

The System of EU Crisis Management – From Bringing Peace to Establishing Democracy?

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This article aims to give an overview of the system of European Union (EU) crisis management. Ongoing and completed missions and operations will be presented to show the wide-spread possibilities of the EU's crisis management system.

The article will focus especially on the practical output of crisis management missions and operations and special attention will be given to the question whether and to what extent the EU is able to “transfer democracy” to third states.

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I. Overview of EU Crisis Management Operations and Missions

To give an appropriate overview of EU crisis management it is necessary to start with a differentiation of the types of actions taken in the field of European Security and Defense Policy (ESDP). The following section deals with completed and ongoing operations and missions.

1. Differentiation

When considering EU crisis management one has to differentiate between two types of action: crisis management operations and crisis management missions. Crisis management operations usually have a military component, while crisis management missions are usually of a civilian nature. Thus these two types of ESDP actions are often combined, especially in the field of civilian-military crisis management in which the EU specializes. Since these regimes are shaped differently, the combination is legally difficult to manage. Furthermore, the socio-economic dimension of complex crisis management undertakings requires a multifaceted scope which is not limited to military options. The year 2007 e.g. saw the increasing trend of deploying peace operations with broad civilian mandates. The result has been a growing complexity of peace operations that is proving difficult to manage.² Unfortunately there exists no consistent and uniform nomenclature in the EU documents naming the different actions the EU might undertake.

2. Operations and Missions in Particular

In the period between 2003 and 2009, the EU has launched twenty-three crisis management missions and operations in twelve third-world countries within the context of ESDP (see Annex). These have ranged from advisory missions consisting of fewer than a dozen experts to large-scale peacekeeping operations involving several thousands of military personnel. Out of the twenty-three, six were military operations carrying out general peacekeeping and humanitarian tasks. The UN Security Council, acting under Chapter VII of the UN Charter, author-

² See Annual Review of Global Peace Operations 2008, page 8; Annual Review of Global Peace Operations 2007, page 2.

ized five of these operations to take enforcement action in the performance of their mandate. The sixth operation (“Concordia”) followed an explicit request from the former Yugoslav Republic of Macedonia government.

In addition, the EU has launched seventeen civilian crisis management missions, including seven police, three rule of law, two monitoring, two security sector, and two border assistance missions, and has undertaken one mixed civilian-military mission.³ These numbers show the high potential in this policy field.

There are fourteen ongoing operations and missions: three military operations, four police missions, two rule of law missions, two border assistance missions, two security sector reform missions and finally one monitoring mission in Georgia.

In detail: there is one military operation in Bosnia-Herzegovina named EUFOR Althea⁴ which is carried out with recourse to NATO assets and capabilities, under the “Berlin Plus” Agreement.⁵ Another military operation takes place in Chad and the Central African Republic (EUFOR TCHAD/RCA).⁶ This is a bridging operation which will closely coordinate with the multi-dimensional United Nations (MINURCAT) presence in the East of Chad and in the North-East of the Central African Republic in order to improve security in those regions.

³ See A. Sari, “The Conclusion of International Agreements by the European Union in the Context of the ESDP”, *ICLQ* 57 (2008), 53 et seq. (53-54), who covers the period from 2003-2007.

⁴ See Council Decision 2004/803/CFSP of 25 November 2004 on the launching of the EU military operation in Bosnia and Herzegovina, OJ L 353/21 of 27 November 2004.

⁵ The “Berlin Plus” Agreement, concluded on 17 March 2003, laid down the foundations for NATO-EU cooperation in the field of crisis management. It enables the Alliance to support EU-led operations in which NATO as a whole is not engaged; see for further information M. Reichard, “The EU-NATO ‘Berlin Plus’ Agreement: the silent Eye of the Storm”, in: S. Blockmans (ed.), *The European Union and Crisis Management – Policy and Legal Aspects*, 2008, 233 et seq.

⁶ See Council Joint Action 2007/677/CFSP of 15 October 2007 on the EU military operation in the Republic of Chad and in the Central African Republic and Council Decision 2008/101/CFSP of 28 January 2008 on the launching of the EU military operation in the Republic of Chad and in the Central African Republic; D.M. Tull, “Tschad-Krise und die Operation EUFOR Tschad/ZAR”, *swp-Aktuell* 15 (February 2009), 1-4.

On 19 September 2008 the EU launched a military coordination action in support of UN Security Council Resolution 1816 (2008) of 2 June 2008 concerning Somalia, named EU NAVCO as a reference to “naval coordination”.⁷ It is a counter-piracy naval operation off the coast of Somalia to support surveillance and protection operations led by certain Member States of the United Nations in Somalia and off the Somali coast. The coordination action is conducted from Brussels by a Coordination Cell supported by the Military Staff of the European Union. In addition on 10 November 2008 the General Affairs/External Relations Council adopted a joint action on an EU military operation – EU NAVFOR (“naval force”) Somalia operation “Atalanta” –, which the EU launched in December 2008. It aims to contribute, in support of resolutions of the UN Security Council, to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast. The activities of the EU NAVCO cell were closed on the launch date of the EU NAVFOR military operation.

One of the police missions takes place in Bosnia-Herzegovina. It is named EU Police Mission in Bosnia and Herzegovina (EUPM)⁸ and was the first ESDP mission launched by the EU in 2003. It followed on from the UN’s International Police Task Force. Another police mission is being carried out in the Palestinian Territories (EUPOL COPPS).⁹ EUPOL COPPS’ operational phase started on 1 January 2006 and has had an initial duration of three years. It has now been amended to a final duration of five years lasting until 31 December 2010.¹⁰ It has a long-term reform focus and provides enhanced support to the Palestinian Authority in establishing sustainable and effective policing arrangements.

⁷ Council Joint Action 2008/749/CFSP of 19 September 2008, OJ L 252/39 of 20 September 2008.

⁸ See Council Joint Action 2007/749/CFSP of 19 November 2007 on the EU (EUPM) in Bosnia and Herzegovina (BiH), OJ L 303/40 of 21 November 2007.

⁹ See Council Joint Action 2005/797/CFSP of 14 November 2005 on the EU Police Mission for the Palestinian Territories and Council Decision 2008/134/CFSP of 18 February 2008 implementing Joint Action 2005/797/CFSP on the EU Police Mission for the Palestinian Territories, OJ L 43/38 of 19 February 2008.

¹⁰ Council Joint Action 2008/958/CFSP, OJ L 338/75 of 17 December 2008.

The police mission in Afghanistan (EUPOL AFGHANISTAN)¹¹ was launched in the framework of the EU's comprehensive approach towards Afghanistan in mid June 2007. The mission aims at contributing to the establishment of sustainable and effective civilian policing arrangements under Afghan authority in accordance with international standards. The police mission in Congo (EUPOL RD Congo)¹² was deployed to assist the Democratic Republic of the Congo (DRC) authorities with a police reform and followed the EUPOL Kinshasa on 1 July 2007.

The first EU Integrated Rule of Law Mission in Iraq named EU Integrated Rule of Law Mission for Iraq (EUJUST Lex)¹³ was established to strengthen the rule of law and to promote a culture of respect for human rights in Iraq. It provides professional development opportunities to senior Iraqi officials from the criminal justice sector. The other rule of law mission in Kosovo (EULEX KOSOVO)¹⁴ will not replace the United Nations Mission in Kosovo (UNMIK) but rather support, mentor, monitor and advise the local authorities. During the build-up period to full operational capability, the EULEX mission will be developed and deployed under the umbrella of the EU Planning Team already on the ground in Pristina.

One of the two border assistance missions takes place at Rafah Crossing Point in the Palestinian Territories (EUBAM Rafah).¹⁵ On 15 November 2005, Israel and the Palestinian Authority concluded an "Agreement on Movement and Access", including agreed principles for the Rafah crossing (Gaza). On 21 November 2005, the Council of the EU welcomed the Agreement and decided that the EU should under-

¹¹ See Council Joint Action 2008/229/CFSP of 17 March 2008 amending Joint Action 2007/369/CFSP on the establishment of the EU Police Mission in Afghanistan, OJ L 75/80 of 18 March 2008.

¹² See Council Joint Action 2008/38/CFSP of 20 December 2007 amending Council Joint Action 2007/405/CFSP on the EU Police Mission undertaken in the framework of the reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo, OJ L 9/18 of 12 January 2008.

¹³ See Council Joint Action 2008/304/CFSP of 14 April 2008, OJ L 105/10 of 15 April 2008.

¹⁴ Council Joint Action 2008/124/CFSP of 4 February 2008 on the EU Rule of Law Mission in Kosovo, OJ L 42/92 of 16 February 2008.

¹⁵ Council Joint Action 2008/379/CFSP of 19 May 2008 amending Joint Action 2005/889/CFSP on establishing an EU Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah), OJ L 130/24 of 20 May 2008.

take the Third Party role proposed in the Agreement to monitor the operations of this border Crossing Point. Due to the circumstances of the Rafah Crossing Point – there is temporarily no access for mission personnel to the Crossing Point – it is a problematic mission.

The other border assistance mission which is technical and advisory in nature is being carried out in Moldova and Ukraine (EU Border Assistance Mission to Moldova and Ukraine, code-named EUBAM).¹⁶ Its mandate is to help improve the capacity of the Moldovan and Ukrainian border and custom services to prevent and detect smuggling, trafficking of goods and human beings, as well as custom fraud, by providing advice and training. This mission is carried out under first pillar (see below) conditions and competences.

There is further one security sector reform mission in Congo (EUSEC RD Congo)¹⁷ which followed an official request by the government of the DRC. The mission provides advice and assistance to the Congolese authorities in charge of security while ensuring the promotion of policies that are in line with human rights and international humanitarian law, democratic standards, principles of good public management, transparency and observance of the rule of law. Additionally, the EU has launched a mission in support of the security sector reform in Guinea-Bissau (EU SSR Guinea-Bissau)¹⁸ which will be undertaken in partnership with the Guinea-Bissau authorities. It will provide advice and assistance regarding the reform of the security sector in order to contribute to the creation of conditions for the implementation of the National Security Sector Reform Strategy. The mission is part of a coherent EU approach and complementary to the European Development Fund and other European Community activities.

¹⁶ See the Memorandum of Understanding between the European Commission, the government of the Republic of Moldova and the government of Ukraine on the European Commission Border Assistance Mission to the Republic of Moldova and to Ukraine, 7 October 2005; X. Kurowska/ B. Tallis, “EU Border Assistance Mission: Beyond Border Monitoring?”, *European Foreign Affairs Review* 14 (2009), 47 et seq.

¹⁷ Council Joint Action 2007/406/CFSP of 12 June 2007 on the EU mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo, OJ L 151/52 of 13 June 2007.

¹⁸ Council Joint Action 2008/112/CFSP of 12 February 2008 on the EU mission in support of security sector reform in the Republic of Guinea-Bissau, OJ L 40/11 of 14 February 2008.

Due to the incidents in Georgia in August 2008, the Council decided, on 15 September 2008, to establish an autonomous civilian mission in Georgia, called European Union Monitoring Mission (EUMM).¹⁹ Its objective is to contribute to stability throughout Georgia and the surrounding regions. In the short term, its aim is to contribute to the stabilization of the situation, in accordance with the six-point cease-fire agreement and the subsequent implementing measures.

This enumeration shows that civilian crisis management in all its facets is the area in which the EU has made the fastest operational progress.²⁰

II. General Legal Framework

1. Mixture of Civilian and Military Crisis Management and its Problems

Civilian crisis management is peculiar to the EU and has no real equivalent in the lexicons of the United Nations, the Organization for Security and Cooperation in Europe (OSCE) or non-European regional organizations.²¹ The interrelationship between the military and civilian components is usually characterized as one between distinct entities with the military providing support and backup to the civilian presence in the field. This support is grounded in the military's ability to wield overwhelming force.²² Nevertheless, civilian crisis management is an instrument for international actors to help create the structures and capacities that enable the state to provide for the security and safety of its

¹⁹ Council Joint Action 2008/736/CFSP of 15 September 2008 on the EU Monitoring Mission in Georgia, EUMM Georgia, OJ L 248/26 of 17 September 2008.

²⁰ R. Dawn, "Civilian Tasks and Capabilities in EU Operations", *SIPRI Policy Paper* 8, 2004, 1; C.R. Earle, *European Capacities for Peace Operations: Taking Stock*, Henry L. Stimson Center, March 2004, 6.

²¹ Dawn, see note 20.

²² Dawn, *ibid.*, 15; H.G. Ehrhart, "The EU as a Civil-Military Crisis Manager – Coping with Internal Security Governance", *International Journal* 61 (2006), 433 et seq. (434-435).

population. It is not a soft option for intervention but a fundamental element in building sustainable peace.²³

Civilian and military crisis management of the EU are shaped in a different way. This is largely due to the different participation of the European Commission and the European Parliament in the field of military crisis management on the one hand and civilian crisis management on the other.²⁴ The EU's specialization in mixed civilian-military crisis management could become legally difficult, as the European Commission and the European Parliament both have huge influence in the field of civilian crisis management. For this reason, a dispute over competences might occur. To maintain its influence, the European Commission might be (too) eager to label an action as one of a civilian nature.

To alleviate tensions one could develop a catalogue of criteria. Such a catalogue could be generated on the basis of completed military and civilian missions. Then, a fixed number of civilian as well as military criteria must be fulfilled to make combined crisis management possible. Another possibility would be to rely on the focus of a specific action.²⁵ Still the question remains exactly how the European Commission and the European Parliament take part in this combined crisis management.

A greater framework than the presently existing Political and Security Committee (PSC) is needed.²⁶ Therefore the Committee for Civilian Crisis Management (CIVCOM), could be further developed as a coordinating mechanism. Thus, it is possible to achieve a step-by-step cooperation (or participation) in the field of civilian-military crisis management. It would be further possible and at the same time less cost-intensive to establish, for example, a common "Security Council" in which the PSC takes the leading role and the other two EU pillars

²³ Dawn, see note 20, 22; F. Kupferschmidt, "Crisis Management – A Combined Effort with Civil and Military Means", *swp-FG3-Working Paper* (January 2007), 1-4.

²⁴ See G. Müller-Brandeck-Bocquet, "The New CFSP and ESDP Decision-Making System on the European Union", *European Foreign Affairs Review* 7 (2002), 257 et seq. (274-278) and R. Rummel, "From Weakness to Power with the ESDP?", *European Foreign Affairs Review* 7 (2002), 453 et seq. (462).

²⁵ That would be a similar approach as the European Court of Justice had decided several times in regard to competence norms of the Treaty of the European Community.

²⁶ H.C. Hagman, *European Crisis Management and Defence*, 2002, 81.

(see below) are represented. The only rational alternative solution to such an intensified coordination between the pillars of the EU would be to abandon the pillar structure²⁷ – but the loss of the pillars might be possible, if at all, only in the long run.

Another open question is the implementation of financing. The lack of transparency emerges particularly in the so-called hybrid operations that is to say in the field of civilian-military foreign assignment of the EU. These operations are financed through the budget of the EU.²⁸ According to the financing options for civilian ESDP-missions (from the budget of the European Community), voluntary national dues (as for military ESDP-operations) or as was the case with ATHENA, the creation of a special financing mechanism,²⁹ could be considered.

There are no participation rights foreseen for the European Parliament during the raising of national funds for the accomplishment of a common action.³⁰ ATHENA is rather a model for a financing mechanism for military ESDP-operations. Thus, the budgetary powers of the European Parliament in the field of civilian-military crisis management would be restricted. This is due to the fact that shadow-budgets in the exclusive intergovernmental scope of the European Council are increasingly being established.³¹ The only alternative would be the financing through the European Community's budget. This would further promote the collectivization of ESDP and the Common Foreign and Security Policy (CFSP).

Command and control authorities remain, however, the most problematic issue in EU civil-military coordination. The military chain of command in EU operations is, currently, distinct and separate from the

²⁷ Hagman, see note 26, 82.

²⁸ A. Benediek/ H. Whitney-Steele, "Wein predigen und Wasser ausschenken – Die Finanzierung der EU-Außenpolitik", *swp-Aktuell* 31 (July 2006), 3.

²⁹ Council Decision 2008/975/CFSP of 18 December 2008 establishing a mechanism to administer the financing of the common costs of EU operations having military or defense implications (ATHENA), OJ L 345/96 of 23 December 2008.

³⁰ W. Kaufmann-Bühler/ N. Meyer-Landrut "Art. 28 EUV", in: E. Grabitz/ M. Hilf (eds), *Das Recht der Europäischen Union, Band 1, EUV/ EGV*, 37, 2008, para. 17; K. Raube, "European Parliamentary Oversight of Crisis Management", in: S. Blockmans (ed.), *The European Union and Crisis Management – Policy and Legal Aspects*, 2008, 181 et seq. (187 et seq.).

³¹ Kaufmann-Bühler/ Meyer-Landrut, see above, "Art. 28 EUV", para. 17.

civilian side.³² Thus many of the practical coordination challenges take place at the operational level.³³

2. Legal Basis in European and International Law

The potential legal basis for EU operations and missions in European law is article 14 Treaty of the European Union (TEU) in conjunction with article 17 para. 2 TEU. In particular the operative advancement of the EU may be based on the instrument “Common Action” according to article 14 TEU (in conjunction with article 17 para. 2 TEU). The so-called Petersberg-tasks in article 17 para. 2 TEU include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.³⁴

EU operations and missions are derived from article 14 TEU in the form of a Common Action which is (usually) legally binding for all EU Member States – except Denmark which secured itself an opt-out. This type of action is typical for the operative progression of the EU. In such a Common Action, a goal, the means, the amount/the complexity, the terms and conditions, and (if necessary) the period of the action must all be specified. But these are (only) formal requirements. The requirement of unanimity for decision-making underlines the intergovernmental character of the ESDP and the central role of the Council of the EU. Thus, only the Member States which abstain from voting without blocking the whole operation or mission are not obliged to contribute to the financing of the specific action.

Both civil and military ESDP missions and operations are typically executed in a two-step procedure. In the first step, the Council decides upon a common action, which regulates the basic parameters for a common approach to a concrete conflict. In a second step, the Council

³² See Dawn, see note 20, 17; M. Paul, “Soldaten als Entwicklungshelfer? – Perspektiven zivil-militärischer Zusammenarbeit im Auslandseinsatz”, *swp-FG3-Discussion Paper* 11 (October 2007), 4.

³³ Dawn, see note 20, 19.

³⁴ See for the Petersberg-tasks in general, R.A. Wessel, “The State of Affairs in EU Security and Defence Policy: The Breakthrough in the Treaty of Nice”, *Journal of Conflict & Security Law* 8 (2003), 265 et seq. (281) and S. Kielmansegg, “The Meaning of Petersberg: Some Considerations on the Legal Scope of ESDP Operations”, *CML Rev.* 44 (2007), 629 et seq.

decides the launching/initiation of a mission or operation and thus lets it become operative.

The EU is not a state and thus not bound formally by the Charter of the United Nations and due to emerging opinions of legal scholars,³⁵ the legal basis of the EU in international law is not particularly clear. No restriction can be found in article 17 para. 2 TEU. This means that the EU is able to carry out operations and missions which are neither limited by geographic criteria nor by a certain intensity of threat.³⁶ Secondly, one of the objectives of the EU as defined in article 11 para. 2 TEU is to preserve peace and strengthen international security in accordance with the principles of the Charter of the United Nations when defining and implementing the common foreign and security policy. Additionally, there are several declarations concerning the collaboration between the United Nations and the EU.³⁷ Therein it is especially recalled that the United Nations Security Council has the primary responsibility for the maintenance of international peace and security. The basic principles of the Charter of the United Nations entail the prohibition of the use of force and basically the need for a Security Council Resolution in case of any military coercive means. On the other hand, the EU can also rely on the exemptions from the prohibition of the use of force. This is foremost the right to self-defense and peace-keeping operations which do not constitute coercive means due to the given consent of the state concerned. Furthermore the EU may rely on possible exemptions from the prohibition of the use of force which could develop on the basis of customary international law. Arti-

³⁵ Some scholars want to establish more exceptions from the United Nations Security Council's power to allow the use of force; an overview is given by Kaufmann-Bühler, see note 30, "Art. 17 EUV", para. 8.

³⁶ See S. Kielmansegg, *Verteidigungspolitik der Europäischen Union*, 2005, 148 et seq.; similar N. Tsagourias, "EU Peacekeeping Operations: Legal and Theoretical Issues", in: M. Thrybus/ N.D. White (eds), *European Security Law*, 2007, 102 et seq. (129).

³⁷ Joint Declaration on EU-UN Co-operation in Crisis Management, 24 September 2003; EU-UN Co-operation in Military Crisis Management Operations – Elements of Implementation of the EU-UN Joint Declaration, European Council, June 2004; Joint Statement on UN-EU Co-operation in Crisis Management, 7 June 2007.

cle 11 para. 2 TEU refers to the principles of the Charter of the United Nations in a dynamic way.³⁸

III. Transfer of Democracy?

Another question which remains is whether and to what extent the crisis management system of the EU really contributes to a transfer of democracy into third countries. Therefore it is necessary to analyze the EU's rule of law³⁹ concept and to have a closer look at the practical output of its crisis management missions.

1. Rule of Law Concept of the EU

The EU's rule of law concept must be seen in the context of the three pillar structure of the Union. The EU is built under a single institutional roof standing on three pillars, established by the Treaty on the EU (1992). The first pillar is the Community pillar, including the three European Communities (EC, Euratom, ECSC). The second pillar is cooperation between the Member States in the common foreign and security policy (the third pillar is cooperation in the fields of justice and home affairs (JHA)). The Commission holds several instruments for non-coercive intervention under the first pillar.⁴⁰ It aims at strengthening and enforcing economic development, but also the respect for human rights, democratic values and the rule of law. For this purpose, the EU has launched various cooperation programs designed to assist political and economic transformation in all parts of the world, but in particular with regard to the Mediterranean area, to Central and Eastern Europe as well as to the Balkans (e.g. Phare, Tacis, Meda or Cards programs).⁴¹

³⁸ Kielmansegg, see note 36, 227; probably also F. Pagani, "A New Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on European Union", *EJIL* 9 (1998), 737 et seq. (741).

³⁹ On the issue of rule of law, see *Max Planck UNYB* 12 (2008), 345 et seq.

⁴⁰ See especially arts 177-181 Treaty of the European Community (Development Co-operation) and Part II. 1. above.

⁴¹ U. Schneckener, "Theory and Practice of European Crisis Management", *European Yearbook of Minority Issues* 1 (2001/2), 131 et seq. (132); F. Hoffmeister, "Inter-pillar Coherence in the European Union's Civilian Cri-

In contrast, the Council of the European Union and the Member States rule in the second pillar within the framework of CFDP and ESDP.⁴² Therein the EU tries to deal with potential crises, ongoing conflicts and/or post-conflict situations.⁴³

Here the second pillar will be focused on where the EU made the rule of law a priority,⁴⁴ and elaborated a concept for missions in this field.⁴⁵ At the Göteborg European Council in June 2001 two generic concepts of rule of law missions were elaborated:

- “Strengthening the rule of law” missions:

In this case personnel in the field of the rule of law are deployed essentially 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. This includes technical assistance, advice on institutions related to capacity building (training, education, and standard setting), monitoring and mentoring of personnel, and the application of legislation and administrative procedures;⁴⁶ and

- “Substitution for local judiciary/ legal system” operations:

These missions involve the deployment of personnel to carry out executive functions, notably where local structures are failing. The objective here is to consolidate the rule of law in a crisis situation in order to restore public order and security. These missions thus concern the functions of the courts, the prosecution system and the running of prisons as well as the provision of defense lawyers.⁴⁷

The general objective of both types of missions is “to provide for complete and sustainable judiciary and penitentiary systems under local

sis Management”, in: S. Blockmans (ed.), *The European Union and Crisis Management – Policy and Legal Aspects*, 2008, 157 et seq. (165-166).

⁴² See Part II. 1. above.

⁴³ Schneckener, see note 41.

⁴⁴ See Council of the European Union (CEU) 13309/01 and 14513/02.

⁴⁵ See CEU 14513/02 and EU Doc. 9792/03, Comprehensive EU Concepts for Missions in the Field of Rule of Law in Crisis Management, including Annexes, Brussels, 26 May 2003 (EU 9792/03).

⁴⁶ See J. Arloth/ F. Seidensticker (eds), *The ESDP Crisis Management Operations of the European Union and Human Rights*, German Institute for Human Rights, April 2007, 27.

⁴⁷ Arloth/ Seidensticker, see above.

ownership and meeting rule of law and human rights standards in the mission area.”⁴⁸ According to the European Parliament “security and the rule of law are indispensable preconditions for development and long-term stability.”⁴⁹ This shows the inter-linkage between first and second pillar activities. Nevertheless the problem of coordination between the first and second pillar needs to be solved.⁵⁰ Therefore a closer look at the practical output of EU crisis management missions and operations is necessary.

2. Result of the EU Crisis Management Missions and Operations: Practical Output

In general, EU crisis management missions and operations seem to be successful. But, this rhetoric does not exactly correspond to reality. The EU is facing numerous problems in regard to crisis management. In part, this is due to the fact that the ESDP is still in its early stages. It evolved at the beginning of the 2000’s and is still in its infancy. Therefore, the EU still lacks capacities to carry out autonomous operations on a greater scale. In this field, larger operations are not possible without recourse to NATO assets and capabilities. Consequently, non-EU Member States like the United States, Canada and Turkey have a stake in genuine European decision-making and panels.

A good example is the deployment of EUPOL Afghanistan which was delayed by Turkey, which used its NATO veto to show its displeasure with the EU. The EU mission has no cooperation agreement with NATO which operates in Afghanistan under the mandates of ISAF (International Security Assistance Force) and operation Enduring Freedom. This means that EU police officers cannot automatically be given NATO intelligence or backup support should they come under attack from the Taliban.⁵¹ Furthermore, the political impact of some

⁴⁸ See CEU 14513/02.

⁴⁹ European Security Strategy and ESDP, European Parliament resolution of 19 February 2009 on the European Security Strategy and ESDP (2008/2202(INI)), para. 22.

⁵⁰ See Part II. 1. above.

⁵¹ P. Hughes, “NATO and the EU: Managing the Frozen Conflict – Test Case Afghanistan”, *Zentrum für Europäische Integrationsforschung Discussion Paper C 178*, 2007, 21, footnote 39; K.P. Klaiber, “The European Union in

missions and operations is highly volatile. For example, the EU Border Assistance Mission at Rafah Crossing Point in the Palestinian Territories and the EUPOL COPPS. It was disputed among the EU Member States whether they should take sides in the conflict. Rafah Crossing Point was often blocked by the Israelis. Israel distrusts Europe for historic reasons, for having a pro-Arab and pro-Palestinian bias, and for not being able to make a solid stance against terrorism. The numerous common declarations of the EU on the Middle East read as a continuous indictment of Israeli occupation policies, and as a result the EU's political standing in Jerusalem remains low, while its impact on Israeli policies is minimal.⁵² The mission in Kosovo e.g. cannot be fully appreciated outside the context of the acceptance of the newly created state. Due to the absence of a United Nations Security Council Resolution regarding the future status of Kosovo, the EU Member States Greece, Spain, Cyprus, Slovakia, Bulgaria and Romania have not recognized Kosovo as an independent state. The conflict in Sudan/ Darfur finally illustrates the problematic role allocation between the EU and the African Union. The EU/African Union relationship on Darfur has been generally successful from a technical point of view, however, the security situation is worsening⁵³ and finally the coordination within and between each other could be much improved. Another example is the EU's engagement in Africa, especially in the Democratic Republic of the Congo which is mainly promoted by France and the former colonial power, Belgium. The country has been a major focus for Europe and a proving ground for an evolving European policy. Through operation "Artemis" the EU has demonstrated for the first time a common European capability to launch military force over a great distance without recourse to NATO assets and capabilities.⁵⁴ Nevertheless the role of

Afghanistan: Lessons Learned", *European Foreign Affairs Review* 12 (2007), 7 et seq.

⁵² A. Pijpers, "The EU and the Palestinian-Israeli Conflict: The Limits of the CFSP", *Paper of the Netherlands Institute of International Relations Clingendael*, September 2007, 4.

⁵³ See International Crisis Group (ed.), *Africa Report No. 99* of 25 October 2005, "The EU/ AU Partnership in Darfur: Not yet a Winning Combination".

⁵⁴ See RAND Institute (ed.), *Europe's Role in Nation-building from the Balkans to the Congo*, 2008, 23 et seq.; S. Wiharta, "Planning and Deploying Peace Operations", *SIPRI Yearbook 2008 – Armaments, Disarmament and International Security*, 97 et seq. (103-104); C. Gegout, "Causes and Consequences of the EU's Military Intervention in the Democratic Republic of

the EU in Africa is often criticized for being rather idealistic.⁵⁵ The problem may be located in the implementation of the abstract goals such as promoting democracy, strengthening the rule of law and others. Finally 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. When money is available, they are prolonged from one year to another. Nevertheless it is unlikely that they can run for decades. Hence, the EU has to develop substantial strategies. The lack of a strong sense of common purposes in the foreign and security policy strongly indicates that less ambitious but feasible crisis management policies, as opposed to morally stringent but difficult policies, are more conducive to the development of EU cohesion and common strategies.⁵⁶

A general problem of the so-called rule of law missions is the understanding of the whole concept behind the idea, i.e. the question whether rule of law is meant in a formal or in a material way. Whereas a formal rule of law concept means “solely” a commitment to the law in force, a material rule of law concept involves the notion of justice. International consensus may be obtained on the formal rule of law concept. Nevertheless, this concept has to be adapted to the cultural background of a specific country. That means that a specific European rule of law concept cannot be exported from one country to another. The rule of law of a state is not a worldwide patent remedy. According to a report by the Secretary-General of the United Nations, rule of law,

“refers to a principle of governance in which all persons, institutions or entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and in-

Congo: A Realist Explanation”, *European Foreign Affairs Review* 10 (2005), 427 et seq. (435).

⁵⁵ T. Risse/ G. Walter-Drop, “Musterschüler mit Makeln – Im Jubiläumsjahr 2009 steht auch das Projekt Europa auf dem Prüfstand”, *IP* 2/2009, 88, 91-92; A. Abass, “EU Crisis Management in Africa: Progress, Problems and Prospects”, in: S. Blockmans (ed.), *The European Union and Crisis Management – Policy and Legal Aspects*, 2008, 327 et seq. (342-343).

⁵⁶ S. Rynning, “Providing Relief or Promoting Democracy? The European Union and Crisis Management”, *Security Dialogue* 32 (2001), 87 et seq. (97).

independently adjudicated, and which are consistent with international human rights norms and standards.”⁵⁷

This rule of law concept is both formal and material.⁵⁸ Nevertheless international consensus may be reached on it, because it refers on the material side to international human rights norms and standards on which consensus may be obtained. But one must bear in mind that there are still regimes refusing to respect fundamental human rights. Crisis management in general is a very complex issue. The overall problem is one of connecting the use of force to the issue of local growth of democracy.⁵⁹ In principle the EU has quite a good starting position because of its combined military and civil crisis management capabilities.⁶⁰ For the United Nations the EU is an attractive partner, it is widely accepted in the world, sometimes even more than NATO, which often is seen as dominated by the United States of America.⁶¹

A possibility to develop substantial strategies could be the broadening of the scope of the defense policy of the EU and loosening the connection to overall worthy political goals, such as democracy and prosperity.⁶² But this would make the demarcation of powers between the two pillars even more complicated. Therefore, coordination and cooperation between the different pillars and institutions remains a crucial challenge for the future effectiveness of the EU’s crisis management system.⁶³

⁵⁷ Doc. S/2006/616, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, Report of the Secretary-General*, 23 August 2004, page 4.

⁵⁸ The same is true for the European Union’s rule of law concept see under Part III. 1. above. Nevertheless its concept goes a little bit further in the direction of a material rule of law concept.

⁵⁹ Rynning, see note 56, 93; Kuperschmidt, see note 23, 6.

⁶⁰ In the same way Hoffmeister, see note 41, 179.

⁶¹ S.B. Gareis, “Partner für den Weltfrieden? Die Zusammenarbeit zwischen EU und UN in der internationalen Krisenbewältigung”, *Vereinte Nationen* 56 (2008), 154 et seq. (156); see for the first point also A. Menon, “From Crisis to Cartharsis: EDSP after Iraq”, *Int’l Aff.* 80 (2004), 631 et seq., (642).

⁶² So the argument of Rynning, see note 56, 98.

⁶³ See also Hoffmeister, see note 41, 179-180; Ehrhart, see note 22, 439 et seq.

Annex

Ongoing Military Operations, 2009	Ongoing Civil Missions, 2009
EUFOR Althea, Bosnia-Herzegovina Start: December 2004 Review: May 2009 (the end of the operation has to be decided by the Council)	EU Police Mission (EUPM), Bosnia-Herzegovina January 2003 – December 2009
EUFOR TCHAD/RCA March 2008 – March 2009 (12 months) Despite the official fulfillment of the mandate in May 2009, the EU remains active at a political and diplomatic level in Chad	EUPOL COPPS, Police Mission in the Palestinian Territories January 2006 – December 2010 (5 years)
EU NAVFOR ('naval force') Somalia/ operation "Atalanta" December 2008 – December 2010 (24 months)	EUPOL AFGHANISTAN (Police Mission) June 2007 – June 2010 (3 years)
	EUPOL RD Congo (Police Mission) July 2007 – June 2009
	EUJUST Lex, Integrated Rule of Law Mission for Iraq July 2005 – June 2009
	EULEX KOSOVO (Rule of Law Mission) February 2008 (fully operational in December 2008) – 28 months from the date of approval of the OPLAN (probably February 2010)
	EUBAM Rafah (Border Assistance Mission in the Palestinian Territories)

	November 2005 – November 2009
	EUBAM (Border Assistance Mission to Moldova and Ukraine) November 2005 – November 2009
	EUSEC RD Congo (Security Sector Reform Mission) June 2005 – June 2009
	EU SSR Guinea-Bissau (Security Sector Reform Mission) February 2008 – November 2009
	EUMM (Monitoring Mission) Georgia October 2008 – October 2009 (review after 6 months)

Completed Military Operations	Completed Civil Missions
Concordia, former Yugoslav Republic of Macedonia (fYROM) March 2003 – December 2003	Proxima (Police Mission), former Yugoslav Republic of Macedonia (fYROM) December 2003 – December 2005
Artemis, Democratic Republic of the Congo June 2003 – September 2003	EUPOL Kinshasa (Police Mission), Democratic Republic of the Congo April 2005 – June 2007
EUFOR RD Congo July 2006 – November 2006	EUPAT (Police Advisory Team), fYROM December 2005 – May 2006
EU NAVCO ('naval coordination'), off the Somali coast September 2008 – December 2008	EUJUST Themis (Rule of Law Mission), Georgia July 2004 – July 2005
	AMM (Aceh Monitoring Mission), Indonesia September 2005 – December 2006
EU Support to AMIS (civil-military operation), Sudan/ Dafur July 2005 – December 2007	