

# Human rights challenges in EU civilian crisis management: the cases of EUPOL and EUJUST LEX

Wanda Troszczyńska-van Genderen



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### *Note*

On 16 June 2010, EUJUST LEX's mandate was extended for another two years (until June 2012). During this period, the mission will progressively shift its activities and relevant structures to Iraq, keeping its focus on specialised judicial, police and penitentiary training programmes. The out-of-country training activities are to be continued throughout this period. This *Occasional Paper* was finalised before this decision was taken and thus reflects the operational modalities that were in place prior to this period.

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# Summary

Over the years, human rights have become an area of programmatic focus in the crisis management operations conducted by the EU. Nevertheless, the geopolitical reality after the launch of the so-called ‘war on terror’ witnessed the emergence of new practical impediments to human rights implementation in civilian crisis response operations. The militarisation of the humanitarian space and blurred boundaries between military and civilian tasks resulted in the increased vulnerability of civilians working in ground operations. Simultaneously, the scale of human rights violations, coupled with security threats to civilians due to both attacks by insurgents and interventions carried out by international military personnel, created operational challenges going well beyond what previous Common Security and Defence Policy (CSDP) civilian crisis management operations had to deal with.

Afghanistan and Iraq are currently considered among the two most challenging theatres for civilian crisis management operations. In this respect, the ongoing CSDP crisis management missions in these two countries – the European Union Police Mission in Afghanistan (EUPOL) and the European Union Integrated Rule of Law Mission to Iraq (EUJUST LEX) – constitute a yardstick for examining operational models chosen for high-risk CSDP civilian crisis management operations, and for assessing the degree to which these models are able to operationally integrate human rights dimensions.

The analysis presented in this *Occasional Paper* focuses on the main internal and external aspects of the missions’ human rights activities. Among the key internal human rights mission components, mission documents, staffing, available expertise, internal training, individual and institutional accountability mechanisms and overall mission transparency will be examined.

The central question to be answered is whether the mission models adopted by EUPOL and EUJUST LEX can be considered as compliant with international best practices with regard to mainstreaming, protecting and promoting human rights in the context of civilian crisis response operations.<sup>1</sup> Even though this paper does not assess per se the missions' overall effectiveness, it evaluates their operational design, and the implication the chosen mission model has for the internal and external aspects of the missions' human rights activities.<sup>2</sup>

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1. For the purpose of the following analysis, gender will be considered as a separate operational dimension for missions and is not included in the scope of the current research. In the context of CSDP crisis management operations, responsibilities for implementing human rights and gender objectives frequently fall on the same structures, even though gender mainstreaming has its own separate methodology and a corpus of key reference documents. While gender issues undoubtedly belong to a wider human rights category, their operationalisation, particularly in the context of inner-mission dimensions, requires a distinct legal, conceptual and practical analysis, which merits separate research. For a recent authoritative account of gender mainstreaming in current CSDP practice, see Johanna Valenius, 'Gender Mainstreaming in ESDP Missions', *Chaillot Paper* no. 101 (Paris: EU Institute for Security Studies, May 2007).

2. The topic of missions' general effectiveness and their cooperation with other international actors on the ground has recently been considered in a number of reports and analyses written on this issue, including: Eva Gross, 'Security Sector Reform in Afghanistan: the EU's Contribution', *Occasional Paper* no. 78 (Paris: EU Institute for Security Studies, April 2009); Daniel Korski and Richard Gowan, 'The EU, So Far' in 'What Can Europe Do in Iraq? Recommendations for a New US-European Collaboration', vol. 11, Heinrich Böll Foundation, 2009; and Luis Peral, 'EUPOL Afghanistan', in Giovanni Grevi, Damien Helly and Daniel Keohan.e (eds.), *European Security and Defence Policy: The First 10 Years (1999-2009)* (Paris: EU Institute for Security Studies, 2009).



# Introduction: legal, conceptual and practical impediments to a human rights focus in CSDP operations

Human rights have been widely invoked to explain and justify international interventionism, including in the context of CSDP operations.<sup>3</sup> In both crisis management and post-conflict reconstruction, human rights protection and promotion has been a crucial component of multilateral international peacekeeping and peacebuilding mandates. While the centrality of human rights has been almost universally emphasised in such contexts, their practical implementation in crisis management has been hindered by significant legal, conceptual and practical obstacles. Respect for human rights constitutes a general EU legal principle and applies both to its internal and external actions and policies.<sup>4</sup>

According to the extra-territorial principle, international human rights treaties imply that states have an unequivocal obligation to engage in international crisis management operations. This has been confirmed in the international jurisprudence of the International Court of Justice (ICJ) as well as of the European Court of Human Rights (ECtHR).<sup>5</sup> The two ICJ decisions related to the applicability of human rights treaties extra-territorially are the so-called 'Israeli Wall' advisory opinion as well as the 2005 *Case Concerning Armed Activities on the Territory of the Congo*. The principal rulings constituting the relevant ECtHR jurisprudence are *Loizidou vs. Turkey* (1996), *Cyprus vs. Turkey* (2001), *Djavit vs. Turkey* (2003), and *Ban-covic vs. Belgium and 16 Other Contracting States* (2001). All but the last ruling of the Court were in favour of the complainant.

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3. One of the changes in EU nomenclature introduced by the Lisbon Treaty was the re-naming of the European Security and Defence Policy (ESDP) as the Common Security and Defence Policy (CSDP), which is seen as a symbolic upgrade, emphasising its importance within the EU institutional setup and the need for the progressive development of this field.

4. According to Article 3.5 of the Treaty on European Union, the EU is legally bound to 'uphold, protect and respect' human rights.

5. Siobhán Wills, 'The Responsibility to Protect by Peace Support Forces under International Human Rights Law,' *International Peacekeeping*, vol. 13, no. 4, p. 477, December 2006.

The UN Human Rights Committee in 2004 additionally confirmed the applicability of human rights treaties in the context of peacekeeping.<sup>6</sup> This body of legal interpretations implies both negative ('do no harm'<sup>7</sup>) and positive ('responsibility to protect'<sup>8</sup>) obligations for international peacekeeping forces. Also, progressive convergence between humanitarian and human rights law further contributes to the effective protection of human rights in a crisis management context.<sup>9</sup> While human rights protection regimes have traditionally been elaborated in separate volumes of reference documents, the International Committee of the Red Cross has advocated for them to be treated holistically. This approach has since been widely adopted by various international human rights organisations and human rights NGOs.

Nevertheless, the recent rulings of ECtHR on the inadmissibility of the two cases related to the human rights accountability of European peacekeeping forces in Kosovo (2007 – *Behrami and Behrami vs. France and Saramati vs. France, Germany and Norway*) demonstrate both lack of legal clarity, as well as a legal lacuna prevailing in the field of accountability in peacekeeping, suggesting the limits of the jurisdiction of international judicial bodies when it comes to international crisis response operations.<sup>10</sup>

On a conceptual level, the argument commonly advanced against the need for a particular human rights focus in crisis management is that crisis management operations are protecting rights 'by default' and thus do not need more specific operational human rights provisions.<sup>11</sup> Nevertheless, numerous empirical examples have demonstrated time and time again how international operations have failed due to a lack of due attention to human rights issues, which often constitute underlying root causes of the

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6. UN Human Rights Committee, General Comment no. 31, CCPR/C/2/1/Rev.1/Add.13, 2004.

7. The 'do no harm' principle in the context of international crisis management missions can be understood in terms of the missions' accountability arrangements *vis-à-vis* host populations and is discussed in later sections of this paper.

8. The concept, which originated in the UNDP 1994 Human Development Report, has been since deployed as an analytical framework for both general theoretical and case-specific analyses and provides a point of departure from the state-centric security discourses.

9. Elizabeth Wilmhurst, *Perspectives on the ICRC Study on Customary International Humanitarian Law* (London: Cambridge University Press, 2007).

10. Marko Milanovic and Tatjana Papić, 'As Bad as It Gets: The European Court of Human Rights' *Behrami and Saramati* Decision and General International Law,' *International and Comparative Law Quarterly*, vol. 58, 2009.

11. This assertion was formulated by the author based on interviews with EU officials and other experts interviewed in the context of this study, as well as on the basis of personal observations while working as a field-based human rights officer in post-conflict environments.

conflict being managed. Whether this neglect of a human rights focus has manifested itself as a failure to establish accountability for wartime human rights violations or to prevent abuses by newly-established state institutions (or even on occasions international peacekeepers themselves), it has inevitably influenced the conduct and legacies of international crisis management efforts.

At the same time, it has to be acknowledged that in the context of international operations conducted in post-conflict environments, there has been much debate about the extent to which human rights can be actively and effectively promoted. This has been particularly pronounced in the so-called ‘peace vs. justice’ debate, in which some have advocated a practical compromise between the ‘maximalist’ approach based on comprehensive war crime prosecutions, and the ‘minimalist’ approach advocating non-judicial measures, such as truth commissions and reconciliation platforms, or various degrees of compromises (i.e. informal plea-bargaining resulting in more lenient sentencing) and amnesties.<sup>12</sup>

The problem essentially is that there still appears to be no universal agreement on to what extent human rights should be promoted within CSDP operations, and on how to handle human rights objectives within larger political and programmatic mission agendas. At present, CSDP operations are carried out in theatres where international human rights standards do not exactly correspond with applicable laws, let alone locally accepted practice. Areas of human rights whose promotion tends to encounter a local backlash range from women’s rights to the application of the death penalty.<sup>13</sup> In such cases, EU human rights promotion activities come up against a certain degree of local resistance and objections that they lack knowledge of local realities, imposing ‘Western values’ or not having enough respect for local religion, culture and traditions.

With regard to the practical implementation of human rights mandates in crisis management operations, it is usually up to the mission staff members on the ground to figure out the best practical way to make sure

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12. Hurst Hannum, ‘Peace versus Justice: Creating Rights as well as Order out of Chaos’, *International Peacekeeping*, vol. 13, no. 4, December 2006, pp. 582-95; Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice* (Cambridge: Cambridge University Press, 2009).

13. It is worth mentioning that the EU position on the death penalty goes further than the international norm. The EU Member States cannot practise it internally, and externally the guidelines on the death penalty stipulate that the EU needs to actively promote its prohibitionist stand in the framework of CFSP/CSDP.

that human rights dimensions are included in all mission components. The degree to which they manage to achieve this goal depends, *inter alia*, on the following factors: whether human rights are included in a mission's mandate; whether key mission documents include concrete human rights objectives; available staffing and expertise; the overall level of political support among the mission's senior management for human rights agendas; and the level of cooperation of local interlocutors.<sup>14</sup>

As CSDP missions do not operate in a political vacuum, the degree to which the EU pursues its human rights objectives through the political tools available in its external action *repertoire*<sup>15</sup> (general or human rights-specific political dialogues, diplomatic instruments such as declarations and *démarches*, etc.), as well as the level of financial assistance (provided through EU funding instruments such as the European Instrument for Democracy and Human Rights, the Instrument for Stability, relevant parts of the Development Cooperation Instrument, etc.) has serious implications for the strength of the human rights dimension in CSDP operations.

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14. Katarina Mansson, 'Integration of Human Rights in Peace Operations: Is There an Ideal Model?', *International Peacekeeping*, vol. 13, no. 4, December 2006, pp. 547-63.

15. The European Commission's DG RELEX website provides an overview on the key instruments of its human rights political and diplomatic 'toolbox'. See: <http://ec.europa.eu>.

# 1. CSDP human rights ‘machinery’: key actors, documents and mechanisms

The following section presents a succinct overview of how human rights have been politically and practically integrated into CSDP operations, and describes how human rights dimensions are integrated during the mission planning process. As part of this overview, it will present the key political, advisory and technical EU bodies involved in mission planning and conduct.<sup>16</sup>

## The UN origins of EU human rights methodology in crisis management

The EU human rights approach to crisis management operations has been strongly influenced by the lessons learned from previous UN missions in the field. Practical methodology of human rights promotion in the context of CSDP operations is based on the United Nations peacekeeping human rights mainstreaming<sup>17</sup> practice. The UN Secretary-General Kofi Annan in his 1997 report to the UN General Assembly requested that human rights dimensions be enhanced and integrated into a range of the organisation’s activities.<sup>18</sup>

The two principal UN instruments relevant to the integration of human rights in crisis management operations are the UN Charter and the Office of the High Commissioner for Human Rights (OHCHR). According to

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16. This *Occasional Paper* is based on research carried out by the author during the months of February and March 2010. The author interviewed in person or over the phone a total of 31 practitioners, including the EU officials based in the missions and in Brussels (representing all EU institutions), as well as representatives of UNAMA/UNAMI, think tanks, academia and human rights NGOs. The secondary source research was based on the declassified mission documents, websites of the EU institutions (European Council, Commission and Parliament), the UN (DPKO, DPA, UNAMA, UNAMI, UNOPS, UNDP and OHCHR), EUPOL’s own website, as well as specialised literature, academic articles, think-tank reports and NGO publications.

17. The UN most commonly used definition of human rights-based approach, or human rights mainstreaming (‘operational integration of human rights standards, principles and deliverables’), is offered in the OHCHR-developed ‘Frequently Asked Questions on Human Rights-Based Approaches,’ available online at: <http://www.ohchr.org>.

18. ‘Report of the Secretary-General on Renewing the United Nations: A Programme for Reform,’ UN doc. A/51/950, 14 July 1997.

the UN Charter, one of the three purposes of the UN is to ‘promote and encourage respect for human rights and for fundamental freedoms for all without distinction of any kind.’<sup>19</sup> While the OHCHR at its inception did not immediately receive a mandate to address human rights in the peacekeeping context, this gap was addressed during the tenure of Secretary-General Annan. The UN report ‘In Larger Freedom’ (2005) not only generally acknowledged the nexus between security, development and human rights, but also mandated the OHCHR to play an active role in the Security Council deliberations to insert human rights provisions directly into resolutions whenever needed.

Last but not least, with the progressive development of the concept of ‘integrated missions’ the status of human rights was further strengthened, with UN missions being mandated both to protect and actively promote human rights in all their operations.<sup>20</sup> The concept of integrated missions in the UN context grew out of an acknowledgement that many interventions of the 1990s failed due to the fact that various UN actors have been acting separately. Since then, interoperability of crisis response operations has implied better coordination of various mission ‘pillars’, which has helped to catalyse better integration of human rights ‘dimensions’ into the ‘mainstream’ mission operations. Over the years, comprehensive methodology has been put in place to systematically promote human rights dimensions in all areas of peacekeeping, including security sector reform (SSR), development and humanitarian actions.

In order to systematically assess impact and develop a human rights ‘toolbox’ to be used across peacekeeping missions, best practices and lessons-learned were compiled in various human rights handbooks, manuals and general operational guidelines. These knowledge management efforts contributed to institutional lessons learned at the UN and served as a blueprint for other organisations’ policies and implementation activities.

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19. Quote from the UN Charter (paragraph 1[3]) in Katharina Mansson, op. cit. in note 15, p. 549.

20. The two key UN documents in this context are the 2005 ‘Report on Integrated Missions’ and 2006 ‘Note of Guidance on Integrated Missions,’ both produced by the UN Department of Peacekeeping Operations (DPKO). Source: Kathleen M. Jennings and Anja T. Kaspersen, ‘Introduction: Integration Revisited,’ *International Peacekeeping*, vol. 15, no. 4, p. 445.

## Political integration of human rights into CSDP

Human rights were first acknowledged and then practically integrated within CSDP through political declarations, which later had to be translated into concrete actions. In its 2005 Annual Report on Human Rights, the Council pointed to the need to ensure human rights policy coherence in this field.<sup>21</sup> Since then, CSDP documents have increasingly contrained allusions to human rights, especially during the EU presidencies of Member States prioritising human rights as an important goal in the EU's external action.<sup>22</sup>

The development of the EU guidelines<sup>23</sup> on the death penalty (1998), torture and other cruel, inhuman or degrading treatment or punishment (2001), human rights dialogues (2001), children and armed conflict (2003), human rights defenders (2004), international humanitarian law (2005) and the promotion and protection of the rights of the child (2007) brought further progress for EU human rights policy coherence, with the guidelines becoming one of the key human rights tools the EU currently has at its disposal. These guidelines were put together to delineate EU human rights standards, which often reach a higher threshold than international standards (particularly where the death penalty is concerned) and mandate EU actors to actively promote them in the context of their external action.

This incorporation of human rights language into political texts and legislation has had concrete implications for the key mission documents, such as the Concept of Operations (CONOPS) and Operation Plan (OP-LAN). Once these two began to mirror concrete human rights priorities, a need for systematising various aspects of the CSDP human rights tools began to emerge.

One of the most significant efforts to date to assemble various CSDP human rights-related documents was the 2007 publication of the 'Mainstreaming Human Rights and Gender into European Security and De-

21. Council of the European Union, 'EU Annual Report on Human Rights – 2005,' 3 October 2005. Available online at: <http://www.consilium.europa.eu>.

22. Tiina Pajuste, 'Mainstreaming Human Rights in the Context of the European Security and Defence Policy', Erik Castren Institute Research Report no. 23, 2008, p. 34.

23. The EU's Human Rights Guidelines can be consulted on the Council of the European Union's website. See: <http://www.consilium.europa.eu>.

fence Policy' compilation, which contained key human rights and gender reference documents, including human rights guidelines, declassified excerpts from internal mission documents, such as planning and operational guidelines, lessons-learned documents, standards of behaviour, as well as examples of specific human rights expert job descriptions.<sup>24</sup>

## **Human rights in the civilian mission planning process – key actors and their roles**

The successful insertion of human rights as either a direct mission focus area or as a dimension to be embedded into a specific component of missions' operations is dependent upon the degree of political will of the key EU decision-makers as much as on the efforts of human rights officials within the EU institutions involved.<sup>25</sup> As EUPOL and EUJUST LEX are civilian crisis management operations, the following section relates only to the civilian mission planning procedures, taking into special consideration avenues available to insert human rights angles in the mission planning and conduct phases.

The decision to launch a civilian CSDP mission can be taken following a request from one of the EU entities (including the High Representative of the Union for Foreign Affairs and Security Policy, and the Presidency) or any of the EU Member States. It is subject to the formal approval of the highest EU decision-making bodies, notably the Council of the European Union, through the Committee of Permanent Representatives (COREPER).

The Political and Security Committee (PSC) is in charge of the political oversight of mission planning and implementation processes. The Political and Security Committee is composed of the Member States' representatives at an ambassadorial level and constitutes the key structure in charge of external policy development and implementation. It is mandated to prepare and coordinate CSDP missions, and is assisted in this task by various parts of the Council Secretariat. With the entry into force of the Lisbon Treaty, it operates under the overall responsibility of the High

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24. Council of the European Union, 'Mainstreaming Human Rights and Gender into European Security and Defence Policy – Compilation of relevant documents', Luxembourg, 2008.

25. Interview with a Council Secretariat official, Brussels, 22 February 2010.



Representative of the Union for Foreign Affairs and Security Policy and of the Council. In short, the planning process can be understood in terms of a series of consultations between the PSC and various bodies within the Council mandated to supply it with their expertise.

Under the political direction of the PSC, the Civilian Planning and Conduct Capability (CPCC) is responsible for operational planning and conduct of civilian CSDP missions. The Committee for Civilian Aspects of Crisis Management (CIVCOM)<sup>26</sup>, the Crisis Management and Planning Directorate (CMPD)<sup>27</sup>, and various other bodies (including the policy, geographic and thematic Units in the Council Secretariat) directly feed into the planning and subsequent mission conduct stages.

In terms of inserting human rights dimensions into both planning and operational phases, it can happen on any of the above-mentioned levels. Nevertheless, in practice, it is the Human Rights Unit in the Council Secretariat<sup>28</sup> which is mandated to ensure that human rights dimensions are included within all missions being planned and conducted. It does this both formally (when solicited for comments on key mission documents, which has thus far not been a systematic practice) or informally (through direct interactions with the relevant Council Secretariat officials or mission staff).<sup>29</sup> The degree to which it manages to accomplish this notably depends upon the degree of the Human Rights Unit's persistence as much as upon the level of receptiveness of their interlocutors and their access to relevant bodies and persons (through reporting, advice etc.)

The Council Working Party on Human Rights (COHOM) is mainly in charge of formulating broad policy guidelines for human-rights related issues, but to date has not been too deeply involved in detailed planning for the human rights aspects of specific missions. Nevertheless, COHOM delegates have on occasion taken the initiative to liaise with their colleagues in other organs (mainly the PSC) to bring human rights

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26. CIVCOM is an advisory body within the Council and deals with civilian aspects of crisis management and reports directly to the PSC.

27. CMPD is a Council directorate tasked with coordinating mission planning and conduct to bring more coherence to the CSDP operations.

28. The Human Rights Unit is headed by the former Personal Representative of the EU High Representative for CFSP, Riina Kionka.

29. E-mail exchange with a Council Secretariat official, 3 March 2010.

and gender elements to the attention of mission planners in Brussels and in the field.

The Commission is involved in the missions' planning, contributing to the formulation of key documents, including strategic plans and options. During a mission's early planning phases, the Commission customarily outlines how the mission can be supported by various financial 'flanking measures' the EU has at its disposal.

After key mission-specific documents (CONOPS and OPLAN) are developed and approved, a mission can be launched. A selected Head of Mission (HoM) takes over from then on and assumes responsibility for practical implementation of the mandate, becoming the primary agent responsible for general mission oversight, management and mandate implementation.

## 2. EUJUST LEX: pros and cons of an out-of-country mission model

The acrimonious split within the EU over the war in Iraq, including its consequences for the European Security and Defence Policy (ESDP), as it was then known, has been analysed elsewhere.<sup>30</sup> Rebuilding the judicial system after the ‘assisted collapse’ of Saddam’s regime proved to be an overwhelming task for both new Iraqi authorities and the international community in Iraq. An unprecedented level of security threats effectively undermined the effectiveness of the reconstruction efforts. These factors, combined with years of malpractice and power abuse, made any attempts to create democratic, accountable and human rights-abiding institutions a daunting task.<sup>31</sup>

### EU human rights ‘flanking measures’ in Iraq

The EU civilian in-country presence in Iraq has been extremely limited, with the EU Delegation staffed by a handful of officials and a few EUJUST LEX personnel in Baghdad who constitute the main EU actors on the ground. Because of security restrictions, the visits of senior EU officials to the country have been rare,<sup>32</sup> making the EU a political actor that is largely invisible in Iraq.

Nevertheless, EU financial support for Iraq remains significant,<sup>33</sup> with the key EU programmes funding projects and initiatives to support human rights and democratisation being the Development Cooperation Instrument (DCI),<sup>34</sup> and the European Instrument for Democracy and Human

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30. Anand Menon, ‘From Crisis to Catharsis: ESDP after Iraq’, *International Affairs*, vol. 4, 2004, pp. 631-48.

31. Reports by Amnesty International, Human Rights Watch, International Crisis Group, the UN Assistance Mission in Iraq (UNAMI) and others provide a wealth of information on current conditions in the country and document human rights violations committed during Saddam’s regime as well as more recently.

32. Interview with Mr. Struan Stevenson, MEP, Head of the Iraq Delegation in the European Parliament, Brussels, 25 February 2010.

33. €933.1 million was provided for reconstruction and humanitarian assistance during the period 2003-2009. The assistance has been mainly implemented through the UN, within the framework of the Iraq Compact agreement between the Iraqi authorities and international donors launched in May 2007. Source: European Commission, DG RELEX website, Iraq country page. See: <http://ec.europa.eu>.

34. The DCI instrument foresees support for human rights programmes and actions of governmental institutions as a cross-cutting priority area for 2009-2010, with a total of €65.8 million being committed for a two-year period. Source: European Commission, DG RELEX, ‘Capacity Building Programme for Iraq 2009-2010’, July 2009.

Rights (EIDHR).<sup>35</sup> These two instruments fund, *inter alia*, capacity-building activities, implementation of concrete projects, technical assistance to national human rights institutions, civil society and electoral assistance.<sup>36</sup> The Instrument for Stability (IFS) has been used in the Iraq context to a much lesser extent.<sup>37</sup> In general, EU assistance to Iraq remains heavily fragmented, with the EU having a very limited capacity to monitor the progress and impact of the projects it funds, resulting in diminished aid effectiveness.

On a political level, there is currently no specific EU-Iraq human rights dialogue. Therefore, human rights are part of a larger EU-Iraq political dialogue. The EU uses its usual diplomatic *repertoire* to convey specific human rights concerns, currently encompassing topics ranging from the continued use of the death penalty, impediments to freedom of speech, ill-treatment and torture of inmates in detention, as well as attacks against minority ethnic and religious groups. The EU Member States actively participated in the country's February 2010 UN Universal Periodic Review (UPR), which in addition to being the main international mechanism allowing for other states and non-governmental actors to scrutinise a country's human rights record, also serves as one of the key platforms for highlighting the human rights priorities the EU should be supporting in Iraq.<sup>38</sup>

## EUJUST LEX at a glance

In order to bring an end to a bitter period of EU disunity over Iraq and contribute to an extensive reform of the justice and rule-of-law sectors, the EU (prompted by the Iraqi authorities) started to consider deploying an EU civilian crisis management mission to the country in early 2004. In March 2005, after much in-house negotiation and the official invitation of the Prime Minister Ibrahim al-Jaafari, the Council Joint Action announced the decision to establish EUJUST LEX – a new civilian crisis

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35. For the period 2009-2010, the total of €65.8 million was earmarked for activities ranging from support for the political and electoral process, technical assistance to the Independent High Commission for Human Rights, human rights legal education in the university law faculties and fostering a culture of civil society. Source: European Commission, DG RELEX, 'Support to the Rule of Law and Justice in Iraq' (internal note, undated).

36. The Commission has supported the electoral process in Iraq with a total amount of €63.9 million since 2004. The key aspects the project covered were the technical assistance and capacity building to the Independent Election Commission of Iraq (IECI). Source: European Commission, DG RELEX, 'EC Support to the Political Process in Iraq' (internal note, undated).

37. The IFS has not yet been frequently used in the Iraq context, with isolated initiatives (such as the project supporting female refugees in neighbouring countries) being financed in 2008.

38. The full Iraq UPR documentation can be accessed at: <http://www.ohchr.org>.

management operation in Iraq tasked to train high and mid-level officials in senior management and criminal investigation.<sup>39</sup>

The mission was mandated to focus on organising training programmes for three target groups (judiciary, police and penitentiary officials) designed to provide them with training which would ‘strengthen the rule of law and promote a culture of respect for human rights in Iraq.’<sup>40</sup> The mission’s mandate, originally established for one year, has been subsequently renewed four times and currently runs until June 2012. The mission has been headed by two consecutive Heads of Missions thus far<sup>41</sup> and is expected to have cost over €60 million by the end of June 2010.

Because of heavy security restrictions, the majority of the 47 EUJUST LEX staff members (out of the total of 53 authorised staff members) are based in Brussels, while only 8 are in Baghdad serving as an interface between the mission in Brussels and the Iraqi interlocutors. The Baghdad-based EUJUST LEX staff members are also responsible for the practical arrangements related to obtaining visas and making travel arrangements for the training participants. This largely logistical support role played by a small and capable team on the ground demonstrates a clear downside of the out-of-country location of the mission, resulting in staff’s expertise being under-utilised in the current setting.

An additional argument for boosting EUJUST LEX’s presence and activities on the ground is that it would contribute to the ‘civilianisation’ of the heavily militarised international presence in Iraq, and help to build local confidence, re-establish trust, and promote ‘soft’ aspects of crisis assistance, including human rights, good governance, democratisation, and humanitarian assistance.

## Internal mission human rights dimensions

The mission currently employs one human rights expert, who reports being well-integrated into the three other mission components, and fully

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39. Council Joint Action 2005/190/CFSP, 7 March 2005 on the European Union Rule of Law Mission for Iraq (EUJUST LEX), *Official Journal* L 62/37, 11 March 2005.

40. EUJUST LEX Mission Factsheet, January 2010. Available online at: <http://eur-lex.europa.eu>.

41. Francisco Diaz Alcantud, a Colonel in the Spanish Guardia Civil, took over the function of HoM from Stephen White, a British national who previously served as the Director of Law and Order and Senior Police Advisor in the Coalition Provisional Authority in Iraq, in January 2010.

participates in the development of the training curriculum as well as overseeing human rights aspects of their implementation.<sup>42</sup> It appears that the expert's role is quite significant within the mission team, with her colleagues referring to the expert as 'the fourth [mission] component'.<sup>43</sup> Additionally, quite a few of the current mission's staff members possess comparable levels of human rights expertise, especially in the context of the missions' three fields of intervention (i.e. the police, judiciary and penitentiary services).

The mission also includes general training on human rights during the new staff induction course. Human rights' training is reportedly provided 'even to the support staff members in Baghdad'.<sup>44</sup>

In terms of the overall mission's external information transparency, EUJUST LEX provides only some general information to the outside audiences, both in Iraq and in Europe. In terms of public access to information on the mission, the Council website features some general information on the mission's mandate, structure and activities. Nevertheless, it provides little publicly available information on the human rights dimensions of its operations and few documents about its training curricula. It also does not proactively reach out to the media whether within or outside the country.

## External training model

Security concerns dictate the external training model used for EUJUST LEX: the mission, in close coordination with voluntarily cooperating EU Member States, put together a course programme/syllabus, which currently encompasses a sizeable catalogue of 16 training modules for the judiciary, police and penitentiary service officials, which are hosted by the collaborating EU Member States.

All courses firmly incorporate human rights aspects relevant to the specific field at hand – for judiciary training programmes, some issues of focus are, *inter alia*, fair trial and due process guarantees; for police training

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42. As expressed during the author's conversation with the EUJUST LEX human rights expert, Brussels, 25 February, 2010.

43. Interview with EUJUST LEX officials, 25 February, 2010.

44. *Ibid.*

courses, use of force in public order management activities and domestic violence responses; and for penitentiary training programmes, torture and ill-treatment in detention, etc.

The training programmes given thus far have taken place in almost all of the EU Member States, with participation costs being covered by the host Member States.<sup>45</sup> This cost-effective (from the mission budget's perspective) training model has been acknowledged in a prestigious award from the International Association of Chiefs of Police (IACP)<sup>46</sup> and a nomination for the President's Award of the International Corrections and Prisons Association (ICPA).<sup>47</sup>

Additionally, EU Member States have provided an opportunity to Iraqi officials to participate in a secondment scheme, whereby the pre-selected officials are able to 'shadow' European colleagues during their professional duties and gain more hands-on exposure to European professional practice.

Thus far, the mission has trained over 3,029 officials during 112 training courses and 21 work experience secondments mainly out of country, with a few pilot in-country training programmes conducted in safer conditions in locations including Baghdad, Erbil and Basra; a few training sessions have taken place in Jordan and Egypt.

While the degree to which human rights is embedded into external training curricula is adequate, the overall human rights impact of the mission is hampered by limited contacts with Iraqi interlocutors. For example, it has been impossible thus far to forge closer relations with the training participants upon completion of the training courses, as remote communication proves extremely difficult (due to the lack of proper telephone coverage in some areas, and general unavailability of the internet), resulting in difficulty in tracking participants who have changed jobs or even the deaths of past participants in the line of duty. This combination of factors means the training courses given so far have all followed the

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45. EUJUST LEX Course Table, 31 December 2009. See: <http://www.consilium.europa.eu>.

46. Council of the European Union, 'EUJUST LEX Mission for Iraq Receives World's Most Prestigious Policing Award,' 12 November 2008. The IACP is the oldest police organisation and considered an influential institution associating high police chiefs from 89 countries. See: <http://www.consilium.europa.eu>.

47. Council of the European Union, News in Brief, 12 November 2008. See: <http://www.consilium.europa.eu>.

‘one-off’ model, with participants changing from one training course to the next. While this type of training model can be useful for some training needs, in the context of the EUJUST LEX mission’s concern to build local capacity in a sustainable way, it might not be an ideal approach to take.

The mission currently plans to remedy this during the ongoing pilot phase aimed at assessing the mission’s operations and to explore possibilities for enhancing the in-country-training dimension,<sup>48</sup> by organising a series of training courses for a small group of pre-selected past participants who then hopefully could engage in more sustainable ‘train-the-trainers’ activities and generate a measurable multiplier effect.

The mission’s operational model has also posed a challenge to proper follow-up on training courses and evaluation of their impact.<sup>49</sup> In the past, training participants have been asked to evaluate the modules they have participated in and outline which aspects they found useful and potentially applicable to their work. Reportedly, the participants have identified many relevant aspects of the training programmes provided and expressed overall satisfaction with the experience they had. Nevertheless, because of the lack of sustainable contacts with the participants it is still unknown how much has really been taken on board, what aspects of knowledge acquired have been further disseminated upon return to the country and what overall transformational impact the experience has generated for the participants individually and for the structures in which they work.

One of the lesser-known disadvantages of the training model practised by EUJUST LEX is an overall absence of female participants, who do not feel comfortable travelling abroad unaccompanied for cultural reasons. However, female judges have participated in the in-country training programmes organised by EUJUST LEX. At the same time, it should be acknowledged that due to an extremely low overall number of female judges and the virtual absence of women in senior police ranks as well as among

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48. The ongoing pilot phase commenced in the summer of 2009 and finished in June 2010.

49. The ability to measure progress to assess the mission’s effectiveness is critical to missions themselves, as well as to host countries. Both mission officials and local stakeholders need access to reliable information to effectively address existing gaps. Among the most commonly used impact assessment tools are periodic stakeholder surveys, numeric performance indicators as well as qualitative reports. Methodologies for result-based mission planning and programming can also be considered as crucial elements enabling progress to be measured.



senior penitentiary officials, the number of female participants would be quite low in such training programmes in general. Nevertheless, it appears as though the in-country training could be more conducive to female participation.<sup>50</sup>

The value-added of learning about best practices from the EU Member States through out-of-country training is emphasised by many EU and EUJUST LEX officials. They cite the need to engage senior Iraqi officials on neutral ground, to demonstrate the EU's goodwill and readiness for closer cooperation, also for the sake of breaking the cycle of isolation in which Iraq has been trapped for so long during its history of dictatorial regimes. They also point to the prohibitively high current costs associated with the in-country training programme, due to the cost of security provision for the training events.

Nevertheless, other EU interlocutors interviewed for the purposes of this research paper questioned the effectiveness of the mission, arguing that it is disconnected from the reality on the ground. They also regretted the mission's lack of visibility and what follows from it – a general lack of awareness about the mission's existence among the Iraqis as well as among international officials representing various international organisations operating in the country.

## Issues of accountability

When discussing the issue of the accountability of international crisis management operations, it is important to distinguish a few different types of accountability, including individual accountability of international personnel, as well as institutional accountability *vis-à-vis* a host country or territory. This paper is concerned with both of them. However, it does not deal with the issue of the political accountability of international missions, which has been discussed elsewhere.<sup>51</sup>

In terms of the mission's internal accountability setup, EUJUST LEX staff members follow the mission's own code of conduct, which forms part of

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50. If the mission expands in the future, resulting in training being provided not only to senior, but also upper-middle ranking officials, this could be a way to include more female officials whose representation is inversely proportional to grade and rank.

51. Hans Born and Hainer Hanggi, *The Double Democratic Deficit: Parliamentary Accountability and the Use of Force under International Auspices*, (Aldershot: Ashgate Publishing Ltd, 2004).

the OPLAN. This code of conduct mandates the staff members to behave responsibly, ethically and adhere to the international human rights and humanitarian law in their professional and private conduct. Simultaneously, EUJUST LEX staff members enjoy the diplomatic immunities as set out in the letter of invitation to the mission by the Iraqi government. While no cases of misconduct have happened to date, in the event of any allegations of such misconduct the EUJUST LEX mission itself would carry out any required investigations and it would be up to the HoM to prescribe a level of sanction, when necessary.

Currently, there is no mechanism in place for receiving third party liability complaints against the mission. Since no such complaints have been filed to date, it is impossible to know how the structure would react in such a situation, in which it would be necessary to invoke the mission's immunities. Nevertheless, there is no instrument guaranteeing financial or other third-party compensatory measures. In the light of the possible expansion of the in-country mission activities, the pending status of mission agreement (SOMA) with the Iraqi authorities would provide an opportunity to address this issue.

At present, the security of the mission's personnel is provided by private security companies. While no incidents or irregularities related to the selection and operations of private security companies protecting EU personnel have to date taken place in the Iraq context, some have argued that 'millions of euros should not be spent on private security companies protecting the EU officials, while any European police force would be able to carry the task, probably with better results, and at a fraction of the cost.'<sup>52</sup>

## **Collaboration with civil society and the UNAMI human rights component**

According to both EUJUST LEX and the UN Assistance Mission for Iraq (UNAMI), the two missions have developed good working relations with each other. EUJUST LEX and UNAMI officials organise face-to-face meetings (during in-country visits as well as occasionally in Amman, where some UNAMI staff members still operate from) to share information

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52. Translated quote of MEP Pino Arlacchi in 'Coulisses de Bruxelles, UE', *Libération*, 23 March 2010.

about their training activities. This cooperation resulted, *inter alia*, in the decision of UNAMI to focus their training efforts for the penitentiary sector officials on training the prison guards, in order to avoid duplication.<sup>53</sup> Also, EUJUST LEX frequently consults UNAMI to solicit its advice on the training course curricula, taking advantage of UNAMI's country expertise, good contacts with local civil society, and well-developed capacity to collect information on the ground.

EUJUST LEX at present does not directly collaborate with Iraqi civil society, even though it recognises that it would be worthwhile investing efforts in strengthening this dimension in the future.

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53. Telephone interview with a UNAMI official, 3 March 2010.



### 3. EUPOL: EU civilian pioneer in a high-risk theatre

Even though EUPOL, the CSDP police mission in Afghanistan, was not conceived and planned in an atmosphere dogged by controversy in the way that EUJUST LEX was, it took a while to forge a consensus to launch the mission in 2006, and initiate the police civilian crisis management operation by mid-June 2007.<sup>54</sup>

The level of destruction wrought by the military intervention aimed to topple the Taliban regime (Operation ‘Enduring Freedom’) as well as the magnitude of human rights abuses committed by various local and international actors, has been extensively documented elsewhere.<sup>55</sup> In the aftermath of the intervention, the immense challenge of creating a functioning state apparatus included the creation of an accountable and law-abiding police force.

#### EU human rights ‘flanking measures’ in Afghanistan

The EU civilian presence in Afghanistan, while sizeable if compared to that in Iraq, pales in comparison to other civilian multilateral actors present on the ground, notably the UN Assistance Mission in Afghanistan (UNAMA).<sup>56</sup> In addition to the EUPOL mission, the EU Delegation<sup>57</sup> and the Office of the Special Representative of the EU for Afghanistan (EUSR)<sup>58</sup> have in the past constituted the main structures representing the EU on the ground. At the time of writing, a merger of the EU Delegation and EUSR is ongoing, and is expected to be completed by late summer 2010. Meanwhile, EUSR staff members have not yet physically moved to the EU Delegation, and they continue to operate under separate staff

54. EUPOL Mission Factsheet, February 2010. See: <http://www.consilium.europa.eu>.

55. For a list of some of the organisations extensively reporting on the situation in the country, see footnote 31.

56. UNAMA currently comprises over 1,000 staff members, deployed throughout the country in Herat, Bamian, Gardez, Kandahar, Lalalabad, Kunduz, Kunar, Asadabad, Qalat, Badghis, Zanjar, Mazar-i-Sharif and Daikundi.

57. The Commission has had a presence in Kabul since the mid-1980s, followed by an ECHO office in 1993. Source: European Commission, ‘EU Blue Book 2009: The EU and Afghanistan,’ November 2009, p. 2.

58. The EU Special Representative to Afghanistan (EUSR) was appointed in 2001 in order to strengthen the EU’s political voice and play a coordination role *vis-à-vis* both the other EU actors as well as international partners on the ground. The EUSR post was previously held by Ettore Sequi and Francesc Vendrell.

rules and chain of command. The newly-appointed EU Ambassador (the former Lithuanian foreign minister Vygaudas Ušackas) heads the entire currently merging structure.

EU financial assistance to Afghanistan has increased over the years, with the EU currently ranked as the country's principal donor having disbursed (together with bilateral assistance of the EU Member States) some €8 billion worth of aid, in fields ranging from counter-narcotics, reconstruction, rule of law, democratisation and human rights.<sup>59</sup> The total budget for EU bilateral development cooperation for 2007-2010 is €610 million.<sup>60</sup> Around 40 percent of this sum has been devoted to good governance and justice sector support measures.<sup>61</sup> Similarly to Iraq, EU's aid for Afghanistan remains fragmented, and its impact poorly assessed. It is worth noting that in the past the European Parliament and European media have voiced numerous criticisms of the way the EU contributions to multilateral funds are not accompanied by appropriate financial scrutiny measures, leading to allegations of corruption, waste and general aid ineffectiveness.

Historically, the EUSR office has been in charge of the coordination, in close cooperation with the EU Delegation (previously with the acting EU Presidency), of the EU Human Rights and Gender Working Group (HRGWG).<sup>62</sup> The EUSR also closely liaises on human rights topics with EUPOL and embassies of third countries, particularly Australia, Canada, Norway, Switzerland and the United States. Moreover, the EUSR's office has often taken the lead on human rights *démarches* and coordinated drafting of various human rights-related papers and declarations.

Financial assistance for the rule-of-law sectors focuses on the EU multilateral contribution to the Law and Order Trust Fund for Afghanistan

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59. Council Secretariat, 'EU Engagement in Afghanistan Factsheet,' updated January 2010. See: <http://www.consilium.europa.eu>.

60. Delegation of the European Union to Afghanistan, 'Cooperation for Development – Overview'. See: <http://www.delafg.ec.europa.eu/en/cooperation/index.htm>.

61. The pie chart illustrating the financial support categorisation can be retrieved on the website of the EU Delegation in Afghanistan. See: <http://www.delafg.ec.europa.eu>.

62. HRGWG was established in January 2005 and currently consists of political and development advisers (in charge of human rights and gender portfolios) from the EU diplomatic representations in Kabul. HRGWG serves as a platform for sharing information, discussing and develop joint positions/actions on human rights, rule of law and gender-related issues. It meets on a monthly basis as well as *ad hoc* when required. EUPOL staff members, diplomats from third country embassies, media representatives and civil society members are also invited to these meetings.

(LOTFA)<sup>63</sup> which covers various aspects of activities of the Afghan National Police (including police equipment and salaries). EIDHR remains the key EU support instrument for human rights in Afghanistan.<sup>64</sup> As in the case of Iraq, the Instrument for Stability has been used to a lesser extent.<sup>65</sup> The EU has also allocated €35 million to electoral support activities, mainly the EU Observation Mission for the presidential and provincial council elections in 2009.<sup>66</sup>

Similarly to Iraq, the EU does not have a specific human rights dialogue with Afghanistan, channelling its human rights concerns through the usual public and private diplomacy instruments (statements, declarations, *démarches*, etc.) Reportedly, the key human rights issues raised in this context are women's rights, freedom of expression, the death penalty, transitional justice and torture and ill-treatment in detention.<sup>67</sup> One of the key platforms for the EU Member States to raise human rights concerns with Afghanistan is the UN Universal Periodic Review (UPR) process.<sup>68</sup>

## EUPOL at a glance

With the UN Security Council's prior authorisation of the military operation and relatively quick establishment of the UN Assistance Mission in Afghanistan (UNAMA), the EU Member States who had been most active in providing aid to Afghanistan since 2002 assumed (under the auspices of the G8, which launched this approach on the occasion of its conference on security sector reform in Geneva) the status of the so-called 'lead nations,' with Italy taking over the responsibility for helping the new Afghan authorities to re-establish a functioning judiciary, the United Kingdom counter-narcotics and Germany the police force.

63. Council Secretariat, 'EU Engagement in Afghanistan Factsheet,' op. cit. in note 59.

64. The key EIDHR projects supported since 2008 have focused on transitional justice mechanisms, truth seeking and reconciliation, professionalising journalism, and strengthening women's rights groups. In November 2009, the new EIDHR cycle was launched, with €1.2 million being earmarked for each calendar year. Source: European Commission, *European Aid, Donor Matrix*.

65. The Instrument for Stability (IfS) has been used to finance technical assistance to the Afghan authorities to draft and implement the reform programme for the Supreme Court and the Attorney General's Office. For the former, the focus was on development of a transparent recruitment and personnel system, while for the latter, the aim was to put in place a free legal aid system.

66. Council Secretariat, 'EU Engagement in Afghanistan Factsheet,' op. cit. in note 59.

67. Interview with Council officials, Brussels, 25 February 2010.

68. The last Afghanistan UPR took place in May 2009. The full documentation can be accessed at: <http://www.ohchr.org>.

The EU police mission was designed to build upon the monitoring, advising and training mandate implemented by Germany under its 'lead nation' status. EUPOL's overall objective was defined as contribution to the establishment of a sustainable and effective policing model properly collaborating with a criminal justice system under Afghan ownership.<sup>69</sup> The mission has since its inception been headed by three consecutive Heads of Missions (with the most recent HoM, Kai Vittrup, taking over the post in October 2008.)<sup>70</sup> The current mandate runs until 30 May 2013. The mission budget for the period of 2008-2010 stands at €81.4 million.<sup>71</sup>

Despite severe security restrictions, all but five EUPOL staff are based in country.<sup>72</sup> Their freedom of movement is severely limited, and all operational modalities are heavily regulated due to security concerns. Some of the specific activity areas restricted by security-dictated concerns are: vehicle movement and travel routes, choice of meeting venues, duration of meetings, size of the meetings attended by the staff members, etc. To date, no duty-related staff casualties have occurred.<sup>73</sup>

The current total number of EUPOL staff members is 290 persons, well below the total of 400 persons authorised. This failure of the EU Member States to provide the remaining number of staff continues to be one of the key operational impediments for the mission and a common source of frustration both within the mission and among Brussels-based EU officials. Currently, 94 EUPOL staff members are deployed throughout the country through the Provincial Reconstruction Teams (PRTs). The Provincial Reconstruction Teams (PRTs) were established in late 2001 by the US forces to facilitate internationally-supported reconstruction efforts. They include both military and civilian experts who, in addition to monitoring, reporting and outreach, implement directly and otherwise coordinate concrete assistance projects.

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69. EUPOL Mission Factsheet, February 2010. See: <http://www.consilium.europa.eu>.

70. Kai Vittrup, a Danish national, has distinguished himself while working in senior positions in various UN peace operations including in Kosovo, Croatia, Sudan, Iraq and Timor Leste.

71. EUPOL Mission Factsheet, op. cit. in note 69.

72. Currently, 191 EUPOL staff members are based in Kabul, and 94 in the regions, while 5 staff members are dispatched to Brussels to interface with the EU institutions there.

73. Nevertheless, two EUPOL staff members died in January 2010 (although while on leave and off duty): one in a traffic accident, the other one from heart failure. Source: EUPOL bi-weekly information bulletin, 'In Memoriam', 1 February 2010.



## Internal mission human rights dimensions

The human rights focus of the mission is to a significant degree embedded in the key mission documents, OPLAN and CONOPS.<sup>74</sup> These two documents outline the mission's human rights obligations, such as human rights reporting, training all staff members on human rights, active promotion of rights-based approaches in the mission's training of Afghan police as well as the mission's general adherence to human rights and humanitarian law in general.

Currently, the Human Rights and Gender Unit constitutes one of the three key components of the EUPOL rule of law department (the other two being anti-corruption and police-prosecutor cooperation). The Unit is currently staffed by five international human rights and gender experts assisted by one national professional officer. Unlike the rest of the mission, suffering from the wide discrepancy between the current staffing levels and the overall level of staff authorised, the human rights unit is fully staffed.

According to the mission staff members interviewed, because of the professional quality of the human rights officers selected for the mission, the level of human rights expertise among them is quite good. The human rights EUPOL experts interviewed for the purpose of this analysis stated that they are 'generally satisfied' with the extent to which their work is embedded in the activities of the other two 'pillars' while stating that due to the many responsibilities of the Human Rights and Gender Unit, juggling priorities has never been easy, especially when faced with competing timeframes of internal and external mission activities in which they are simultaneously engaged. The Human Rights and Gender Unit, in addition to its monitoring and reporting of the mission's internal obligations, is also involved in the so-called 'human rights proofing' of the missions' training curricula. Externally, its main training activity is mentoring and advising the Ministry of the Interior officials.

The induction training provided to the newly arrived EUPOL staff by the mission gives a general overview of the human rights activities of the mis-

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74. The relevant parts of the CONOPS and OPLAN as cited in this paper have been declassified for the purpose of the 'Mainstreaming Human Rights and Gender into European Security and Defence Policy' compilation, op.cit. in note 24, and are publicly available (p.13).

sion, but does not offer any general human rights and humanitarian law training, leaving that responsibility to the seconding Member States. In practice, the level of human rights knowledge varies significantly among the newly arriving staff members. The level of country-specific knowledge, also in terms of its human rights situation, is usually basic or nil among newly arriving non-specialist mission members.

The Human Rights and Gender Unit produces written outputs based on its general monitoring activities and specific operations on weekly, monthly and half-yearly bases. These outputs are later incorporated into the mission report which is then transmitted from the mission to Brussels and distributed among the EU institutions and diplomatic circles.

In terms of the mission's approach to information transparency, EUPOL's track record is better than many other CSDP operations, which do not make much information on the respective missions available to the 'outside world'. In addition to the usual basic mission webpage accessible on the Council website,<sup>75</sup> the mission maintains its own trilingual (English, Dari and Pashto) website, where it posts non-classified mission documents, information about current activities (including multi-media pieces) as well as general statistics.<sup>76</sup> Moreover, the mission produces a bi-weekly newsletter, which it distributes via email but also makes available on the above-mentioned website.<sup>77</sup>

While the above-mentioned online written products are insufficient to ensure comprehensive outreach to the general public, much of which remains illiterate and lacking internet access, these tools have proved to be helpful in the context of outreach to national and international interlocutors, particularly members of the Afghan administration and various actors in Europe (EU institutions, Member States, European media, think-tanks, NGOs etc.) Currently, EUPOL also actively reaches out to local media, even though its efforts are mainly concentrated in the capital-based media outlets.

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75. EUPOL section on the Council general website. See: <http://www.consilium.europa.eu>.

76. See EUPOL website: <http://www.eupol-afg.eu/>.

77. EUPOL newsletter page. See: <http://www.eupol-afg.eu>.

## External training model

EUPOL's human rights-oriented training and advisory mandate is realised through a mentoring scheme, whereby EUPOL human rights experts are paired with one or more senior officials in the Ministry of the Interior (MoI) and work together across a period of time. This mentoring scheme is based on a mutually agreed work plan, whereby an official involved in the scheme has some concrete objectives and benchmarks specifying which knowledge he or she would like to acquire and which skills should be improved as a result of this interaction. Some concrete examples of human rights-related topics are, *inter alia*, widespread human rights violations in policing (such as for example, excessive use of force and maltreatment in detention) as well as some broader general human rights education (related to universal human rights and humanitarian law).<sup>78</sup>

The impact of mentoring schemes is mutually assessed on a periodic basis, and is measured against the action plan both sides agreed upon in the beginning. While the Ministry officials reportedly express satisfaction with their participation in this scheme, it appears as though there is an appetite among mission members working on the scheme for a more robust mission involvement with the Ministry, including 'less bilateral meetings and more hands on'<sup>79</sup> – one example of such an approach mentioned was the possibility of advising the officials on concrete case management.

On the project implementation side, EUPOL itself currently supports a few projects with a clear human rights angle. For example, it has helped to set up and train the police response team which runs the telephone helpline for female police officers who have received death threats.<sup>80</sup>

## Issues of accountability

EUPOL staff members follow the mission-specific code of conduct, integrated in the OPLAN under the 'mission's vision' section. Any allegations

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78. It is worth mentioning that UNAMA currently does not provide any training to MoI officials, focusing on other ministries, including the Ministry of Justice.

79. Telephone interview conducted by author with EUPOL official, 19 February 2010.

80. This project is being managed jointly with UNDP and the Norwegian bilateral agency for development.

of staff misconduct are subject to standard CSDP mission procedures, which stipulate that such allegations are to be investigated internally, with the HoM deciding on potential sanction measures, ranging from verbal reprimand to staff dismissal, which in particularly serious cases can be accompanied by a ban on participating in future EU missions. Like EUJUST LEX, EUPOL staff are protected by diplomatic status and immunity.

In terms of the mission's institutional accountability setup, EUPOL is covered by third-party liability insurance, allowing for financial compensation to be made. The focal points for receiving such complaints are designated within the mission's security cell as well as the Ministry of Interior. As security for the mission staff is provided by a private security company, the mission's coverage by an insurance scheme providing the possibility of financial compensation to be awarded in third party liability cases should be viewed in a positive light.

It is also worth noting that, as in Iraq, security costs remain very high in Afghanistan, and have been criticised as excessive by the European Parliament.

## **Collaboration with civil society and the UNAMA human rights component**

Civil society cooperation constitutes an important aspect of the EUPOL Human Rights and Gender Unit's focus. The Unit is particularly involved in this field, creating appropriate platforms for communication between the mission, civil society and government partners. This platform at the moment takes the form of a monthly meeting between civil society actors (including the Independent Human Rights Commission), the Ministry of the Interior and EUPOL, aimed at forging closer relations between the Ministry and civil society, which at times have been tense. As currently there are not many institutionalised channels providing civil society with access to the government officials, EUPOL's contribution to this platform's creation should be counted as a positive initiative. At present, these meetings are organised and chaired by the MoI itself.

The cooperation between the EUPOL and UNAMA human rights units is largely based on informal contacts. Both sides admit that much more

could be done in terms of strengthening their respective human rights operations by enhancing and formalising coordination and cooperation. While EUPOL and the UN can effectively mobilise around the highly visible coordinated actions undertaken in the human rights domain (women's rights, media law and defence of individual human rights activists), mutual interaction is mainly based on personal contacts and occasional invitations to each other's meetings.<sup>81</sup>

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81. Reportedly, UNAMA has extensive and structured working relations with the EUSR, as they both participate in the UNAMA-coordinated working groups on transitional justice, freedom of expression, women's rights, detention and torture. The purpose of these working groups is to identify common priorities and strategies, with a view to taking common actions aimed at producing a positive impact on human rights. Moreover, UNAMA provides technical advice on human rights issues to the Delegation, through their participation as an external expert in evaluation of proposals submitted by Afghan human rights NGOs within EIDHR.



## 4. Which way forward? The potential impact of the Lisbon Treaty

The analysis above has focused on the human rights operational models used in two current CSDP missions targeting countries where extreme security risks continue to severely hamper the missions' operations. The mixed results obtained by the missions in the field of human rights described in this paper have been acknowledged by both mission- and Brussels-based EU personnel closely involved in these operations, as well as their interlocutors (UNAMA/UNAMI) interviewed for the purpose of this research.

At the same time, the analyses of the missions produced by think tanks or academic researchers have not been focused on their human rights dimensions but rather on the degree to which the missions' actions have complemented other actors on the ground pursuing similar mandates or on how the missions' activities 'fit' into a broader EU financial assistance and political agenda in the countries in question. In this context, judgements on the missions' general activities have been quite critical.<sup>82</sup> At the same time, human rights NGOs frequently address both the EU in general and the missions specifically in their reports' recommendations relating to concrete human rights abuses in Afghanistan and Iraq, which would suggest the missions' relevance for the community of human rights defenders.<sup>83</sup> Nevertheless, operational aspects of the CSDP human rights organisational architecture and methodology remain largely off the radar of the academic, policy and human rights communities.

While the following section on conclusions and policy recommendations offers a succinct summary of findings and outlines practical ways to address the identified problems, it is important to hereby acknowledge the new institutional momentum provided by the Treaty of Lisbon, particularly the

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82. Some recent reports offering critical assessment of the missions' overall effectiveness, coordination with partners on the ground and cohesiveness with other EU instruments have been provided by the European Council on Foreign Relations, Heinrich Böll Stiftung, International Crisis Group (ICG), and International Security Information Service Europe (ISIS Europe). The key general aspects criticised were the lack of coordination with other actors on the ground, duplication of efforts, lack of visibility and poor assessment of the missions' impact. Because of the modest size and limited scope of the missions' mandates, the reports criticised the EU for 'punching below its weight' in the field of rule-of-law support in both countries.

83. For example, both Amnesty International and Human Rights Watch frequently formulate specific recommendations to both the EU in general, as well with regard to the missions specifically in their Afghanistan and Iraq country reports.

creation of the European External Action Service (EEAS), as well as the post of the High Representative for Foreign Affairs and Security Policy of the European Union.

In both Afghanistan and Iraq, the missions' human rights activities remain somewhat disconnected from the general financial and political support the EU provides in this field. Moreover, many of the Member States also provide their own assistance in the field of human rights, and their support is not closely coordinated with the EU. In this respect, the ongoing operationalisation of the European External Action Service (EEAS), which will combine both EU officials and national diplomats, bringing them under the joint chain-of-command, could provide a good opportunity to improve the cohesion of EU financial, political and technical assistance on the ground.

This, combined with the dismantling of the pillar structure, should have an important trickle-down effect for the two missions. It should be easier to coordinate between the missions and the unified political and financial EU arm on the ground, which could result in better synchronisation of EU assistance and optimisation of the existing support mechanisms.

It is also crucial that the Commission's flanking measures, described earlier on, correspond much more closely than they currently do with the missions' activities. The Commission should be consulted throughout the missions' planning and conduct phases in a much closer manner than it is at the moment. The fact that the new High Representative is also one of the Vice-Presidents of the Commission could help to streamline missions' planning and conduct also at the Brussels end.

Nevertheless, the current inter-institutional disagreements and turf wars that have accompanied the creation of the EEAS, suggest possible delays and pitfalls on the path to attain more strategic and operation coherence by the EU.<sup>84</sup> It is therefore indispensable that all entities involved focus on the challenges at hand rather than on inter-institutional power struggle and individual gains.

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84. On 22 March 2010, ten leading civil society organisations dealing with the EU's external relations (including, *inter alia*, the Open Society Institute, International Alert, International Crisis Group, EastWest Institute and Bertelsmann Stiftung), submitted an open letter to the Council President, Commission President, Commissioners and Foreign Ministers, in which they stated that they were 'appalled by the current debate among the Brussels institutions on implementing the EAS', calling all institutions in questions to focus on issues of substance rather than using the creation of the EEAS as an opportunity to assert their powers *vis à vis* the other institutional actors involved.



# Conclusions and policy recommendations

This paper has analysed some important human rights dimensions of EUJUST LEX and EUPOL, in both their internal and external operations, showing the varying degree to which they managed to integrate them and comply with international best practices. Looking back over this analysis, the following conclusions can be drawn:

- *Adequate staffing and expertise*

In the case of both missions, the number of staff working for the human rights components is in principle adequate to the mission size. As in both cases human rights vacancies solicited a high volume of applications from qualified candidates, both missions were able to ensure good human rights expertise.

Nonetheless, there appears to be a human rights ‘knowledge gap’ among the non-specialist staff members, due to the deficiencies or absence of pre-deployment training, which is not fully remedied during the induction courses provided for staff at the outset of the respective missions.

- *Embedding human right experts in all missions components*

In both missions, human rights experts reported that they were adequately embedded in both internal and external aspects of the missions’ operations. Nevertheless, further formalisation of the experts’ role remains desirable, as good cooperation currently depends on harmonious work relations between all of the staff and the support of the current HoMs, rather than on clear and mandated role prescription.

- *Integrating human rights into staff induction curriculum*

Currently, human rights are not sufficiently integrated into new staff induction curricula. Member States provide little or no pre-deployment training for their mission secondees. The EU provides pre-deployment training in Brussels to only very senior staff members, which is largely

devoid of human rights topics. The missions' induction courses provide some human rights training, which is however largely focused on the missions' specific human rights activities, and does not bridge the knowledge gap about general human rights and humanitarian law, as well as country-specific human rights issues.

EU institutions and Member States must ensure that an adequate level of pre-deployment human rights training is provided to all mission members. The missions must ensure that their induction programmes adequately fill the knowledge gaps, especially when it comes to country-specific human rights issues.

- *Integrating human rights into external training*

Both missions manage to integrate various general human rights 'angles' into their external training curricula, ensuring that the training provided contains information on international best practices and international legal standards. In the case of EUJUST LEX, the training provided is not country-specific but rather related to best practices inside the EU. Both missions could benefit from strengthening their training programmes' follow-up, evaluation practices and impact assessment procedures and methodologies.

The missions must provide country-relevant and sustainable training. For this to happen, the missions must ensure that the training content is prepared in close collaboration with the local interlocutors, and that adequate impact assessment methodology is put in place. Experience shows that in order to make the most of the learning experience, it needs to take place over a period of time and preferably take the form of an over-time mentoring and advising scheme. In this respect, the external training model as practised by EUPOL could be a good one for EUJUST LEX to follow, especially if the mission gets the green light to expand its in-country presence and operations.

- *Mission accountability and transparency*

In terms of the missions' institutional accountability setup (allowing for the reception of complaints from third parties and financial compensation), EUJUST LEX should establish a suitable mechanism as a matter of priority, while EUPOL should work towards further

strengthening its institutional accountability structure (by, for example, making sure that the local population know whom they can file their individual complaints with and what outcomes they can realistically expect from the process).

The issue of institutional accountability in the context of CSDP operations is particularly pressing, considering the real possibility of harm to local populations which can result in various contexts of the missions' operations – vehicle and weapon handling incidents (by, for example, private security companies providing security for both missions) being just two examples.

In terms of internal staff accountability mechanisms, both missions follow the standard CSDP procedures, which stipulate that any investigations into staff misconduct are to be handed internally. There is also a limit for possible sanctions that the mission can prescribe, the most severe one being a dismissal of a staff member. It appears that the creation of a semi-independent structure (serving all missions) to investigate cases related to mission staff conduct could be beneficial to the missions, to make the review process more objective and even-handed. The UN's Office of Internal Oversight Services (OIOS) provides a helpful model to follow in this respect.

EUPOL has been effective in putting in place various online public information resources, including, *inter alia*, multilingual website and mission-specific bulletins. In terms of its online information availability and outreach, EUPOL could provide a good example to follow for EUJUST LEX, which currently appears to be less open and proactive. Simultaneously, both missions could benefit from initiating (EUJUST LEX) and strengthening (EUPOL) their outreach to the general local public, especially the illiterate part of the population, who cannot access its online written material.

- *Collaboration with relevant civil society actors*

The missions' collaboration with and openness to mandate-relevant civil society actors can enhance the missions' human rights impact. Arguably, civil society actors can significantly contribute to the missions' operations, providing them with local knowledge and issue con-

text that the missions often lack. EUPOL's Human Rights and Gender component has been focusing on collaboration with civil society actors, and EUJUST LEX is contemplating the possibility of following suit – that is, if it is allowed to expand its in-country presence and operations.

The missions' human rights components must ensure good collaboration with civil society actors, making sure that their outreach is inclusive of actors representing the host countries' ethnic and cultural diversity, to avoid marginalising particular groups and communities.

- *Collaboration with the UN human rights components*

It appears that both missions' human rights components established good informal working relations with their UN counterparts. However, it seems that their collaboration could be significantly strengthened (by structuring and formalising it) in order to maximise the impact and resources available. One of the first steps on this path could be signing a Memorandum of Understanding (MoU) which would formalise forms of collaboration, division of labour and joint undertakings.

One general conclusion emerging from this study is that in order to be able to adequately respond to increasingly challenging complex emergencies in volatile theatres, the EU mission planning and conduct procedures, as well as on-the-ground implementation, must be progressively strengthened. This requires a serious effort on the part of the EU institutions and EU Member States to analyse and evaluate the ongoing operations, in order to know what works and what does not.

At the same time, there is a general recognition that in order to create conditions conducive to institutional learning, much more effort would need to go into collecting and analysing empirical information about past and ongoing operations. In this respect, the lack of empirical data allowing for precise comparisons to be made is particularly acute. This research has been undertaken to offer a small contribution to filling this gap.

# Annex

## Abbreviations

CFSP	Common Foreign and Security Policy
CIVCOM	Committee for Civilian Aspects of Crisis Management
CMPD	Crisis Management and Planning Directorate
COHOM	Council Working Party on Human Rights
CONOPS	Concept of Operations
COREPER	Committee of Permanent Representatives
CPCC	Civilian Planning and Conduct Capability
CSDP	Common Security and Defence Policy
DCI	Decentralised Cooperation Instrument
DG RELEX	Directorate General for External Relations
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
EAS	External Action Service
ECtHR	European Court of Human Rights
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
ESDP	European Security and Defence Policy
EUJUST LEX	European Union Integrated Rule of Law Mission to Iraq
EUPOL	European Union Police Mission in Afghanistan
EUSR	European Union Special Representative
HoM	Head of Mission
ICJ	International Court of Justice
IS	Instrument for Stability
LOTFA	Law and Order Trust Fund for Afghanistan
MoI	Ministry of Interior
MoU	Memorandum of Understanding
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
OPLAN	Operation Plan
PRT	Provincial Reconstruction Team
PSC	Political and Security Committee
SOMA	Status of Mission Agreement
SSR	Security Sector Reform

UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNDP	United Nations Development Programme
UNOPS	United Nations Office for Project Services
UPR	Universal Periodic Review

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