of the contributing states⁵²⁶, a solution that may ensure greater uniformity in terms of the applicable legal framework, training and reporting.⁵²⁷ It is more feasible to delineate the

Somali Republic in the framework of the EU military operation Atalanta, Art. 1(3)(g); Council Decision 2010/464/CFSP of 6 August 2010 on the signing and conclusion of the Agreement between the European Union and the Republic of Uganda on the Status of the European Union-led Mission in Uganda.

⁵²¹ Priv-War, 'Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services' (March 2011), 3-4 <http://priv-war.eu/wp-content/uploads/2013/03/Priv-War_Recommendations-FINAL-.pdf>.

⁵²² Council of the European Union, 'EU Concept for Logistic Support for EU-led military operations' (2011) 8641/11; Elke Krahnmann and Cornelius Friesendorf, 'The Role of Private Security Companies (PSCs) in CSDP Missions and Operations' (2011) EXPO/B/SEDE/FWC/2009-01/LOT6/10/REV1, 40-41 recommends the adoption of 'Common guidelines for the hire, use and management of military and security contractors in CSDP operations (CSDP Contracting Guidelines)'.

⁵²³ ECJ, Case C-519/04 P 316 *Meroni & Co, Industrie Metallurgiche SpA v High Authority* [1958] ECR 133, 42-47; Case 33/82 *Murri Frères v Commission* [1985] ECR 2759, para 36.

⁵²⁴ See Priv-War, 'Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services' (2011) Recommendation no 8, 12 <http://priv-war.eu/wp-content/uploads/2013/03/Priv-War_Recommendations-FINAL-.pdf>.

⁵²⁵ Mirko Sossai and Christine Bakker, 'The Role of EU External Relations in Ensuring Compliance with Human Rights and Humanitarian Law by Private Contractors' in Christine Bakker and Mirko Sossai (eds), *Multilevel Regulation of Military and Security Contractors: The interplay between international, European and domestic norms* (Hart Publishing 2012), 87-88.

⁵²⁶ James K Wither, 'European Security and Private Military Companies: The Prospects for Privatized "Battlegroups"' (2005) 4(2) *Connections: The Quarterly Journal*, 107-126.

⁵²⁷ Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press 2011), 320.

applicability of human rights and IHL standards, and the training and reporting conditions in the contracts concluded between the Operation Commander or the Head of the Mission and the PMSCs.⁵²⁸

D. Accountability of CSDP missions and operations, individual responsibility of personnel and accountability

Accountability can be defined as ‘the process through which an organisation commits to respond to and balance the needs of stakeholders in its decision-making processes and activities, and fulfils his commitment.’⁵²⁹ Accountability involves the acknowledgement and assumption of responsibility for actions and the capacity of being able to respond to complaints and ensure transparency for its activities and decisions.⁵³⁰ The EU’s activities in the field should not only be limited to the promotion of accountability of local institutions, but also to ensuring the accountability of the mission itself. The accountability concept of CSDP missions and operations is complex and includes a number of diverse and inter-related dimensions. EULEX Kosovo provides good practices in terms of accountability of CSDP missions. In 2010, the ‘EULEX accountability’ was defined in terms of three dimensions: operational, internal and external. EULEX Kosovo has established accountability mechanisms for different dimensions such as its so-called ‘Programmatic Approach’, the Human Rights and Gender Office (HRGO)⁵³¹ the Internal Investigations Unit (IIU) and the Human Rights Review Panel (HRRP).⁵³²

Box 7: EULEX Kosovo Accountability⁵³³

Operational accountability
<ul style="list-style-type: none"> • ‘Programmatic approach’ to assess the work of EULEX and the progress of local rule of law institutions⁵³⁴ • Human Rights and Legal Office/Gender Unit with a preventive, advisory and coordinative function in ensuring the EULEX’s activities respect human rights and human rights and gender mainstreaming

⁵²⁸ See *inter alia* Council joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia, Art. 8(3)

⁵²⁹ Daniela Irrera, *NGOs, Crisis Management and Conflict Resolution Measuring the Impact of NGOs on Intergovernmental Organisations* (Edward Elgar 2013), 108.

⁵³⁰ See Monica Blagescu, Lucy de Las Casas and Robert Lloyd, *Pathways to Accountability. The GAP Framework* (One World Trust 2005) <http://www.oneworldtrust.org/publications/doc_view/210-pathways-to-accountability-the-gap-framework?tmpl=component&format=raw> accessed 26 March 2016.

⁵³¹ Following the restructuring of the Mission in 2012 the gender aspect was integrated in the Strengthening division of the mission to enhance gender mainstreaming and the visibility at all level internally and externally. The current human rights and legal Office (HRLO) concentrates only in human rights aspects without prejudice to the possibility of working collaboratively with the gender unit where deemed appropriate. Interview with EULEX gender advisor and human rights officers.

⁵³² EEAS, ‘EULEX Accountability’ <<http://www.eulex-kosovo.eu/docs/Accountability/EULEX-Accountability-05.01.2010.pdf>> accessed 26 March 2016.

⁵³³ EEAS, ‘EULEX Accountability’ <<http://www.eulex-kosovo.eu/?page=2,23>> accessed 26 March 2016.

⁵³⁴ See the latest report EULEX Kosovo, ‘Compact Progress Report’ (September 2015) <http://www.eulex-kosovo.eu/eul/repository/docs/CPReport_2N.pdf> accessed 26 March 2016.

Internal accountability
<ul style="list-style-type: none"> • Legal accountability through the judicial mechanisms of the participating states • Disciplinary procedures through the Internal Investigations Unit (IIU)
External accountability
<ul style="list-style-type: none"> • Political accountability to the EU Member States and participating third states through the chain of command • Accountability vis-à-vis the political authorities in Kosovo through regular contact between the members of the joint Rule of Law Board institution. • Social accountability to the people of Kosovo by providing transparent and timely information on the Mission's performance • Financial accountability to the European Commission. Any claims of financial compensation for alleged damage caused by EULEX Kosovo will in principle be handled through the existing insurance cover • External human rights accountability through the Human Rights Review Panel (HRRP) for human rights violations in the conduct of its executive mandate

The EULEX's Programmatic Approach is a mechanism that statistically measures EULEX's achievements and the progress of the local rule of law institutions. The Human Rights and Legal Office, together with the Gender Unit (formerly part of the HRGO), provide advice and promote the human rights and gender perspective internally - by providing training to mission personnel - and externally, to the local authorities.

CSDP mission personnel play a two-fold role with respect to human rights: on the one hand their acts should respect and be guided by human rights and on the other hand they have to assist local authorities in meeting their human rights obligations.⁵³⁵ The existing cases of misconduct are surrounded by uncertainty and are not informed. What it is certain, however, is that experts attribute cases of misconduct and abuse to the lack of adequate training as well as to the lack of specific accountability mechanisms, and the difficulty for individuals affected during EU missions to access justice.⁵³⁶ In practice, the training provided to the staff members of EU missions should include reference to the charges that could be brought against them in case of direct or indirect participation in a crime.

⁵³⁵ Clara Rey Sánchez, 'Clarifying Mechanisms and Procedures for Accountability in Case of Violations' in Milena Costas Trascasas (ed), *Mainstreaming human rights in EU CSDP missions: a transversal analysis* (Low Cost Books 2012), 487-494.

⁵³⁶ Gentian Zyberi, 'The Applicability of General Principles and Instruments of International Law to Peace Missions of the European Union' in Sari A and Wessel RA (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 35.

CSDP personnel are granted privileges and immunities aimed at ensuring the legal security of CSDP personnel.⁵³⁷ It is argued that since the adoption of the generic Model of SOFAs⁵³⁸ and SOMAs⁵³⁹ in 2005, both military and civilian personnel are granted more extensive privileges and immunities than those laid out in the Vienna Convention on Diplomatic Relations of 1961,⁵⁴⁰ which is not in line with the 'strictly functional purpose' of the privileges and immunities to be negotiated with host states.⁵⁴¹

The 'Generic Standards of Behaviour for CSDP Operations', adopted in 2005 and complementary to the legal obligations of personnel, draws special attention to specific criminal activities, namely organised crime, corruption, human trafficking and child abuse. These guidelines note, in particular, that 'personnel should report any alleged violations by personnel of human rights and international humanitarian or international criminal law.' It further states that '[a]n investigation of each complaint and where relevant subsequent prosecution should be ensured by the competent authority. Personnel are to be made fully aware of applicable law, in particular [the above mentioned] illegal and criminal activities'.⁵⁴² There are also references to sexual and gender-based violence and the potential impact of these offences on the 'moral standing of the [CSDP] operation [and] it will ultimately make the mission more difficult to achieve.'⁵⁴³

Human rights violations or abuses committed by personnel deployed in the mission area could have devastating effects on the effectiveness of missions and operations, as well as loss of credibility, trust, respect and confidence amongst the local population. There is only one example of an accountability mechanism, which is in EULEX Kosovo for human rights violations. The *Human Rights Review Panel* (HRRP) became operational on 9 June 2010 to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. It should be noted that EULEX Kosovo has been the only civilian mission to date with a partial executive mandate. The HRRP is not a judicial nor a disciplinary body and its decisions and recommendations to the Head of the Mission are of a non-binding and non-pecuniary nature.⁵⁴⁴

⁵³⁷ See Aurel Sari, 'Status of Forces and Status of Mission Agreements under the ESDP: The EU's Evolving Practice' (2008) 19(1) *The European Journal of International Law*, 67-100.

⁵³⁸ Council of the European Union, 'Draft Model Agreement on the status of the European Union-led forces between the European Union and a host State' (2005), 8720/05.

⁵³⁹ Council of the European Union, 'Draft Model Agreement on the status of the European Union Civilian Crisis Management Mission in a host State' (2005), 10564/05.

⁵⁴⁰ Aurel Sari, 'Status of Forces and Status of Mission Agreements under the ESDP: The EU's Evolving Practice' (2008) 19(1) *The European Journal of International Law*, 79.

⁵⁴¹ *ibid* 78.

⁵⁴² Council of the European Union, *Generic Standards of Behaviour for ESDP Operations* (2005), 8373/3/05, 9.

⁵⁴³ *ibid* 7

⁵⁴⁴ Human Rights Review Panel <<http://hrrp.eu/>> accessed 5 March 2016.. See also European Commission for Democracy through Law (Venice Commission), 'Opinion on the Existing Mechanisms to Review the Compatibility with Human Rights Standards of Acts by UNMIK and EULEX in Kosovo', adopted 17-18 December 2010, Opinion no 545 / 2009, CDL-AD(2010) <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)051-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)051-e)> accessed 28 March 2016.

VI. Case studies of CSDP missions and operations

This FRAME deliverable looks at selected CSDP operations and missions since the adoption of the joint strategy for human rights and examines their purpose and how they fit into the EU human rights policy and into the regional and multilateral efforts to promote human rights as a means to achieve international peace. The main purpose of the case studies is to illustrate the EU efforts to integrate human rights and IHL in CSDP mandates and to ensure coordination and coherence with other EU initiatives in place. The analysis does not cover the impact of the selected CSDP missions and operations on human rights in the host country that will require more thorough examination all EU policies and programmes in place.

In view of the increasing interest of EU Member States in the migration dimension of the conflicts and crises throughout the Middle East and North African (MENA) and Sub-Saharan region, and their preference for a comprehensive approach to conflict and crisis, the case selected are the CSDP missions and operations deployed in the Sahel region and the military operation EUNAVFOR MED Operation Sophia in the Mediterranean Sea.

The political response to the migrant crisis that has captivated Europe in recent months has centered on managing migrant flows from the Eastern and Central Mediterranean routes. The humanitarian toll of these migrations – whether from overburdened ships capsizing in the Mediterranean or migrants abandoned and left to their deaths in the vast Sahara – have necessitated attention and a more integrated European response. Part of the process of managing this crisis has involved efforts to increase cooperation with regional partners, especially those with whom the EU has developed a deeper relationship due to ongoing political turmoil and security threats in the Sahara and Sahel. This has involved the reinforcement of CSDP missions and operations deployed in the regions and broadening their mandates to include a greater focus on migration

The EU's comprehensive approach to security and development in the Sahel includes three CSDP actions: EUCAP Sahel Niger, EUCAP Sahel Mali and the EU training mission in Mali (EUTM). The EU launched a civilian CSDP mission EUCAP SAHEL in Niger in 2012 with the objective to fight terrorism and organised crime. Its mandate was extended in 2014 until July 2016. EUCAP Sahel Niger provides advice and training to support the Nigerien authorities in strengthening their capacities to combat terrorism and organised crime. In January 2015, the Council launched EUCAP Sahel Mali to support the Malian internal security forces. EUCAP Sahel Mali is helping the Malian state ensure constitutional and democratic order, put in place the conditions for lasting peace as well as maintain its authority throughout the entire territory. At the request of Mali and in line with relevant international decisions including UNSC Resolution 2085 (2012), the EU launched an EU military Training Mission in Mali (EUTM Mali) in 2013. The mission supports the rebuilding of the Malian armed forces and to meet their operational needs by providing expertise and training.

EUNAVFOR MED, also known as Operation Sophia, is an EU anti-migrant smuggling military operation operation launched in June 2015. EUNAVFOR Med is the first CSDP operation with a potential openly coercive mandate which could potentially lead the EU to engage in 'peace enforcement'-type activities.

As other CSDP missions and operations, EUNAVFOR Med constitutes one element of a EU Comprehensive Approach towards both the refugee crisis and restoring stability in Libya.

The analysis is divided into three subsections: context, the EU's comprehensive strategy in which CSDP actions are embedded and an assessment of the integration of human rights and IHL aspects into their mandates.

A. SAHEL EUTM Mali and EUCAP Niger

1. Context

The Sahel region is one of the poorest and most volatile areas of the world and suffers from a protracted humanitarian crisis.⁵⁴⁵ The Sahelian countries face extreme poverty, political instability, high population growth rates, climate change and food insecurity, fragile governance, illegal trafficking, radicalisation and violent extremism. However, over the last few years, the rising threat of terrorism and the increasing 'migration flows' have placed the Sahel region in the international spotlight.⁵⁴⁶ The core of the Sahel is an area that encompasses the north and northwest of Mauritania and the north of Mali and Niger and it is characterised by an absence of state authority in vast areas of their territories, providing a safe haven for terrorist groups and criminal networks. The presence of non-state actors and the destabilising effect their activities have upon the security and economy of the Sahel region represent a major challenge. The main non-state actors present in the region include the Tuareg⁵⁴⁷ terrorist groups and the drug trafficking networks.⁵⁴⁸ The population in these Northern and undeveloped areas constitute an easy target for radicalisation and recruitment into terrorist groups.⁵⁴⁹

The 2011 Libyan war had a great impact on the Sahel region with an influx of fighters and weapons that led to further deterioration of the security situation in northern Mali and Niger.⁵⁵⁰ Large quantities of arms and ammunition from Libyan stockpiles ended up in the trans-Sahel smuggling business. The returned Tuareg fighters who had served Muammar Gaddafi were endowed with significant military expertise and

⁵⁴⁵ The Sahel is considered in the INFORM (Index for Risk Management) of the Joint Research Centre -JRC 2 of the European Commission, as an area of very high risk of disasters and humanitarian crises; INFORM, 'Index for Risk Management' <<http://www.inform-index.org>> accessed 20 January 2016.

⁵⁴⁶ Miguel Ángel Ballesteros Martín, 'Diagnóstico Geoestratégico del Conflicto en Malí' (2013) IEEE Documento de Análisis 14/2013 <http://www.ieee.es/Galerias/fichero/docs_analisis/2013/DIEEEA14-2013_DiagnosticoEstrategicoSAHEL_GB.Ballesteros.pdf> accessed 20 January 2016.

⁵⁴⁷ The Tuareg are a traditionally nomadic people of North African Berber origin who live in the Central Sahara and the Sahel. The Tuareg have sought autonomy in the Sahel region since the early 1900s, however the main Tuareg rebellions in the Sahel originate from: the creation of new states with established borders following the end of colonial rule in the region that transformed the social and economic organisation of these nomadic groups, political marginalisation in these new states; and, the perceived exploitation of natural resources from Tuareg lands by governments. For more information see Baz Lecocq, *Disputed Desert: Decolonisation, Competing Nationalisms and Tuareg Rebellions in Northern Mali* (Brill 2010)

⁵⁴⁸ *ibid* 14-16

⁵⁴⁹ Luis Simon, Alexander Mattelaer and Amelia Hadfield, 'A Coherent EU Strategy for the Sahel', (European Parliament 2012), EXPO/B/DEVE/FWC/2009-01/Lot5/23, 8-9

⁵⁵⁰ UN Security Council, 'Report of the assessment mission on the impact of the Libyan crisis on the Sahel region' (2011), S/2012/42

weapons, which were crucial in sustaining their subsequent offensives, particularly in Mali. From October 2011 onwards these fighters organised themselves into the National Movement for the Liberation of Azawad (MNLA) seeking the independence of the northern areas in Mali. In March 2012, the situation escalated dramatically when the National Movement for the Liberation of Azawad (known by its French acronym MNLA) and Ansar Dine succeeded in pushing the governmental security forces out of Northern Mali.⁵⁵¹ On 18 June 2013, the Malian government and two armed Tuareg movements signed a 'Preliminary Agreement on the Presidential Election and Inclusive Peace Talks'.⁵⁵²

Niger is affected by a wide range of problems such as organised crime, terrorism and migration, which is exacerbated by its weak economy. The crisis in Mali, instability in Libya and the terrorist group Boko Haram in Nigeria also pose a threat to Niger's security and development. The fall of the Libyan leader Muammar Gaddafi in 2011 cut off a major source of funding and investment for the Nigerien authorities. The crisis, which followed the 2011 events, drove thousands of Nigeriens back to their country of origin, one of the poorest and most dependent nations in the African continent. Among the returnees there were Tuaregs who had fought for Qaddafi and workers whose families in Niger relied on remittances sent from Libya.⁵⁵³

In 2013 the French military intervention retook control of the major cities in Northern Mali, leading the Islamist extremists allied to the Tuareg rebels to spread across the region into neighbouring countries.⁵⁵⁴ In Niger the absence of governmental authority in the Northern underdeveloped areas of Niger created a fertile ground for the establishment of these radical groups.⁵⁵⁵ Niger is a major transit country for West and Central African migrants towards Europe through Libya and Algeria,⁵⁵⁶ and the Northern city of Agadez

⁵⁵¹ International Crisis Group, 'Putting Mali Back on the Constitutional Track' (2012) <<http://www.crisisgroup.org/en/publication-type/alerts/2012/mali-putting-mali-back-on-the-constitutional-track.aspx>> accessed 20 January 2016.

⁵⁵² Accord préliminaire à l'élection présidentielle et aux pourparlers inclusifs de paix au Mali, Ouagadougou, Burkina Faso, June 18, 2013 <https://minusma.unmissions.org/sites/default/files/130618mali2_0.pdf> accessed 23 January 2016; The Ouagadougou agreement was a preliminary arrangement that avoided addressing difficult issues and focused on short-term issues: a cease-fire; the preparation of the presidential election; the return of public services in the Northern regions; and, the elaboration of a more comprehensive peace agreement.

⁵⁵³ Philippe Fargues and Christine Fandrich, 'Migration after the Arab Spring' (2012) European University Institute, Migration Policy Centre (MPC) 2012/09, 4 <<http://www.migrationpolicycentre.eu/docs/MPC%202012%20EN%2009.pdf>> accessed 25 January 2016.

⁵⁵⁴ David J. Francis, 'The regional impact of the armed conflict and French intervention in Mali' (2013) Norwegian Peacebuilding Resource Center (NPRC) Report, 11 <http://www.peacebuilding.no/var/ezflow_site/storage/original/application/f18726c3338e39049bd4d554d4a22c36.pdf> accessed 23 January 2016.

⁵⁵⁵ International Crisis Group, 'Mali: Reform or Relapse' (2014) Africa Report no 210, 12 <[http://www.crisisgroup.org/~media/Files/africa/west-africa/mali/210-mali-reform-or-relapse-english.pdf](http://www.crisisgroup.org/~/media/Files/africa/west-africa/mali/210-mali-reform-or-relapse-english.pdf)> accessed 20 January 2016.

⁵⁵⁶ Approximately 90% of migrants from Western Sahara, about half of the migrants arriving irregularly through Libya travel through Niger. Also it should be noted that Nigeria, Mali, Ghana, Senegal and Burkina Faso have agreed visa-free travel arrangements, granted to citizens within the Economic Community of West African States (ECOWAS)

is a major hub for clandestine migration.⁵⁵⁷ The Nigerien authorities face a major challenge in controlling the North of the country and its borders with Libya, Mali and Nigeria resulting from the lack of sufficient resources and capabilities. Irregular migration is also linked to trafficking of human beings and the smuggling of migrants, corruption, illicit trafficking and transnational organised crime. This is particularly the case for the regions that remain strong as long as the presence of governmental authorities is weak. The most vulnerable groups include women, children and refugees and IDPs. Youth and women in the Sahel, who constitute a vast majority of the population, are the targets of recruitment into radical movements - high unemployment rates, chronic poverty and social deprivation are the main driving factors for recruitment by terrorist groups.⁵⁵⁸ Thus, supporting the vulnerable populations is a way of addressing the root causes of the humanitarian and development crisis and a way to prevent individuals from joining criminal and terrorist groups.

2. The EU's comprehensive approach to crises in the Sahel

The situation in the Sahel is of interest for EU Member States because the problems facing the region do not only affect the local populations but also the security of European citizens.⁵⁵⁹ Initially, the EU's engagement with the African states consisted essentially of development cooperation aid. EU Member States became increasingly aware that EU development efforts towards the region would only yield positive results with the adoption of a more comprehensive approach encompassing security and development policies and programmes towards the region. The 'limitations to what development money can achieve in a near anarchical environment largely explains the EU's increasing emphasis on capacity building. If governments obtain the instruments to improve the region's security, the conditions are created within which development efforts can truly flourish.'⁵⁶⁰

a) Policy framework

There are a number of agreements, strategies and action plans regulating the relations between the EU and the Sahelian countries.⁵⁶¹ The EU Sahel Strategy for Security and Development adopted in March 2011

⁵⁵⁷ See *inter alia* Sarah Wolff, 'The European Union and the challenges of trans-saharan migration' in Sieglinde Gstöhl and Erwan Lannon (eds), *The European Union's Broader Neighbourhood: Challenges and Opportunities for Cooperation beyond the European Neighbourhood Policy* (Routledge 2015), 37-52

⁵⁵⁸ European Parliament, 'European Parliament resolution of 14 June 2012 on human rights and the security situation in the Sahel region' (2012) 2012/2680(RSP) <<http://www.europarl.europa.eu/document/activities/cont/201206/20120628ATT47836/20120628ATT47836EN.pdf>> accessed 20 January 2016.

⁵⁵⁹ Council of the European Union, 'Strategy for Security and Development in the Sahel' (2011), 1

⁵⁶⁰ Luis Simon, Alexander Mattelaer and Amelia Hadfield, 'A Coherent EU Strategy for the Sahel', (2012) European Parliament EXPO/B/DEVE/FWC/2009-01/Lot5/23, 9

⁵⁶¹ See Anna-Luise Chané and others, 'Report on the EU's engagement with regional multilateral organisations: Case study: African perspective' (2015) FRAME D 5.4, 19-26 <<http://www.fp7-frame.eu/wp-content/uploads/2015/11/FRAME-Deliverable-5.4-Submitted-30-June-2015.pdf>> accessed 20 January 2016; Human rights references in the main political and regulatory instruments include the following: Art. 9. Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, [2000] OJ L317/3; Art 96(2)(a) of the Joint Africa-EU Strategy (JAES) and its Action Plans.

is the key framework for the EU and its Member States to approach the key security and development challenges in the region. The strategy acknowledges that ‘the problems facing the Sahel not only affect the local populations but increasingly impact directly on the interests of European citizens,’⁵⁶² including threats from terrorists groups such as Al-Qaeda in the Maghreb (AQIM) and transnational criminal activities in the region’s ungoverned spaces. However, the implementation of the Sahel Strategy since its adoption in 2011 has faced several challenges resulting in particular, from shifts in the Sahel’s geopolitical configuration, especially after the Libya conflict, pushing the EU to gauge its action plans to better fit the changing context.⁵⁶³

Table 7: The EU Sahel Strategy for Security and Development⁵⁶⁴

Policy Basis	<ul style="list-style-type: none"> - Strategy for Security and Development in the Sahel (2011) - Revised Strategy for Security and Development in the Sahel (2014) - Council conclusions on the Sahel Regional Action Plan 2015-2020
‘Core’ Sahel Countries	Burkina Faso, Chad, Mali, Mauritania and Niger
Challenges	<ul style="list-style-type: none"> - Food, Natural Resources and Human Development - Governance and Human Rights - Economic Infrastructure, Energy and Trade - Regional impact of crisis - Reduced response capacity
Development and Security Instruments and Initiatives	<ul style="list-style-type: none"> - CSDP action - European Development Fund (EDF) - Instrument for Stability (IfS) - Bilateral support from EU Member States - Regional Indicative Programme for West Africa, the new Pan-African Programme (PANAF) - Development Cooperation Instrument (DCI) - Instrument contributing to stability and peace (IcSP) - EUSR for the Sahel - EU Humanitarian Aid - European Neighbourhood Instrument (ENI) EU humanitarian action - Strengthening of human rights and the protection of civilians and vulnerable groups (various instruments and initiatives) - Mediation support and conflict analysis

The Sahel region is one of the crisis scenarios in which the EU has intervened with a broad spectrum of instruments at its disposal even before the concept and principles were formulated in the Comprehensive Approach in 2013. The *raison d’être* of the comprehensiveness of the EU’s response is to maximise its

⁵⁶² Council of the European Union, ‘Strategy for Security and Development in the Sahel’ (2011), 1

⁵⁶³ See Oladiran Bello, ‘Quick Fix or Quicksand? Implementing the EU Sahel Strategy’ (November 2012) FRIDE Working Paper no 114 <http://fride.org/download/WP_114_Implementing_the_EU_Sahel_Strategy.pdf> accessed 2 February 2016.

⁵⁶⁴ Council of the European Union, ‘Council conclusions on the Sahel Regional Action Plan 2015-2020’ (2015) Press release 190/15 <<http://www.consilium.europa.eu/en/press/press-releases/2015/04/20-council-conclusions-sahel-regional-plan/>> accessed 2 February 2016.

actions as both a development agency and a security provider.⁵⁶⁵ The Sahel Strategy is based on the assumption of ‘inter-dependence of security and development’ and that the ‘problems in the Sahel are cross-border and closely intertwined’ and that a regional response is required.⁵⁶⁶ The 2015, the Sahel Regional Action Plan stressed that ‘the enhancement of security in the region through the fight against terrorism, illicit trafficking, radicalisation and violent extremism, remains the key objective of the EU.’⁵⁶⁷ The Sahel Regional Action Plan provides a new focus on the link between migration and development in close correlation with the comprehensive response to the migrant and refugee crisis.

A truly regional approach to the Sahel also needs to encompass cooperation with neighbouring countries affected by terrorist and transboundary criminal activities and migration flows. For example, terrorists attacks perpetrated in Niger where reportedly planned in southern Libya⁵⁶⁸ and around half of the migrants transiting through Libya made their journey through Niger. In view of the transboundary nature of these threats, coordination, coherence and complementarity among the various EU external strategies is crucial. The Sahel Strategy initially focused on three ‘core’ countries (Mali, Mauritania and Niger) to the neglect of the region’s leading players (Nigeria and Algeria).⁵⁶⁹ The European Agenda on Migration approved in May 2015 foresees to integrate or reinforce the migration dimension in CSDP missions and

⁵⁶⁵ The EU Strategy for Security and Development or Sahel Strategy initially covered Mali, Mauritania and Niger. The Council revised the Sahel Strategy on 17 March 2014 extending the implementation to Burkina Faso and Chad. Council of the European Union, ‘Council conclusions on implementation of the EU Strategy for Security and Development in the Sahel’ (2014) Press release <http://eeas.europa.eu/documents/pdf/2fac_sahel1703_en.pdf> accessed 2 February 2016; A new Regional Action Plan (RAP) 2015-2020 for the implementation of the Strategy was adopted on 20 April 2015.

⁵⁶⁶ EEAS, ‘Strategy for Security and Development in the Sahel’, (2011), 1-2 <http://eeas.europa.eu/africa/docs/sahel_strategy_en.pdf> accessed 2 February 2016; The Strategies main focus is on Mauritania, Mali and Niger while some of the challenges of geographical nature may also involve Burkina Faso and Chad. Many of the challenges may also have an impact on neighbouring countries (Algeria, Libya, Morocco and even Nigeria)

⁵⁶⁷ Council of the European Union, ‘Council conclusions on the Sahel Regional Action Plan 2015-2020’, 2. The EU approach to the Sahel is articulated in four complementary areas of action: (i) development, good governance and internal conflict resolution; (ii) political and diplomatic action; (iii) security and the rule of law; and, (iv) countering violent extremism and radicalisation. The Action Plan identifies four domains to be further reinforced which could potentially have a spill-over effect outside the region, including the EU, namely: (i) preventing and countering radicalisation; (ii) creating appropriate conditions for Youth; (iii) migration and mobility; and, (iv) border management, fight against illicit trafficking and transnational organised crime. EEAS, ‘Strategy for Security and Development in the Sahel’ (2011), 7-8

⁵⁶⁸ Tobias Koepf, ‘Terrorist attacks in Niger: not another Mali’ (2013) Issue Alert 13, 2 <http://www.iss.europa.eu/uploads/media/Alert_Niger.pdf> accessed 3 February 2016.

⁵⁶⁹ Council of the European Union, ‘Council Conclusions on an EU Strategy for Security and Development in the Sahel’ (2011), para 3 <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/120075.pdf> accessed 2 February 2016. This narrow regional dimension undermined the possibility of tackling crucial economic, security, humanitarian and governance aspects from the outset. Indeed, the coordination with international and regional organisations has also been affected by different geographical scopes of their respective strategies. See the mapping of the strategies and initiatives of the multilateral organisations present in the region, Damien Helly and others ‘Sahel strategies: why coordination is imperative’ (March 2015) <http://ecdpm.org/wp-content/uploads/ECDPM_ISS_EN_SAHEL_STRATEGIES_2015_HELLY_GALEAZZI.pdf> accessed 2 February 2016.

operations in the Sahel.⁵⁷⁰ Also, in order to ensure coherence in the implementation of the EU strategies for the Sahel and the Horn of Africa, the Foreign Affairs Council expanded the geographical and functional scope of the EU Operations Centre in 2014, which initially only covered the Horn of Africa, to improve coordination and strengthen civil-military synergies between the CSDP actions deployed both regions.⁵⁷¹ It is also necessary to mention the ‘train and equip’ initiative, which is aimed at supporting countries and regional organisations to take responsibility for their own security. Somalia and Mali have been identified as priority pilot cases, together with the strengthening of the African Peace and Security Architecture (APSA).⁵⁷² This is particularly relevant in view of the difficulties encountered by the military training missions EUTM Mali and EUTM Somalia which have had limited impact in their activities due to the shortage of equipment of the Malian and Somalian armies.

The instruments foreseen in the Sahel Strategy include the European Development Fund (EDF), the Instrument for Stability (IfS), the European Neighbourhood Instrument (ENI, former European Neighbourhood and Partnership Instrument), thematic programmes and budget lines, the possibility of bilateral support from EU Member States and CSDP missions and operations (EUTM Mali, EUCAP Sahel Niger and EUCAP Sahel Mali). Despite the presence of a varied range of instruments, there are divergent views on the necessity and balance between the security and development elements thereof. Indeed, some are of the view that the Sahel Strategy seems to disproportionately emphasise development over security instruments despite the growing instability in the region.⁵⁷³ The AQIM’s consolidation in northern Mali led the EU to pay closer attention to the security dimension of the strategy and engage through the CSDP.⁵⁷⁴ The Action Plan 2015-2020 in force also contains explicit references to the improvement and strengthening of human rights, the protection of civilians, particularly women and children, are all priorities of the EU. The Action Plan asserts the EU’s commitment to promote the ratification and effective implementation of the various UN, AU and ECOWAS instruments adopted by the countries in the Sahel on human rights.⁵⁷⁵

The comprehensive approach to crisis in the Sahel involves the contribution of the EU institutions, the EU Special Representative (EUSR) for the Sahel and EU Member States to regional and country-led and owned

⁵⁷⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘A European Agenda on Migration’ (2015) COM(2015) 240 final, 5

⁵⁷¹ EEAS, ‘EU Operations Centre Horn of Africa & Sahel (EU OPCEN)’ <http://eeas.europa.eu/csdp/structures-instruments-agencies/eu-operations-centre/docs/factsheet_eu_opcen_23_06_2015.pdf> accessed 3 February 2016.

⁵⁷² European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council ‘Capacity building in support of security and development - Enabling partners to prevent and manage crises’ (2015) JOIN(2015) 17 final

⁵⁷³ Oladiran Bello, ‘Quick Fix or Quicksand? Implementing the EU Sahel Strategy’ (November 2012) FRIDE Working Paper no 114, 2 <http://fride.org/download/WP_114_Implementing_the_EU_Sahel_Strategy.pdf> accessed 2 February 2016.

⁵⁷⁴ *ibid.*

⁵⁷⁵ Council of the European Union, ‘Council conclusions on the Sahel Regional Action Plan’ 2015-2020, 23

initiatives in the framework of the Action Plan.⁵⁷⁶ The first EUSR for the Sahel was appointed in March 2013⁵⁷⁷ to help coordinate the EU's overall approach to the crisis on the basis of the EU Sahel Strategy. The EUSR for the Sahel is also required to 'contribute to the implementation of the Union's human rights policy in the region in cooperation with the EUSR for Human Rights'. 'The contribution will include monitoring and reporting on developments, as well as formulating recommendations in this regard and maintain regular contacts with the relevant authorities in Mali and in the region, the Office of the Prosecutor of the International Criminal Court, the Office of the High Commissioner for Human Rights and the human rights defenders and observers in the region.'⁵⁷⁸

The EU's comprehensive approach to security and development in the Sahel includes three CSDP actions: EUCAP Sahel Niger, EUCAP Sahel Mali and EUTM Mali that will be addressed in the follow

b) Regional and multilateral efforts

There is significant mobilisation among the regional and international actors that deal with the political, security and humanitarian situation in the Sahel region, particularly following the fall of the Qaddafi regime in Libya in 2011.⁵⁷⁹ Mali initially attracted most of the crisis management efforts as the radical Islamist groups in the North of the country posed the most visible threat to regional security. Mali hosts four parallel missions: the French Operation Barkhane (preceded by Operation Serval), the United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA), and the EU-led EUCAP Sahel Mali and EUTM Mali. The Economic Community of West African States (ECOWAS) and African Union (AU) have played an important role as mediators in Mali to the establishment of the various multidimensional operations in Mali and Niger. Altogether, these operations involve a division of labour among security actors based on their 'respective know-how and comparative advantages.'⁵⁸⁰ All these actors have elaborated their own strategies although they diverge on many aspects with the EU Strategy for the Sahel such as geographical scope and implementation resulting from their own needs, interests and perceptions of the crisis.⁵⁸¹

⁵⁷⁶ Council of the European Union, 'Council conclusions on the Sahel Regional Action Plan 2015-2020' (2015) Press release 190/15 <<http://www.consilium.europa.eu/en/press/press-releases/2015/04/20-council-conclusions-sahel-regional-plan/>> accessed 2 February 2016.

⁵⁷⁷ Council Decision 2013/133/CFSP of 18 March 2013 appointing the European Union Special Representative for the Sahel, OJ L 75/29

⁵⁷⁸ Council Decision (CFSP) 2015/2274 of 7 December 2015 appointing the European Union Special Representative for the Sahel, Art. 3.1(j)

⁵⁷⁹ Stockholm International Peace Research Institute, 'Sipri Yearbook 2015: Armaments, Disarmament and International Security' (2015), 176-178

⁵⁸⁰ See Thierry Tardy, 'The UN in the Sahel: Managing Expectations in the Quest for a "Hybrid Peace"' in Cristina Barrios and Tobias Koepf (eds), *Re-mapping the Sahel: Transnational Security Challenges and International Responses* (June 2014) EUISS Report no 19, 67 <http://www.iss.europa.eu/uploads/media/Report_19_Sahel.pdf> accessed 5 February 2016.

⁵⁸¹ Damien Helly and others, 'Sahel strategies: why coordination is imperative' (March 2015); see table on security actors and instruments in the Sahara/Sahel in Amandine Gnanguènon, 'ECOWAS and the Sahel Action Plan (PCAR): A Tool for Regional Integration in the Sahel?' in Cristina Barrios and Tobias Koepf (eds), *Re-mapping the Sahel: transnational security challenges and international responses* (June 2014) ISSUE Report no 19, 59 <http://www.iss.europa.eu/uploads/media/Report_19_Sahel.pdf> accessed 2 February 2016.

France took the lead in confronting the armed groups in northern Mali and pushing for the establishment of subsequent UN and EU operations.⁵⁸² The French Operation Serval was the first military intervention to oust Islamic militants in the north of Mali at request of the interim government and under United Nations Security Council Resolution 2085 (2012). Following the French military intervention, ECOWAS decided to deploy the African-led International Support Mission to Mali (AFISMA) against Islamist rebels in the Northern Mali conflict and under the authorisation of the UN Security Council Resolution 2085.⁵⁸³ The strategic concept for the resolution of the Malian crisis was adopted on 24 October 2012 by the African Union Council for Peace and Security and assigned to the UN the coordination of the activities of all security actors.⁵⁸⁴

The EU Action Plan, in coordination with key international and regional partners, in particular the UN, the AU,⁵⁸⁵ the Economic Community of West African States (ECOWAS),⁵⁸⁶ the West African Economic and Monetary Union (WAEMU), the G5 Sahel, the Lake Chad Basin Commission, the World Bank and civil society organisations, underlines the importance of the principle of full ownership and responsibility of the countries concerned. The UN Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA) provides security, stabilisation and protection of civilians; supporting national political dialogue and reconciliation; and assisting the reestablishment of State authority, the rebuilding of the security sector, and the promotion and protection of human rights in that country.⁵⁸⁷

The Joint Africa-EU Strategy (JAES), adopted in 2007, provides a political framework for cooperation between the EU and African countries with the African Union (AU) as the main interlocutor on pan-African

⁵⁸² UNSC Resolution 2085 (2012), para 18; The operation was replaced on 15 July 2014 by Operation Barkhane to fight Islamist fighters with a wider geographic scope.

⁵⁸³ After the March 2012 coup and the subsequent seizure of the northern cities of Gao, Kidal and Timbuktu in Mali, ECOWAS initiated diplomatic efforts and started the planning of a possible peace operation to assist the Malian government to restore its sovereignty in the north of the country. Eventually AU took over the operation as ECOWAS encountered in the planning phase, the International Support Mission to Mali (AFISMA). However, the AU too faced operational and financial difficulties that challenged the feasibility and sustainability of its project. In January 2013 a serious offensive of the radical Islamist groups took place and France decided to launch a military response (operation Serval), and the UN took over the AU mission in Mali on 1 July 2013; UN Security Council Resolution 2100 adopted on 25 April 2013.

⁵⁸⁴ African Union, 'Concept Stratégique pour la résolution des crises que connaît le Mali' (2012) <<http://www.peaceau.org/uploads/cps.concept.strategique.pdf>> accessed 2 February 2016. See also Bélangère Rouppert, 'The EU Strategy for the Sahel: state of play - One year later, disillusion and fears for the future in Mali' (27 December 2012) <http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2012/na_2012-12-27_fr_b-rouppert.pdf> accessed 3 February 2016.

⁵⁸⁵ For an overview of EU-AU relations see ISS Africa, 'EU-AU relations: beyond institutional twinning' (15 October 2015) <<https://www.issafrica.org/pscreport/on-the-agenda/eu-au-relations-beyond-institutional-twinning>> accessed 4 February 2016.

⁵⁸⁶ ECOWAS, focused on economic matters and formed by 15 West African countries (Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo) has led the mediation process to support the stabilization of Mali, before the United Nations and the African Union. Additionally it deployed in collaboration with the AU a stabilisation force in Mali. The UN Security Council Resolution 2085 (2012) authorised the deployment of African-led international support mission for a period of a year.

⁵⁸⁷ UN Security Council Resolution 2164 in 2014

issues.⁵⁸⁸ African and European Heads of State and Government adopted the Roadmap 2014-2017 which focuses on the implementation of the Joint Strategy on five priority areas: peace and security; democracy, good governance and human rights; human development; sustainable and inclusive developmental growth and continental integration; and, global and emerging issues.⁵⁸⁹

The EU also supports existing initiatives carried out by EU Member States, countries of the Sahel and regional and international organisations operating in the area. The EU has allocated funds to support the deployment of AFISMA through ECOWAS⁵⁹⁰ under the African Peace Facility (APF), created in 2004.⁵⁹¹ Nonetheless, the allocation of APF funds to support military operations is controversial, and viewed as being for the purpose of ‘securitisation of aid’, development funds may be used to address security goals instead of pursuing poverty reduction.⁵⁹²

A recent initiative in the framework of the EU Agenda on Migration is to establish a multi-purpose migrant centre proposed in the European Agenda on Migration in cooperation with IOM and UNHCR. The main objective of the centre is to provide assistance to migrants in transit in the Northern region of Agadez and also to inform them about the risks of continuing their journey on the migratory routes while also offering local protection, resettlement opportunities and voluntary return options for irregular migrants.⁵⁹³ At the time of writing this report it is still too early to assess the impact of this project and the synergies developed with CSDP missions as the implementation of this initiative has been delayed until mid-2016. Nevertheless this initiative has already provoked criticism as it is seen aimed to ‘convince migrants en route to Europe to stop their journey’⁵⁹⁴.

⁵⁸⁸ The EU-Africa Partnership, ‘African-led Peace Support Operations’ <<http://www.africa-eu-partnership.org/en/priority-areas/peace-and-security/achievements-and-milestones/african-led-peace-support>> accessed 4 February 2016.

⁵⁸⁹ The EU-Africa Partnership, ‘Fourth EU-Africa Summit: Roadmap 2014-2017’ <http://www.africa-eu-partnership.org/sites/default/files/documents/2014_04_01_4th_eu-africa_summit_roadmap_en.pdf> accessed 4 February 2016.

⁵⁹⁰ European Commission, ‘Donor Conference on Mali: EU pledges € 50 million to support an African-led peace operation (AFISMA)’ (2013) Press Release <http://europa.eu/rapid/press-release_IP-13-62_en.htm> accessed 4 February 2016.

⁵⁹¹ The African Peace Facility is a EU financing instrument to strengthen the ability of the African Union to engage in peace support and peacekeeping operations; Council Decision 2003/3 of the ACP-EC Council of Ministers of 11 December 2003 on the use of resources from the long-term development envelope of the ninth EDF for the creation of a Peace Facility for Africa. The Peace Facility is based on the principle of African ownership to support African-led peacekeeping operations in Africa as well as capacity building for the emerging security structure of the African Union (AU). These operations are launched and implemented by the African Union's organisations and/or by sub-regional organisations.

⁵⁹² The APF can be used to finance costs incurred by African countries deploying their peace-keeping forces in one or more other African countries (cost of carrying troops, soldiers' living expenses, development of capabilities, etc) but not to cover military and arms expenditure. In any event spending on peace missions does not count as ODA; Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (Routledge 2006), 123

⁵⁹³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘A European Agenda on Migration’ (2015) COM(2015) 240 final, 5

⁵⁹⁴ Nikolaj Nielsen, ‘Expert teams in Niger to steer migrants home’ (21 April 2015) <<https://euobserver.com/justice/128299>> accessed 1 May 2016.

3. Assessment of the integration of human rights, gender and IHL

a) Mandate

(1) EUCAP Sahel Niger

The Council Decision 2012/392/CFSP established the civilian mission EUCAP Sahel in Niger to build the capacity of Nigerien security forces to fight terrorism and organised crime.⁵⁹⁵ In July 2014, the Council decided to amend and extend the EUCAP mission's mandate by a further two years.⁵⁹⁶ The mission, as its name indicates, was initially conceived as a 'regional' mission to cover Mauritania, Niger and Mali and liaison officers were placed in Mali and Mauritania respectively. Eventually the establishment of a mission in Mauritania was dismissed due to lack of interest from the side of the local authorities. It was then decided to establish a separated mission, EUCAP Sahel Mali, with a stronger focus on capacity building rather than specific support to fight against terrorism, as in the case of Niger.⁵⁹⁷

EUCAP SAHEL Niger is aimed 'at contributing to the development of an integrated, multidisciplinary, coherent, sustainable, and human rights-based approach among the various Nigerien security actors in the fight against terrorism and organised crime' as part of the security dimension of the EU Strategy for Security and Development⁵⁹⁸ and in support of the implementation of the national 'Strategy for Development and Security in Sahel-Saharan Areas of Niger'.⁵⁹⁹

In order to fulfill these objectives, EUCAP Sahel Niger's tasks comprise the following:

- (a) advise and assist in the implementation of the security dimension of the Nigerien Strategy for Security and Development at national level, complementary to other actors,
- (b) support the development of comprehensive regional and international coordination in the fight against terrorism and organised crime,
- (c) strengthen the rule of law through the development of the criminal investigation capacities, and in this context develop and implement adequate training programmes,
- (d) support the development of Nigerien Security Forces' sustainability,

⁵⁹⁵ Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger)

⁵⁹⁶ Council Decision 2014/482/CFSP of 22 July amending Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger)

⁵⁹⁷ Interview with EEAS Official [April 2016, Brussels]

⁵⁹⁸ Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger), Art. 2

⁵⁹⁹ Republic of Niger, 'Strategy for Development and Security in Sahel-Saharan Areas of Niger' (2011) <https://www.ipinst.org/wp-content/uploads/2013/04/pdfs_sds_version_english.pdf> accessed 2 February 2016.

(e) contribute to the identification, planning and implementation of projects in the security field.⁶⁰⁰

EUCAP Sahel Niger's Headquarters are based in Niamey. On 5 October 2015, in the context of the increasing migration from Sub-Saharan Africa to North Africa and on to Europe, the Council agreed to include the migration element in EUCAP Sahel Niger's mandate, establish a permanent mission presence in the Northern city of Agadez and to double the mission's annual budget.⁶⁰¹

(2) EUTM Mali

After the official request from the Malian government, and in accordance with international decisions on the subject, in particular UN Security Council Resolution 2085 (2012), the Council decided to launch EUTM Mali on 18 February 2013 for an initial period of 15 months⁶⁰² but its mandate was extended for two more years.⁶⁰³ The main objective of the military training mission in Mali (EUTM Mali) is 'to provide, in the South of Mali, military and training advice to the Malian Armed Forces (MAF) (...), in order to contribute to the restoration of their military capacity with a view to enabling them to conduct military operations aiming at restoring Malian territorial integrity and reducing the threat posed by terrorist groups.'⁶⁰⁴ The mission is aimed to support the rebuilding of the Malian armed forces and to meet their operational needs is to be achieved through the provision of 'training support for the benefit of the MAF' and 'training and advice on command and control, logistical chain and human resources, as well as training on International Humanitarian Law, protection of civilians and human rights'.⁶⁰⁵

The mission's headquarters are located in Bamako with training taking place in Koulikoro (northeast of Bamako). At the time of writing this report there are around 180 operation personnel deployed and there are perceptible no staff shortages.⁶⁰⁶ The common costs of EUTM Mali shall be administered in accordance with Decision 2011/871/CFSP establishing the mechanism for financing military operations (Athena). EUTM Mali is organised into two pillars: a counselling and advice pillar (Advisory Task Force) and the Training Task Force (TTF).⁶⁰⁷

⁶⁰⁰ Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger), Art. 3(1)

⁶⁰¹ Council Decision 2014/482/CFSP of 22 July amending Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger), para 3

⁶⁰² Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger), Art. 6

⁶⁰³ Council Decision 2014/482/CFSP of 22 July amending Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger)

⁶⁰⁴ Council Decision 2013/34/CFSP of 17 January 2013 on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali), Art. 1(1)

⁶⁰⁵ *ibid* Art. 1(2)

⁶⁰⁶ Interview with EUTM Mali official [March 2016 via video conference]

⁶⁰⁷ EUTM Mali, 'EUTM Mali' (23 December 2015) Press File <<http://www.eutmmali.eu/wp-content/uploads/2015/12/Press-kit-EUTM-Mali-engl-DEC-2015-1.pdf>> accessed 2 February 2016.

(3) EUCAP Sahel Mali

EUCAP Sahel Mali was launched on 15 January 2015 at the invitation of the Malian government. The mission's objective is 'to allow the Malian authorities to restore and maintain constitutional and democratic order and the conditions for lasting peace in Mali, and to restore and maintain State authority and legitimacy throughout the territory of Mali by means of an effective redeployment of its administration.'⁶⁰⁸ The more concrete tasks include the provision of assistance and advice to the national police, the national gendarmerie and the national guard in the implementation of the security reform set out by the new government, aimed at improving their operational efficiency, re-establishing their respective hierarchical chains, reinforcing the role of judicial and administrative authorities with regard to the management and supervision of their missions and facilitating their redeployment to the north of the country.⁶⁰⁹

b) Mainstreaming human rights, IHL, gender and the principles of democracy and the rule of law

'[H]uman rights challenges in the Sahel cannot be disaggregated from a general crisis of governance, encompassing widespread corruption in public office, weak provision of basic services, poor implementation of social and economic rights, and particularly in the vast and often sparsely populated Saharan regions, profound challenges in upholding the rule of law and maintaining effective border controls.'⁶¹⁰ The local governments bear the greatest responsibility to provide protection and basic services to their citizens. Therefore an assessment of the EU efforts to strengthen human rights in the Sahel region needs necessarily to look into the role of CSDP activities in support to capacity-building and the cooperation between their actions and other EU programmes on ground.

(1) CSDP planning phase

Alongside the CSDP missions, several EU policy instruments seek to directly support the Malian authorities including the EU's Instrument contributing to Stability and Peace (IcSP), the European Development Fund (EDF) and the European Instrument for Democracy and Human Rights (EIDHR). In view of ensuring coherence among the different EU actions, the civilian-military dimension has been a core area for increased cooperation among EU diplomats, military staff and development cooperation officials in the context of the crisis of the Sahel. In order to overcome the different institutional cultures between the EEAS and the Commission, joint programming and conflict analysis are conducted aimed at enhancing coherence and complementarity of EU actions in the Sahel. Regarding EUCAP Sahel Niger, a multitude of actors from EEAS HQ in Brussels and from the EU Delegations in Niger participated in the planning of

⁶⁰⁸ Council Decision 2014/219/CFSP. of 15 April 2014. on the European Union CSDP mission in Mali (EUCAP Sahel Mali)

⁶⁰⁹ Council Decision 2014/219/CFSP on the European Union CSDP Mission in Mali (EUCAP Sahel Mali), Art. 2(2)

⁶¹⁰ European Parliament, 'Report on the situation of human rights in the Sahel region' (8 October 2013) 2013/2020(INI), para 26 <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0325+0+DOC+XML+V0//EN>> accessed 1 May 2016.

EUCAP Sahel Niger (CMPD and CPCC officers together with DG DEVCO officers).⁶¹¹ Additionally EU development actors⁶¹² often join the missions' assessment procedures conducted by EEAS strategic planners to monitor the work of the mission.⁶¹³ The Sahel task force brings together officials from the EEAS and the Commission (such as DG DEVCO or DG Humanitarian Aid) to regularly discuss all issues related to the Sahel region.⁶¹⁴ The participation of multitude of actors both from the field and Brussels facilitate the exchange of information and also brings the possibility to bring into the planning procedure relevant human rights concerns.

Due to the military nature of EUTM Mali the contribution of other EU policy actors was rather limited from the outset. In contrast to EUCAP Sahel Niger, the fact-finding mission to Mali was comprised solely of officials from the EUMS and geographic desks of the EEAS.⁶¹⁵ Despite the EU's pledge regional ownership relevant regional organisations were not invited to participate in the planning phase of the EUTM Mali.⁶¹⁶ Nonetheless, actors from the EEAS or the Commission participated in the drafting of the crisis management concept in order to define the relation between EUTM Mali and the APF and to delimitate the competences.⁶¹⁷ Additionally, prior to the planning process of the mission, experts were appointed to EU Delegations in Mali to provide first-hand analysis, as it was considered at risk of conflict.⁶¹⁸

At the operational level, CSDP working groups on security and EU Delegations in Mali and Niger meet regularly which facilitates the identification of potential synergies such as joint analysis and activities, also with a view of strengthening support to human rights.⁶¹⁹ Furthermore, CSDP missions have appointed a liaison officer to the corresponding EU Delegation to enhance cooperation between the EU Delegation and the mission.⁶²⁰ Another initiative to enhance coordination and synergies was established by the EU

⁶¹¹ Simon Stroß, *One Goal, Many Paths: The Promotion of Policy Coherence for Development in EU Policy Formulation* (2014), 168-169. See Table VII.3 Policy formulation timeline of EUCAP Sahel Niger.

⁶¹² This Sahel task force within the EEAS and under the leadership of the Director for West and Central Africa created in 2010 brings together EEAS staff and from the Directorate-General of Development and Cooperation (DG DevCo), the Directorate-General for Humanitarian Aid and Civil Protection (ECHO), the office of the Counter-Terrorism Coordinator, and representatives of the Commission's Foreign Policy Instrument responsible for managing the Instrument for Stability (IFS). Simon Stroß, *One Goal, Many Paths: The Promotion of Policy Coherence for Development in EU Policy Formulation* (2014), 168-170

⁶¹³ Interview with EEAS official [April 2016, Brussels]

⁶¹⁴ DG DEVCO officers viewed the initial competences of the head of the mission on development funding as falling outside his scope of competence, thus at the end, these references were deleted from the draft. See Nicoletta Pirozzi, *The EU's Comprehensive Approach to Crisis Management* (DCAF 2013), 16

⁶¹⁵ Simon Stroß, *One Goal, Many Paths: The Promotion of Policy Coherence for Development in EU Policy Formulation* (2014), 168-169

⁶¹⁶ Oladiran Bello, 'Quick Fix or Quicksand? Implementing the EU Sahel Strategy' (2012) Working Paper 114, 3 <http://fride.org/download/WP_114_Implementing_the_EU_Sahel_Strategy.pdf>

⁶¹⁷ Simon Stroß, *One Goal, Many Paths: The Promotion of Policy Coherence for Development in EU Policy Formulation* (2014), 176

⁶¹⁸ EEAS, Annual 2013 CSDP lessons report - summary for publication (2013) <http://eeas.europa.eu/csdp/documents/annual_2013_csdp_lessons_report_en.pdf> accessed 27 January 2016.

⁶¹⁹ Raube K and others, 'Supporting European security and defence with existing EU measures and procedures' (2015) European Parliament EP/EXPO/B/SEDE/FWC/2013-08/Lot4/02, 48

⁶²⁰ Minke Meijnders and Dick Zandee, 'The CSDP in Africa' in Dick Zandee (ed), *The EU as a security actor in Africa: In-depth study* Clingendael Monitor 2016 (2016)

Crisis Platform convened in October 2013: the *Groupe de travail interservices* to develop proposals for a better integration of EU and Member States' initiatives in the view of securing the comprehensive approach in the field of regional security.⁶²¹ These initiatives are relevant to identify human rights concerns and the protection needs of vulnerable groups. While CSDP missions and operations are more technical in nature and interact with local authorities

The EU Delegation in Niger regularly invites mission personnel to senior meetings with the Nigerien authorities.⁶²² EUCAP Sahel Niger has also established a *Comité de Pilotage* (Steering Board), which brings together, among others, the Nigerien Ministers, the Head of the EU Delegation and Heads of EU Member States Diplomatic Missions, as well as the Head of EUCAP Sahel Niger.⁶²³ The *Comité de Pilotage* has identified a set of priorities for EUCAP Sahel Niger and adopted an Action Plan.⁶²⁴ At present, EUCAP Sahel Niger and the EU Delegation in Niger have reached a greater level of coordination and carry out joint initiatives.⁶²⁵ Additionally, the EU Delegation has also been playing an important role by introducing CSDP staff to relevant interlocutors in Niger.⁶²⁶ Despite all these ongoing initiatives to improve coordination, participation of local civil society and NGOs is missing. As pointed out in one of the interviews conducted, in addition to the lack of knowledge of the EU initiatives in place, the majority of local NGOs involved in

<http://www.clingendael.nl/pub/2015/clingendael_monitor_2016_en/1_the_eu_as_a_security_actor_in_africa/#he_csdp_in_africa> accessed 27 January 2016.

⁶²¹ The working group has proposed in the 'GTI Report on Security in Sahel –Maghreb' to appoint security experts to the EU Delegations to strengthen regional capacity building efforts and cooperation with the CSDP missions is also in process of being implemented although for the time being in MENA countries. Damien Helly and Greta Galeazzi, 'Avant la lettre? The EU's comprehensive approach (to crises) in the Sahel' (February 2015) no 75, 3 <<http://ecdpm.org/wp-content/uploads/BN-75-EU-Comprehensive-Approach-Sahel-February-2015.pdf>> accessed 27 January 2016; House of Commons European Scrutiny Committee, 'Nineteenth Report of Session 2013–14' (2013), 111 <<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xviii/83-xviii.pdf>> accessed 27 January 2016.

⁶²² House of Commons European Scrutiny Committee, 'Nineteenth Report of Session 2013–14' (2013), 111 <<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xviii/83-xviii.pdf>> accessed 27 January 2016.

⁶²³ EUCAP Sahel Niger, '1ère réunion du Comité de pilotage de la Mission à la Primature' <<http://eucap-sahelniger.faceniger.com/comit%C3%A9-de-pilotage/84-1ere-reunion-du-comite-de-pilotage-de-la-mission-a-la-primature.html>> accessed 27 January 2016; a second action plan was adopted in 2014, EUCAP Sahel Niger, 'Troisième réunion du Comité de pilotage d'EUCAP Sahel Niger - 14/10/2014' <<http://eucap-sahelniger.faceniger.com/comit%C3%A9-de-pilotage/159-troisi%C3%A8me-r%C3%A9union-du-comit%C3%A9-de-pilotage-d%E2%80%99eucap-sahel-niger-14-10-2014.html>> accessed 27 January 2016.

⁶²⁴ EUCAP Sahel Niger, 'Le comité de pilotage approuve le plan d'action d'EUCAP SAHEL' <<http://eucap-sahelniger.faceniger.com/comit%C3%A9-de-pilotage/85-le-comite-de-pilotage-approuve-le-plan-daction-deucap-sahel.html>> accessed 23 January 2016.

⁶²⁵ For instance, joint roundtables on migration issues together with local authorities, Agence Nigérienne de Presse, 'Ouverture à Niamey d'une table ronde sur la gestion concertée de la migration' (3 February 2016) <<http://www.anp.ne/article/ouverture-niamey-d-une-table-ronde-sur-la-gestion-concertee-de-la-migration#sthash.KAKLDvc6.dpbs>> accessed 23 January 2016.

⁶²⁶ Kolja Raube and others, 'Supporting European security and defence with existing EU measures and procedures' (2015) European Parliament EP/EXPO/B/SEDE/FWC/2013-08/Lot4/02, 48

EU seminars and other programmes are based in the capital while engagement with local organisations in the North and least populated areas remains a challenge.⁶²⁷

EUCAP experts have also contributed to the identification of relevant communication equipment to be provided to Nigerien forces supported by the Instrument contributing to Stability and Peace (IcSP). Indeed, EUCAP Sahel Niger has been erroneously 'perceived by Nigeriens as a cooperation agency to which they could make equipment requests'. This situation shows the lack of information about the mission's objectives.⁶²⁸ One of the main 'best practices' from the experience of EUCAP Niger has been the recruitment of CSDP mission personnel with experience in development cooperation, and being able to coordinate and cooperate immediately with EU Delegations managers about development cooperation funds.⁶²⁹

In view of the future of EU CSDP action, EUTM Mali is currently handing over training tasks to the Malian authorities.⁶³⁰ Following the amendment of the EUTM Mali mandate in 2014, the EUTM's activities are taking the form of an exit strategy as they put more emphasis on follow-up processes and 'train the trainers' programmes to allow the Malian armed forces to be autonomous in the training of their units.⁶³¹ In Niger, however, the end of 2014 CT program Sahel⁶³² (Niger component) raised the question of securing the impact of this project in the long term. Given the proximity of the CT mandates and EUCAP Sahel Niger, it was decided that the CSDP Mission will take over the CT Sahel program including 'train the trainers' modules. EUCAP Sahel Niger's exit strategy involves three steps: training trainers, transfer of competences and a draft decree that establishes a permanent status of trainer within Nigerien armed forces and the judiciary in order to create an incentive to retain the trained trainers.⁶³³

⁶²⁷ Interview with EEAS official [April 2016, Brussels]

⁶²⁸ Kolja Raube and others, 'Supporting European security and defence with existing EU measures and procedures' (2015) European Parliament EP/EXPO/B/SEDE/FWC/2013-08/Lot4/02, 48

⁶²⁹ *ibid.*

⁶³⁰ Council of the European Union, 'CSDP Transition Strategies – recent lessons' (27 March 2015) 7632/15, 6 <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011934%202014%20INIT>> accessed 23 January 2016.

⁶³¹ EUTM Mali, 'Cérémonie de fin de formation "Train the trainers" (TTT)' (1 April 2014) <<http://www.eutmmali.eu/ceremonie-de-fin-de-formation-train-the-trainers-ttt/>> accessed 23 January 2016.

⁶³² The Counter Terrorism (CT) Sahel is a regional programme (covering Mali, Mauritania, and Niger) that delivered trainings and exchanges to law enforcements agencies and judicial institutions with the view to supporting regional cooperation. See Institute for Security Studies & Royal United Services Institute, 'Mid-Term review of the CT Sahel Project Final Report 2014' (European Commission 2014) <http://ec.europa.eu/europeaid/documents/mid-term-review-ct-sahel-2014-final-report_en.pdf> accessed 23 January 2016.

⁶³³ Bérange Rouppert, 'L'approche globale de l'UE au Sahel : quelles avancées dans la mise en oeuvre?' Colloque sur «l'UE et l'approche globale: le cas des crises en Afrique» organisé conjointement par l'IHEDN et l'Institut Egmont à Bruxelles le 9 juillet 2015 (2015) <<http://www.ihedn.fr/userfiles/file/Intervention%20de%20B%C3%83%C2%A9rang%C3%83%C2%A8re%20Rouppert.pdf>> accessed 23 January 2016.

(2) Mainstreaming human rights and IHL

EUTM Mali

The parties signatory to the Ouagadougou ceasefire agreement⁶³⁴, the Malian government and armed groups, accepted to facilitate the return of the Malian Armed Forces (FAMA) to the North, however, the implementation of this agreement has encountered a number of obstacles, mainly the lack of operational capacities and equipment and lack of confidence on the part of local population. EUTM Mali activities focus on operational training, command and control, logistical chains and human resources. The training of Malian battalions takes place prior their deployment in the North, and this formation plays a crucial role in building of the Malian armed forces and in restoring the confidence of the population. Once trained, the Malian Armed Forces operating under the control of legitimate civilian authorities are deployed to the north of the country for a period of six months to enforce the law and the protection of human rights and humanitarian international law.⁶³⁵

At the beginning of EUTM activities, the Malian defence and security forces have reportedly committed violations and abuses of human rights and IHL (torture and ill-treatment, arbitrary execution and arbitrary arrest and detention in the north)⁶³⁶ and have been involved in criminal activities.⁶³⁷ For this reason, the integration of human rights, IHL and gender as part of the training activities of the mission is deemed crucial to prevent human rights violations by Malian forces. Prior to the amendment and extension of EUTM Mali's mandate, military officers are tasked with preparing an operational plan with due consideration of human rights and gender aspects.⁶³⁸ EUTM Mali has appointed two civilian personnel to provide a module on international humanitarian law, the protection of civilians and human rights as part of training curricula.⁶³⁹ Initially this module was assessed as being too limited in scope and content in view of the vulnerable condition of certain groups such as children⁶⁴⁰ who are recruited by armed and extremist

⁶³⁴ Agreement between Mali government, armed groups that focuses on the cease-fire, the preparation of the presidential election, the return of public services in the north, and the elaboration of a framework for broader and more-substantive future peace talks. Accord préliminaire à l'élection présidentielle et aux pourparlers inclusifs de paix au Mali, 2013. http://peacemaker.un.org/sites/peacemaker.un.org/files/ML_130618_AccordElectionsDialogueInclusif.pdf accessed 10 May 2016.

⁶³⁵ European Commission and High Representative of the European Union, Joint Communication to the European Parliament and the Council, 'Capacity building in support of security and development - Enabling partners to prevent and manage crises' (28 March 2015) JOIN(2015) 17 final, 6 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015JC0017&from=EN>> accessed 23 January 2016.

⁶³⁶ UN Security Council, 'Report of the Secretary-General on the situation in Mali' (2015) S/2015/732, 9-10 <http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/732> accessed 25 January 2016.

⁶³⁷ Wolfram Lacher, 'Organized crime and conflict in the Sahel-Sahara region' (2012) Carnegie Endowment, 11 <<http://carnegieendowment.org/2012/09/13/organized-crime-and-conflict-in-sahel-sahara-region/dtjm>> accessed 25 January 2016.

⁶³⁸ Interview with EUTM Mali official [March 2016 via video conference]

⁶³⁹ Interview with EUTM Mali official [March 2016 via video conference]; EUTM Mali, 'Droit international humanitaire' (3 Octobre 2014) <<http://www.eutmmali.eu/droit-international-humanitaire/>> accessed 29 January 2016; EUTM Mali, 'Human rights training: Alison's testimony' (29 July 2013) <<http://www.eutmmali.eu/1184/>> accessed 25 January 2016.

⁶⁴⁰ See Watchlist on Children and Armed Conflict (Watchlist), 'Where are they...? The situation of children and armed conflict in Mali' (June 2013), 39-40 <http://watchlist.org/wordpress/wp-content/uploads/Watchlist_Mali.pdf>

groups. In previous CSDP missions such as EUSEC RD Congo⁶⁴¹ or EUFOR RD Congo⁶⁴² an expert has been appointed to deal exclusively with issues on the protection of children.

Training is provided to all ranks in the Malian military forces and includes instruction on the following issues: humanitarian situation in Mali; human rights; civil-military co-ordination with UN agencies and NGOs; protection of women in conflict; protection of children in conflict; and protection of displaced persons and the return of refugees.⁶⁴³ UN agencies have also contributed to the humanitarian law courses to reinforce EUTM Mali efforts to make the Malian soldiers understand and increase their sensibility towards human rights and IHL obligations.⁶⁴⁴ The content and methods used in the modules vary depending on the skills and priorities of the individual instructor; eg some focus on female genital mutilation and gay and lesbian rights, while others place more emphasis on IHL.⁶⁴⁵ One of the main challenges identified for the training on human rights, gender and IHL is the low level of education and previous formation of the Malian soldiers. Many of them are illiterate, and/or have difficulties to understand the concept of human rights or rule of law due to the long-standing crisis context.⁶⁴⁶ The instructors have called attention to the necessity to adapt the content and methods to the different audiences and needs, depending on the status and level of education.⁶⁴⁷ An added difficulty faced by EUTM Mali training activities is the language barrier between the instructors and the trainees (the latter

accessed 27 January 2016.; The human rights and gender module lasts over the duration of the entire training period (1 hour per week for 10 weeks) including scenario-based training. The instructors initially reported that the module had been too theoretical, which resulted adjustments to teaching methods; Helené Lackenbauer and Michael Jonsson, 'Implementing UNSCR 1325 in Capacity Building Missions: A study of NTM-Afghanistan, EUTM-Mali and EUTM-Somalia' (Folke Bernadotte Academy 2014) FOI-R--3925—SE, 22-23 <http://www.foi.se/ReportFiles/foir_3925.pdf> accessed 29 January 2016; See also Cynthia Petrich, 'Even Wars have Limits: IHL Training Material EUTM Mali' (July 2014) <https://issuu.com/zaatko/docs/manual_v3.3_higher_res241/13?e=7503937/9543907> accessed 25 January 2016.⁶⁴¹ Wouter Vandenhoe and Yannick Weyns, 'Child Soldiers and the EU policy on Children and Armed Conflict' (2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24, 34-35 <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET\(2014\)433845_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET(2014)433845_EN.pdf)> accessed 29 January 2016.

⁶⁴² Both missions shared a Human Rights/Children in armed conflict expert.

⁶⁴³ Helené Lackenbauer and Michael Jonsson, 'Implementing UNSCR 1325 in Capacity Building Missions: A study of NTM-Afghanistan, EUTM-Mali and EUTM-Somalia' (2014) Folke Bernadotte Academy FOI-R--3925—SE, 22-23 <http://www.foi.se/ReportFiles/foir_3925.pdf> accessed 29 January 2016; See also Cynthia Petrich, 'Even Wars Have Limits: IHL Training Material EUTM Mali' (July 2014), 22 <https://issuu.com/zaatko/docs/manual_v3.3_higher_res241/13?e=7503937/9543907> accessed 29 January 2016.

⁶⁴⁴ See *inter alia* UNICEF, 'Military operation in Mali: the protection of children at the heart of concerns' <http://www.unicef.org/wcaro/english/media_7387.html> accessed 29 January 2016.

⁶⁴⁵ Helené Lackenbauer and Michael Jonsson, 'Implementing UNSCR 1325 in Capacity Building Missions: A study of NTM-Afghanistan, EUTM-Mali and EUTM-Somalia' (2014) Folke Bernadotte Academy FOI-R--3925—SE, 22-23 <http://www.foi.se/ReportFiles/foir_3925.pdf>; See also Cynthia Petrich, 'Even Wars Have Limits: IHL Training Material EUTM Mali' (July 2014), 23-24 <https://issuu.com/zaatko/docs/manual_v3.3_higher_res241/13?e=7503937/9543907> accessed 29 January 2016.

⁶⁴⁶ *ibid* 23.

⁶⁴⁷ *ibid*.

do not always share the same language) and the fact that translators do not always have sufficient command of human rights terms.⁶⁴⁸

Despite the improvements in the activities of EUTM Mali, the lack of appropriate equipment remains a major challenge that prevents Malian forces from providing protection in population in the North.⁶⁴⁹ For example, the lack of communication equipment poses obstacles to the exercise of command and control and other elements such as ambulances, water and fuel tanks are necessary to ensure autonomy and the ability to operate independently. Support of the local population and ad hoc remedies have often an alternative but this is not a sustainable and long-term solution.⁶⁵⁰ The Malian government is responsible to ensure that the trainees are appropriately equipped. In turn, their incapacity to provide equipment and materials impedes the achievement of the objectives of EUTM Mali.⁶⁵¹ Malian soldiers often lack basic essentials such as accommodation, food, medical support and protective equipment against mines and explosive devices; under these conditions 'it is difficult to expect results from human rights and gender training if the trainees themselves are being subjected to human rights violations during training.'⁶⁵²

Apart from providing training to Malian military forces, EUTM Mali provides support and advice to the Malian authorities in building its security sector. The Ministry of Defence in Mali is responsible for the selection of trainees. The recruitment team encounters considerable difficulties in selecting trainees for the battlegroups. Due to time constraints and fear of possible infiltrators the Malian authorities they have abandoned the initial commitment to integrate trainees from the populations in northern Mali to develop an ethnically diverse army.⁶⁵³ This is particularly significant as '[a]n armed force which is not representative

⁶⁴⁸ *ibid* 24.

⁶⁴⁹ French General Francois Lecointre, former Commander of EUTM Mali, stated that the main problems for the mission were the lack of a clear hierarchy and chain of command, with little team spirit, poor and patchy equipment, made up of material donated by richer nations over two decades; Agence France Presse, 'EU troops begin Mali training mission' (2 April 2013) <<http://www.globalpost.com/dispatch/news/afp/130402/eu-troops-begin-mali-training-mission>> accessed 29 January 2016. See the interview with General Francois Lecointre in *Le Combat*, 'Entretien avec le général de Brigade François Lecointre «Ma mission, c'est de former des guerriers et non participer à la guerre»' <<http://www.lecombat.info/offres-d-emploi/120-interview-/2428-entretien-avec-le-general-de-brigade-francois-lecointre-lma-mission-cest-de-former-des-guerriers-et-non-participer-a-la-guerrier->> accessed 29 January 2016.

⁶⁵⁰ European Commission, 'Capacity building in support of security and development - Enabling partners to prevent and manage crises' (Joint Communication to the European Parliament and the Council) JOIN(2015) 17 final, 6

⁶⁵¹ Cecilia Hull Wiklund and Emma Skeppström, 'European Union Training Mission Mali - Challenges and Opportunities' (January 2014) <<http://www.foi.se/Documents/European%20Union%20Training%20Mission%20Mali-%20Challenges%20and%20Opportunities.pdf>> accessed 29 January 2016.

⁶⁵² Helené Lackenbauer and Michael Jonsson, 'Implementing UNSCR 1325 in Capacity Building Missions: A study of NTM-Afghanistan, EUTM-Mali and EUTM-Somalia' (2014) Folke Bernadotte Academy FOI-R--3925—SE, 25

⁶⁵³ Cecilia Hull Wiklund and Emma Skeppström, 'European Union Training Mission Mali - Challenges and Opportunities' (January 2014) Folke Bernadotte Academy, Peace Operations Project <<http://www.foi.se/Documents/European%20Union%20Training%20Mission%20Mali-%20Challenges%20and%20Opportunities.pdf>> accessed 2 March 2016.

of the population is unlikely be considered legitimate by a majority of the population'.⁶⁵⁴ EUTM advisory activities could put more emphasis on the need to build an ethnically diverse army.

The EUTM training pillar contributes to the promotion of rule of law by providing a course on the Rule of Law to commanders in parallel with their battalions.⁶⁵⁵ In view of the needs of the Malian forces, the Council decided to extend the EUTM's mandate and to focus on leadership training, follow-up training post-graduation and 'train the trainer' work to prepare an exit strategy for transition.⁶⁵⁶ The work of EUCAP Sahel Mali is complementary to the work of EUTM Mali aimed at supporting the restructuring of Malian Internal Security Forces through the combination of junior and intermediate leadership training as well as strategic advice on human resources. Cooperation between EUTM Mali and EUCAP Sahel Mali is deemed satisfactory and both missions coordinate training activities that are provided to certain categories of semi-military forces.⁶⁵⁷

At the internal level of the mission, the human rights and gender instructors have developed in-mission training for field staff on IHL, UNSCR 1325 and human rights for all EUTM instructors to secure a common understanding among mission personnel.⁶⁵⁸

EUCAP Sahel Niger

Since the deployment of EUCAP Sahel Niger, the activities of the mission have focused on 'improving the efficiency of the regional mixed command posts to allow a better response to crises and the interoperability of security forces; collecting and sharing intelligence between those forces; developing forensic science expertise; training the municipal police in the region of Agadez; reviewing HR management systems; improving teaching capacity at the security forces' training centres; and ensuring that the armed forces act on a sound legal basis in their mission to combat terrorism and trafficking.'⁶⁵⁹ More than 3000 members of the country's internal security forces, armed forces and judiciary have received training with emphasis on 'train the trainer'. Additionally, EUCAP coordinates all international assistance and donations to Nigerien security forces.⁶⁶⁰

⁶⁵⁴ *ibid* 2.

⁶⁵⁵ EUTM Mali, 'EUTM Mali' (31 July 2015) Press file, <<http://www.eutmmali.eu/wp-content/uploads/2013/08/Press-kit-EUTM-Mali-engl-JULY-2015.pdf>> accessed 2 March 2016.

⁶⁵⁶ *ibid*; After a period of operational engagement, the battalions receive a period of leave and complementary training for 5 to 7 weeks, in order to review their knowledge before they are redeployed. See Juan Carlos Castilla Barea, 'The Malian Armed Forces and the Future of EUTM' (2013) 13 <http://www.ieee.es/en/Galerias/fichero/docs_opinion/2013/DIEEEO93-2013_EUTM_Mali_CastillaBarea_ENGLISH.pdf> accessed 2 March 2016; Interview with EUTM official [March 2016 via video conference]

⁶⁵⁷ Interview with EUTM Mali official [March 2016 via video conference]

⁶⁵⁸ *ibid* 22.

⁶⁵⁹ EEAS, 'The EUCAP Sahel Niger civilian mission' (September 2014), <http://eeas.europa.eu/csdp/missions-and-operations/eucap-sahel-niger/pdf/factsheet_eucap_sahel_niger_en.pdf> accessed 2 March 2016.

⁶⁶⁰ EEAS, 'The EUCAP Sahel Niger civilian mission' (September 2014) Factsheet <http://eeas.europa.eu/csdp/missions-and-operations/eucap-sahel-niger/pdf/factsheet_eucap_sahel_niger_en.pdf> accessed 2 March 2016.

The Council has significantly increased the budget for EUCAP Sahel Niger to ensure enhanced the engagement with local authorities in Niamey and to secure its permanent presence in the desert region of Agadez with the aim to gather information on migrant routes and relevant actors.⁶⁶¹ In this context, victims of trafficking of human beings, women and children deserved special attention.⁶⁶² Therefore, human rights concerns have been integrated in formative activities provided to the Nigerien security forces on fighting against terrorism and organised crime.⁶⁶³

EUCAP Sahel Niger's mandate covers the fight against organised crime and it is the first mandate that clearly focuses on the fight against terrorism.⁶⁶⁴ Nigerien authorities have been receptive and cooperative with the EU, although budgetary and capability constraints hamper the government capacity to strengthen the rule of law and provide protection to their citizens. Niger has been the first sub-Saharan state to promulgate a law criminalising the smuggling of migrants and has welcomed the provision of additional EU assistance to Nigerien authorities in tackling migration flows through Niger to North Africa and Europe.⁶⁶⁵ Furthermore, Niger has been more successful than Mali in the socio-political integration of the Touareg community with initiatives such as the constitution of a Garde Nationale with a strong Touareg component.⁶⁶⁶

The activities of EUCAP Sahel Niger to contribute to more stability in the region has to be assessed together with other security-development oriented programmes that address the root causes of

⁶⁶¹ Council of the European Union, 'EUCAP Sahel Niger: Council nearly doubles mission's annual Budget' (5 October 2015) Press release 693/15 <<http://www.consilium.europa.eu/en/press/press-releases/2015/10/05-eucap-sahel-niger-council-nearly-doubles-missions-annual-budget/>> accessed 2 March 2016.

⁶⁶² Le Sahel, 'Séminaire de formation sur le trafic illicite de migrants/EUCAP Sahel: Début d'un partenariat entre la mission Eucap Sahel Niger et l'Agence nigérienne pour la lutte contre la traite des personnes' <<http://www.lesahel.org/index.php/societe/item/9725-s%C3%A9minaire-de-formation-sur-le-traffic-illicite-de-migrants-eucap-sahel--d%C3%A9but-dun-partenariat-entre-la-mission-eucap-sahel-niger-et-lagence-nig%C3%A9rienne-pour-la-lutte-contre-la-traite-des-personnes>> accessed 2 March 2016; Niamey, 'Fin de l'atelier sur la traite des personnes, le trafic illicite de migrants, la corruption et le blanchiment d'argent: Outiller les Auditeurs de Justice et les Avocats stagiaires afin de leur permettre de bien cerner la problématique' (5 February 2016) <<http://news.aniamey.com/h/65922.html>> accessed 3 March 2016.

⁶⁶³ EEAS, 'La protection des droits de l'Homme dans la lutte contre le terrorisme à travers la procédure pénale - 10-13 Mars 2014' (11 March 2014) <<http://eucap-sahelniger.faceniger.com/eucap-infos/92-la-protection-des-droits-de-lhomme-dans-la-lutte-contre-le-terrorisme-a-travers-la-procedure-penale-10-13-mars-2014.html>> accessed 2 March 2016.

⁶⁶⁴ Other Commission-funded programmes complement the work of EUCAP Sahel Niger as the EDF-funded Support Programme for Justice and the Rule of Law, PAJED I and PAJED II in support of the rule of law. The main objective of this initiative is to reinforce and reform the Nigerien justice sector by creating a specialised chamber to deal with terrorism and trafficking at the regional level.

⁶⁶⁵ Tuesday Reitano, 'What incentives does Niger have for cracking down on migrant smuggling? Not many' (13 January 2016) LSE Blog <<http://blogs.lse.ac.uk/africaatlse/2016/01/13/what-incentives-does-niger-have-for-cracking-down-on-migrant-smuggling-not-many/>> accessed 2 March 2016.

⁶⁶⁶ Luis Simon, Alexander Mattelaer and Amelia Hadfield, 'A Coherent EU Strategy for the Sahel' (2012) Study for the European Parliament, 15 <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/433778/EXPO-DEVE_ET\(2012\)433778_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/433778/EXPO-DEVE_ET(2012)433778_EN.pdf)> accessed 1 March 2016.

insecurity aimed at youth empowerment to counter radicalisation,⁶⁶⁷ strengthening the security of people and goods under the responsibility of local authorities and disarmament, de-mobilisation and reintegration (DDR) of former rebel fighters, mercenaries and returnees from Libya. Other IcSP-funded initiatives include the Sahel Security College that was established for training justice and law enforcement actors and fostering the sharing of information and expertise, as well as the West Africa Police Information System.

c) Final remarks

The main issue of concern identified in the analysis of the CSDP missions in the Sahel is the broadening the mandate of EUCAP Sahel Niger to tackle migration. This amendment implies that the strategic and operational planners will have to assess the potential interference these new activities with the rights of civilians and to consider potential vulnerable groups and their needs (eg vulnerable migrants, refugees and victims of human trafficking). The new dimension of migration of the mission implies reinforced cooperation and communication with other actors (eg UNHCR, IOM) given that the initial objective of EUCAP Sahel Niger is to strengthen Niger's counter-terrorism capacities with all relevant actors and to avoid spill-over effects from the crisis in Mali. Reinforcing existing missions with migration instruments can create imbalance between the EU and local priorities, especially considering that human smuggling, as well as other criminal activities, are deeply embedded in local political and economic networks, thus affecting to the most vulnerable population in the North.⁶⁶⁸ Given the strategic position of Niger in the flow of migrants, helping the Niger security forces to gain control of their borders will make the passage significantly more dangerous for people in transit. These groups of migrants and refugees are often subjected to violence perpetrated by state and non-state actors in deserted and uncontrolled areas of the Sahel region where they operate in a climate of impunity.

In the military domain, EUTM Mali is focused on the provision of training and advice to the Malian armed forces, but shortages of equipment have hampered the effectiveness of training. There are many examples of units lacking the most basic equipment, let alone weapons.⁶⁶⁹ The reasons for this reluctance to provide equipment may include one or more of the following: the fact that it not fall within the mandate of the mission; budgetary constraints; the refusal, in principle, of many member states; the refusal of member states on the grounds of there being a risk that the equipment may end up in the hands of unintended recipients. The ongoing discussions on the 'train and equip' initiative is likely to yield a response to these concerns, given the possibility for the EU to provide communication and protection equipment and land infrastructure and medical facilities, excluding lethal equipment. Otherwise, EU

⁶⁶⁷ The programme entitled 'Support for reducing the risks of insecurity and instability in north-west and south-east regions of Niger' (2014) < <http://data.consilium.europa.eu/doc/document/ST-13971-2014-INIT/en/pdf>> accessed 27 February 2016.

⁶⁶⁸ Research Programme on Aid Effectiveness in Fragile Contexts (ACROPOLIS) 'Building security in the Sahel: European, regional and local approaches' (2015) Policy Note Series no N2015/004, 1-2 <<http://www.grapax.be/wp-content/uploads/2015/10/N2015-004-Conference-on-Building-Security-in-the-Sahel.pdf>> accessed 27 February 2016.

⁶⁶⁹ Discussions on the provision of equipment alongside training to enhance their performance started in 2013 under the EEAS formula 'Train and Equip'. The issue of financing is generating a long debate, given the controversial nature of development security-related activities.

efforts to contribute to capacity building in the Sahel region risk becoming unfinished work and raise the question of aid effectiveness.

B. EUNAVFOR MED Operation SOPHIA and Libya: the EU response to migratory pressure

The Mediterranean is the world's deadliest migration route. The tragic death of hundreds of migrants on the Mediterranean in April 2015 raised awareness among EU Member States of the critical urgency of addressing the issue of migrants en route to Europe, particularly as regards migratory flows from the coast of Libya. The migratory flows transiting through Libya are filled with individuals seeking better economic opportunities, people fleeing conflict and/or persecution or a combination of all these factors.⁶⁷⁰ These migrants frequently face torture, rape, abuse and exploitation by smugglers, officials and others in transit from countries such as Libya or deserted areas in the Sahel region where they operate in a climate of impunity.

The EU's response to this humanitarian crisis has focused largely on trying to prevent or discourage people attempting to make the dangerous crossing. This approach is also reflected in the EU's current focus on anti-smuggling measures, including pre-emptive seizure and destruction of boats used by smugglers. However, such robust military intervention need to be accompanied by sustained and determined efforts to ensure the right to seek asylum enshrined in the Universal Declaration of Human Rights and guaranteed in the EU's Charter of Fundamental Rights.⁶⁷¹ The purpose of this section is to analyse the role of the CSDP mission EUNAVFOR Med within the context of the wider EU response to the migration crisis in the Mediterranean taking into account the duties and obligations to respect, protect and guarantee the human rights of migrants and asylum seekers.

1. Context

The section provides a background of the current migration transiting Libya. The analysis includes data, a profile description of those migratory flows crossing the Mediterranean, and the main push and pull factors. This section also outlines the main features of the business of migrant smuggling and human trafficking in Libya.

a) Data on migrant arrivals and fatalities in the Mediterranean

According to the UNHCR, in 2014, maritime arrivals to Europe across the Mediterranean stood at over 218.000, tripling the number of arrivals registered in 2011 at the height of the Arab Spring. A million refugees and migrants fled to Europe in 2015, with some thousands dead or missing.⁶⁷² Approximately 90% of the migrants arriving to Europe by sea come from countries torn apart by war and generalized

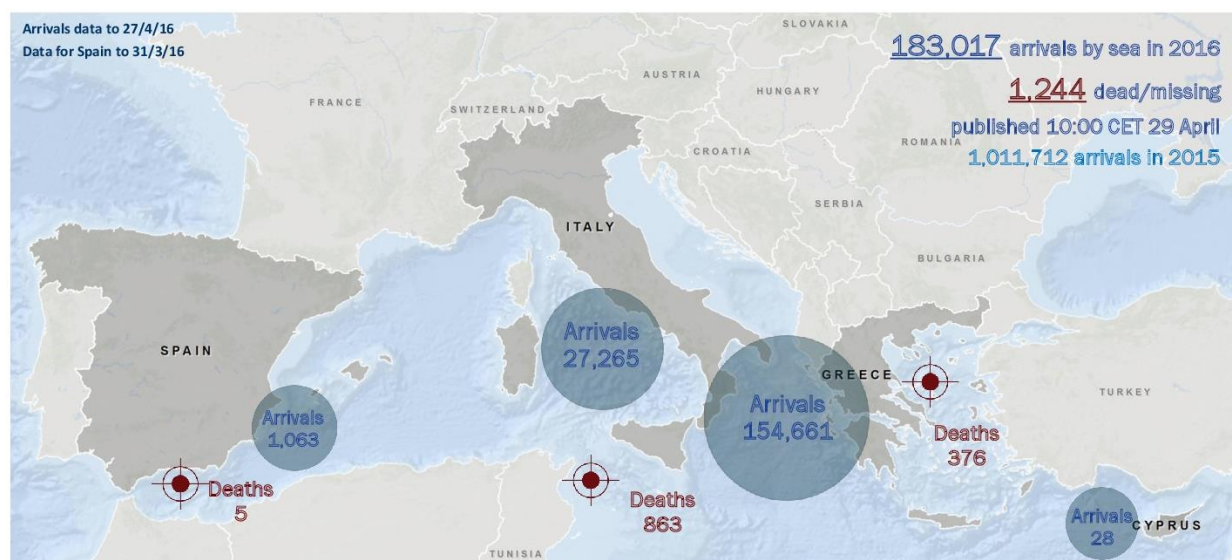
⁶⁷⁰ UNSMIL, 'The situation of migrants in transit through Libya en route to Europe' (8 May 2015) <<http://unsmil.unmissions.org/Default.aspx?tabid=3543&ctl=Details&mid=6187&ItemID=2078339&language=en-US>> accessed 27 February 2016.

⁶⁷¹ Art. 18 EU Charter of Fundamental Rights.

⁶⁷² UNHCR, 'Refugees/Migrants Emergency Response – Mediterranean' <<http://data.unhcr.org/mediterranean/regional.php>> accessed 27 February 2016.

violence or ruled by repressive governments (see figure 2 below).⁶⁷³ Based on arrivals since January 2015, the UNHCR reported that 31% were children and 19% women.⁶⁷⁴ UNHCR estimates that children make up one in four refugees and migrants crossing the Mediterranean since January 2015. One of the reasons for this high rate of minors is that smugglers wrongly promise that an unaccompanied child will be given automatic asylum followed by family reunification.⁶⁷⁵ Unaccompanied children are a particularly vulnerable group whose situation poses problems for authorities in terms of reception conditions and providing care, education and counselling. Figure 1 presents the data on migrant arrivals and fatalities in the Mediterranean up until 4 March 2016.

Figure 1: Migration flows towards Europe: arrivals and fatalities⁶⁷⁶



The International Organisation for Migration (IOM) estimates that more than 3.700 lives were lost in trying to make the crossing in 2015, which ultimately makes this migration route the world's deadliest.⁶⁷⁷ The Eastern Mediterranean migrant route, through Turkey and the Balkans, surpassed the Central Mediterranean route in intensity of flows in the summer of 2015, however the Central Mediterranean

⁶⁷³ UNHCR, 'The sea route to Europe: Mediterranean passage in the age of refugees' (2015) 12 <<http://www.unhcr.org/5592bd059.html>> accessed 27 February 2016.

⁶⁷⁴ UNHCR, 'Refugees/Migrants Emergency Response – Mediterranean' <<http://data.unhcr.org/mediterranean/regional.php>> accessed 27 February 2016.

⁶⁷⁵ European Commission, 'A study on smuggling of migrants: Characteristics, responses and cooperation with third countries' (2015) European Commission, DG Migration & Home Affairs, 23 <http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/study_on_smuggling_of_migrants_final_report_master_091115_final_pdf.pdf> accessed 27 February 2016; FRONTEX, 'Unaccompanied Minors in the Migration Process' (December 2010) 18477 <http://frontex.europa.eu/assets/Attachments_News/unaccompanied_minors_public_5_dec.pdf> accessed 27 February 2016.

⁶⁷⁶ Missing Migrants, 'Mediterranean Update. Migration Flows Europe: Arrivals and Fatalities' (4 March 2016 update) <http://missingmigrants.iom.int/sites/default/files/Mediterranean_Update_4_March_2016.pdf> accessed 27 February 2016.

⁶⁷⁷ IOM, 'IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015' (5 January 2016) <<http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>> accessed 27 February 2016.

route, more concretely Libya, is destined to remain one of the main gateways into Europe because of its instability, lawlessness, and longstanding smuggling networks.⁶⁷⁸ Migrants also face threats at other stages of their journey, starvation and dehydration crossing the Sahara Desert into North Africa or abuse and killings at the hands of traffickers and smugglers.⁶⁷⁹

In order to understand the root causes of migration, one has to distinguish between push factors - the reasons for migrants leaving their country of origin - and pull factors - the reasons encouraging them to come to Europe.⁶⁸⁰ According to the UN Special Rapporteur on the human rights of migrants, migration flows to Europe, particularly through the Central Mediterranean Sea, are 'largely driven by conflict, persecution and poverty (push factors) as well as unmet needs with the labour market (pull factors)'.⁶⁸¹ The deteriorating conditions in many refugee-hosting or transit countries constitute another push factor, as is the case in Libya.⁶⁸² The IOM's report 'Children on the Move' shows that unaccompanied children migrate for a wide variety of reasons, ranging from economic factors, educational needs, cultural pressures, traumatic experiences such as sexual violence, conflicts and natural disasters.⁶⁸³

⁶⁷⁸ AIDA, 'Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis' AIDA Annual Report 2014/2015, 26-28 <http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_annualreport_2014-2015_0.pdf> accessed 27 February 2016.

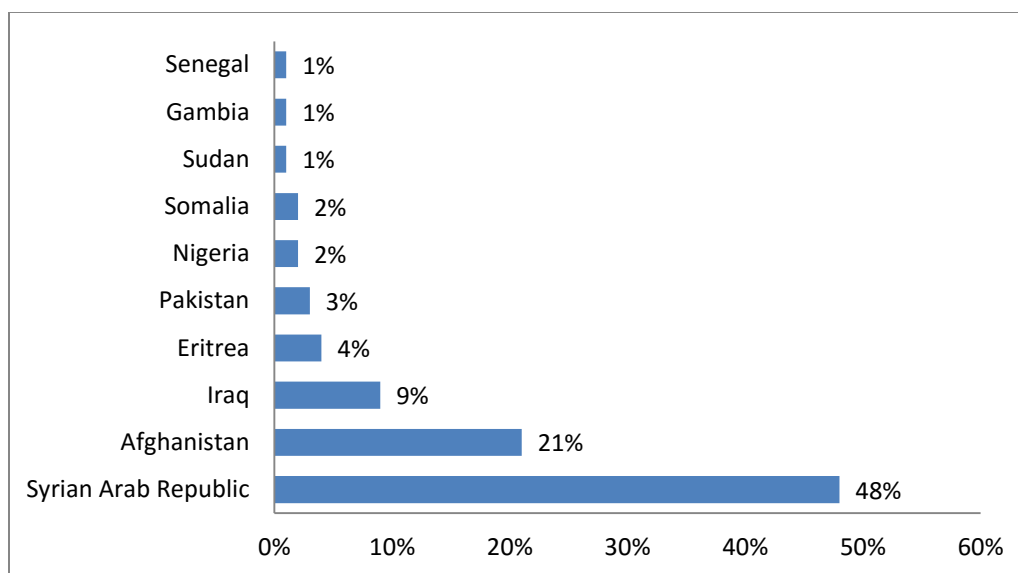
⁶⁷⁹ Christopher Horwood and Arezo Malakooti/Altai Consulting, 'From Sub-Saharan Africa through North Africa: Tracking Deaths along the Way in IOM' (2014) *Fatal Journeys: Tracking Lives Lost during Migration* <https://publications.iom.int/system/files/pdf/fataljourneys_countingtheuncounted.pdf> accessed 15 February 2016.

⁶⁸⁰ See Everett S. Lee, 'A Theory of Migration' (1966) 3(1) *Demography* 47-57

⁶⁸¹ Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 'Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants' (8 May 2015) A/HRC/29/36, para. 26; See also UNHCR, 'The sea route to Europe: The Mediterranean passage in the age of refugees' (1 July 2015), 6 <<http://www.unhcr.org/5592bd059.html>> accessed 15 February 2016; Human Rights Watch, 'The Mediterranean Migration Crisis Why People Flee, What the EU Should Do' (2015), 4-19 <https://www.hrw.org/sites/default/files/report_pdf/eu0615_web.pdf> accessed 15 February 2016.

⁶⁸² The treatment of migrants, asylum seekers, and refugees in Libya has dramatically worsened as reported in Human Rights Watch, 'The Mediterranean Migration Crisis Why People Flee, What the EU Should Do' (2015), 19 <https://www.hrw.org/sites/default/files/report_pdf/eu0615_web.pdf> accessed 15 February 2016; Tineke Strik, 'Committee on Migration, Refugees and Displaced Persons, Countries of transit: meeting new migration and asylum challenges' (11 September 2015) Parliamentary Assembly Council of Europe 13867, 4 para. 8 <<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22017&lang=en>> accessed 15 February 2016.

⁶⁸³ IOM, 'Children on the Move' (2013), 30-32 <http://publications.iom.int/system/files/pdf/children_on_the_move_15may.pdf> accessed 15 February 2016.

Figure 2: Top-10 nationalities (90%) of Sea arrivals⁶⁸⁴

The phenomenon of migration is not new. However, the resurgence of violence and repression in the countries of origin has caused an increase in the migration flux. Syrians, who account for almost half of the current arrivals by boat, flee civil war and indiscriminate attacks in civilian areas by both government forces and armed groups, and the increasing violence by extremist Islamic groups such as the Islamic State.⁶⁸⁵ Afghans are facing a new period of insecurity since 2014, involving political instability and a growing pressure by the Taliban and other insurgent groups.⁶⁸⁶ Thousands of Eritreans flee their country every month due to the country's dismal human rights and economic situation, and a large proportion of these people are minors, often unaccompanied, who are escaping from compulsory and indefinite military service.⁶⁸⁷ Similarly, the Iraqi population is suffering from an escalation of armed conflict and the advance of the Islamic State within their country.⁶⁸⁸

⁶⁸⁴ UNHRC, 'Refugees/Migrants Emergency Response - Mediterranean'

<<http://data.unhcr.org/mediterranean/regional.php>> accessed 15 February 2016. (Top-10 nationalities represent (90%) of the Sea arrivals)

⁶⁸⁵ Human Rights Watch, 'The Mediterranean Migration Crisis Why People Flee, What the EU Should Do' (2015), 5-7 <https://www.hrw.org/sites/default/files/report_pdf/eu0615_web.pdf> accessed 15 February 2016.

⁶⁸⁶ *ibid* 8-11.

⁶⁸⁷ Human Rights Watch, 'World Report 2015: Eritrea' <<https://www.hrw.org/world-report/2015/country-chapters/eritrea>> accessed 15 February 2016; see for a more extended analysis of the issue of unaccompanied minors in Women's Refugee Commission, 'Young and Astray: An Assessment of Factors Driving the Movement of Unaccompanied Children and Adolescents from Eritrea into Ethiopia, Sudan and Beyond' (May 2013), <https://www.womensrefugeecommission.org/images/zdocs/Young_and_Astray_web.pdf> accessed 15 February 2016.

⁶⁸⁸ Human Rights Watch, 'World Report 2015: Iraq' <<https://www.hrw.org/world-report/2015/country-chapters/iraq>> accessed 17 February 2016; The same goes for the other countries of origin: in Nigeria, the conflict between governmental forces and insurgent armed groups like Boko Haram and the atrocities committed against civilians have increased the number of persons who have fled the country since 2014. In north-west Pakistan, the security situation is fragile with sectarian attacks and military operations displacing more than one million people and devastating massive floods in other provinces. Somalia has been one of Africa's most intractable civil conflicts

The push factors emerge as being far more influential than the pull factors as the need to flee from instability, either resulting from war or conflict or economic or social pressures. Many migrants and asylum seekers have been embarking on the journey across the Mediterranean from Libya, which has been in a state of political turmoil since 2011 when an uprising and armed conflict led to the overthrow government of Muammar Gaddafi. Migrants and asylum seekers in Libya face specific threats in detention centers and in the hands of the smugglers themselves.⁶⁸⁹ Some argue that the Italian naval operation Mare Nostrum's search and rescue activities created an 'unintended' pull factor, although, since Mare Nostrum ceased its operations in January 2013, the number of migrants on boats that departed the Libyan coast has increased. Additionally, the EU Member States' approach to grant refugee protection based on 'territorial criteria' has made asylum protection dependant on the refugee's ability to reach the border of the state where they seek protection.

b) Patterns of migrant smuggling and human trafficking

In order to understand the impact of the activities of Operation Sophia on the security of migrants, and in particular, vulnerable groups, an overview of the business model of migrant smuggling and human trafficking is necessary. Human trafficking usually involves 'coercion' whereas migrant smuggling takes place with the consent of the person.⁶⁹⁰ Due to the complexity of those activities, it is not always easy to identify whether one is being faced with a case of human smuggling or a case of human trafficking. Indeed, these sometime overlap; reportedly migrants are also victims of abuse, rape, torture and deprivation during their journey to Europe and abducted by smugglers for ransom to be paid by their families.⁶⁹¹ The notion of irregular migration does not have a universally agreed definition. According to the definition provided by IOM, the most common forms of irregular migration are illegal entry, overstaying and unauthorised work.⁶⁹² The number of migrants that are smuggled into Europe is unknown as the most reliable statistics focus on the number of irregular migrants who have entered or are living in the EU.

exacerbated by a large-scale humanitarian crisis and restricted humanitarian access. Additionally, the Islamist group al-Shabaab carries out attacks against civilians, children are forced to join armed groups and the climate change has brought drought and famine crisis to the region. UNHCR, 'Nigeria Situation. Emergency Response' (8 May 2015) <<http://www.unhcr.org/554cbcd29.html>> accessed 18 February 2016; Human Rights Watch, 'World Report 2015: Pakistan' <https://www.hrw.org/world-report/2015/country-chapters/pakistan> accessed 15 February 2016; Human Rights Watch, 'World Report 2015: Somalia' <<https://www.hrw.org/world-report/2015/country-chapters/somalia>> accessed 15 February 2016.

⁶⁸⁹ IOM and Altai Consulting, 'Migration Trends Across the Mediterranean: Connecting the Dots' (June 2015), 8 <http://www.altaiconsulting.com/docs/migration/Altai_Migration_trends_across_the_Mediterranean.pdf> accessed 15 February 2016.

⁶⁹⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Art. 3; As matter of fact, human trafficking is understood as a modern form of slavery; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art. 3

⁶⁹¹ Amnesty International, 'Libya: Horrific abuse driving migrants to risk lives in Mediterranean crossings (11 May 2015) <<https://www.amnesty.org/en/latest/news/2015/05/libya-horrific-abuse-driving-migrants-to-risk-lives-in-mediterranean-crossings/>> accessed 15 February 2016.

⁶⁹² IOM, 'Glossary on Migration' (2011) *International Migration Law Series* no 25; Friedrich Heckmann, 'Towards a better understanding of human smuggling' (November 2007) IMISCOE Policy Brief no. 5.

According to the last FRONTEX Annual Risk Analysis Report, more than 220.000 irregular migrants were detected at the EU sea borders in 2014.⁶⁹³

Libya is one of the principal transit countries for irregular movement together with Turkey, Egypt, the FYROM and Serbia. The smuggling business model in Libya is dependent on three vital conditions; (i) the inflow of migrants seeking to use the central Mediterranean Route; (ii) the possibility to operate without the interference of the militias and authorities; and (iv) the availability of capabilities to provide the transport to Europe. EUNAVFOR MED is aimed at tackling the third condition. From the migrants' perspective, it is the availability of smuggling services and the possibility to work during the transit period that turns a country into a favoured transit point.⁶⁹⁴ In Libya, it is relatively easy to contact the smuggling networks organising crossings by boat towards Italy or Malta and local employers may even contribute by paying or arranging the crossing with the smugglers as a form of payment.⁶⁹⁵ Before the 2011 war, Libya was a 'destination country' for many migrants to work⁶⁹⁶ but its status changed to being a 'transit' country as the opportunities to work decreased following the Arab Spring uprising. Intense movements of Syrian refugees began to be registered in 2013 as a result of the Syrian war and Europe's failure to provide safe channels of protection.⁶⁹⁷ Another key factor determining the designation of Libya as a 'transit country' is the degree of cooperation with the EU and its Member States; before the fall of Gaddafi, Italy made concessions in exchange for tightening border controls by Libyan authorities.⁶⁹⁸

2. Comprehensive approach to migration

In October 2013, more than 300 migrants died in a shipwreck off the coast of Lampedusa while trying to make their journey across the Mediterranean from Libya to Europe. Italy was the first EU Member State to react and launched its Naval Search and Rescue (SAR) operation Mare Nostrum, which saved the lives

⁶⁹³ FRONTEX, 'Annual Risk Analysis report' (2015) 57 <http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf> accessed 15 February 2016.

⁶⁹⁴ See European Commission, 'A study on smuggling of migrants: Characteristics, responses and cooperation with third Countries' (September 2015) Final Report, 30-31; In Libya the main 'hubs' are Tripoli and Benghazi and surrounding areas and the city of Sebha between the south and the north; see Regional Mixed Migration Secretariat (RMMS) 'Going West: Contemporary mixed migration trends from the Horn of Africa to Libya and Europe' (2014) <http://www.regionalmms.org/fileadmin/content/rmms_publications/Going_West_migration_trends_Libya___Europe_final.pdf> accessed 17 February 2016.

⁶⁹⁵ Bina Fernandez, 'Traffickers, Brokers, Employment Agents, and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East' (2013) 47(4) *International Migration Review*, 814-843

⁶⁹⁶ Altai Consulting and UNHCR, 'Mixed Migration: Libya at the Crossroads: Mapping of Migration Routes from Africa to Europe and Drivers of Migration in Post-revolution Libya' (November 2013), 10-11 <http://www.altaiconsulting.com/mixedmigrationlibya/Altai_Consulting-UNHCR-Mixed_Migration_Libya.pdf> accessed 17 February 2016.

⁶⁹⁷ Mattia Toaldo, 'Libya Migrant-Smuggling Highway: Lessons for Europe' (10 November 2015) ECFR/147 <http://www.ecfr.eu/page/-/ECFR-147_Libyas_Migrant_Smuggling_Highway1.pdf> accessed 17 February 2016.

⁶⁹⁸ For instance, the cooperation between Spain and Morocco and in the past the cooperation between Italy and Libya discourages many migrants from choosing those as transit points.

of some 150.000 migrants until it ceased its operations in October 2014.⁶⁹⁹ In 2013 the EU set up Task Force Mediterranean to better manage migration and asylum flows, and prevent deaths at sea.⁷⁰⁰ In November 2014, at the request of the Italian authorities, operation Mare Nostrum was replaced by the Frontex Joint Operation Triton,⁷⁰¹ a smaller border-control operation with a much more limited budget and geographic scope of action.⁷⁰² The funding for Operation Triton was tripled following the shipwreck disaster in April 2015,⁷⁰³ but Member States refused to broaden the scope of the operation's mandate to include search and rescue.⁷⁰⁴

The situation of instability in the EU's neighbouring regions, notably in the Middle East, Central Africa, and in the Horn of Africa, combined with the better economic prospects that Europe provides, encourages migration towards EU countries. Some studies suggest that there is a close link between European border control policies and the rising number of deaths at sea⁷⁰⁵ with people forced to take more dangerous routes or means of transport.⁷⁰⁶ An added difficulty in this scenario is the mixed nature of migration flows, comprising both economic migrants and asylum-seekers, although these categories may overlap.⁷⁰⁷

a) *EU response to migratory flows*

The EU comprehensive response to the migration crisis came after a series of mass drownings, particularly after the death of approximately 800 migrants off the Libyan coast in April 2015. The EU has developed a

⁶⁹⁹ Ministero Della Difesa, 'Mare Nostrum Operation' <<http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>> accessed 18 February 2016.

⁷⁰⁰ Council of the European Union, 'Task Force Mediterranean' (5 December 2013) Press release 17409/13 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139937.pdf> accessed 18 February 2016.

⁷⁰¹ FRONTEX, 'Frontex launches Joint Operation Triton' (31 October 2014) <<http://frontex.europa.eu/news/frontex-launches-joint-operation-triton-JSYpL7>> accessed 18 February 2016.

⁷⁰² ECRE, 'MareNostrum to end – New Frontex Operation will not ensure rescue of migrants in international waters' (10 October 2014) <<http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html>> accessed 18 February 2016.

⁷⁰³ BBC, 'Mediterranean migrants crisis: What happened on the sinking boat?' (23 April 2015) <<http://www.bbc.co.uk/news/world-europe-32411381>> accessed 18 February 2016.

⁷⁰⁴ European Council, 'Special meeting of the European Council, 23 April 2015 – statement' 204/15 (23 April 2015); FRONTEX, 'Frontex expands its Joint Operation Triton' (26 May 2015) <<http://frontex.europa.eu/news/frontex-expands-its-joint-operation-triton-udpHP>> accessed 18 February 2016.

⁷⁰⁵ Spijkerboer analyses the extent to which European states may be accountable for the side-effects of increased border control in the increasingly number of migrant's deaths; see Thomas Spijkerboer, 'Are European States Accountable for Border Deaths?' in Juss Satvinder (ed), *Research Companion to Migration Law and Theory* (Ashgate, 2013), 62

⁷⁰⁶ There is some evidence that unsafe rubber boats are fabricated in Libya for the sole purpose of transporting migrants; see European Commission, 'A study on smuggling of migrants: Characteristics, responses and cooperation with third Countries' (September 2015) Final Report, 40

⁷⁰⁷ See UNHCR, 'Mixed Migration into Europe' <<http://www.unhcr.org/pages/4a1d569d6.html>> accessed 18 February 2016; Emanuela Roman, 'Mediterranean Flows into Europe: Refugees or Migrants?' (April 2015) <http://www.iemed.org/osservatori/arees-danalisi/arxiu-adjunts/anuari/med.2015/IEMed_MedYearbook%202015_Mediterranean%20Flows%20into%20Europe_Emanuela%20Roman.pdf> accessed 18 February 2016.

comprehensive response to tackle migration⁷⁰⁸, and has also developed other comprehensive strategies and action plans on migrant smuggling,⁷⁰⁹ trafficking of human beings,⁷¹⁰ security⁷¹¹ and regional policies,⁷¹² among others.⁷¹³

On 20 April 2015, in a joint meeting of EU Foreign and Interior Ministers, the EU Migration Commissioner presented a ten-point action plan that foresees reinforcing maritime and border control in the Mediterranean, targeting people smugglers and working with countries of origin and transit of migrants to try to dissuade people from taking to the seas. The ten-point action plan also envisages the establishment of a CSDP operation to capture and destroy vessels used by smugglers in the Southern Central Mediterranean:⁷¹⁴ In reality, these attempts to prevent crossings are likely to fail as this approach overlooks the root causes of migration. In many cases there are desperate reasons grounded in forced displacement and human rights abuse for making this dangerous journey.

Box 8: Ten point action plan on migration

- Reinforce the **Joint Operations in the Mediterranean**, namely Triton and Poseidon, by increasing the financial resources and the number of assets. We will also extend their operational area, allowing us to intervene further, within the mandate of Frontex;
- A systematic effort to **capture and destroy vessels** used by the smugglers. The positive results obtained with the Atalanta operation should inspire us to similar operations against smugglers in the Mediterranean;

⁷⁰⁸ European Commission, 'European Agenda on Migration' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2015) 240 final

⁷⁰⁹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU Action Plan against migrant smuggling (2015-2020)' (2015) COM(2015) 285 final

⁷¹⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016' (2012) COM(2012) 286 final

⁷¹¹ European Council, 'A Secure Europe in a Better World: European Security Strategy' (12 December 2003)

⁷¹² EEAS, 'European Neighbourhood Policy (ENP)' <http://eeas.europa.eu/enp/index_en.htm> accessed 18 February 2016; EEAS, 'ENP Action Plans' <http://eeas.europa.eu/enp/documents/action-plans/index_en.htm> accessed 18 February 2016; EEAS, 'Euro-Mediterranean Partnership (EUROMED)' <http://eeas.europa.eu/euromed/index_en.htm> accessed 18 February 2016.

⁷¹³ Other relevant policy documents include the following: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Global Approach to Migration and Mobility (GAMM)' (2011) COM(2011) 743 final; Also relevant are the mobility partnership concluded with Tunisia and Morocco that have partly prompted the number of migrants transiting through Libya; European Commission 'Migration and mobility partnership signed between the EU and Morocco' (June 2013) Press release <http://europa.eu/rapid/press-release_IP-13-513_en.htm> accessed 18 February 2016; European Commission, 'EU and Tunisia establish their Mobility Partnership' (3 March 2014) Press Release <http://europa.eu/rapid/press-release_IP-14-208_en.htm> accessed 18 February 2016.

⁷¹⁴ European Commission, 'Joint Foreign and Home Affairs Council: Ten point action plan on migration' (20 April 2015) Press Release IP/15/4813 <http://europa.eu/rapid/press-release_IP-15-4813_en.htm> accessed 18 February 2016.

- EUROPOL, FRONTEX, EASO and EUROJUST will **meet regularly and work closely to gather information** on smugglers modus operandi, to trace their funds and to assist in their investigation;
- EASO to deploy teams in Italy and Greece for **joint processing of asylum applications**;
- Member States to ensure **fingerprinting of all migrants**;
- Consider options for an emergency relocation mechanism;
- A EU wide **voluntary pilot project on resettlement**, offering a number of places to persons in need of protection;
- Establish a **new return programme for rapid return of irregular migrants** coordinated by Frontex from frontline Member States;
- **Engagement with countries surrounding Libya** through a joined effort between the Commission and the EEAS; initiatives in Niger have to be stepped up.
- Deploy **Immigration Liaison Officers (ILO)** in key third countries, to gather intelligence on migratory flows and strengthen the role of the EU Delegations.

On 13 May 2015, the European Commission made its contribution by setting out four key focus areas in its ‘Communication on a European Agenda for Migration’ as follows: a strong Common Asylum System; a new European policy on legal migration; fighting irregular migration and human trafficking; and Securing Europe's external borders.⁷¹⁵ The European Agenda on Security in April 2015 also addresses the necessity to prevent and counter migrant smuggling and⁷¹⁶ the issue of migration to ‘become a specific component of ongoing Common Security and Defence Policy (CSDP) missions already deployed in countries like Niger and Mali, which will be strengthened on border management.’⁷¹⁷ The EU Action Plan against Migrant Smuggling (2015-2020) adopted in May 2015 is aimed at countering and preventing migrant smuggling, while also providing assistance to vulnerable migrants and ensuring the protection of the human rights of migrants, although no substantive provisions relating to assistance can be found in the document.⁷¹⁸ The

⁷¹⁵ European Commission, ‘European Agenda on Migration’ COM(2015) 240 final; see for more information on the state of play of the Agenda European Commission, ‘European Agenda on Migration – Factsheets’ <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/index_en.htm> accessed 18 February 2016.

⁷¹⁶ Indeed the European Agenda on Security states that ‘This Agenda has to be seen in conjunction with the forthcoming European Agenda on Migration, which will address issues directly relevant to security, such as smuggling of migrants, trafficking in human beings, social cohesion and border management.’ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘European Agenda on Security’ (2015) COM(2015) 185 final, 4

⁷¹⁷ European Commission, ‘European Agenda on Migration’ COM(2015) 240 final, 5

⁷¹⁸ The main provision reads ‘[t]he EU should step up efforts to provide smuggled migrants, in particular vulnerable groups such as children and women, with assistance and protection. The Commission will launch a consultation, in 2016, and impact assessment on the possible revision of Directive 2004/81/EC9 on residence permits issued to victims of trafficking in human beings and to smuggled migrants cooperating with authorities’. European Commission, ‘EU Action Plan against migrant smuggling (2015 - 2020)’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2015) 285 final, 7

Action Plan against Migrant Smuggling sets out specific actions geared towards the implementation of the two agendas, namely: enhanced police and judicial cooperation; improved gathering and sharing information, stronger cooperation with third countries; and, enhanced prevention of smuggling and assistance to vulnerable migrants.⁷¹⁹

The Action Plan against Migrant Smuggling foresees the establishment of a CSDP operation to contribute to the disruption of migrant smuggling networks⁷²⁰ and the reinforcement of CSDP missions such as EUCAP Sahel Niger and EUCAP Sahel Mali on border management.⁷²¹ There is no express mention of EUBAM Libya, which was established in May 2013 to support the Libyan authorities in improving and developing their capacity to enhance the security of their borders, and to develop a broader Integrated Border Management (IBM). Due to deterioration in the security situation in Tripoli since July 2014, the staff has been temporary relocated to Tunis and Brussels.⁷²²

On 18 May the EU Foreign Affairs Council adopted a decision on establishing an EU military operation called EUNAVFOR MED with the aim '[to disrupt] the business model of human smuggling and trafficking networks in the Southern Central Mediterranean, achieved by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers'.⁷²³ The launching of the EUNAVFOR MED operation was not without controversy, despite being embedded in an EU comprehensive approach, allegedly aimed at tackling the current symptoms and the root causes of migration. Some experts question the legal and practical appropriateness of resorting to a military operation to prevent further deaths at sea.⁷²⁴ Furthermore, while there is a certain level of consensus

⁷¹⁹ The actions aimed at prevention of smuggling and assistance to vulnerable migrants include information and prevention campaigns in third countries; development of guidelines for border authorities and consular services; negotiations on readmission with the main countries of origin of irregular migrants and increase inspections in the economic sectors most exposed to illegal employment.

⁷²⁰ European Commission, 'EU Action Plan against migrant smuggling (2015 - 2020)' COM(2015) 285 final, 3

⁷²¹ *ibid* 9.

⁷²² EEAS, 'EU Relations with Libya' <http://eas.europa.eu/libya/index_en.htm> accessed 18 February 2016; The decision of launching this mission has been criticised for coming into action too late, when the state of the conflict in Libya made its work impossible; see Franziska Brantner, 'The Libyan context of the migration crisis' ECFR Commentary (2015) <http://www.ecfr.eu/article/commentary_the_libyan_context_of_the_migration_crisis3040> accessed 18 February 2016.

⁷²³ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) OJ L 122, Art. 1

⁷²⁴ See *inter alia* Giuliana Ziccardi Capaldo, 'The EUNAVFOR MED Operation and the Use of Force' (18 December 2015) 19(27) *American Society of International Law* <<https://www.asil.org/insights/volume/19/issue/27/eunavfor-med-operation-and-use-force>> accessed 10 February 2016; Andrew and Renata Kaldor Centre for International Refugee Law, 'Combatting people smuggling and trafficking' [year] <<http://www.kaldorcentre.unsw.edu.au/combating-people-smuggling-and-trafficking>> accessed 18 February 2016; Meijers Committee, 'Military action against human smugglers: legal questions concerning the EUNAVFOR Med operation' (23 September 2015) <<http://www.commissie-meijers.nl/en/comments/391>> accessed 18 February 2016.

among EU Member States with regards to eliminating smuggling networks, they have been struggling on the question of admission and distribution of asylum seekers.⁷²⁵

Noteworthy is also the EU Trust Fund for Africa, a financial mechanism in the field of development cooperation, that helps foster stability in the regions and that contributes to better management of migration flows in a wide range of African countries.⁷²⁶ The initiative was launched at the Valletta Summit on Migration on 12 November 2015 by European and African partners. The Trust Fund covers economic programmes to create employment opportunities, projects improving migration management, projects supporting basic services such as food and nutrition security and support to good governance, in particular as regards conflict prevention and strengthening the rule of law.⁷²⁷

One of the main challenges, with regards to the EU's commitment to disrupt the business model of migrant smuggling networks, is that Libyan authorities are not willing and/or able to cooperate with the EU, thus other complementary actions to CSDP action cannot be implemented. The business of smuggling constitutes a network of a multitude of actors performing a variety of roles and not necessarily operating in Libya or its coastal areas.⁷²⁸ Without Libya's active collaboration or consent to operate in its territory (including territorial waters) it would be impossible to dismantle these criminal networks. The network structure makes the smuggling business resistant to law enforcement actions as the actors involved can be easily removed and replaced. Moreover, Frontex data indicates that only a small percentage of migrant smugglers are detected at sea, as often migrants guide the boats themselves, so that smugglers avoid being arrested.⁷²⁹

⁷²⁵ The European Commission proposed taking in 20.000 refugees and distributing them across Europe according to certain criteria, while giving Britain, Ireland and Denmark the option not to accept their quotas. Britain and Ireland have 'opt-ins' on EU matters related to justice and home affairs, ie they only participate if they so choose, while Denmark has an 'opt-out', meaning that in principle it will not participate. European Commission, 'European Solidarity: A Refugee Relocation System' <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf> accessed 18 February 2016.

⁷²⁶ The eligible countries include: the Sahel region and Lake Chad area (Burkina Faso, Cameroon, Chad, the Gambia, Mali, Mauritania, Niger, Nigeria and Senegal); the Horn of Africa (Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania and Uganda); the North of Africa: Morocco, Algeria, Tunisia, Libya and Egypt; and neighbouring countries of the eligible countries may benefit from projects with a regional dimension; European Commission, 'A European Union Emergency Trust Fund for Africa' (2015) <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_factsheet_emergency_trust_fund_africa_en.pdf> accessed 20 February 2016.

⁷²⁷ European Commission, 'President Juncker launches the EU Emergency Trust Fund to tackle root causes of irregular migration in Africa' (12 November 2015) Press Release <http://europa.eu/rapid/press-release_IP-15-6055_en.htm> accessed 20 February 2016.

⁷²⁸ A research identified the following actors: 'Smugglers/top men; Recruiters; Guides, drivers or skippers; Spotters/Messengers; Money collectors – Hawala shop; Forgers (passports/formal documents); Suppliers (boat makers, boat owners, car/bus owners); Corrupt government officials (immigration officials) and corrupt service providers (train conductors etc); Enforcers; Receivers'; European Commission, 'A study on smuggling of migrants: Characteristics, responses and cooperation with third Countries' (September 2015) Final Report, 47

⁷²⁹ FRONTEX, 'Annual Risk Analysis 2015' (2015), 58 <http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf> accessed 20

An added difficulty with regards to EU-Libya relations is the absence of an Association Agreement. Libya remains outside most of the structures of the European Neighbourhood Policy (ENP), however, it is eligible for funding under the European Neighbourhood Instrument (ENI) for regional and thematic assistance programmes on human rights or migration.⁷³⁰ Since 2008, the EU has been trying to negotiate a framework agreement but due to political instability negotiations were suspended in February 2011 and have yet to resume.⁷³¹

b) Regional and multilateral efforts

EUNAVFOR MED Operation SOPHIA identified coordination and de-confliction of activities as an essential area early on. At the Operation Commander's initiative the Shared Awareness and De-Confliction in the Mediterranean forum (SHADE MED) was established to serve as a forum for representatives from states and organisations tackling irregular migration across the Mediterranean Sea. The first meeting was held in Rome on 26 November 2015 and it was attended by representatives from governments, international and nongovernmental organisations.⁷³² 80 representatives from 39 different entities attended the first meeting, ranging from governments and armed forces of the coastal states of the Mediterranean Sea to international organisations such as the UN and the EU as well as NGOs. Various UN organisations as well as FRONTEX and NATO participated in the SHADE MED forum. The initiative has contributed positively to coordination efforts of Operation Sophia with other stakeholders.⁷³³ Additionally, EUNAVFOR MED

February 2016; European Commission, 'A study on smuggling of migrants. Characteristics, responses and cooperation with third Countries' (September 2015) Final Report, 50

⁷³⁰ European Commission, 'Libya' <http://ec.europa.eu/enlargement/neighbourhood/countries/libya/index_en.htm> accessed 20 February 2016.

⁷³¹ The EU has sought cooperation with other Mediterranean neighbours to control the flow of migrants to European shores through the negotiation of a framework agreement. Euro-Mediterranean Association Agreements are in force with most of them, with the exception of Syria and Libya. The political polarisation and the intensification of fighting between rival factions had led to two de facto parliaments and governments in Libya. The two governments in Libya are the internationally-recognised Council of Deputies based in Tobruk and the General National Congress (GNC) in Tripoli. However the signing of an UN-brokered agreement between Libya's warring factions to constitute a unity government has renewed EU's hopes of gaining further support from Libya in handling the migration crisis. See Council of the European Union, 'Declaration by the High Representative Federica Mogherini on behalf of the EU on the signature of the Libya Political Agreement' (17 December 2015) Press release 949/15 <[http://www.consilium.europa.eu/en/press/press-releases/2015/12/17-hr-declaration-on-libya-political-agreement/?utm_source=dsms-](http://www.consilium.europa.eu/en/press/press-releases/2015/12/17-hr-declaration-on-libya-political-agreement/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Declaration+by+the+High+Representative+Federica+Mogherini+on+behalf+of+the+EU+on+the+signature+of+the+Libya+Political+Agreement)

[auto&utm_medium=email&utm_campaign=Declaration+by+the+High+Representative+Federica+Mogherini+on+behalf+of+the+EU+on+the+signature+of+the+Libya+Political+Agreement](http://www.consilium.europa.eu/en/press/press-releases/2015/12/17-hr-declaration-on-libya-political-agreement/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Declaration+by+the+High+Representative+Federica+Mogherini+on+behalf+of+the+EU+on+the+signature+of+the+Libya+Political+Agreement)> accessed 20 February 2016; The General National Congress threatened to open the floodgates for migrants to stream into Europe if EU Member States would not recognise its self-declared Islamist government; see *inter alia* The Guardian, 'Lack of EU contact with Tripoli a barrier to tackling migrant deaths' (20 April 2015) <<http://www.theguardian.com/world/2015/apr/20/lack-of-eu-contact-with-tripoli-a-barrier-to-tackling-migrant-deaths>> accessed 20 February 2016.

⁷³² EEAS, 'First Shared Awareness and De-confliction (SHADE) meeting for the Mediterranean Sea' (26 November 2015) Press release 04/15 <http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/operation_sophia_press_release_004.pdf> accessed 12 February 2016.

⁷³³ Interview with EUNAVFOR MED officials [March 2016, via email]; EEAS, 'First Shared Awareness and De-confliction (SHADE) meeting for the Mediterranean Sea' (26 November 2015) Press release 04/15 <http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/operation_sophia_press_release_004.pdf> accessed 12 February 2016.

personnel is of the view that the relations with several non-security actors such as IOM, UNHCR, OHCHR, Save the children, MSF and the civilian mission EUBAM Libya are satisfactory.⁷³⁴

There are many actors involved in trying to deal with migration flows on the Mediterranean. The UNHCR is mandated to lead and co-ordinate international action to protect refugees and seek durable solutions together with UN Member States to the refugee problem.⁷³⁵ The IOM has been active in facilitating and organising the evacuation of trapped populations of migrants and vulnerable persons in Libya, however, neither IOM nor UNHCR carry out search-and-rescue operations on the Mediterranean Sea.⁷³⁶ The EU and its Member States are IOM's second largest donor and additionally, the IOM, the EEAS and three European Commission services (DG HOME, DG DEVCO, DG ECHO) have adopted a Strategic Cooperation Framework to enhance their collaboration on migration, development, humanitarian response and human rights issues.⁷³⁷

At the European level, the European Asylum support office (EASO) helps Member States to fulfill their European and international obligations to give protection to people in need by providing practical, technical and operational support to the EU Member States subject to a strong migratory pressure. The EASO contributes to identifying people in need of international protection and the processing of asylum applications in the so-called 'hotspot areas' in Greece and Italy.⁷³⁸

The EU Border Agency FRONTEX aims to strengthen border security and ensure coordination in the implementation of EU measures relating to external border management. In November 2014, the Frontex Joint operation Triton took over from the Italian operation Mare Nostrum to conduct border surveillance, although it does not carry out proactive searches close to Libya's coast as the former did.⁷³⁹ The UN Special Rapporteur on the human rights of migrants, François Crépeau, has been critical of 'Operation Triton's limited mandate for effective search and rescue operations compared with the mandate of Operation Mare Nostrum, incoherence in search and rescue zone management, tensions between unilateral and regional interventions, disincentives for private and military vessels to provide assistance to migrants, limited resource commitments from member States and difficulties in establishing disembarkation

⁷³⁴ Interview with EUNAVFOR MED officials [March 2016, via email]

⁷³⁵ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees (1950) A/RES/428(V)

⁷³⁶ Christine Aghazarm, Patrice Quesada and Sarah Tishler, 'Migrants Caught in Crisis: the IOM Experience in Libya' (IOM 2012) <https://publications.iom.int/es/system/files/pdf/migrationcaughtincrisis_forweb.pdf> accessed 22 February 2016.

⁷³⁷ IOM, 'IOM and the EU' <<http://eea.iom.int/index.php/about-iom/iom-and-the-eu>> accessed 22 February 2016.

⁷³⁸ A 'hotspot' is characterised by specific and disproportionate migratory pressure, consisting of mixed migratory flows, which are largely linked to the smuggling of migrants; European Commission, 'Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration' (23 September 2015) Press Release IP/15/5700 <http://europa.eu/rapid/press-release_IP-15-5700_en.htm> accessed 22 February 2016.

⁷³⁹ Jacques Hartmann and Irini Papanicolopulu, 'Are Human Rights Hurting Migrants at Sea?' (*Ejil Talk*, 24 April 2015) <<http://www.ejiltalk.org/are-human-rights-hurting-migrants-at-sea/>> accessed 22 February 2016.

protocols.⁷⁴⁰ Various EU Member States involved in maritime border surveillance also feature search and rescue coordination through its operations deployed in the Central Mediterranean area such as the *Comando Generale delle Capitanerie di Porto* for Italy and the *Armed forces of Malta* for Malta.⁷⁴¹ In June 2015, the EU Regional Task Force (EU RTF) was established in Catania (Sicily) to coordinate the work of Frontex, EASO, Europol, EUNAVFOR MED and national authorities, ensuring coverage at different ports of disembarkation.⁷⁴² EUNAVFOR MED maintains a close relationship with EU organisations and agencies involved in countering migrant smuggling and human trafficking. Operation Sophia and Frontex have concluded a series of agreements and operational procedures covering exchange of information, communication mechanisms, shared training and capabilities as well as the deployment of Frontex Liaison Officers within EUNAVFOR Med.⁷⁴³ Operation Sophia has also concluded specific arrangements with EUROJUST⁷⁴⁴ and EUROPOL.⁷⁴⁵

NGOs such as *Médecins Sans Frontières* (MSF) have launched operations to provide humanitarian assistance to migrants in the Mediterranean Sea.⁷⁴⁶ Some private companies and individuals are also assisting migrants attempting to reach Europe. The Frontex's Annual Risk Analysis reported that more than 600 merchant ships had rescued persons in 2014 in the Mediterranean.⁷⁴⁷ However humanitarian actors are often deterred from providing assistance under the EU and Members States' legislations.⁷⁴⁸

⁷⁴⁰ Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 'Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants' (8 April 2015) A/HRC/29/36

⁷⁴¹ FRA, 'Fundamental Rights at Europe's southern sea borders' (July 2013), 42 <https://fra.europa.eu/sites/default/files/fundamental-rights-europes-southern-sea-borders-jul-13_en.pdf> accessed 22 February 2016.

⁷⁴² European Commission, 'Annex to the Communication from the Commission to the European Parliament, the European Council and the Council Managing the refugees crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration' (30 September 2015) 12313/15 ADD 2 REV 1, 6

⁷⁴³ EEAS, 'EUNAVFOR MED reaffirms the full interoperability with TRITON's assets' (4 February 2016) <http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/news/20160204_01_en.htm> accessed 12 February 2016.

⁷⁴⁴ EUROJUST, 'Letter of Understanding on Cooperation between Eurojust and EUNAVFOR MED' (1 October 2015) <[http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Letter%20of%20Understanding%20on%20cooperation%20between%20Eurojust%20and%20EUNAVFOR%20MED%20\(2015\)/EUROJUST-EUNAVFOR%20MED-2015-10-01-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Letter%20of%20Understanding%20on%20cooperation%20between%20Eurojust%20and%20EUNAVFOR%20MED%20(2015)/EUROJUST-EUNAVFOR%20MED-2015-10-01-EN.pdf)> accessed 12 February 2016.

⁷⁴⁵ EUROPOL, 'EUNAVFOR MED Operation Sophia and EUROPOL determined to strengthen bilateral cooperation' (22 December 2015) <https://www.europol.europa.eu/latest_news/eunavfor-med-operation-sophia-and-europol-determined-strengthen-bilateral-cooperation> accessed 12 February 2016.

⁷⁴⁶ MSF, 'Opérations de recherche et de sauvetage de migrants en Méditerranée' (6 January 2016) <<http://www.msf.fr/actualite/dossiers/operations-recherche-et-sauvetage-migrants-en-mediterranee>> accessed 22 February 2016.

⁷⁴⁷ Frontex, 'Annual Risk Analysis 2015' (April 2015), 19 <http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf> accessed 22 February 2016.

⁷⁴⁸ Sergio Carrera and others, 'Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants' (2016) European Parliament PE 536.490 <[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU\(2016\)536490_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU(2016)536490_EN.pdf)> accessed 22 February 2016; FRA, 'Fundamental Rights at Europe's southern sea borders' (July 2013), 35-36

The Valletta Summit held in November 2015 brought together more than 60 countries, the EU, the African Union and other relevant regional and international organisations to discuss ways of strengthening cooperation in order to address the current challenges of migration.⁷⁴⁹ The participants agreed on an Action Plan built around five priority domains and which sets sixteen priority initiatives to be launched by the end of 2016.⁷⁵⁰

Operation SOPHIA maintains a close relationship with civilian CSDP mission EUBAM Libya and liaison officers have been appointed to Tunis where the mission has been relocated. Furthermore, the Operation has good cooperation with the EU Delegation to Libya and EEAS planners at headquarters ensuring that relevant information about EU planning on Libya is transmitted within the Operation.⁷⁵¹

3. Mandate

According to Article 2 of the decision, EUNAVFOR MED shall be implemented in three sequential phases⁷⁵²:

- a) in a first phase, support the detection and monitoring of migration networks through information gathering and patrolling on the high seas in accordance with international law,
- b) in a second phase,
 - (i) conduct boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling or trafficking, under the conditions provided for by applicable international law, including UNCLOS and the Protocol against the Smuggling of Migrants;
 - (ii) in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, conduct boarding, search, seizure and diversion, on the high seas or in the territorial and internal waters of that State, of vessels suspected of being used for human smuggling or trafficking, under the conditions set out in that Resolution or consent;
- c) in a third phase, in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, take all necessary measures against a vessel and related assets, including through disposing of them or rendering them inoperable, which are

⁷⁴⁹ Council of the European Union, 'Valletta Summit on migration' (11-12 November 2015) <<http://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>> accessed 22 February 2016.

⁷⁵⁰ The five main elements of the Action Plan are: addressing the root causes of migration, the protection of migrants and asylum seekers, measures to counter human trafficking, improving measures for refoulement (return, readmission and reintegration) and measures to encourage legal migration. Council of the European Union, 'Valletta Summit 11-12 November 2015 Action Plan' (2015) <file:///C:/Users/Usuario/Downloads/ACTION_PLAN_EN.pdf> accessed 22 February 2016.

⁷⁵¹ Interview with EUNAVFOR MED officials [March 2016, via email]

⁷⁵² Council Decision 2015/778/CFSP of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), Art. 2(2)

suspected of being used for human smuggling or trafficking, in the territory of that State, under the conditions set out in that Resolution or consent.

The mission is currently in its second phase, searching and diverting vessels on the high seas and territorial waters under a mandate of the UN Security Council. On 7 October 2015, the naval operation entered phase two after the Political and Security Committee (PSC) of the Council considered that the military objectives related to the first phase had been accomplished, ie the collection and analysis of information and intelligence had been completed.⁷⁵³

EUNAVFOR Atalanta in the Indian Ocean became a referent for the establishment of a maritime operation in the Mediterranean to fight people smuggling operations in Libya.⁷⁵⁴ Unlike EUNAVFOR MED, the destruction of ships was not part of the original objectives of Atalanta but the latter was supported by a UN Security Council Resolution and had the consent of the coastal state involved. Pursuant Articles 39 and 42 of the UN Charter, the Security Council shall only authorise the use of force if 'necessary to maintain or restore international peace and security'. Although the Security Council has previously adopted resolutions in response to refugee crises in Iraq and Haiti, these were intended to stabilise the countries of origin and not to prevent persons from seeking refuge elsewhere. On 9 October 2015, the United Nations Security Council (UNSC) adopted Resolution 2240 (2015) authorising Member States to intercept vessels off of the Libyan coast, suspected of migrant smuggling.⁷⁵⁵

4. Assessment

The establishment of a military operation to address one dimension of the current migration crisis, ie human smuggling and trafficking, is subject to intense debate concerning the legality and effectiveness this means. Before March 2015, no CSDP mission or operation had ever incorporated migration concerns in its mandate, even though the CSDP has resulted in extensive EU experience in border management. After the adoption of the ten-point action plan, we suddenly find that existing missions are reinforced with migration instruments (EUCAP Sahel Niger, EUCAP Sahel Mali, EUBAM Libya) and a EU military operation is established to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean. These developments show that there is no systematic approach to the use of CSDP in the field of migration. Furthermore, Operation Sophia in the Mediterranean, which is seemingly built on the experiences of the EU's naval operations off of the Horn of Africa, faces a context of crisis which has never happened before: a humanitarian crisis outside any state borders and the intended targets, smuggling and trafficking networks out of reach, operating in Libyan territory.

⁷⁵³ Council of the European Union, 'EUNAVFOR Med: EU agrees to start the active phase of the operation against human smugglers and to rename it "Operation Sophia"' (28 September 2015) Press Release 678/15 <<http://www.consilium.europa.eu/en/press/press-releases/2015/09/28-eunavfor>> accessed 22 February 2016; At the same time the PSC also decided to change the name of the operation from EUNAVFOR MED into 'Operation Sophia', the name of the baby that was born on a EUNAVFOR MED ship after her mother was rescued.

⁷⁵⁴ As stated in the European Commission, 'Joint Foreign and Home Affairs Council: Ten point action plan on migration' (20 April 2015) Press Release IP/15/4813

⁷⁵⁵ UNSC Resolution 2240 (2015)

a) *Key legal aspects*

EUNAVFOR MED operates in a complex legal environment of overlapping rules of refugee law, international human rights law, the law of the sea, and international rules on the use of force. Anti-smuggling measures should fully comply with binding obligations under the European Convention for Human Rights (ECHR) to protect the rights to life, liberty and security, an effective remedy, and the non-refoulement obligation. The EU should also ensure that all measures to combat irregular migration are grounded in respect for human rights and dignity, including the right to seek asylum, and protection against returning people to countries where their lives or freedoms may be at risk.

The extraterritorial application of the ECHR and the exercise of jurisdiction may pose additional difficulties even though the ECtHR has asserted the applicability of the ECHR in various cases dealing with law enforcement operations on the high seas.⁷⁵⁶ Spijkerboer defends the view that interceptions carried out on the high seas clearly fall within the jurisdiction of the intercepting state, and that regardless of whether people drown in territorial waters or on the high seas, there is a strong correlation between the increasing use of dangerous routes and EU Member States' border control policies.⁷⁵⁷ This section aims to highlight key legal aspects in the conduct of Operation Sophia.

The principle of non-refoulement

Non-refoulement is a core principle of international refugee law and as a part of customary international law, binds all States even if they are not parties to the 1951 Convention and 1967 Protocol.⁷⁵⁸ The principle of non-refoulement is enshrined in Article 78(1) TFEU and Article 19 of the EU's Charter of Fundamental Rights.⁷⁵⁹ The IMO Guidelines on the treatment of persons rescued at sea state that '[d]isembarkation of asylum-seekers and refugees recovered at sea, in territories where their lives and freedom would be threatened should be avoided.'⁷⁶⁰ In the present context, migrants pushed-back to Libya would be subject to arbitrary detention and ill-treatment precisely because they left a State's territory in an irregular manner.⁷⁶¹ This are, in addition to the widespread abuses against migrants, committed by smugglers,

⁷⁵⁶ *Medvedyev v France* [2008] ECHR App no 3394/03; *Rigopoulos v Spain* [1999] ECHR App No 37388/97; *Xhavara and Others v Italy and Albania* [2001] ECHR App No 39473/98

⁷⁵⁷ In his view the 'gap in human rights protection that exists if one denies jurisdiction in these cases is an intentionally created gap; Thomas Spijkerboer, 'Are European States Accountable for Border Deaths?' in Juss Satvinder (ed), *Research Companion to Migration Law and Theory* (Ashgate 2013), 64-65

⁷⁵⁸ UNHCR, 'Note on international protection' (13 September 2001) A/AC.96/951, para 16; Art. 33(1) of the 1951 Geneva Convention prohibits states to 'expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

⁷⁵⁹ Since the entry into force of the TEU in 2009 the Charter is binding on EU institutions and the Member States when implementing EU law.

⁷⁶⁰ Resolution MSC.167(78) adopted in May 2004 by the Maritime Safety Committee together with the SAR and SOLAS amendments, 17 para 6

⁷⁶¹ See FRA, 'Fundamental Rights at Europe's southern sea borders' (July 2013), 43 <http://fra.europa.eu/sites/default/files/fundamental-rightseuropes-southern-sea-borders-jul-13_en.pdf> accessed 12 February 2016.

traffickers and terrorists groups.⁷⁶² Regarding the transfer of migrants and suspected traffickers or smugglers, EUNAVFOR MED follows some of the procedures included in the FRONTEX OPLAN for Operation TRITON.⁷⁶³ Upon disembarkation, migrants and suspected traffickers or smugglers are handed over to the Italian immigration authorities and law enforcement respectively.⁷⁶⁴

Italian authorities are struggling to ensure adequate reception conditions for the refugees and migrants disembarked in the country. The government's plan to distribute them in reception centres across the country has encountered strong resistance from local authorities and population, including violent attacks.⁷⁶⁵ In September 2015, Italy started applying the so-called 'hotspot approach', under which asylum-seekers of certain nationalities would be identified to benefit from relocation to other EU Member States where they could seek asylum. There are concerns that asylum-seekers and migrants may be subjected to arbitrary detention and forced fingerprinting in centres designated as 'hotspots'. There are reported cases of expulsion orders issued to individuals upon arrival, raising concern that people ineligible for relocation may be expelled without being previously granted an opportunity to seek asylum or receive information regarding their rights.⁷⁶⁶

Use of force and interception of human beings

In many cases, action against migrant smugglers and traffickers of human beings involves the use of force that has to be 'calibrated to ensure the lives and safety and rights of asylum seekers and migrants who are in the hands of smuggling.'⁷⁶⁷ Generally such use is limited to self-defence, however use of force against migrant smugglers and traffickers of human beings off the coast of Libya is authorized as an

⁷⁶² See Human Rights Council, 'Report of the Special Rapporteur on the human rights of migrants' François Crépeau (2 April 2012) A/HRC/20/24; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 'Regional Study: management of the external borders of the European Union and its impact on the human rights of migrants' (24 April 2013) A/HRC/23/46

⁷⁶³ Neither the operational plan nor the rules of engagement are public. This information sheet can provide some information on the issue: European Commission, 'How does Frontex Joint Operation Triton support search and rescue operations?' <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/frontex_triton_factsheet_en.pdf> accessed 12 February 2016.

⁷⁶⁴ The Meijers Committee recommended to that more specific guidelines should be developed; Meijers Committee, 'Military action against human smugglers: legal questions concerning the EUNAVFOR Med operation' (23 September 2015), 3 <<http://www.commissie-meijers.nl/en/comments/391>> accessed 12 February 2016.

⁷⁶⁵ In July 2015, residents and far-right militants broke into flats destined to receive asylum-seekers in Quinto di Treviso, Northeast Italy, leading the authorities to move the asylum-seekers to another location. Amnesty International, Amnesty International Report 2015/16: The State of the World's Human Rights' (2016) POL 10/2552/2016, 204-205.

⁷⁶⁶ In September 2015, the European Court of Human Rights found that three nationals of Tunisia had been subject to collective expulsion, as their individual circumstances had not been genuinely considered prior to their return to Tunisia. In addition, the applicants were not provided information and had no opportunity to challenge their detention. the conditions in the reception centre amounted to inhuman and degrading treatment. ECtHR, *Khlaifia and Others v Italy* [2015] App no 16483/12

⁷⁶⁷ The Guardian, 'EU launches naval operation to monitor Libyan people smugglers' (22 June 2015) <www.theguardian.com/world/2015/jun/22/eu-announces-naval-operation-to-monitor-libyan-people-smugglers> accessed 1 May 2016.

exception to the exclusive rights of the flag state,⁷⁶⁸ with the limitation that it be reasonable and necessary and that the human rights of the persons involved are safeguarded. Article 2 of the Decision states that EUNAVFOR MED shall conduct the measures of the second and third phase ‘in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned (...) under the conditions set out in that Resolution or consent (...) except for operations in the high seas against vessels without nationality subject only to international law’.⁷⁶⁹ Considering the mission operates in a sensitive civilian environment, the use of force is strictly regulated by the EU concept of the use of force and ROE based on international law including IHL and which are different for each of the three phases of the mandate.⁷⁷⁰

Duty to assist persons in distress at sea

The duty to assist persons in distress at sea is a long-established rule of customary international law that extends to other vessels and coastal states in the vicinity.⁷⁷¹ Based on article 98(1)(b) UNCLOS ‘every State shall require the master of a ship flying its flag (...) to render assistance to any person found at sea in danger of being lost’ and ‘proceed with all possible speed to the rescue of persons in distress.’ This duty also extends to coastal states in the vicinity and applies to all persons in distress.⁷⁷² Although conducting search and rescue operations is not part of Operation SOPHIA’s mandate, the Operation has a legal obligation to help anyone in distress at sea. The UNCLOS, SOLAS and SAR conventions contain ‘the obligation to assist people in distress at sea and to lead the survivors to a safe place; to that end, the vessels assigned to EUNAVFOR MED will be ready and equipped to perform the related duties under the coordination of the competent Rescue Coordination Centre’.⁷⁷³ At the time of writing, EUNAVFOR MED has carried out 61 rescue operations saving more than 10 thousand lives.⁷⁷⁴ Those rescued by the EUNAVFOR Med operation are disembarked in Italy, while suspected smugglers or traffickers are transferred to the Italian judicial authorities.⁷⁷⁵

⁷⁶⁸ The Article 87 of the UN Convention on the Law of the Sea (UNCLOS) ensures the right to freedom of navigation on the high seas. The right to board a vessel on the high seas is provided by article 110 of LOSC (if inter alia, there are reasonable grounds for suspecting that the vessels has no nationality Art. 110(1)(d) UNCLOS), whereas the jurisdictional basis for the seizure of the latter is accorded by article 105 of LOSC.

⁷⁶⁹ Council Decision 2015/778/CFSP of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), Art. 2

⁷⁷⁰ Interview with EUNAVFOR MED officials [March 2016, via email]

⁷⁷¹ Anne T. Gallagher and Fiona David Gallagher, *The International Law of Migrant Smuggling* (Cambridge University Press 2014), 444

⁷⁷² Article 98 UNCLOS

⁷⁷³ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) [2015] OJ L 122/31, para 6; Efthymios Papastavridis, *The Interception of Vessels on the High Seas: Contemporary Challenges to the Legal order of the Oceans* (Hart Publishing 2014), 292

⁷⁷⁴ EEAS, ‘208 migrants rescued by EUNAVFOR MED operation Sophia’s assets’ (7 March 2016) <http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/news/20160307_02_en.htm> accessed 12 February 2016.

⁷⁷⁵ The SAR convention further states that the persons assisted should be disembarked in the flag state of the rescuing vessel or, alternatively, they can be disembarked to a safe third country. Annex 5 to the Convention, Adoption of Amendments to the International Convention on Maritime Search and Rescue, 1979, as amended (20 May 2004) Resolution MSC. 155(78)

Arrest and detention of suspect smugglers and traffickers

The maritime interception operation should be carried out with respect for human rights, such as the right to life, the prohibition of torture and degrading and inhumane treatment⁷⁷⁶ as well as the right to liberty and security.⁷⁷⁷ Accordingly, no person shall be arbitrarily deprived of his liberty, unless there is a precise and foreseeable law in place; all detained persons enjoy the right to be brought promptly before a judge⁷⁷⁸ and suspects have a right to be informed of the reasons for their arrest. This implies that there should be an on-board translator and lawyer, and the detention and treatment must conform to international standards, particularly the principle of non-refoulement⁷⁷⁹ as backed by series of ECtHR judgements concerning the assertion of enforcement of powers on the high seas.⁷⁸⁰

In view of the common practice of smugglers and traffickers of human beings to leave migrants themselves to drift to boats, a reduced number of suspects have been detained in the conduct of the Operation Sophia. The detained suspects are transferred to the Italian authorities.⁷⁸¹

b) *Mainstreaming human rights and IHL*

Human rights and gender have been enshrined in all mission planning documents such as the OPLAN and its annexes. Since the initial phases of the operation, there has been at least one gender advisor assigned to EUNAVFOR MED.⁷⁸² The guiding documents for Operation SOPHIA, such as the OPLAN, include explicit mention of vulnerable persons.⁷⁸³

Appropriate training is crucial to ensure that operation personnel are able to identify victims of trafficking; to conduct appropriate debriefing of migrants; and know how to preserve evidence in order to facilitate investigation. Training related to Search and Rescue (SAR) operations is also crucial to meet the

<<http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/Resolution%20MSC.155-%2078.pdf>> accessed 12 February 2016; Neither the SOLAS nor the SAR Convention presents a definition of what constitutes a 'place of safety', but the 2004 IMO Guidelines on the Treatment of Persons rescued at Sea defines it as a 'place where the survivors' safety of life is no longer threatened and where their 'basic human needs (such as food, shelter and medical needs) can be met', Resolution MSC. 167(78) (20 May 2004); See Matteo Tondini, 'The Legality of Intercepting Boat People Under Search and Rescue and Border Control Operations with Reference to Recent Italian Interventions in the Mediterranean Sea and the Ecthr Decision in the Hirsi Case' (2012) 18(1) *The Journal of International Maritime Law* 59-74

⁷⁷⁶ Art. 7 ICCPR and Art. 3 ECHR

⁷⁷⁷ Art. 9 ICCPR and Art. 5 ECHR

⁷⁷⁸ Applicability of this rule under exceptional circumstances in *Medvedyev et al v France* [2010] ECHR App No 3394/03

⁷⁷⁹ *Hirsi Jamaa and others v Italy* [2012] ECHR App no 27765/09

⁷⁸⁰ UNODC, 'Combating Transnational Organized Crime Committed at Sea' (2013), 12-13.

<https://www.unodc.org/documents/organized-crime/GPTOC/Issue_Paper_-_TOC_at_Sea.pdf> accessed 12 February 2016; *Medvedyev et al v France* ECHR App No 3394/03; *Hirsi Jamaa and others v Italy* [2012] ECHR App no 27765/09 Grand Chamber; For a more in-depth analysis of the Hirsi case see Mariagiulia Giuffrè, 'Waterdown Rights on the High Seas: Hirsi Jamaa and others v Italy (2012)' (2012) 61 *International and Comparative Law Quarterly*, 728-750.

⁷⁸¹ Interview with EUNAVFOR MED officials [March 2016, via email]

⁷⁸² Interview with EUNAVFOR MED officials [March 2016, via email]

⁷⁸³ Interview with EUNAVFOR MED officials [March 2016, via email]

international legal obligations. Vulnerable groups of migrants such as women, children and victims of trafficking of human beings have special needs that need to be addressed when rescued at sea. IOM reports raise concerns over the high number of women that are victims of sexual trafficking⁷⁸⁴ and unaccompanied children in the Central Mediterranean route.⁷⁸⁵ The Frontex 2015 Risk Analysis Report acknowledged the need for European border-control authorities to be prepared 'to manage the flow of vulnerable people, including numerous children' and to identify in due time '[a]pplicants in need of special procedural guarantees, eg due to their age, disability, illness, sexual orientation or traumatic experiences'.⁷⁸⁶

Human rights advisors and two gender experts have been appointed to the operation, including senior levels to the Operation and Force Commanders at the Headquarters in Rome.⁷⁸⁷ All personnel receive training in aspects of international human rights law and refugee law in cooperation with UNHCR, IOM and OHCHR. The initial training on human rights covers the treatment of vulnerable persons such as women and unaccompanied minors. In addition, the Operation has developed a 'Migrant Handling Training Manual', prepared in cooperation with several humanitarian organisations including, amongst others, UNICEF, IOM, and Save the Children, which introduces staff to basic principles, policies and concepts when coming into contact with migrants rescued at sea. The manual includes modules on search and rescue procedures and how to interact with migrants in a way that is sensitive to their culture and gender. As the rescued migrants are often interviewed to gather information on smuggling and trafficking networks, personnel are given direction on how to maintain body language, attitude and interview techniques that engender confidence for all migrants to speak openly about themselves.⁷⁸⁸ Details gathered during their short interaction with migrants of any kind of abuse, exploitation or trafficking is collected and reported to the responsible migration authorities in Italy, as appropriate. The 'Migrant Handling Training Manual' also provides concrete guidance on spotting indicators of human trafficking.⁷⁸⁹

With regards to gender mainstreaming, the Operation has adopted a Standard Operating Procedure on preventing sexual exploitation and abuse to ensure that all staff are aware of the non-tolerance for such

⁷⁸⁴ IOM, 'More Women Making Dangerous Mediterranean Crossing - Many Victims of Abuse' (11 July 2014), 115 <<https://www.iom.int/news/more-women-making-dangerous-mediterranean-crossing-many-victims-abuse>> accessed 12 February 2016; IOM, and Altai Consulting, 'Migration Trends Across the Mediterranean: Connecting the Dots' (June 2015), 8 <http://www.altaiconsulting.com/docs/migration/Altai_Migration_trends_accross_the_Mediterranean.pdf> accessed 12 February 2016.

⁷⁸⁵ UNODC, 'Combating Transnational Organized Crime Committed at Sea' (2013), 12-13 <https://www.unodc.org/documents/organized-crime/GPTOC/Issue_Paper_-_TOC_at_Sea.pdf> accessed 12 February 2016.

⁷⁸⁶ Frontex, 'Annual Risk Analysis 2015' (April 2015), 48 <http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf> accessed 12 February 2016.

⁷⁸⁷ Samuel Cogolati, Nele Verliden and Pierre Schmitt, 'Migrants in the Mediterranean: Protecting Human Rights' (2015) European Parliament EP/EXPO/B/DROI/2015/01, 40

⁷⁸⁸ Interview with EUNAVFOR MED officials [March 2016, via email]

⁷⁸⁹ Interview with EUNAVFOR MED officials [March 2016, via email]

offences.⁷⁹⁰ It provides for both a reporting procedure and also a specific internal monitoring mechanism for sexually based human rights violations. Since the entry into force of the SOP on Sexual Exploitation and Abuse, training is given to Operation Sophia personnel to raise their awareness of gender based human rights violations. In relation to internal gender participation, at the time of conducting this research, there were around 50 female staff members within Operation Sophia engaged in different areas of operation and ranks.⁷⁹¹

c) Final remarks

There is an imbalance between measures to tackling migrant smuggling and measures to protecting migrants. Actions to restrict the irregular entry and stay have already driven migrants and refugees to use more dangerous routes to enter Europe.⁷⁹² EUNAVFOR MED activities may further encourage smugglers to leave migrants to drive vessels themselves and more migrants to tempt their fate at sea with the prospect of being rescued. Overall, the EUNAVFOR Med operation alone will not put an end to migration across the Mediterranean. 'A truly comprehensive approach of tackling the root causes, improving regional refugee facilities, enhancing border management in transit countries and a common EU asylum policy is the only sustainable answer to this problem'.⁷⁹³

With regards to the wider EU response to the migration crisis, there is no consensus among EU Member States on how the adoption of specific measures for the protection of migrants. There are a number of proposals on the table to provide safe and legal entry channels to the EU for persons in need of international protection such as the activation of the Temporary Protection Directive;⁷⁹⁴ granting

⁷⁹⁰ Interview with EUNAVFOR MED officials [March 2016, via email]; UNHCR, 'Europe's Refugee Emergency Response: Update #13 (27 November – 3 December 2015) Highlights' (2015) <<https://undg.org/wp-content/uploads/2015/11/12-UNHCR-Europe-Refugee-Emergency-Response.pdf>> accessed 10 February 2016; UNHCR, 'Europe's Refugee Emergency Response. Update #9 (09 – 15 October 2015) Highlights' (2015) <<http://www.refworld.org/pdfid/562f2d544.pdf>> accessed 10 February 2016.

⁷⁹¹ Interview with EUNAVFOR MED officials [March 2016, via email]

⁷⁹² Wooden boats are more valuable and safe but following the deployment of Operation Sophia second phase smugglers can no longer recover the smuggling vessels to be re-used, consequently they opt for the cheaper and less safe rubber boats; see The Malta Independent, 'Rubber boats for Libyan human smugglers imported from China, transhipped through Malta' (22 February 2016) <<http://www.independent.com.mt/articles/2016-02-22/local-news/Rubber-boats-for-Libyan-human-smugglers-imported-from-China-transhipped-through-Malta-6736153656>> accessed 10 February 2016.

⁷⁹³ Margriet Drent, Rob Hendriks and Dick Zandee, 'New Threats, New EU and NATO Responses' (July 2015) Clingendael Report 58 <http://www.clingendael.nl/sites/default/files/New%20Threats_New%20EU_Nato%20Responses_Clingendael_July2015.pdf> accessed 10 February 2016.

⁷⁹⁴ The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries, who are unable to return to their country of origin; to activate the Directive, the existence of a mass influx of displaced persons must be established by a Council Decision adopted by a qualified majority on a proposal from the Commission; Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (2001) OJ L 212.

admission on humanitarian grounds;⁷⁹⁵ and the issuing of humanitarian visas.⁷⁹⁶ Another proposal aimed at preventing irregular migration flows is the use of offices and embassies outside EU to process applications for asylum and refugee status before migrants reach Europe.⁷⁹⁷

The smuggling activities operating in Libya have decreased to some extent since September 2015, while the migrant flow arriving from Egypt has increased substantially since the launching of the mission in June 2015. However, this downfall in migrant smuggling activities may not solely be the result of EUNAVFOR MED's performance. There are other factors, such as rising tensions between local militias in Libya, particularly along the coastal area, and the unity agreement concluded between members of HoR and GNC in December 2015, that could improve relations between the EU and Libyan authorities and eventually allow Operation Sophia to operate in Libyan territorial waters thus lowering the risks for migrants.⁷⁹⁸ Moreover, the mass drowning incident off Libyan shores on 27 August 2015, reportedly provoked generalised rejection among Libyan citizens towards criminal organisations and additional counter-smuggling measures were taken by the authorities.

⁷⁹⁵ Some Member states such as Germany, Austria, UK and Ireland adopted national programmes under which persons in need of international protection are admitted to the territory and are provided with a limited or permanent right to stay; European Parliament, 'EU migratory challenge: Possible responses to the refugee crisis' (September 2015)

<[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568312/EPRS_BRI\(2015\)568312_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568312/EPRS_BRI(2015)568312_EN.pdf)> accessed 10 February 2016; UNHCR, 'Resettlement and Other Forms of Legal Admission for Syrian Refugees' <<http://www.unhcr.org/52b2febafc5.pdf>> accessed 10 February 2016.

⁷⁹⁶ Ulla Iben Jensen, 'Humanitarian Visas: Option or Obligation?' (2014) PE 509.986 <http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509986/IPOL_STU%282014%29509986_EN.pdf> accessed 10 February 2016.

⁷⁹⁷ Madeline Garlick, 'The Potential and Pitfalls of Extraterritorial Processing of Asylum Claims' (March 2015) <<http://www.migrationpolicy.org/news/potential-and-pitfalls-extraterritorial-processing-asylum-claims>> accessed 10 February 2016.

⁷⁹⁸ New Europe, 'Members of HoR and GNC sign Libyan unity agreement' <<http://neurope.eu/article/members-of-hor-and-gnc-sign-libyan-unity-agreement/>> accessed 10 February 2016.

VII. General conclusions

Since the first EU-led crisis management mission was launched in 2003, the EU has made considerable progress in its commitment to ensure respect for and to promote human rights and humanitarian law in the field of crisis management. Through their wide variety of mandates, CSDP missions and operations are, albeit not explicitly, to contribute to the promotion and protection of human rights in a crisis situation. However, the EU's contribution would be difficult to measure in isolation of other EU actions as CSDP missions and operations are usually embedded in a comprehensive approach which also includes developmental, humanitarian or other assistance. As part of this comprehensive strategy, CSDP has both a direct and an indirect impact on the promotion and protection of human rights. Widespread human rights abuses by the government and armed groups is common in conflict and crisis scenarios. 'Indeed, had these places been shiny examples of human rights protection, the EU would most likely not have intervened.'⁷⁹⁹

As examined in the report, great progress has been made in the field of mainstreaming human rights and gender in the CSDP domain. The EU has developed numerous policy documents on key human rights priorities applicable to the area of CSDP.⁸⁰⁰ Yet, such advancements also pose a risk of individualising human rights, gender and IHL and are to be seen as the work of an exclusive domain of experts rather than cross-cutting issues which impact directly on the effectiveness of missions and operations in delivering their mandates. It is therefore crucial to continue to progress in human rights, gender and IHL mainstreaming, based on a review of the progress made so far. To this end, the CSDP planning structures are, at the time of writing, conducting a baseline study on human rights and gender mainstreaming in CSDP.⁸⁰¹ Human rights, gender and the principles of democracy and the rule of law should be more than just an appropriate standard or a 'tick the box' exercise. In contrast, these values should be considered as being in the EU's own interest, in order to ensure the effective and long-lasting results of CSDP action.⁸⁰²

Appropriate and regular training is crucial to ensure that human rights are consistently promoted and respected regardless of the national and professional background of the mission personnel. However, the main challenge remains to ensure that all participating states to CSDP put emphasis on the provision of adequate training according to minimum set standards, ideally tailored to specific circumstances in the area of deployment to ensure that mission staff are not only aware of these concepts, but also know how to implement them in the context. All the phases of CSDP should take account of the necessary expertise to ensure that human rights, IHL, gender and vulnerable groups are taken into consideration. The appointment of human rights and gender experts to CSDP missions and operations on the ground has

⁷⁹⁹ Hadewych Hazelzet, 'Common security and defence policy: What nexus between human rights and security?' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation: A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 12

⁸⁰⁰ See Annex IV

⁸⁰¹ Interview with EEAS Official [April 2016, Brussels]; The baseline study is led by the Human Rights and Gender Advisor at the CMPD. The study is aimed at reviewing all the CSDP policy documents and instruments with the aim of identifying areas for potential improvement.

⁸⁰² Annex V provides an overview and analysis of current and past crisis management operations and reflects on the advancements in the implementation of the EU's policy for mainstreaming human rights and gender into CSDP.

become the rule but as evidenced in this report, its presence is rather limited in the decision-making and planning structures. The reinforcement of human rights and gender mainstreaming at the decision-making and planning stage is crucial to ensure their integration at later stages in the implementation of the mandate. For this purpose it is recommended *inter alia* that more 'full-time' posts are created to deal with human rights and gender issues, and to invite other key actors, particularly civil society organisations, to engage at the decision-making, planning and evaluation stages.

One of the main findings of the research is the fact that certain categories of vulnerable groups, namely women and children, have received particular attention while other vulnerable groups' rights have been addressed to a far lesser extent. This is the case, for example, of minorities and forcibly displaced persons who are exposed to higher levels of violence and human rights violations in many of the scenarios where CSDP missions and operations have been deployed.

As noted in this report, the protection of human rights within the EU's external action does not only constitute a political commitment but a legal obligation. The explicit mention of the applicability of human rights (and IHL where appropriate) in Council Decisions serves to clarify and to reinforce the human rights accountability and liability of the EU. However, the very mention of the term 'human rights', 'gender' or 'humanitarian norms' may not be sufficient, and vague references to 'international or European standards' can lead to loose interpretations in the conduct of operations. A more detailed description of the human rights and humanitarian duties and obligations of the mission or operations in the operational or policy documents would serve to bridge the gap between the different treaty obligations and interpretations of the contributing states.⁸⁰³

Regarding the existing remedy mechanisms responding to human rights violations, an extension of CJEU jurisdiction to the CSDP area is unlikely. The EU, however, is bound to make reparations for violations of international law. The establishment of non-judicial accountability mechanisms such as the Human Rights Review Panel (HRRP) for EULEX Kosovo provides a response for human rights violations in CSDP and serves to preserve the credibility of the EU. However, the decisions issued by these bodies may not be sufficient due to their non-binding nature and the lack of financial compensation provided to the victim. Furthermore, it is difficult to assess the degree of responsibility of the EU when the personnel lack effective enforcement powers and they perform advisory and mentoring tasks instead.

The case studies serve to illustrate the EU efforts in integrating human rights and IHL in CSDP missions and operations and the existing difficulties that result from internal constraints such as the EU institutional framework, limited capabilities and human resources, and lack of interest or understanding from some EU Member States.

The CSDP missions and operations deployed in the Sahel region benefit from a comprehensive strategy that seeks to coordinate, ensure coherence and eventually create synergies between the different EU policies in place. On the ground, CSDP actions and their respective EU Delegations in the region have developed strategies to improve coordination and have established clear channels of communication that should be viewed as a good example capable of being extrapolated to other missions and operations. The

⁸⁰³ See Annex VI.

main cause of concern for CSDP missions and operations in the Sahel is the lack of equipment and materials in the Malian and Nigerien security forces which in turn diminishes the impact of the work of CSDP missions and operations. Additionally the reinforcement of missions' mandates with migration instruments pose serious concerns with regards to the protection of vulnerable groups and the suitability of CSDP action to tackle 'irregular migration' flows.

EUNAVFOR MED has been one of the most controversial CSDP operations established in recent years. Concerns arise regarding its legality, the effectiveness to tackle human traffickers and smugglers, and the possible unintended side-effects for those migrants and refugees fleeing persecution or conflicts, seeking to reach Europe for protection. A number of safeguards have been adopted in this respect to ensure the protection of rescued migrants in the conduct of operations and in compliance with the search and rescue obligations under international law. Apart from the suitability and safeguards in place, the most worrying issue remains to be the imbalance between measures to tackling migrant smuggling and measures to protecting migrants.

Overall, the report is aimed at providing the basis for the next stage of research in WP10, which will consist of the formulation of policy recommendations on how to improve the coherence and efficiency of the EU's external policy related to all phases of crisis and conflict and to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/rule of law principles, in order to meet the challenges of protecting and promoting human rights in EU external policies.

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Annex I - EU responses to crisis: strategies, EUSRs and CSDP missions and operations

EUSR (geographic scope)	CSDP Missions and Operations
EUSR in the Horn of Africa (Since 2013) <i>Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan and Uganda</i>	EUNAVFOR Atalanta Somalia (Since 2008) EUTM Somalia (Since 2010) EUCAP Nestor Djibouti, Kenya, Somalia, Seychelles and Tanzania (Since 2012)
EUSR for Kosovo (Since 1998)	EULEX Kosovo (Since 2008)
EUSR in Afghanistan (Since 2001)	EUPOL Afghanistan (Since 2007)
EUSR in Bosnia and Herzegovina (Since 2002)	EUFOR Althea BiH (Since 2004) EUPM BiH (2003-2012)
EUSR for the South Caucasus and the crisis in Georgia (Since 2011)* *(replacing jointly the EUSR for the crisis in Georgia and the EUSR for the South Caucasus, since 2008 and 2003 respectively)	EUMM Georgia (Since 2008) EUJUST Themis Georgia (2004-2005)
EUSR for the Sahel (Since 2013) <i>Mali, Mauritania and Niger (later extended to Burkina Faso and Chad)</i>	EUCAP Sahel Mali (Since 2014) EUTM Mali (Since 2013) EUCAP Sahel Niger (Since 2012)
EUSR for the Middle East Peace Process (Since 1996) <i>Israel and the Palestinian Territories</i>	EUPOL COPPS Palestinian Territories EUBAM Rafah Palestinian Territories
EUSR for Central Asia (Since 2005) <i>Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, Uzbekistan</i>	
EUSR for Human Rights (Since 2012)	All CSDP missions and operations
EUSR for the Southern Mediterranean region (2011-2014)	EUBAM Libya (Since 2013)

EUSR (geographic scope)	CSDP Missions and Operations
<i>Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Occupied Palestinian Territories, Syria and Tunisia</i>	EUNAVFOR MED Operation SOPHIA (Since 2015)
EUSR for the African Union (AU) (2007-2014)	
	AMM Aceh Indonesia (2005-2006)
	EUFOR Tchad/RCA (2008-2009) EUFOR RCA (2014-2015) EUMAM RCA (Since 2015)
	EU SSR Guinea –Bissau (2008-2010)
EUSR for Sudan and South Sudan (2005-2007)* *South Sudan since 2011	EUAVSEC South Sudan (2012-2014) EU Support to AMIS (2005-2007)
EU Special Envoy for the African Great Lakes Region (1996-2011)	Operation Artemis DRC (2003) EUPOL Kinshasa DRC (2005-2007) EUFOR RDC (2006) EUPOL DRC (2007-2014) EUSEC RDC (Since 2005)
EUSR in the Former Yugoslav Republic of Macedonia (FYROM) (2001-2011) EUSR for the Federal Republic of Yugoslavia (1998-1999)	Operation Concordia FYROM (2003) EUPOL Proxima FYROM (2004-2005) EUPAT FYROM (2006)
EUSR for Moldova (2005-2011)	EUBAM Ukraine/Moldova (Since 2005) EUAM Ukraine (Since 2014)
	EUJUST Iraq (2005-2013)

Annex II - CSDP Missions and Operations: the integration of human rights, gender, IHL and the principles of democracy and rule of law

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p style="text-align: center;">EUPM BiH</p> <p>Aims: Help local authorities fight organized crime, promote EU standards in line with the general objectives of the Paris/Dayton Agreement.</p> <p>2002 – UNSC Resolution 1396 (2002) 2002 - Council Joint Action 2002/210/CFSP 2003 - Council Joint Action 2003/141/CFSP 2003 - Council Joint Action 2003/188/CFSP 2005 - Council Joint Action 2005/824/CFSP 2007 - Council Joint Action 2007/749/CFSP 2007 - Council Decision 2007/791/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict scenario. • Lack of executive mandate for crime fighting. • Lack of definitions of the ‘European standards’. • Lack of adequate training of EUPM staff in the relevant procedures and laws. • Insufficient planning and conceptualisation of the mission objectives. • Initial coordination problems with EUFOR Althea: interference of the military in the enforcement of police work in fighting organised crime. 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate. • Adoption of a Memorandum of Understanding (MoU) on the cooperation in the implementation of the UNSCR 1325 on women, peace and security (2008) agreed with EUFOR and United Nations Development Fund for Women (UNIFEM). • Appointment of a EUSR for BiH to ensure greater consistency and coherence of all EU policies, particularly in the areas of the rule of law and security sector reform. • Establishment of a Criminal Justice Interface Unit to improve relations with the judiciary and penitentiary system. • Programmes to improve the capacity of the local police to respond to violence against women and children.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2009 - Council Decision 2009/906/CFSP</p> <p>2010 - Council Decision 2010/755/CFSP</p>		
<p>EUFOR Concordia FYROM</p> <p>Aims: Prevent civil war, build environment favourable to identification and implementation of political settlements (2001 Ohrid Framework Agreement).</p> <p>2001 – UNSC Resolution 1371 (2001)</p> <p>2003 – Council Joint Action 2003/92/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation and took over from NATO’s Allied Harmony Operation. • First EU military mission. • Lack of appropriate guiding strategy under the Council Joint Action. • First mission under the ‘Berlin Plus Agreement’: restricted autonomy, coordination problems regarding information sharing and reporting chain. • Lack of liason between the political and military aspects of the mission (no comprehensive approach). • Failure to apply the principle of local ownership: responsibilities were not shared or transferred to the local authorities. • The operation was established at the request of the FYROM authorities. 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate. • Weekly co-ordination meetings of the EUSR, the Delegation of the Commission and Concordia to align positions and activities.
<p>Artemis RD Congo</p>	<ul style="list-style-type: none"> • Ethnically motivated Ituri conflict. 	<ul style="list-style-type: none"> • No explicit reference to human rights or gender in the mandate

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>Aims: contribute to the stabilisation of the security conditions and the improvement of the humanitarian situation in Bunia.</p> <p>2003 – UNSC Resolution 1484 (2003) 2003 - Council Joint Action 2003/423/CFSP 2003 - Council Decision 2003/432/CFSP</p>	<ul style="list-style-type: none"> • Deficient and insecure communication channels and tools diffculted intelligence sharing. • Limited geographical, temporary and operational mandate with impact on the expectations of civilians, belligerent parties and the UN. • Authorised use of force under UNSCR 1484. • First EU military mission without NATO logistical and operational support. 	<ul style="list-style-type: none"> • UNSCR 1484: ‘Demands that all the parties to the conflict in Ituri and in particular in Bunia cease hostilities immediately and reiterates that IHL must be respected, and that there will be no impunity for violators.’ (para. 5); ‘all Congolese parties and all States in the Great Lakes region respect human rights’ (para. 7) and ‘authorizes [Artemis RD Congo] to contribute to the stabilization of the security conditions and the improvement of the humanitarian situation in Bunia (...) [and] the protection of (...) the internally displaced persons in the camps.’ (para. 1). • Special Annex to the OPLAN with guidance to deal with child soldiers. • Improved legal certainty: SOFA signed between France (Framework Nation) and Uganda was extended to all contributing countries. • Rapid response to the UNSG request to contribute to the Interim Emergency Multinational Force.
<p>EUJUST Themis</p> <p>Objective: support and assistance in reforms of criminal justice system. EU support in follow-up to implementation strategy for reform criminal system.</p>	<ul style="list-style-type: none"> • Post-Soviet transition; social turmoil and ethnic conflict in Abkhazia and South Ossetia. • First EU-led RoL mission with exclusion of relevant fields in nedd of reform in the Georgian criminal justice due to the mission 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate. • The OPLAN was drawn by the EU in close coordination with relevant international actors (OSCE, CoE and bilateral donors)

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2004 - Council Joint Action 2004/523/CFSP</p>	<p>size and limited structures, resources and time frame.</p> <ul style="list-style-type: none"> • Mandate was not flexible to deal with unforeseen circumstances. • Lack of engagement at a high political level. • EUJUST Themis strategy was approved at the termination of the mission. • Inefficient logistical planning and lack of support from Brussels. • Potential complementarity with other actions by other international actors was not taken into consideration from the outset. • Strict policy on confidentiality. • Shortage of Georgian authorities to enhance local ownership of reforms. 	<ul style="list-style-type: none"> • The mission was conceived from the beginning as a mission coordinated with other programmes of the EU, OSCE and Council of Europe. • Advice on the adoption of a criminal strategy in line with international human rights standards. • EUJUST Themis contributed to conflict prevention through reform of the criminal justice system in a post-crisis scenario. • Positive impact on other South Caucasus countries. • EU experts within Georgian institutions with local legal assistants contributed to build trust and to develop home-grown solutions. • Establishment of a high-level group by governmental decree No 914 (2004) to develop a reform strategy for the Georgian criminal justice system. • Follow-up of the RoL reform process by European Commission's instruments.
<p>EUPOL Proxima FYROM</p> <p>Aims: Help local authorities fight organized crime, promote EU policing standards.</p>	<ul style="list-style-type: none"> • Relative stable security situation. • Previous request by the Government. • Shift from a military operation Concordia to a civilian mission and followed up by EU police advisory team (EUPAT). • First 'police mission' of this kind. • Short planning phase. 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate. • Relatively successful in the integration of ethnic Albanians into the FYROM police. • Enhanced visibility of the mission's activities. • Consideration of lessons learned from past missions.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2001 - UNSC Resolution 1371 (2001) 2004 - Council Joint Action 2004/789/CFSP)</p>	<ul style="list-style-type: none"> • Slow and ineffective implementation of the mission with informal assistance from the OSCE. • Shortage of monitors. • Lack of appropriate cooperation and overlapping activities between EUPOL and OSCE. • Lack of appropriate coordination with EU institutions as the European Agency for Reconstruction, the Council and the Commission. • No linkage between police issues and justice and administration practices. 	
<p>EUFOR Althea BiH</p> <p>Aims: Maintaining stable and secure environment, ensure continue compliance with Dayton/Paris Agreement, assist ICTY; support international community's High Representative and local authorities in fighting organized crime.</p>	<ul style="list-style-type: none"> • Post-conflict situation. • Use of NATO assets and capabilities under the 'Berlin Plus' Agreement, transition from NATO's SFOR mission. • Initial problems of coordination with EUPM that where solvented with later amendments to the mandate (EUPM II and III). • Lack of definition of the 'European standards'. • Insufficient planning and conteptualization of the mission objectives. 	<ul style="list-style-type: none"> • No explicit reference to human rights or gender in the mandate. • Adoption of a MoU on the implementation of the UNSCR 1325 on women, peace and security (2008) in cooperation with EUPOL and United Nations Development Fund for Women (UNIFEM). • Appointment of a Gender And Human Rights Advisor. • Nomination of EUSR to coordinate EU actions in BiH. • Support to the ICTY with the detention of war crimes indectees.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2004 –UNSC Resolution 1551 (2004)</p> <p>2004 - Council Joint Action 2004/570/CFSP</p> <p>2004 – UNSC Resolution 1575 (2004)</p> <p>2004 - Council Decision 2004/803/CFSP</p> <p>2009 – UNSC Resolution 1895 (2009)</p> <p>2010 – UNSC Resolution 1948 (2010)</p> <p>2011 – UNSC Resolution 2019 (2011)</p> <p>2012 - UNSC Resolution 2074 (2012)</p> <p>2013 - UNSC Resolution 2123 (2013)</p>	<ul style="list-style-type: none"> • Long planning process and delayed implementation. • Insufficient coordination and follow-up between Brussels and Operation HQ. • Lack of adequate training for EUFOR staff. 	<ul style="list-style-type: none"> • MoU with the UNIFEM for the implementation of the UNSCR 1325 on women, peace and security. • Successful completion of the military and stabilization tasks under the Dayton and Paris Agreements.
<p>EUJUST LEX Iraq</p> <p>Aims: training in management and criminal investigation of senior officials and executive staff from judiciary, police, penitentiary to strengthen the rule of law and to</p>	<ul style="list-style-type: none"> • Mixed conflict and post-conflict scenarios. • Before 2010 activities were only carried out in Member States. • Continued violations of human rights aggravated by shortcomings in and lack of guarantees by the Iraqi justice system. 	<ul style="list-style-type: none"> • Joint Action 2010/330/CFSP includes explicit mention of gender and human rights: ‘EUJUST LEX-IRAQ shall promote closer collaboration between the different actors across the Iraqi criminal justice system and strengthen the management capacity (...) and procedures in criminal investigation in full respect for the rule of law and human rights.’ Art. 2(2)

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<p>promote a culture of respect for human rights.</p> <p>2005 - Council Joint Action 2005/190/CFSP</p> <p>2006 - Council Joint Action 2006/413/CFSP</p> <p>2006 - Council Joint Action 2006/708/CFSP</p> <p>2007 - Council Joint Action 2007/760/CFSP</p> <p>2008 - Council Joint Action 2008/304/CFSP</p> <p>2008 - Council Joint Action 2008/480/CFSP</p> <p>2009 - Council Join Action 2009/475/CFSP</p> <p>2010 - Council Decision 2010/330/CFSP</p> <p>2011 - Council Decision 2011/170/CFSP</p> <p>2011 - Council Decision 2011/380/CFSP</p> <p>2012 - Council Decision 2012/372/CFSP</p>	<ul style="list-style-type: none"> • Volatile political and security situation with a rise of violence between armed ethnic and religious groups and terrorist attacks • Disagreement among EU MS with regard to the crisis and following occupation of Iraq. • The fall of the regime resulting in the collapse of public institutions and loss of human capital • Initially EUJUST LEX operated outside the territory of Iraq thus a good part of its budget was spent on transfer of course participants to Europe and not on the development of training activities. • Lack of SOMA: Iraqi authorities were reticent to provide immunity to the personnel of international organisations operating in Iraq. • EUJUST's primarily focus on training to the police sector rather than the judiciary or the penitentiary. • During the courses conceptual problems have been raised with respect to the contents and the legal system or local Iraqi judicial practice. • Limited impact of the mission's training activities as the course-goers were selected by the Iraqi government. 	<ul style="list-style-type: none"> • 'EUJUST LEX-IRAQ activities should maintain a balanced representation of the Iraqi population, based on a human rights and gender equality approach.' Art. 2(6) • All courses incorporate human rights aspects relevant to the specific field at hand and there are specific courses on 'Public Order Management and Human Rights'; Fair Trial and Human Rights (Juvenile Justice); Strategies for Managing Vulnerable Prisoners; Females, Juveniles and Ethnic Minorities. Human rights are a cross-cutting element to all courses. • Promotion of the selection of female course-goers and gender-balanced composition of the mission. • A human rights expert participated in the development of the training curriculum and oversees human rights aspects of their implementation in the three fields of intervention (police, judiciary and penitentiary services). • Since 2009 team members were also specialized in human rights • Females accounted for almost 40% of mission personnel. • EUJUST LEX contributed to the 'civilianisation' of the heavily militarised international presence in Iraq, helping to build local confidence, re-establish trust,

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
	<ul style="list-style-type: none"> • Lack of visibility of the EU as a political actor in Iraq; human rights are part of a larger EU-Iraq political dialogue. • Disconnection from Iraqi reality and lack of awareness of the mission’s existence among the Iraqi population and relevant stakeholders. • The Iraqi government disregarded the mission’s request to adopt a criterion of ethnic and female representation for the selection of participants to the course. • EU limited capacity to monitor the progress and impact of the mission. • The majority of participants belong to the police force, and few prison official, judges and prosecutors. • No training was offered to other relevant actors in the administration of justice (lawyers, judicial officers and forensics). • Difficulties to follow-up training courses, evaluation of their impact and in tracking participants. • Reduced number of female Iraqi officials. 	<p>and promote ‘soft’ aspects of crisis assistance, including human rights.</p> <ul style="list-style-type: none"> • Design of the mission mandate with a ‘clear vision of success.’ • The decision to end the mission was taken because mission activities could be continued or enveloped in Commission programmes. • Cooperation between EUJUST LEX and UNAMI: UNAMI focus on training the penitentiary sector to avoid duplication • Out-of-country training allows engagement senior Iraqi officials on neutral ground.
<p>EUSEC RD Congo</p>		<ul style="list-style-type: none"> • Explicit reference to human rights and IHL in the mandate:

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>Aims: advice and assistance to military authorities for security sector reform, support integration into the Armed Forces of the DRC (FARDC).</p> <p>2005 - Council Joint Action 2005/355/CFSP</p> <p>2005 - Council Joint action 2005/868/CFSP</p> <p>2006 - Council Joint Action 2006/303/CFSP</p> <p>2007 - Council Joint Action 2007/192/CFSP</p> <p>2007 - Council Joint Action 2007/406/CFSP</p> <p>2008 - Council Joint Action 2008/491/CFSP</p> <p>2009 - Council Joint Action 2009/509/CFSP</p> <p>2009 - Council Joint Action 2009/709/CFSP</p> <p>2010 - Council Decision 2010/565/CFSP</p> <p>2011 - Council Decision 2011/538/CFSP</p> <p>2012 - Council Decision 2012/515/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation with fighting in Eastern areas of the country between security and armed forces. • Internal competition between the Commission's long-term development agenda and the Council's short-term commitment on SSR. • Insufficient resources. • EUPOL RD Congo and EUSEC RD Congo do not operate under a single agenda. • Need for intercultural mediators to bridge important cultural gaps between EU personnel and the local population and authorities. 	<ul style="list-style-type: none"> • <i>'The mission must provide the Congolese authorities responsible for security with advice and assistance, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.'</i> (Art. 1(1) JA 2005/355/CFSP). • <i>'The EU has consistently supported SSR in the DRC, as one of the elements of a more general EU commitment to supporting development and democracy in the African Great Lakes Region, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.'</i> (Preamble JA 2009/709/CFSP). • <i>'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.'</i> (Art. 1(1) JA 2009/709/CFSP). • <i>The mission shall aim, in close cooperation and coordination with the other actors (...) detailed plans to rebuild the FARDC, in particular in the following areas: (...) human rights and combating sexual violence' and 'supporting cross-cutting</i>

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<p>2013 - Council Decision 2013/468/CFSP</p> <p>2014 - Council Decision 2014/674/CFSP</p> <p>2015 - Council Decision 2015/883/CFSP</p>		<p><i>activities, particularly in the area of human rights and for gender issues,’ (Art. 2(1) JA 2009/709/CFSP).</i></p> <ul style="list-style-type: none"> • EUSEC RD Congo and EUPOL RD Congo <i>‘shall coordinate their activities closely and shall seek synergies (...) as regards the sharing of functions between the two missions, particularly in relation to gender issues and human rights.’ (Art. 11(3) JA 2009/709/CFSP).</i> • Adequate response to the changing conditions and expectations on the ground as a result of several extensions and amendments to the EUSEC’s mandate and close cooperation with local authorities. • Clear and well-defined picture of security needs as a result of good cooperation with local and international stakeholders and EUPOL Kinshasa and EUPOL RD Congo. • Successful in ensuring a transparent disbursement of wages and biometric census of troops. • Improvement of socio-economic conditions of soldier’s relatives by providing training on agriculture, finance and the teaching of women’s rights. • Human rights and IHL course to Congolese officers. • Efficient communication IT network for the military administration.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>EU Support to AMIS (Darfur)</p> <p>Aims: support the AU-led AMIS II and its political, military and police efforts to address the crisis in the Darfur region of Sudan.</p> <p>2005 - Council Joint Action 2005/557/CFSP 2007 - Council Joint Action 2007/887/CFSP 2007 - Council Joint Action 2007/887/CFSP</p>	<ul style="list-style-type: none"> • The AU deployed AMIS in Darfur to monitor the N'djamena Humanitarian Ceasefire Agreement. A few months later the AU and the UN Security Council decided to include in its mandate assistance to the process of confidence building and to the protection of civilians and humanitarian operations (AMIS II) • First civil-military mission. 	<ul style="list-style-type: none"> • Explicit reference to human rights of vulnerable groups: <i>'In its resolution 1325 of 31 October 2000, the UNSC recognised the importance of training concerning the protection, special needs and human rights of women and children in conflict situations.'</i> (Preamble (7) JA 2005/557/CFSP)
<p>AMM Aceh/Indonesia</p> <p>Aims: monitor various aspects of the peace agreement set out in the Memorandum of Understanding (MoU) signed by the Government of Indonesia and the Free Aceh Movement (GAM) in 2005.</p> <p>2005 - Council Joint Action 2005/643/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation. • The monitoring activities only cover violations expressed in the Memorandum. • Internal disagreement between EU Member States and EU institutions on EU's external action priorities. • The Human Rights court and the Truth and Reconciliation Commission were never established. • Mandate too explicit and limited. 	<ul style="list-style-type: none"> • 'AMM shall (...) 'monitor the human rights situation and provide assistance in the field' (Art 1 JA 2006/202/CFSP) • First EU mission in South East Asia and in cooperation with ASEAN Member States. • Contribution of EU and ASEAN to AMM Aceh has increased the visibility and credibility of both organisations in this regional context • First CSDP mission with explicit human rights mandate.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2005 – MoU between the Government of the Republic of Indonesia and the Free Aceh Movement, Helsinki</p>	<ul style="list-style-type: none"> • Concerns on the compatibility of the instauration of Islamic law system with international human rights standards. 	<ul style="list-style-type: none"> • Appointment of human rights advisors to monitor aspects of DDR. • Positive contribution to transitional justice. • Rapid deployment amid political and humanitarian crisis.
<p>EUBAM Ukraine and Moldova</p> <p>Aims: Assistance in creation of an international customs control arrangement and effective border monitoring mechanism on Transnistrian segment of the Moldova–Ukraine State border; training and advice to Mold/Ukr officials; Strengthen crossborder cooperation; appointment EUSR</p> <p>2005 – MoU between the European Commission, the Government of the Republic of Moldova and the Government of Ukraine of 7 October 2005 on the European Union Border Assistance Mission to the Republic of Moldova and to Ukraine.</p>	<ul style="list-style-type: none"> • Joint request of the Presidents of Moldova and Ukraine to Javier Solana in June 2005 asking for support on border management. • The mission is funded by the Commission’s ENPI (formerly by the TACIS programme and Rapid Reaction Mechanism). • No accurate Moldovan statistics on human trafficking and migration. • Europeization fatigue. • No access to Transnistria region. • Lack of executive power. • No regional approach including Russian participation. • No clear demarcation of the Moldovan-Ukrainian frontier. 	<ul style="list-style-type: none"> • No explicit reference to human rights or gender in the mandate: ‘the Mission must contribute to combating human trafficking’ (MoU). • The Mission’s six cherished core values are neutrality, partnership, reliability, results, service and transparency. • Improving the efficiency of joint border control between Moldova and the Ukraine is within the EUSR for the Rep. of Moldova’s mandate. • A number of contrabands channels and migration networks have been detected. • More transparency on Transnistrian exports and border’s staff corruption. • Temporary re-assignment of staff between EUBAM Ukraine and Moldova and EUBAL Rafah coupled with Visiting Experts arrangement.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p style="text-align: center;">EUBAM Rafah Palestinian Territories</p> <p>Aims: Contribute to confidence building and cooperation between the parties; building institutional capacity in the Palestinian Authority to ensure effective border control and surveillance as well as a professional customs operation.</p> <p>2005 - Council Joint Action 2005/889/CFSP 2006 - Council Joint Action 2006/773/CFSP 2007 - Council Joint Action 2007/359/CFSP 2008 - Council Joint Action 2008/133/CFSP 2008 - Council Joint Action 2008/379/CFSP 2008 - Council Joint Action 2008/862/CFSP 2009 - Council Joint Action 2009/854/CFSP</p>	<ul style="list-style-type: none"> • Occupation and conflict situation, continuous violations of human rights and IHL. • Complexity and sensitivity of the Israeli-Palestinian conflict. • No Status of Mission Agreement concluded with any of the parties involved. • The 2007 split of the Palestinian Authority between the Hamas and Fatah factions. • Suspension of operations at the Rafah Crossing Ppint in June 2007. 	<ul style="list-style-type: none"> • No explicit reference to human rights or gender in the mandate.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2010 - Council Decision 2010/274/CFSP</p> <p>2011 - Council Decision 2011/312/CFSP</p> <p>2011 - Council Decision 2011/857/CFSP</p> <p>2012 - Council Decision 2012/332/CFSP</p> <p>2013 - Council Decision 2013/355/CFSP</p> <p>2014 - Council Decision 2014/430/CFSP</p> <p>2015 - Council Decision 2015/1065/CFSP</p>		
<p>EUPOL Kinshasa RD Congo</p> <p>Aims: Assist in setting up an integrated police and reinforce internal security apparatus.</p> <p>2004 - Council Joint Action 2004/847/CFSP</p> <p>2006 - Council Joint Action 2006/913/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation with fighting in Eastern areas between security and armed forces. • Follow up to Operation Artemis. • No common training for EUPOL and MONUC staff despite sharing common objectives. • Need to further harmonize the EU's long-term development agenda and short-term crisis management actions. 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate: • 'Continued commitment of EU political effort and resources' in 'the process of strengthening of democracy, the rule of law and international and regional security.' (Preamble 3 JA 2004/847/CFSP). • 'to monitor, mentor, and advise the setting up and the initial running of the IPU in order to ensure that the IPU acts following the training received in the Academy Centre and according to international best practices in this field.' (Art. 3 JA 2004/847/CFSP).

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
	<ul style="list-style-type: none"> • Lack of coordination between the EU and other actors of the international community. • Difficulties at the operational level in procuring equipment. 	<ul style="list-style-type: none"> • The promotion of democratic values could be deduced from the extension of the mandate under Joint Action 2006/913/CFSP in view of the elections in 2006. • The IPU was trained in human rights standards, gender issues and on children affected by armed conflict through a partnership with the ICRC. • First EU police mission in the Great Lakes region • Close relations with EUSEC and EUFOR missions. • Flexibility of EUPOL to respond to the raising security concerns • Creation of an Integrated Police Unit (IPU) to protect members of the Transition Government and its institutions. • Extension of the mission’s mandate in 2006 in 2006 to integrate police reforms and monitoring into a larger security sector reform project. • Support to recruitment based on an ethnic, gender and political criteria.
<p style="text-align: center;">EUPAT FYROM</p> <p style="text-align: center;">2005 - Council Joint Action 2005/826/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation with a view to future Stabilization and Association process with the EU. • Limited budget and time frame, staff shortage. 	<ul style="list-style-type: none"> • No explicit reference to human rights or gender in the mandate. • Successful crisis management process from NATO-led action to EU member candidacy.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
	<ul style="list-style-type: none"> • Conditions imposed by FYROM authorities hampered the effective implementation of the mandate. • EUPAT is considered a ‘closing mission’ or ‘transitional measure’ rather than a mission itself to bridge the gap between the end of Proxima and the CARDS programme (Community Assistance for Reconstruction, Development and Stabilisation) in June 2006. 	<ul style="list-style-type: none"> • Improved consultation mechanism: monthly report to the local authorities on the reform, progress and police shortcomings. • Improved coordination with the Commission.
<p style="text-align: center;">EUPOL COPPS Palestinian Territories</p> <p>2005 - Council Joint Action 2005/797/CFSP</p> <p>2006 - Council Decision 2006/807/CFSP</p> <p>2008 - Council Decision 2008/134/CFSP</p> <p>2008 - Council Decision 2008/482/CFSP</p> <p>2008 - Council Joint Action 2008/958/CFSP</p> <p>2009 - Council Decision 2009/955/CFSP</p>	<ul style="list-style-type: none"> • Occupation and conflict situation, continuous violations of human rights and IHL. • Complexity and sensitivity of the Israeli-Palestinian conflict. • No Status of Mission Agreement concluded with any of the parties involved. • The 2007 split of the Palestinian Authority between the Hamas and Fatah factions. • The isolation of the Gaza Strip from the EUPOL COPPS’s area of action. • Conflict of interests between the long-term Commission’s agenda linking police security sector reform with criminal justice reforms 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate: ‘The aim of EUPOL COPPS is to contribute to the establishment of sustainable and effective policing arrangements under Palestinian ownership in accordance with best international standards’ Art. 2(1)JA 2005/797/CFSP. • Protection of vulnerable groups: the RoL unit of the mission pays particular attention to honour crimes and domestic violence issues. • First EU police mission in the Middle East. • Police reform is part of a wider security sector and criminal justice reforms. • Gender-sensitive training workshops for the Palestinian civil police

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2010 - Council Decision 2010/747/CFSP</p> <p>2010 - Council Decision 2010/784/CFSP</p> <p>2011 - Council Decision 2011/858/CFSP</p> <p>2012 - Council Decision 2012/324/CFSP</p> <p>2013 - Council Decision 2013/354/CFSP</p> <p>2014 - Council Decision 2014/447/CFSP</p> <p>2015 - Council Decision 2015/1064/CFSP</p>	<p>and EUPOL COPPS short-term operational capacity reforms.</p>	<ul style="list-style-type: none"> • Enhanced effective control over the West Bank by the Palestinian Civil Police. • Increased local ownership and sensitivity among Palestinians for respect of equality before the law, human dignity and respect of human rights.
<p>EUFOR RD Congo</p> <p>2006 – UNSC Resolution 1671 (2006)</p> <p>2006 - Council Joint Action 2006/319/CFSP</p> <p>2006 - Council Decision 2006/412/CFSP</p> <p>2007 - Council Joint Action 2007/147/CFSP</p>	<ul style="list-style-type: none"> • Post conflict situation with fighting in Eastern parts of DRC between security and armed forces. • Lack of logistical support and communication between MONUC and EUFOR. • Need for request from UNSG for EUFOR to assume the tasks under UNSCR 1671. • Concerns over the EU presence in support to MONUC 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender issues in the mandate: ‘to contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment’ (UNSCR 1671). • Gender Advisor that cooperates with local women’s organisations that report cases of sexual violence and with the Human Rights Division of MONUC. • Appointment of a shared human rights/children and armed conflict expert to EUSEC RD Congo and EUPOL RD Congo.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
	<ul style="list-style-type: none"> Internal disagreement among EU Member States contributing to EUFOR. 	<ul style="list-style-type: none"> The Human Rights Focal Point provided training to EUFOR personnel and material for guidance on gender and children in armed conflict issues. In the Planning phase it was also decided upon a Soldier's card that included a part on gender and sexual exploitation and abuse. Gender Focal Points inside the different units and staff branches in Kinshasa and Gabon were also appointed The field HQ provided a weekly gender report to Operations HQ in Postdam. Gender-mixed patrolling and exercises. Information campaign to explain the role of the missions and the differences with MONUC.
<p>EUPOL RD Congo</p> <p>2007 - Council Joint Action 2007/405/CFSP</p> <p>2007 - Council Joint Action 2008/38/CFSP</p> <p>2008 - Council Joint Action 2008/485/CFSP</p> <p>2009 - Council Joint Action 2009/466/CFSP</p>	<ul style="list-style-type: none"> Post conflict situation, transitional justice process. Coordination and coherence problems between international actors in the transitional process. Lack of harmonisation the several missions deployed in the region. 	<ul style="list-style-type: none"> Reference to human rights, IHL, gender issues and protection of vulnerable groups in the mandate: 'The mission must provide advice and assistance directly to the responsible Congolese authorities and through the police reform monitoring committee (CSRP) and the joint committee on justice, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2009 - Council Joint Action 2009/769/CFSP</p> <p>2010 - Council Decision 2010/329/CFSP</p> <p>2010 - Council Decision 2010/576/CFSP</p> <p>2011 - Council Decision 2011/537/CFSP</p> <p>2012 - Council Decision 2012/514/CFSP</p> <p>2013 - Council decision 2013/467/CFSP</p>		<p>respect for the rule of law.’ (Art. 1 JA 2007/405/CFSP)</p> <ul style="list-style-type: none"> • ‘Contribute to the police as well as to the gender, human rights and children and armed conflict aspects of the peace process in the eastern DRC and especially to its linkage to the reform process of the PNC.’ (Art. 1 2008/485/CFSP) • The operational repartition of tasks include ‘experts assigned to the police as well as to the gender, human rights and children and armed conflict aspects of the stabilisation process in the east, and its linkage to the national police reform process.’ (Art. 3 2008/485/CFSP) • Experts on human rights, gender issues and children in armed conflict.
<p>EUPOL Afghanistan</p> <p>2007 - Council Joint Action 2007/369/CFSP</p> <p>2007 - Council Joint Action 2007/733/CFSP</p> <p>2008 - Council Joint Action 2008/229/CFSP</p> <p>2008 - Council Joint Action 2008/643/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation and internal violence. Mixed scenario with fighting in some areas. • Deplorable security situation: the area of action is restricted to the most secure and stable areas. • Delayed deployment and recruitment shortages due to lack of consensus in Brussels. 	<ul style="list-style-type: none"> • Explicit reference to human rights in the mandate: ‘Contribute to the establishment under Afghan ownership of (...) civilian policing arrangements, (...) in accordance with international standards, within the framework of the rule of law and respects human rights.’ (Art. 3) • RoL Unit within the mission, • Appointment of a Human Rights and Gender Advisor and adoption Gender Action Plan: ‘Mainstreaming of gender issues and human rights

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2008 - Council Decision 2008/884/CFSP</p> <p>2009 - Council Joint Action 2009/842/CFSP</p> <p>2010 - Council Decision 2010/279/CFSP</p> <p>2011 - Council Decision 2011/298/CFSP</p> <p>2011 - Council Decision 2011/473/CFSP</p> <p>2012 - Council Decision 2012/391/CFSP</p> <p>2014 - Council Decision 2014/922/CFSP</p> <p>2015 - Council Decision 2015/2336/CFSP</p>	<ul style="list-style-type: none"> • Coordination problems with other police training missions. • Lack of coherent strategy for tackling illiteracy, desertion and corruption hindering the training of trainers approach. • An integrated approach to the police and justice sector is missing. 	<p>within the Ministry of Interior and the Afghan National Police' is one of the Strategic priorities.</p> <ul style="list-style-type: none"> • Support to the establishment of a Gender and Human Rights Department within the Ministry of Interior • Integration of Human Rights and Gender Issues in the curricula of courses for police officers • Specific training courses for police women. • Provision of a Human Rights Police Booklet in Pashto and Dari. • Training on Human Rights, Law Enforcement and Gender for prosecutors from the Office of the Attorney General • Training on Human Rights and Administration of Justice to legal experts. • Training on Fair Trial Issues to judges and prosecutors in the Military Justice Sector. • Security Plan for female offices and the setting of a helpline. • Creation of an Office of Police Ombudsman.
<p>EUFOR Tchad/RCA</p> <p>2007 - UNSC Resolution 1778 (2007)</p>	<ul style="list-style-type: none"> • Unstable situation with no prospect of improvement. • Lack of cooperation with AMIS II and UNAMID • Difficult security conditions. 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate: 'support (...) to ensure humanitarian deliveries and protection of civilians.' (Preamble)

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2007 - Council Joint Action 2007/677/CFSP</p> <p>2008 - Council Decision 2008/101/CFSP</p> <p>2009 - Council Joint Action 2009/795/CFSP</p>	<ul style="list-style-type: none"> Humanitarian actors unwilling to accept EU armed escorts fearing that this would compromise their 'neutrality'. The military component of the United Nations Mission in Central African Republic and Chad (MINURCAT) was undertaken by EUFOR Chad/RCA to help manage refugee flows from Darfur. 	<ul style="list-style-type: none"> 'To help create the security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons, (...) by contributing to the protection of refugees, displaced persons and civilians in danger, by facilitating the provision of humanitarian' (UNSCR 1778). 'To contribute to the monitoring and to the promotion and protection of human rights, with particular attention to sexual and gender-based violence'(UNSCR 1778) Special Annex to the OPLAN on how to deal with Child soldiers. Successful hand-over to the MINURCAT. Operation EUFOR Tchad/RCA was part of the EU's comprehensive approach in tackling the crisis in Darfur.
<p>EU SSR Guinea-Bissau</p> <p>2008 - Council Joint Action 2008/112/CFSP</p> <p>2009 - Council Joint Action 2009/405/CFSP</p> <p>2009 - Council Joint Action 2009/841/CFSP</p>	<ul style="list-style-type: none"> Post-conflict situation. Lack and shortage of adequate human resources. 	<ul style="list-style-type: none"> No explicit reference to human rights, IHL or gender in the mandate. Security-development nexus: Linking the Council short-term and the Commission SSR long-term strategies. Cooperation with other regional and international organisations. EU enhanced role in transitional justice processes.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2010 - Council Decision 2010/298/CFSP</p>		
<p>EUMM Georgia</p> <p>Aims: to contribute to long-term stability throughout Georgia and the surrounding region; and in the short term, to 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.</p> <p>2008 - Council Joint Action 2008/736/CFSP</p> <p>2008 - Council Joint Action 2008/759/CFSP</p> <p>2009 - Council Joint Action 2009/294/CFSP</p> <p>2009 - Council Joint Action 2009/572/CFSP</p> <p>2010 - Council Decision 2010/424/CFSP</p> <p>2011 - Council Decision 2011/536/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation, outbreak of hostilities between Georgia, the region South Ossetia and Russia. • The South Ossetia de facto authorities and Russia deny access of EUMM personnel to the regions of South Ossetia and Abkhazia, hampering the mission's ability to to fully implement the tasks of normalisation and stabilisation and the delivery of humanitarian assistance to the civilian population in this area. • Major political constraints due to the involvement of two important partner countries (Russia and Georgia). • Lack of agreement on the EU's involvement in the conflict among EU member states. • Failure of EU preventive diplomacy. • Lack of information in relation to EUMM activities, poor assessment on EU contribution to human rights and IHL. 	<ul style="list-style-type: none"> • Human rights drawn from EUMM mandate and activities. • Special Annex on human rights into OPLAN. • EUMM has contributed to certain extent to the stabilisation and normalisation of the situation in areas directly affected by the 2008 conflict and the return of IDPs. • Analysis on patterns of violation of human rights and IHL. • The inclusion of monitoring tasks on human rights and humanitarian issues ratify the assumption that the stability and security can only be achieved through the promotion of good governance and respect for human rights. • Rapid deployment. • Cooperation with OSCE and UN. • Transparency of the activities of Georgian police and the military by signing of two MoU between the EUMM and Ministries of Defence and Internal Affairs. • Establishment of Incident Prevention and Response Mechanism to facilitate regular contacts between all stakeholders on the ground.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2012 - Council Decision 2012/503/CFSP</p> <p>2013 - Council Decision 2013/446/CFSP</p> <p>2014 - Council Decision 2014/915/CFSP</p> <p>2015 - Council Decision (CFSP) 2015/2008</p>		
<p>EULEX Kosovo</p> <p>2008 - Council Joint Action 2008/124/CFSP</p> <p>2009 - Council Joint Action 2009/445/CFSP</p> <p>2010 - Council Decision 2010/619/CFSP</p> <p>2012 - Council Decision 2012/291/CFSP</p> <p>2015 - Council Decision (CFSP) 2015/901/CFSP</p>	<ul style="list-style-type: none"> • Post-conflict situation. • Unilateral declaration of independence and non-recognition by all EU Member States. • Delay in the mission deployment due to Russian and Serbian opposition to the transference of powers from UNMIK to EULEX. • Existing Serbian parallel structures following the declaration of independence (Mitrovica). • Attacks against EULEX personnel in Kosovo Serb areas. • Significant delay in the examination of judicial cases inherited by UNMIK. • Inefficiency of the judicial system and coexistence of three parallel sources of 	<ul style="list-style-type: none"> • Reference to human rights and gender mainstreaming in the mandate: 'EULEX Kosovo shall (...) ensure that all its activities respect international standards concerning human rights and gender mainstreaming.' (Art. 3(i)) • Human rights accountability mechanism (Human Rights Review Panel) • Rule of law concept affects the personnel perception on the EULEX's responsibility for the protection of human rights not clear. Rule of law concept is more focused on corruption and organised crime than human rights. • Largest and most ambitious CSDP mission • First fully-integrated rule of law mission (justice, police and customs). • Long but efficient implementation and planning phase taking advantage of UNMIK experience.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
	<p>legislation (prior UNMIK, during UNMIK, after declaration of independence).</p> <ul style="list-style-type: none"> • Lack of definition of the executive powers foreseen in the mandate. • Lack of definition of the ‘European best practices’. • Staff shortage due to the size of the mission. • Lack of interaction between EULEX and other international organisations. • Overlapping with OSCE activities in the field of gender. • High expectations and lack of visibility with an important impact on the perception among civil society. 	<ul style="list-style-type: none"> • Enhanced interaction with other international organisations in the field of human rights protection. • Elaborated communication strategy albeit shortcomings. • Programmatic approach to assess and evaluate the mission progress on a monthly basis. • Integration of human rights issues in the mandate of the EU Special Representatives (EUSR).
<p>EUNAVFOR Atalanta</p> <p>2008 - UNSC Resolution 1814 (2008)</p> <p>2008 - UNSC Resolution 1816 (2008)</p> <p>2008 - Council Joint Action 2008/749/CFSP</p> <p>2008 -UNSC Resolution 1838 (2008)</p>	<ul style="list-style-type: none"> • Fight against piracy. • Operation Atalanta does not tackle the root causes of piracy. • First CSDP naval mission. • Multitude of actors with different missions and orders to fight against piracy (NATO via SNMG, UN and AU via AMISOM). • Judicial uncertainty as regards the jurisdiction under which a arrested or detained piracy suspect will be prosecuted. 	<ul style="list-style-type: none"> • Reference to human rights within the mandate. No explicit reference to IHL or gender issues in the mandate. • Transfer of persons arrested and detained with a view to their prosecution ‘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.’ (Art. 12 JA 2008/851/CFSP)

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2008 - Council Joint Action 2008/851/CFSP</p> <p>2008 - UNSC Resolution 1846 (2008)</p> <p>2008 - Council Decision 2008/918/CFSP</p> <p>2008 - UNSC Resolution 1851 (2008)</p> <p>2008 - UNSC Resolution 1863 (2009)</p> <p>2009 - UNSC Resolution 1897 (2009)</p> <p>2009 - Council Decision 2009/907/CFSP</p> <p>2010 - Council Decision 2010/766/CFSP</p>	<ul style="list-style-type: none"> • Doubts on the applicability of IHL to counter piracy on Somali soil after some incidents. • Lack of access to adequate surveillance assets. 	<ul style="list-style-type: none"> • ‘Protection of vessels of the WFP delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in UNSC Resolution 1814 (2008)’ (Art. 1 JA 2008/851/CFSP) • Use of force: ‘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 it is present’ (Art. 2 JA 2008/851/CFSP). • Effective coordination between Atalanta and other international actors through the creation of a secure communication platform (Mercury) and creation of a Contact Group on Piracy • EU Security Center –Horn of Africa (MSCHOA) issues periodic updates and recommendations to vessels transiting regional waters • Pursuant its mandate it protects the delivery of food to Somalia by the World Food Programme and has thus saved numerous lives. • Appointment of the EUSR for he Horn of Africa to contribute to regional and international efforts to achieve lasting peace, security and development in the region.
<p>EUTM Somalia</p>	<ul style="list-style-type: none"> • The mission was initially based in Uganda. 	<ul style="list-style-type: none"> • No explicit reference to human rights, IHL or gender in the mandate.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2009 - UNSC Resolution 1872 (2009)</p> <p>2010 - Council Decision 2010/96/CFSP</p> <p>2010 - Council Decision 2010/197/CFSP</p> <p>2011 - Council Decision 2011/483/CFSP</p> <p>2012 - Council Decision 2012/835/CFSP</p>	<ul style="list-style-type: none"> Human rights abuses, violations of international humanitarian law, and crimes committed by non-state armed groups. 	<ul style="list-style-type: none"> Training modules on international humanitarian law and human rights, and the protection of civilians and 'Train-the-Trainers' courses. The mission is conducted in close coordination with the Somali Transitional Federal government, Uganda, the African Union, UN, and the US. Appointment of the EUSR for the Horn of Africa to contribute to regional and international efforts to achieve lasting peace, security and development in the region.
<p>EUAVSEC South Sudan</p> <p>Aims: support to strengthening security at Juba International Airport, as part of the international community's overall assistance to the country.</p> <p>2012 - Council Decision 2012/312/CFSP</p>	<ul style="list-style-type: none"> Post-independent South Sudan (since July 2011). 	<ul style="list-style-type: none"> Explicit reference to human rights in the mandate: <i>'In particular, EUAVSEC-South Sudan shall contribute to strengthening aviation security, border control and law enforcement at JIA, under public oversight and in accordance with human rights standards.'</i> (Art. 2(2)) The mission was part of the comprehensive approach of the EU to Sudan and South Sudan.
<p>EUCAP Nestor Horn of Africa</p>	<ul style="list-style-type: none"> Somalia: complex crisis, human rights abuses, violations of international 	<ul style="list-style-type: none"> Since March 2012 the EU Operations Centre is aimed at coordinating and strengthening civil-

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2009 - UNSC Resolution 1872 (2009)</p> <p>2012 - Council Decision 2012/389/CFSP</p> <p>2013 - Council Decision 2013/367/CFSP</p> <p>2013 - Council Decision 2013/660/CFSP</p> <p>2014 - Council Decision 2014/485/CFSP</p> <p>2014 - Council Decision 2014/726/CFSP</p> <p>2015 - Council Decision 2015/1793/CFSP</p> <p>2015 - Council Decision 2015/2275/CFSP</p>	<p>humanitarian law, and crimes committed by non-state armed groups.</p> <ul style="list-style-type: none"> • UNSC Resolution 1872 (2009) urged states and regional and international organisations to offer technical assistance for the training and equipping of the Somali Security forces. • Different levels of political support in host countries and lack of political buy-in. • Kenya and Tanzania: Piracy is not as a key national concern for some countries. • The Seychelles and Djibouti: good cooperation. • Separate information strategies among all the three missions operating in the Horn of Africa. • It took more than three years for EUCAP NESTOR to be launched. 	<p>military synergies between the three CSDP missions in the Horn of Africa.</p> <ul style="list-style-type: none"> • Civilian mission sustaining the military endeavours of EUNAVFOR Atalanta and EUTM Somalia. • Training and mentoring on gender and human rights. • First regional civilian CSDP mission. • Appointment of the EUSR for the Horn of Africa to contribute to regional and international efforts to achieve lasting peace, security and development in the region.
<p>EUCAP Sahel Niger</p> <p>2012 - Council Decision 2012/392/CFSP</p> <p>2013 - Council Decision 2013/533/CFSP</p>	<ul style="list-style-type: none"> • Instability resulting from terrorism, organised crime and radicalisation. • Major transit country for Africans seeking to reach the EU. 	<ul style="list-style-type: none"> • Explicit reference to human rights and IHL in the mandate: '(...) EUCAP SAHEL Niger shall aim at contributing to the development of an integrated, multidisciplinary, coherent, sustainable, and human rights-based approach among the various Nigerien security actors in the fight against terrorism and

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2014 - Council Decision 2014/482/CFSP</p>		<p>organised crime.’ (Art. 2 Council Decision 2012/392/CFSP)</p> <ul style="list-style-type: none"> Human rights included in the training curricula.
<p>EUTM Mali</p> <p>2013 - Council Decision 2013/34/CFSP</p> <p>2013 - Council Decision 2013/87/CFSP</p> <p>2013 - Council Decision 2013/729/CFSP</p> <p>2014 - Council Decision 2014/220/CFSP</p>	<ul style="list-style-type: none"> Mixed scenario with fighting in the north of the country. Asymmetry in national threat perceptions and interests among Member States has led EUTM to be seen as to serve France interests. 	<ul style="list-style-type: none"> Explicit reference to human rights and IHL in the mandate: ‘training on International Humanitarian Law, protection of civilians and human rights’ (Art. 1(1)(b) Council Decision 2013/34/CFSP) The training curricula includes modules on IHL and human rights, as well as on the protection of the civilian populations delivered in collaboration with UNOCHA, UNHCR, ICRC, UN WOMEN and UNICEF.
<p>EUBAM Libya</p> <p>Aims: to support the Libyan authorities in developing border management and security at the country’s land, sea and air borders through advising, training and mentoring Libyan counterparts and by advising the Libyan authorities on the development of</p>	<ul style="list-style-type: none"> Mixed scenario, post-conflict, political transition with intense fighting in many areas of the country -and increasingly presence of radical Islamist non-armed groups. Two governments are vying for legitimate control over Libya: one internationally recognized government and another self-declared authority based in Tripoli. 	<ul style="list-style-type: none"> No explicit reference to human rights or gender in the mandate. Good communication with CSDP missions and operations in the Sahel and EUNAVFOR MED. Rule of Law, human rights and gender are integral part of the training. Appointment of a Rule of Law/Human Rights/Gender Advisor. Seminars to improve respect by the Libyan authorities for human rights and especially for the

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>a national Integrated Border Management (IBM) strategy.</p> <p>2013 - Council Decision 2013/233/CFSP</p> <p>2015 - Council Decision 2015/800/CFSP</p> <p>2016 - Council Decision 2016/207/CFSP</p>	<ul style="list-style-type: none"> • Due to the political and security situation in Libya, EUBAM was relocated in Tunisia in June 2014. Since March 2015 the mission is <i>de facto</i> 'on hold' with nominal presence to monitor the situation. The decisions to downsize the mission have led to a marked loss of expertise and corporate memory. • Evacuation or relocation of almost all international organisations, including humanitarian agencies. • No Status of Mission Agreement (SOMA) has been concluded with Libya. • The mission's legal status in Tunis is unclear. 	<p>rights of refugees, some of them jointly with other organisations such as UNSMIL, UNHCR or the IOM.</p>
<p>EUFOR RCA</p> <p>Aims: contribute to the provision of a safe and secure environment, concentrating its action in the Bangui area.</p> <p>2014 - UNSCR 2134 (2014)</p> <p>2014 - Council Decision 2014/73/CFSP</p> <p>2014 - Council Decision 2014/183/CFSP</p>	<ul style="list-style-type: none"> • Ethnic-motivated conflict between rebel groups and overthrow of the government. • Military bridging operation with a hand over to MINUSCA. 	<ul style="list-style-type: none"> • In its Resolution 2127 (2013) on the situation in the • Central African Republic (CAR), adopted on 5 December • 2013, the United Nations Security Council (UNSC) expressed deep concern about the continuing deterioration of the security situation and the multiple and increasing violations of international humanitarian law and human rights in the CAR.' (Preamble (1) Council Decision 2014/73/CFSP) • 'the European Council, in its conclusions of 20 December 2013, expressed its concern about the continuously deteriorating crisis in the CAR and its

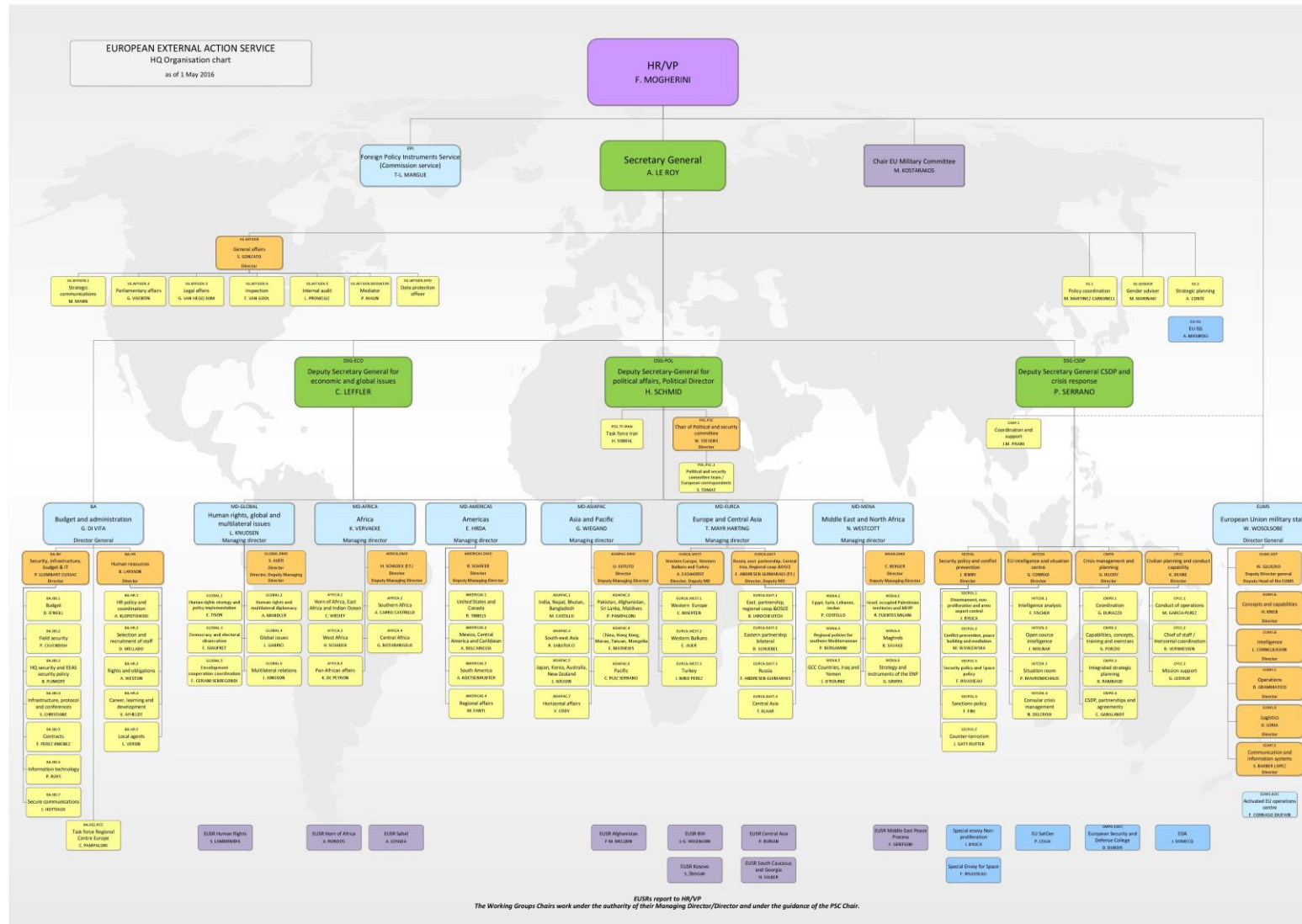
CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2014 - UNSC Resolution 2134 (2014)</p> <p>2014 - Council Decision 2014/775/CFSP</p>		<p>severe humanitarian and human rights consequences.’ (Preamble (2) Council Decision 2014/73/CFSP)</p> <ul style="list-style-type: none"> • UNSC Resolution 2134 (2014): authorisation to the use of force (para 44)
<p>EUAM Ukraine</p> <p>2014 - Council decision 2014/486/CFSP</p> <p>2015 - Council Decision 2015/2249/CFSP</p>	<ul style="list-style-type: none"> • Annexation of Crimea by the Russian Federation and fighting in Eastern provinces. • Major political constraints due to deterioration of the EU-Russia relationship, particularly due to the imposition of restrictive measures • Limited mandate: conditionality at the decision-making stage to avoid a too provocative response towards Russia (civilian and advisory mission). • Recruitment problems due to high number of applications. • - Poor public communication, low visibility of the mission. 	<ul style="list-style-type: none"> • Explicit mention to human rights in the mandate. No mention of IHL or gender issues: ‘Create a conceptual framework for planning and implementing reforms (...) in full respect for human rights and consistent with the constitutional reform process.’ (Art. 2(1) Council Decision 2014/486/CFSP) • Appointment of a Human Rights Minorities Adviser and Gender Adviser. • Rapid response and deployment • Creation of Border Management Assistance Group (BMAG) to enhance cooperation with Ukrainian authorities and international organisations in this field. • EU’s comprehensive approach, reflected by diplomatic means, political, economic, financial measures and the deployment EUAM Ukraine • Deployment advantages to a country with relatively similar conditions to many EU member states. • EUAM is viewed as a preventive EU action.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p style="text-align: center;">EUCAP Sahel Mali</p> <p>Aims: to support of the Malian internal security forces to restore and maintain constitutional and democratic order and the conditions for lasting peace in Mali, and to restore and maintain State authority and legitimacy throughout the territory of Mali by means of an effective redeployment of its administration.</p> <p>2014 - Council decision 2014/219/CFSP 2014 - Council Decision 2015/76/CFSP</p>	<ul style="list-style-type: none"> • Mixed scenario with fighting in the north provinces. • The Malian government's lack of equipment and materials. 	<ul style="list-style-type: none"> • No explicit mention to human rights, IHL and gender issues in the mandate. • Training modules on human rights and gender issues • EUCAP Sahel Mali is part of the EU's comprehensive approach and linked to EUBAM Libya, EUCAP Sahel Niger and EUTM Mali.
<p style="text-align: center;">EUMAM RCA</p> <p>Aims: to support the CAR authorities in the Security Sector Reform.</p>	<ul style="list-style-type: none"> • Post-conflict. • Follow-up mission to improve the CAR armed forces' capacities and solidify EUFOR's achievements. 	<ul style="list-style-type: none"> • No explicit reference to human rights or IHL in the mandate. • Support to multi-ethnic CAR forces.

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
<p>2015 - Council Decision 2015/78/CFSP</p> <p>2015 - Council Decision 2015/442/CFSP</p>		
<p>EUNAVFOR MED Operation Sophia</p> <p>Aims: to contribute to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean.</p> <p>2015 - Council Decision 2015/778/CFSP</p> <p>2015 - Council Decision 2015/972/CFSP</p> <p>2015 – UNSC Resolution 2240 (2015)</p> <p>2015 - Council Decision 2015/1926/CFSP</p>	<ul style="list-style-type: none"> • A rising number of refugees and migrants seek asylum in European countries traveling across the Mediterranean Sea • The Libyan authorities are reluctant to cooperate or to grant consent to operate in the territorial waters of Libya • The mixed nature of migratory flows and identifying particularly vulnerable groups (unaccompanied minors, victims of human trafficking etc) • Authorisation from the UNSC limited to the high seas due to the difficulty to qualify human trafficking as a ‘threat to the peace’ and conditional on the consent of the Libyan authorities to operate in territorial waters • The vast majority of boats depart from the west coast under control of the self-proclaimed government 	<ul style="list-style-type: none"> • Explicit reference to human rights in the mandate: ‘The Union CSDP operation will be conducted in accordance with international law, in particular with (...) the 2000 Protocols against the Smuggling of Migrants by Land, Sea and Air (the Protocol against the Smuggling of Migrants) and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (...) the 1951 Geneva Convention relating to the Status of Refugees and the principle of non-refoulement and international human rights law’ (Preamble) • EU NAVFOR MED is part of the EU’s comprehensive approach to migration crisis in the Mediterranean • The ‘Migrant Handling Training Manual’ which introduces staff to basic principles, policies and concepts when coming into contact with migrants rescued at sea • The adoption of a Standard Operating Procedure (SOP) on preventing sexual exploitation and abuse to ensure that all staff is aware of the non-tolerance for such offences

CSDP mission or operation	Scenario of deployment and main constrains	Lessons learned, best practices and other key aspects
	<ul style="list-style-type: none">• Outsourcing migration control to third countries, with assurances and safeguards against human rights violations	<ul style="list-style-type: none">• Regular communication with EUBAM Libya, the EU Delegation in Libya and Tunisia, the UN and relevant humanitarian organisations• The Shared Awareness and De-Confliction in the Mediterranean forum (SHADE MED) was established to serve as a forum for representatives from states and organisations tackling irregular migration across the Mediterranean Sea

Annex III - European External Action Service (HQ Organisation Chart)



Annex IV - CSDP-related guidelines, concepts and other documents⁸⁰⁴

Title	Document no.	Type	Area of application	Aim
European Code of police ethics	CoE 19 September 2001	Related Document	Civilian CSDP/Police	<ul style="list-style-type: none"> To maintain law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes
Guidelines for Command and Control structure for EU Police Operations in civilian aspects of crisis management	13306/01 26 October 2001	Guidelines	Civilian CSDP/Police	<ul style="list-style-type: none"> To elaborate considerations to be taken into account in the development of a doctrinal approach to the issue of Command and Control To set out options for a Command and Control structure for an EU Police Mission either conducted independently by the EU or as a contribution to other missions
Guidelines on Training and Selection Criteria for Personnel in EU Police Missions*	13308/01 26 October 2001	Guidelines	Training	<ul style="list-style-type: none"> To recommend guidelines for training and selection criteria to help Member States to provide to an EU force Police Officers
Standardisation and Interoperability	13307/01 26 October 2001	Concept	Capability Support/Mission Support	<ul style="list-style-type: none"> To enhance the EU operational effectiveness and to improve efficiency in the use of available resources

⁸⁰⁴ The shaded rows indicate documents with a focus on the integration of human rights, gender, IHL and the protection of vulnerable groups. Online database with information of all courses relevant to EU's CSDP EEAS, Crisis Management Goalkeeper' <<https://goalkeeper.eeas.europa.eu/StartApp.aspx>>; Council of the European Union, 'Civilian CSDP Best Practice Compilation' (2015) 5705/15; Council of the European Union, 'Documents and publications' <<http://www.consilium.europa.eu/en/documents-publications/>>

Title	Document no.	Type	Area of application	Aim
EU crisis management and conflict prevention – Guidelines on Fact finding missions	15048/01 6 December 2001	Guidelines	Mission Planning	<ul style="list-style-type: none"> To set guidelines applicable to fact-finding missions in EU crisis management and conflict prevention. Its content is meant to be flexible, as specific FFMs will be determined on an ad hoc basis, depending on the particular situation at stake and as a function of the expertise needed, both in the civilian and the military field
European Union Concept for Police Planning	6923/02 6 March 2002	Concept	Civilian CSDP/Police	<ul style="list-style-type: none"> -To define the EU's Concept for Police Planning either in support to UN and OSCE-led police operations or EU-led autonomous operations
Guidelines for Police Command and Control aspects of EU crisis management	7854/1/02 15 April 2002	Guidelines	Civilian CSDP/Police	<ul style="list-style-type: none"> To set forth the initial guidelines regarding the Command and Control structure of an EU Police Mission either conducted independently by the EU or as a contribution to a mission led by other international organisations
CIS Concept for EU Crisis Management	8665/ 02 6 May 2002	Concept	General Crisis Management Framework	<ul style="list-style-type: none"> To provide the basis to start the process to transfer the required CIS architecture into a technical solution
Comprehensive Concept for Police Substitution Missions	8655/5/02 8 May 2002	Concept	Civilian CSDP/Police	<ul style="list-style-type: none"> To identify a general structure which will draw from all policing capacities of EU Member States To transfer the main policing responsibilities to civilian control with a view to re-establishing a functioning local police force

Title	Document no.	Type	Area of application	Aim
Equipment lists for EU police missions	8776/02 8 May 2002	Guidelines	Capability Support/Mission Support	<ul style="list-style-type: none"> To provide an indicative equipment list for EU police missions in support missions or substitution missions
Basic Guidelines for Crisis Management missions in the field of Civil Administration*	9369/1/02 REV1 30 May 2002	Guidelines	Civilian CSDP/Civilian Administration	<ul style="list-style-type: none"> To identify the critical aspects to be addressed in all stages of missions in the field of civilian administration To set a framework upon which the transitional administration could be built - To offer possible solutions regarding the underlying principles, organisation and staffing of an interim international administration
EU Comprehensive Concept for Strengthening of Local Police Missions*	9535/02 31 May 2002	Concept	Civilian CSDP/Police	<ul style="list-style-type: none"> To establish a comprehensive concept for strengthening of local police missions To propose general guidelines and recommendations for the Planning
Police Aspects of Fact Finding Mission (FFM)*	9735/02 10 June 2002	Guidelines	Civilian CSDP/Police	<ul style="list-style-type: none"> To supplement the “Guidelines on Fact Finding Missions”.
Civil protection in the framework of crisis management	10882/1/02 REV1 16 September 2002	Concept	Civil Protection	<ul style="list-style-type: none"> To give an overview on the EU’s capacities within Civil Protection in the field of crisis management
Information activities in the area of ESDP - principles and tasks ahead*	12424/02 26 September 2002	Guidelines	Planning and Conduct/Information on activities	<ul style="list-style-type: none"> To inform on relevant existing activities, especially in the field of general public information on ESDP To identify some basic principles for the development of practices in the field of information in the context of EU crisis

Title	Document no.	Type	Area of application	Aim
				response and point to possible guidelines for such development
Guidelines for ESDP Crisis Response Information Activities*	13817/02 18 November 2002	Guidelines	Planning and Conduct/Information Activities	<ul style="list-style-type: none"> Draft Guidelines for ESDP Crisis Response Information Activities
Comprehensive EU concept for missions in the field of Rule of Law (RoL) in crisis management, including annexes*	9792/03 26 May 2003	Concept	Civilian CSDP/Strengthening the Rule of Law	<ul style="list-style-type: none"> To develop a comprehensive concept and guidelines for civilian RoL missions
Suggestions for procedures for coherent, comprehensive EU Crisis Management	11127/03 3 July 2003	Guidelines	General Crisis Management Framework	<ul style="list-style-type: none"> To develop coherent and comprehensive crisis management procedures
Joint Declaration on UN-EU Co-operation in Crisis Management	12730/03 19 September 2003	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To deepen the UN-EU co-operation and provide reliable and sustainable mechanisms
Handbook for Police Officers deploying to EU Police Missions*	12572/1/03 REV1 30 September 2003	Guidelines	Civilian CSDP/Police	<ul style="list-style-type: none"> To provide information for Police Officers prior to their deployment to an EU Police Mission
Report on planning and mission support capability for civilian crisis management	13835/03 23 October 2003	Related Document	Capability Support/Mission Support	<ul style="list-style-type: none"> To develop EU planning and mission support capability based upon the specific needs and the synergies with the capabilities already existing in the Commission
Civil Military Coordination (CMCO)	14065/03 28 October 2003	Concept	General Civ-Mil Concepts	<ul style="list-style-type: none"> To develop CMCO as a culture of co-ordination

Title	Document no.	Type	Area of application	Aim
Concept for EU Monitoring missions	14536/03 28 October 2003	Concept	Civilian CSDP/Monitoring	<ul style="list-style-type: none"> To provide a concept for Monitoring Missions as a crisis management instrument.
Civil Military Coordination (CMCO)	14457/03 7 November 2003	Concept	General Civ-Mil Concepts	<ul style="list-style-type: none"> To develop CMCO as a culture of co-ordination
EU Training Policy in ESDP	14176/2/03 REV2 13 November 2003	Policy	Training	<ul style="list-style-type: none"> To set out the guiding principles and responsibilities of the EU training policy in CSDP
Common Criteria on Training for EU Civilian Aspects of Crisis Management*	11675/5/03 REV 5 13 November 2003	Guidelines	Civilian CSDP/Training	<ul style="list-style-type: none"> To outline a general framework for Comprehensive European Union Strategy to training civilian personnel to be employed in EU-led and EU-supported crisis management operations
EU Concept for Crisis Management Missions in the field of Civilian Administration	15311/03 25 November 2003	Concept	Civilian CSDP/ Civilian Administration	<ul style="list-style-type: none"> To lay down a general understanding of the main principles that should be taken into account when planning and carrying out a Civilian Administration crisis management mission
European Union Exercise Concept	9329/04 7 May 2004	Concept	Exercises	<ul style="list-style-type: none"> To set out the practical modalities with regard to exercise implementation in conformity with the EU Exercise Policy
EU Guidelines on Human Rights Defenders	10056/1/04 REV1 9 June 2004	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To enhance the EU's activities in the protection and support of human rights defenders and to reinforce the EU's human rights policy in general. The guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora. The Guidelines will assist EU

Title	Document no.	Type	Area of application	Aim
				<p>Missions in their approach to human rights defenders. It should be noted that the Guidelines were adopted prior the entry into force of the Lisbon Treaty, EU Missions are considered Embassies and Consulates of EU Member States and European Commission Delegations.</p>
Action Plan for Civilian Aspects of ESDP	European Council 17-18 June 2004	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To outline why the EU needs to be more active, more coherent and more capable in meeting these new demands
EU Training Concept in ESDP	11970/04 30 August 2004	Concept	Training	<ul style="list-style-type: none"> To implement the EU Training Concept in CSDP
Action Plan for ESDP support to Peace and Security in Africa	10538/4/04 REV 4 16 November 2004	Action Plan	General Crisis management Framework	<ul style="list-style-type: none"> To implement the support to African organisations in building autonomous conflict prevention and management capacities, with a special attention to the African Union (AU)
Guidelines for rapid deployment of police elements in an EU-led substitution mission (not available)	7294/05 21 March 2005	Guidelines	Civilian CSDP/Police	<ul style="list-style-type: none"> To define and provide guidance for the roles, mission and tasks, command and control, technical tactical procedures and logistics of police elements in an EU-led substitution mission
Generic Standards of Behaviour for ESDP Operations	8373/3/05 REV3 18 May 2005	Concept	Mission Planning	<ul style="list-style-type: none"> To establish generic standards of behaviour to ensure that all categories of personnel involved in CSDP operations maintain the highest personnel standards of behaviour

Title	Document no.	Type	Area of application	Aim
Human Resources Handbook for CSDP missions	Version 2005 18 May 2005	Guidelines	Mission Support	<ul style="list-style-type: none"> To compile the administrative guidelines, procedures and minimum standards concerning human resources issues in CSDP Missions
<u>Concept for rapid deployment of police elements in an EU-led substitution mission</u>	8508/2/05 REV 2 31 May 2005	Concept	Civilian CSDP/Police	<ul style="list-style-type: none"> To define the guidelines for the rapid deployment of police elements in a substitution scenario from the initial stage until the stabilisation stage as defined in the document 8655/1/02 “Comprehensive concept for Police Substitution Missions” To ensure a sufficient level of interoperability for police elements, notably for rapid deployment (short-term goal) To identify and to define recommendations leading to enhanced standardisation and Interoperability (medium-term/long-term goal) between police elements as well as to lead into integration and coordination with other components of the EU Mission
<u>EU Principles for EU HQs</u>	9667/05 3 June 2005	Guidelines	Military CSDP	<ul style="list-style-type: none"> To provide guidelines and principles that will serve as a basis for the establishment and operation of an EU HQ, when used in the context of an EU-led military CMO
<u>Implementation of UNSCR 1325 in the context of ESDP</u>	11932/2/05 29 September 2005	Concept	Human Rights & Gender Issues	<ul style="list-style-type: none"> To propose measures to implement UNSCR 1325 within CSDP, contributing at the same time to the application of the EU’s general approach on gender mainstreaming. The document applies to all planning and

Title	Document no.	Type	Area of application	Aim
				implementation processes from pre-conflict to post-conflict phases (CSDP Decision making bodies, Member States, CSDP personnel, EUSR, HoM, or Operation Commander/Force Commander etc.)
EU Concept for ESDP support to Security Sector Reform (SSR)*	12566/4/05 REV 4 13 October 2005	Concept	Security Sector Reform	<ul style="list-style-type: none"> To provide a concept for CSDP support to SSR in third countries in complementarity with action undertaken by the commission
Draft EU Concept for Comprehensive Planning	13983/05 3 November 2005	Concept	Civilian and military CSDP/Mission Planning and Control	<ul style="list-style-type: none"> To define a practical framework for effective planning coordination between EU actors for EU crisis management To enhance the possibility for the EU to address complex crisis in a coherent manner
Concept paper on procedures for the termination, extension and refocusing of an EU civilian crisis management operation	5136/06 9 January 2006	Concept	Mission Planning	<ul style="list-style-type: none"> To consider the steps that need to be taken in preparation for the end of a mission mandate from a political, operational and financial perspective
Civil-Military Coordination: Framework paper of possible solutions for the management of EU Crisis Management Operations	8926/06 2 May 2006	Guidelines	General Civ-Mil Concepts	<ul style="list-style-type: none"> To provide concrete recommendations and possible solutions for CMCO in the field, taken into account previous experience.
Standard IPU and FPU Structures (availability upon request)	9225/06 11 May 2006	Guidelines	Civilian CSDP/Police	<ul style="list-style-type: none"> -To describe the standard structure and the operational elements of IPU's ("Type A" and "Type B") and FPU's

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Policy of the EU on the security of personnel deployed outside the EU in an operational capacity under Title V of the Treaty on EU	9490/06 29 May 2006	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To ensure that all reasonably practicable measures are taken to protect personnel deployed outside the European Union from harm and injury
Mainstreaming human rights across CFSP and other EU policies	10076/06 7 June 2006	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> Concrete actions for human rights mainstreaming across CFSP and other EU external policies. These actions are addressed to all actors involved in CFSP, i.e. COHOM and other thematic working parties, Council Secretariat, Commission, HoMs and Member States)
Host Nation Support (HNS) Concept for EU-led Military Crisis Management Operations	10603/06 15 June 2006	Concept	Military CSDP	<ul style="list-style-type: none"> N/A
Transitional Justice and ESDP	10300/1/06 16 June 2006	Concept	Civilian CSDP/Strengthening the Rule of Law	<ul style="list-style-type: none"> To outline suggestions for how thinking on transitional justice can be further taken into account in the context of CSDP
European Union concept for strengthening African capabilities for the prevention, management and resolution of conflicts	11316/06 7 July 2006	Concept	Concept	<ul style="list-style-type: none"> To provide an overall framework for implementation of the EU Strategy for Africa
Checklist to ensure gender mainstreaming and	12068/06 27 July 2006	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To ensure gender mainstreaming and implementation of UNSCR 1325 from the

Title	Document no.	Type	Area of application	Aim
implementation of UNSCR 1325 in the planning and conduct of ESDP Operations				early planning to the conduct of CSDP operation, including follow-up. The checklist is addressed to the civilian and military planners in Member States and in the Council Secretariat
Initial Concept of Mission Support for ESDP Civilian Crisis Management Missions	12457/06 5 September 2006	Concept	Mission Support	<ul style="list-style-type: none"> • General description of mission support activities • Description of key features, CSDP mission support in Brussels, tasks, day-to-day management and way ahead
Mainstreaming of Human Rights into ESDP	11936/4/06 11678/1/05 14 September 2006	Concept	Human Rights & Gender Issues	<ul style="list-style-type: none"> • To provide concrete steps to ensure mainstreaming of human rights into CSDP. The document should be mainly used by CSDP planners
EU Battlegroup Concept	13618/06 5 October 2006	Concept	Military CSDP	<ul style="list-style-type: none"> • N/A
Civil-Military Co-ordination (CMCO): Possible solutions for the management of EU Crisis Management Operations - Improving information	13218/5/06 31 October 2006	Concept	Planning and Conduct/Information Activities	<ul style="list-style-type: none"> • To improve information sharing in support of EU crisis management operations
Draft EU Concept for support to Disarmament, Demobilisation and Reintegration (DDR)	13727/4/06 REV 4 30 November 2006	Concept	Disarmament, Demobilisation, Reintegration (DDR)	<ul style="list-style-type: none"> • To set out the EU approach to DDR and to define the principles for future engagements in this area
Draft Concept for ESDP Border missions in the	16137/06 1 December 2006	Concept	Civilian CSDP/Monitoring	<ul style="list-style-type: none"> • To define a concept and a general understanding of the main principles for the

Title	Document no.	Type	Area of application	Aim
framework of Civilian Crisis Management				<p>planning and conduct of CSDP border missions</p> <ul style="list-style-type: none"> To develop the CSDP monitoring capacity related to border issues
Co-ordination and coherence between the EU Special Representative (EUSR), the EU military operation (EUFOR - Althea) and the EU Police Mission (EUPM) in Bosnia and Herzegovina (BiH): Case study and Recommendations for the future	<p>16770/06 15 December 2006</p>	<p>Related Document</p>	<p>Coordination and Coherence</p>	<ul style="list-style-type: none"> To outline practical lessons on the co-ordination and coherence between these three actors
Guidelines for Command and Control structure of EU civilian operations in Crisis Management	<p>9919/07 23 May 2007</p>	<p>Guidelines</p>	<p>Planning and Conduct/Command and Control</p>	<ul style="list-style-type: none"> To clarify the command and control structures in civilian ESDP crisis management operations. Issuing orders and organising control procedures to enable the monitoring and evaluation of the outcomes achieved -Defining the reporting and information exchange requirements among all actors involved in the operation both within the established chain of command as well as with other external organisations to the mission

Title	Document no.	Type	Area of application	Aim
				<ul style="list-style-type: none"> Identifying and ensuring the deployment of the necessary Communication and Information Systems (CIS)
Draft Joint Statement on UN-EU Cooperation in Crisis Management	10310/07 5 June 2007	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To further enhance mutual cooperation and coordination through regular senior-level political dialogue between the UN Secretariat and the EU Troika on broader aspects of crisis management and regular exchange of views between senior UN Secretariat officials and the Political and Security Committee of the EU
Lead State Concept	10715/07 12 June 2007	Concept	General Crisis Management Framework	<ul style="list-style-type: none"> To establish the principles of the Lead State approach and setting out the next steps
Health and Medical support Concept for Military EU-led Crisis Management Operations	10901/07 15 June 2007	Concept	Military CSDP	<ul style="list-style-type: none"> To provide a comprehensive concept for the Health and Medical Support in military EU-led CMOs
Standard language for planning documents and legal acts for civilian ESDP operations	11277/07 28 June 2007	Guidelines	Mission Planning	<ul style="list-style-type: none"> Standard language for planning documents and legal acts for civilian ESDP operations
Mainstreaming human rights and Gender into ESDP – Compilation of relevant documents	11359/07 EXT 1 29 June 2007	Related Document	Human Rights & Gender Issues	<ul style="list-style-type: none"> To form a guideline for the planning of civilian and military EU activities to help decision makers in Brussels as well as advisors on human rights, children in armed conflict and gender and other personnel in the CSDP missions. The document includes

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				concrete recommendations to HoMs and Force Commanders
Military Engineering Concept for EU-led Military Crisis Management Operations	11853/07 13 July 2007	Concept	Military CSDP	<ul style="list-style-type: none"> N/A
Implementation of the Joint statement on UN-EU Co-operation in Crisis Management	13609/07 16 October 2007	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To note the ongoing co-operation and possible strengthening of this co-operation To invite the PSC to endorse the suggestions for enhancing EU-UN co-operation
Final Report on the Civilian Headline Goal 2008	14807/07 9 November 2007	Report	Civilian CSDP	<ul style="list-style-type: none"> To provide a succinct, comprehensive overview of the CHG 2008 process and its results
EU Maritime Rapid Response Concept	15294/07 15 November 2007	Concept	Military CSDP	<ul style="list-style-type: none"> N/A
Civilian Headline Goal 2010	14823/07 19 November 2007	Related Document	Civilian CSDP	<ul style="list-style-type: none"> To improve the EU's civilian capability to respond effectively to crisis management tasks
EU Guidelines for the Promotion and Protection of the Rights of the Child	16457/07 10 December 2007	Guidelines	Protection of Civilians/Human Rights	<ul style="list-style-type: none"> To reinforce the action of the EU for the promotion and protection of the rights of the child in its external relations and encourage an overall, strategic approach to these issues. They complement the EU guidelines on children and armed conflict and they are addressed to all those involved in EU external dimension
EU Air Rapid Response Concept	16838/07 21 December 2007	Concept	Military CSDP	<ul style="list-style-type: none"> N/A

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EU Concept for Military Information Operations (not available)	6917/08 25 February 2008	Concept	Military CSDP	<ul style="list-style-type: none"> N/A
Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An update of the Guidelines	8590/08 18 April 2008	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To provide an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights in order to support and strengthen on-going efforts to prevent and eradicate torture and ill-treatment in all parts of the world. These guidelines contain concrete actions to HoMs, the COHOM and other relevant Geographic Working Groups
Draft General review of the Implementation of the Checklist for the Integration of the Protection of Children affected by Armed Conflict into ESDP Operations	9822/08 23 May 2008	Guidelines	Civilian Protection	<ul style="list-style-type: none"> To review the Implementation of the Checklist for the Integration of the Protection of Children affected by Armed Conflict into ESDP Operations. The implementation of the checklist involves different actors involved in CSDP missions/operations, heads and staff of CSDP missions/operations and EUSRs, within their respective mandates, Member States and all other relevant EU bodies
Draft review of recommendations for enhancing cooperation with Non-Governmental Organisations (NGO) and Civil Society Organisations	10114/1/08 REV1 29 May 2008	Concept	General Crisis Management Framework	<ul style="list-style-type: none"> To provide an overview on the current EU cooperation with NGOs and CSOs To set out recommendations for enhancing EU cooperation with NGOs and CSOs

Title	Document no.	Type	Area of application	Aim
<u>(CSO) in the framework of EU civilian crisis management and conflict prevention</u>				
<u>EU Guidelines on Children Affected by Armed Conflict</u>	10019/08 5 June 2008	Guidelines	Civilian Protection	<ul style="list-style-type: none"> To commit the EU to addressing the short, medium and long-term impacts of armed conflict on children
<u>EU Guidelines on the Death Penalty: revised and updated version</u>	10015/08 5 June 2008	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To define the EU objectives and approach towards the abolition of the death of penalty. The document applies to the broad EU external dimension but it contains concrete references to HoMs
<u>EU Concept for Force Generation</u>	10690/08 16 June 2008	Concept	Military CSDP	<ul style="list-style-type: none"> To set out the principles and procedures for the generation of military forces and capabilities for EU-led military operations
<u>EU Concept for Military Planning at the Political Strategic level</u>	10687/08 16 June 2008	Concept	Military CSDP	<ul style="list-style-type: none"> To define EU Military Planning at the Political and Strategic Level.
<u>EU Concept for Reception, Staging, Onward Movement and Integration (RSOM&I) for EU led Military Operations</u>	10971/08 19 June 2008	Concept	Military CSDP	<ul style="list-style-type: none"> To provide a conceptual basis for the planning and execution of RSOI of the EU-led forces in EU-led military operations
<u>EU Concept for Logistic Support for EU-led Military Operations</u>	10963/08 19 June 2008	Concept	Military CSDP	<ul style="list-style-type: none"> To establish the overarching concept for logistic support for the entire spectrum of EU-led military operations
<u>EU Concept for Strategic Movement and</u>	10967/08 19 June 2008	Concept	Military CSDP	<ul style="list-style-type: none"> To provide a conceptual basis for the strategic M&T support for the entire

Title	Document no.	Type	Area of application	Aim
Transportation for EU-led Military Operations				spectrum of possible EU-led military operations
EU Concept for Civil-Military Co-operation(CIMIC) for EU-led Military Operations	11716/1/08 11 July 2008	Concept	Military CSDP	<ul style="list-style-type: none"> To establish the basis and framework for the planning and execution of joint and multinational CIMIC activities
Field security handbook for the protection of personnel, assets, resources and information	13765/08 2 October 2008	Related Document	Mission Support	<ul style="list-style-type: none"> To define the guidelines for the organisation and management of security in civilian deployments
Security Sector Reform - draft document on deployable European expert teams	14576/1/08 REV1 21 October 2008	Concept	Security Sector Reform	<ul style="list-style-type: none"> To establish a pool of experts in the SSR field
Guidelines for identification and implementation of lessons and best practices in civilian ESDP missions	15987/08 19 November 2008	Guidelines	Lessons Learned	<ul style="list-style-type: none"> To improve civilian crisis management in ESDP and to introduce a culture of continuous improvement of practice reflecting the high political ambition of ESDP
Draft guidelines for planning and conducting EU supporting actions	16274/08 24 November 2008	Guidelines	Planning and Conduct	<ul style="list-style-type: none"> To provide generic guiding principles for planning and conduct of EU supporting actions
Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820	15671/1/08 1 December 2008	Concept	Human Rights & Gender Issues	<ul style="list-style-type: none"> 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, the document outlines common definitions and principles, and

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on women, peace and security				includes a series of specific measures to move forward
Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP	15782/3/08 REV3 3 December 2008	Concept	Human Rights & Gender Issues	<ul style="list-style-type: none"> To outline the state of play and the future challenges in the implementation of UNSCR 1325 and UNSCR 1820 in the context of CSDP. The document should be used by all actors involved in planning and conducting CSDP missions and operation
EU guidelines on violence against women and girls and combating all forms of discrimination against them	8 December 2008	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To encourage the implementation of a greater number of specific projects aimed at women and girls financed by, <i>inter alia</i>, the European Instrument for Democracy and Human Rights, but also by any other appropriate financial instrument of the EU and the Member States
Draft Model Agreement on the Status of the European Union Civilian Crisis Management Mission in a Host State (SOMA)	17141/08 15 December 2008	Guidelines	Planning and Conduct	<ul style="list-style-type: none"> To propose language to be used for the drafting of SOMA with host countries of civilian CSDP missions
EU Guidelines on human rights dialogues with third countries	16526/08 19 January 2009	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> -To define the objectives, scope, principle and practical issues of the EU human rights guidelines. The guidelines apply to all actors involved in the EU external dimension. The COHOM plays a crucial role in this regard
Guidelines for allowances for seconded staff	7291/09 10 March 2009	Guidelines	Mission Support	<ul style="list-style-type: none"> To establish a uniform and homogeneous criteria for determining compensations to be granted

Title	Document no.	Type	Area of application	Aim
participating in EU civilian crisis management missions				
Draft Review of Recommendations for Enhancing Co-operation with Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) in the Framework of EU Civilian Crisis Management and Conflict Prevention	10114/1/08 REV 1 17 March 2009	Related Document	Civilian CSDP	<ul style="list-style-type: none"> To review the 'Recommendations for enhancing EU cooperation with NGOs and CSOs'
EU Concept for Military Command and Control	10688/1/08 3 June 2009	Concept	Military CSDP	<ul style="list-style-type: none"> To set out the arrangements for delivering C2, from the Political and Strategic level to those military elements deployed in an EU-led military operation
European Union Guidelines on Human Rights Defenders	16332/2/08 10 June 2009	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To provide practical suggestions for enhancing EU action in relation to this issue in the EU external action
Implementation of UNSCR 1325 and UNSCR 1820 in the context of training for the ESDP missions and operations - recommendations on the way forward	13899/09 30 September 2009	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> Proposals to improve the coherence, quality availability and access of training on gender aspects; to strengthen the links between capacity-building, training and deployment; to improve the awareness of gender mainstreaming as a security element and to ensure operational effectiveness
Security Sector Reform -	14916/09 22 October 2009	Guidelines		<ul style="list-style-type: none"> To provide a practical and flexible tool to conduct analysis, covering all necessary

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Guiding Framework for EU SSR Assessments			Security Sector Reform	<p>aspects of the security sector, SSR sub-sector and the inter-connections between them</p> <ul style="list-style-type: none"> • To provide practical guidance on SSR assessments • To allow more systematic and comprehensive analysis of the SSR environment and thus strengthen its ability to effectively deliver SSR support
Comprehensive concept for ESDP Police Strengthening Missions (Interface with broader Rule of Law)*	15031/09 26 October 2009	Concept	Civilian CSDP/Police	<ul style="list-style-type: none"> • To establish a comprehensive concept for police strengthening activities in the framework of CSDP • To ensure that when a police strengthening mission is being set up, consideration will be given to develop a working interface with the HC justice system • To define the range of activities in which a police strengthening mission may engage to develop a working interface with the RoL sector, in particular the justice system • To propose guidelines, methodology, tools and recommendations for the planning of the tasks/activities of strengthening missions
Civilian Response Teams (CRT)	15371/09 4 November 2009	Concept	Civilian CSDP	<ul style="list-style-type: none"> • To increase the rapid reaction capacity of the EU • To contribute to the adequacy and effectiveness of EU crisis management

Title	Document no.	Type	Area of application	Aim
				<p>response as well as to its coherence with other actors.</p> <ul style="list-style-type: none"> • To carry out assessments and fact-finding missions • To establish a rapid initial operational presence in the field in the mission build-up phase. • To provide, as appropriate, timely reinforcement of existing EU crisis management activities in response to urgent and distinct needs
Overarching principles for the establishment of an Analytical Capability in Civilian ESDP Crisis Management Operations – Mission Analytical Capability (MAC)	15417/1/09 REV 1 6 November 2009	Guidelines	Planning and Conduct	<ul style="list-style-type: none"> • To improve existing ways to provide HoM and mission management with means and capabilities that enable continuous monitoring and analysis of the crisis environment in the pursuit of Mission objectives
Concept on Strengthening EU Mediation and Dialogue Capacities	15779/09 10 November 2009	Concept	General Crisis Management Framework	<ul style="list-style-type: none"> • To Strengthen EU Mediation and Dialogue Capacities
EUMC Interoperability Study – Final Report (partially available to the public)	16741/09 26 November 2009	Related Document	Military CSDP	<ul style="list-style-type: none"> • To assess the interoperability issue in the framework of Headline Goal 2010
Updated European Union Guidelines on promoting compliance with	OJ 2009 C 303/06 15 December 2009	Guidelines	Humanitarian Issues	<ul style="list-style-type: none"> • To set out operational tools for the EU and its institutions and bodies to promote compliance with international humanitarian

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international humanitarian law (IHL)				law (IHL) by third States, and, as appropriate, non-State actors operating in third States
Generic list of equipment for civilian crisis management operations (not available)	5611/10 21 January 2010	Related Document	Civilian CSDP	<ul style="list-style-type: none"> To establish a generic list of equipment necessary for civilian crisis management operations
Indicators for the Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security	11948/10 14 July 2010	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> Proposed indicators for measuring the EU execution of its women, peace and security commitments, as defined in the Comprehensive Approach and the operational paper 'Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP
Draft Guidelines on the Protection of Civilians in CSDP Missions and Operations	15091/10 9 September 2010	Guidelines	Protection of Civilians	<ul style="list-style-type: none"> To revise the 2003 Guidelines on the Protection of Civilians in EU-led Crisis Management Operations To further integrating PoC aspects in CSDP missions and operations and assessing the appropriate and realistic level of engagement of the EU The guidelines are addressed to all stages of CSPDP: advance and operational planning and conduct of CSDP missions and operations

Title	Document no.	Type	Area of application	Aim
EU Framework Nation Concept	16276/10 22 November 2010	Concept	Military CSDP	<ul style="list-style-type: none"> To provide a conceptual basis for the conduct of autonomous EU-led CMOs with recourse to a Framework Nation To identify the particular characteristics and criteria of a Framework Nation, focusing specifically on the planning, Command and Control, multinationality and force generation aspects
Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions	17138/1/10 REV 1 30 November 2010	Related Document	Human Rights & Gender	<ul style="list-style-type: none"> To compile lessons and best practices of mainstreaming human rights and gender into CSDP
Report on the activities of the CSDP missions on celebrating the 10th anniversary of the UNSCR 1325 on Women, Peace and Security	30 November 2010	Related Document	Human Rights & Gender Issues	<ul style="list-style-type: none"> Mission activities, related to the celebration of the 10th anniversary of UNSCR 1325
Package of three draft concepts containing minimum standard training elements on Human Rights, Gender and Child Protection in the context of CSDP (not available)	17209/2010 1 December 2010	Concept	Human Rights & Gender Issues	<ul style="list-style-type: none"> N/A

Title	Document no.	Type	Area of application	Aim
EU concept for CSDP Justice Missions (within the Rule of Law framework)*	18173/10 COR 1 12 January 2011	Concept	Civilian CSDP/Strengthening the Rule of Law	<ul style="list-style-type: none"> To establish a strategic basis for designing, planning and assessing justice activities of CSDP missions
Guidelines for improving Force Generation for civilian ESDP missions (not available)	7221/11 2 March 2011	Guidelines	Capability Support	<ul style="list-style-type: none"> To outline current problems concerning Force Generation
Health and Medical Support (HMS) principles	7733/11 16 March 2011	Related Document	Mission Support	<ul style="list-style-type: none"> To identify principles and policies at the basis of HMS
Security rules for protecting EU classified information	6952/2/11 REV2 31 March 2011	Related Document	Planning and Conduct/Information activities	<ul style="list-style-type: none"> To establish a comprehensive security system for protecting EU classified information (EUCI) covering the Council and its General Secretariat (GSC) and the Member States
Report on the EU-indicators for the Comprehensive approach to the EU Implementation of the UN Security Council UNSCRs 1325 & 1820 on Women, Peace and Security	9990/11 9 May 2011	Related Document	Human Rights & Gender Issues	<ul style="list-style-type: none"> To monitor and follow-up the developments in the EU implementation of the UN Security Council UNSCRs 1325 & 1820 on Women, Peace and Security
Guidelines on the Implementation of Benchmarking in Civilian CSDP Missions	17110/11 17 November 2011	Guidelines	Civilian CSDP/ Mission	<ul style="list-style-type: none"> To provide guidance on the implementation of benchmarking in Civilian CSDP Missions
Actions to enhance EU CSDP support to UN peacekeeping	17497/11 24 November 2011	Related Document	EU-UN Cooperation	<ul style="list-style-type: none"> To present a consolidated list of possible actions in a number of fields in which CSDP could support UN peacekeeping

Title	Document no.	Type	Area of application	Aim
Comprehensive Annual Report on CSDP and CSDP-related training	17438/11 25 November 2011	Related Document	Human Rights & Gender Issues	<ul style="list-style-type: none"> CSDP and CSDP-related training overview in 2010
Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines	6129/1/12 REV 1 20 March 2012	Guidelines	Human Rights & Gender Issues	<ul style="list-style-type: none"> To provide the EU with an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights fora in order to support and strengthen ongoing efforts to prevent and eradicate torture and other ill-treatment in all parts of the world
EU Military Lessons Learned (LL) Concept	12322/1/11 REV1 30 March 2012	Concept	Military CSDP	<ul style="list-style-type: none"> To provide an overarching concept of how EU military lessons, and where appropriate, civilian lessons, can be learned, in order to develop and improve the military contribution to CSDP
Guidelines on the use of "Visiting Experts" in the context of civilian CSDP Missions	8551/12 4 April 2012	Guidelines	Planning and Conduct	<ul style="list-style-type: none"> To provide guidance on the use of Visiting Experts in civilian CSDP, including planning and administration aspects
Guidelines on the use of "Visiting Experts" in the context of civilian CSDP missions – financial aspects	8709/12 17 April 2012	Guidelines	Planning and Conduct	<ul style="list-style-type: none"> To provide guidance on the financial aspects of the use of Visiting Experts in civilian CSDP
Non-Family Missions (not available)	9779/12 10 May 2012	Guidelines	Mission Support	<ul style="list-style-type: none"> To provide clarification on the use of the existing non-family mission practice

Title	Document no.	Type	Area of application	Aim
Plan of Action to enhance EU CSDP support to UN peacekeeping (not available)	11216/12 14 June 2012	Related Document	EU-UN Cooperation	<ul style="list-style-type: none"> To set out modalities for the implementation of the actions to enhance EU CSDP support to UN peacekeeping
European Union Military Concept on Environmental Protection and Energy Efficiency for EU-led military operations	13758/12 14 September 2012	Concept	Military CSDP	<ul style="list-style-type: none"> To set principles and the responsibilities to meet the requirements of EP during EU-led military operations in support of the CSDP
Guidelines to design civilian CSDP mission specific organisational structures (MMS) (not available)	11833/12 26 June 2012	Guidelines	Mission Planning	<ul style="list-style-type: none"> To provide guidance for design of civilian CSDP mission-specific organisational structures
CSDP Civilian Lessons Learned and Best Practices Concept (not available)	11120/12 17 September 2012	Concept	Lessons Learned	<ul style="list-style-type: none"> To set out the management process and to assign roles to the different actors
CSDP Handbook - The Common Security and Defence Policy of the European Union (2nd Edition)	BMLVS R 11-0465, Vienna/Austria 2013	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To provide basic documentation for trainers and trainees of the ESDC and others. To promote a better and comprehensive understanding of the CSDP To offer a brief overview of CFSP/CSDP: the state of affairs, structures and policies
ENTRI Deployment Handbook - A practical guide for civilian experts	2013	Related Document	Training	<ul style="list-style-type: none"> To serve as an introduction to peace operations and crisis management missions, but not strategic or policy guidance

Title	Document no.	Type	Area of application	Aim
working in Crisis Management Missions – In Control				<ul style="list-style-type: none"> To provide field personnel with practical information for daily work
Intelligence Led Policing (ILP) for civilian CSDP missions	2013	Related Document	Planning and Conduct	<ul style="list-style-type: none"> To help civilian CSDP missions to support the implementation of an ILP model in the host country within their mandate To contribute to the standardisation of the ILP approach and to the growth of a common and shared security culture To provide a sound documentation, a methodology and tools for the officers in CSDP missions in the fight against criminal acts
Draft Inventory of CSDP and CSDP related Civilian Conceptual Documents	7634/13 20 March 2013	Guidelines	Planning and Conduct	<ul style="list-style-type: none"> To provide an overview on the applicable policies, concepts, guidelines and SOPs
Reporting guidelines	CivOpsCdr instruction No 03-2013 26 April 2013	Guidelines	Civilian CSDP	<ul style="list-style-type: none"> To provide the CivOpsCdr and the CPCC/EEAS with the necessary information to take action in support of the missions and to provide guidance to HoM's
Suggestions for crisis management procedures for CSDP crisis management operations (CMP)	7660/2/13 REV2 18 June 2013	Guidelines	Civilian and military CSDP	<ul style="list-style-type: none"> To describe the full conceptual steps of the process through which the EU engages in a crisis with its CSDP instruments as part of its overall comprehensive approach
EU Concept for Military Intelligence Structures in EU Crisis Management and	01846/13 15 November 2013	Concept	Military CSDP	<ul style="list-style-type: none"> N/A

Title	Document no.	Type	Area of application	Aim
EU-Led Military Operations/Missions				
Second revised draft EU Concept on CSDP Support to Integrated Border Management	16044/2/13 REV2 10 December 2013	Concept	Civilian CSDP	<ul style="list-style-type: none"> To define principles for CSDP support to IBM and to identify best practice
EU Concept for Contractor Support to EU-led military operations	8628/14 7 April 2014	Concept	Military CSDP	<ul style="list-style-type: none"> To provide guidance on CSO to the Troop Contributing Nations (TCN), to Headquarters (HQs) offered for EU-led military operations and to civilian or state-owned companies and service providers (contractors) potentially offering services in support of an EU-led military operation
EU Exercise Policy (not available)	8909/14 11 April 2014	Related Document	Civilian and military CSDP	<ul style="list-style-type: none"> To provide guidance for the scheduling and implementation of EU exercises under the CFSP
Guidelines for the development of civilian CSDP mission-specific Rules for the Use of Force (RUoF)	ST07209/4/13 14 May 2014	Guidelines	Mission Planning	<ul style="list-style-type: none"> To ensure consistency in the development of mission-specific RUoF by helping delineating the circumstances, conditions, manners and limitations within which the authorisation to use force may apply in the execution of one's duty while serving in a mission To give a clear and informative direction to assist and expedite the production of mission-specific RUoF and relevant mission SOP's and to be used for generic training purposes

Title	Document no.	Type	Area of application	Aim
CSDP Transition Strategies – recent lessons	11934/14 15 July 2014	Related Document	Civilian and Military CSDP	<ul style="list-style-type: none"> To propose improvements in current planning methodology, and provides detail for additional options to facilitate transition
Operational Guidelines for Monitoring, Mentoring and Advising in civilian CSDP missions (MMA)	15272/14 7 November 2014	Guidelines	Civilian CSDP	<ul style="list-style-type: none"> To define MMA best practise as well as operational guidelines for practitioners
Framework Process for Managing CSDP Military Training Requirements	17087/14 18 December 2014	Guidelines	Military CSDP/Training	<ul style="list-style-type: none"> To set the framework for a process of managing the CSDP military training requirements
European Union Concept for EU-led Military Operations and Missions	17107/14 19 December 2014	Concept	Military CSDP	<ul style="list-style-type: none"> To provide an overarching conceptual framework for EU-led Military Operations and Missions
Handbook on CSDP Missions and Operations. The Common Security and Defence Policy of the European Union	BMLVS 15-9999 Vienna/Austria, 2015	Related Document	General Crisis Management Framework	<ul style="list-style-type: none"> To provide basic documentation for trainers and trainees of the ESDC and others To promote a better and comprehensive understanding of the CSDP To offer a brief overview of CFSP/CSDP: the state of affairs, structures and policies
EU Concept for Military Command and Control	02021/7/14 5 January 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To set out the arrangements for delivering command and control, from the Political Strategic level to those military elements conducting an EU-led military operation or mission
EU Military Rapid Response Concept	17036/1/14 REV1 8 January 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To provide the conceptual framework for the preparation and conduct of CSDP joint and single service military

Title	Document no.	Type	Area of application	Aim
				operations/missions requiring a Rapid Response and including special operations, as a part of the EU multidimensional response
Civilian CSDP Best Practice Compilation	EEAS document Ares(2014)4217483 13 January 2015	Guidelines	General Crisis Management Framework	<ul style="list-style-type: none"> To facilitate a compilation of existing civilian CSDP best practice divided in two sections; first, all existing best practice put into a simplified structure; second, a description of the main elements contained in each concept or guidelines
Civilian CSDP Best Practice Compilation	5705/15 28 January 2015	Guidelines	Mission Planning	<ul style="list-style-type: none"> To serve primarily those that are taking part in the planning, setting up, support and conduct of civilian CSDP missions, as well as those performing functions within the missions by allowing easy understanding and access to existing doctrine
EU Concept for Military Planning at the Political Strategic Level	6432/15 23 February 2015	Concept	Military CSDP/Mission planning	<ul style="list-style-type: none"> To define EU Military Planning at the Political Strategic Level
Annual 2014 CSDP Lessons Report	6777/15 3 March 2015	Related Document	General Crisis Management	<ul style="list-style-type: none"> To review the implementation of the key lessons of 2013 To identify five additional key lessons for 2014
Revised Civilian CSDP Best Practice Compilation for Planners and Mission staffs*	5705/1/15 REV 1 5 March 2015	Related Document	General Crisis Management	<ul style="list-style-type: none"> To provide a follow-up to the CPCC lessons report of 2013 and related on how to facilitate the understanding of and access to the variety of existing conceptual work for civilian CSDP missions

Title	Document no.	Type	Area of application	Aim
Military Advice on EEAS Food For Thought Paper (FFT) on Article 44 TEU	7032/15 9 March 2015	Guidelines	General Crisis Management	<ul style="list-style-type: none"> To provide military advice on the EEAS Food For Thought (FFT) paper on Article 44 TEU and to comment on military aspects and possible military implications
EU Military Concept Development Implementation Programme 2015-2016	7422/15 20 March 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To outline the conceptual work for the subsequent two years in line with the strategic priorities of the EUMC, the spirit of the Lisbon Treaty and the EU's comprehensive approach
Strengthening the UN-EU Strategic Partnership on Peacekeeping and Crisis Management: Priorities 2015-2018	7632/15 27 March 2015	Policy	General Crisis Management Framework	<ul style="list-style-type: none"> To establish a number of strategic priorities on which the UN and the EU will work to strengthen their cooperation in the coming years
Revised draft list of generic civilian CSDP tasks*	7656/2/15 REV2 8 May 2015	Guidelines	Civilian CSDP	<ul style="list-style-type: none"> To contribute to a common understanding of generic tasks in civilian CSDP To help civilian CSDP structures and Member States to identify capability requirements related to planning, conduct and overall support of civilian CSDP missions To facilitate the work on civilian-military synergies to maximize the efficient use of resources
Food-for-thought paper "Countering Hybrid Threats" (not available)	8887/15 13 May 2015	Related Document	General Crisis Management	<ul style="list-style-type: none"> To outline a possible way ahead for the EU to better support MS, and itself, in countering hybrid threats, in accordance with the direction given by Defence

Title	Document no.	Type	Area of application	Aim
				Ministers at their meeting in Riga in February 2015
EU Concept for the Use of Force in EU-led Military Operations	17168/2/09 REV 2 29 May 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To define the framework and principles for the use of force by military units and individuals in EU-led military operations. It also aims to serve as a reference document for defining principles of use of force, including ROE, for any EU-led military contribution to other military operations
EU Military Lessons Learnt at the Political Strategic Level Concept	10692/15 8 July 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To provide a new overarching Lessons Learnt Concept in order to develop and improve the military contribution to CSDP
Guidelines for EU Military Training Discipline Leader	11192/15 23 July 2015	Guidelines	Military CSDP/Training	<ul style="list-style-type: none"> To define the "EU Military Training Discipline Leader", its role, responsibilities and relationship with EU relevant stakeholders
EU Concept for Force Generation	14000/15 11 November 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To set out the principles and procedures for the generation of military assets/forces/capabilities for EU-led military operations/missions
EU Framework Nation Concept	15494/15 18 December 2015	Concept	Military CSDP	<ul style="list-style-type: none"> To set out the conceptual basis for the planning, launch and conduct of autonomous EU-led military operation/mission where there is a Framework Nation
Avoiding and Minimizing Collateral Damage in EU-led Military Operations	5785/16 3 February 2016	Concept	Military CSDP	<ul style="list-style-type: none"> To define the conceptual framework concerning avoiding and minimizing

Title	Document no.	Type	Area of application	Aim
Concept				Collateral Damage in EU-led military operations where the LOAC is applicable
EUMS Clearing House Mechanism Concept	5966/16 9 February 2016	Concept	Military CSDP	<ul style="list-style-type: none"> To provide the conceptual framework and guidance for the establishment and implementation of a Clearing House Mechanism (CHM) to coordinate support to EU External Action in support of a Partner State or Organisation
EUMC Glossary of Acronyms and Definitions Revision 2015	6186/16 16 February 2016	Related Document	Military CSDP	<ul style="list-style-type: none"> To provide a revised glossary and definitions
Final Report Training Requirements Analysis - Operations Planning for CSDP	6546/16 26 February 2016	Related Document	Training	<ul style="list-style-type: none"> To present the conclusions of the Training Requirements Analysis for the training discipline "Operations Planning for CSDP" and to propose the adoption by the MS of several corrective measures

* Documents that contain explicit reference to human rights, gender and/IHL.

Annex V - Overview of ratifications of core international human rights instruments by third states contributing to ongoing CSDP missions⁸⁰⁵

	ICCPR	ICCPR - OP1	ICCPR – OP2	ICESR	ICESCR - OP	ICERD	CEDAW	CEDAW - OP	CRC	CRC-OP-AC	CRC-OP-SC	CRC-OP-IC	CAT	CAT - OP	CPED	ICMW	CRPD
Albania	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X
Australia	X	X	X	X		X	X	X	X	X	X		X				X
Canada	X	X	X	X		X	X	X	X	X	X		X				X
Chile	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X
FYROM	X	X	X	X		X	X	X	X	X	X		X				X
Georgia	X	X	X	X		X	X	X	X	X	X		X	X			X
Montenegro	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Moldova	X	X	X	X		X	X	X	X	X	X		X	X		X	X
New Zealand	X	X	X	X		X	X	X	X	X	X		X	X			X
Norway	X	X	X	X		X	X	X	X	X	X		X	X			X
Serbia	X	X	X	X		X	X	X	X	X	X		X	X	X		X
Switzerland	X		X	X		X	X	X	X	X	X		X	X			X

⁸⁰⁵ Countries are invited to participate in EU crisis management operations through the establishment of a Framework Participation Agreement (FPA). All countries except Australia have signed and FPA with the EU.

Turkey	X	X	X	X		X	X	X	X	X	X		X	X		X	X
Ukraine	X	X	X	X		X	X	X	X	X	X		X	X	X		X
United States	X					X					X		X				