

CRISIS MANAGEMENT OF THE EUROPEAN UNION AND THE HUMAN RIGHTS ASPECT – CASE STUDIES

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Abstract

The promotion and protection of human rights is one of the primary objectives of the European Union's foreign policy – and thus of the European Security and Defence Policy (ESDP). It is a guiding principle in the military operations of the EU, and with the strengthening of the civil-military co-operation and the development of purely civilian instruments for crisis management, human rights protection should and will increase in importance for crisis management of the EU. This paper examines the role which human rights protection plays today in ESDP operations. It reaches the conclusion that, from a normative perspective, a solid set of human rights rules and guidelines for ESDP operations have been developed. In practice, however, the integration of human rights components in ESDP missions has only just begun. This paper considers the strengthening of the civil component and the integration of human rights as well as the implementation of fundamental steps for successful EU missions in conflict regions. For this purpose, case studies are included which have exclusive importance for the region and its security (Concordia and PROXIMA in Macedonia and ALTHEA and Police mission in Bosnia and Herzegovina). The study concludes with a set of recommendations for strengthening human rights as an element of the ESDP.

Key words: European Union, security, human rights, cases.

1. Introduction

The European Security and Defence Policy was created at the European Council Summit in Cologne in June 1999, when started the development of military and civilian capabilities for conflict prevention and crisis management in order to strengthen the EU's capacity for external actions

(Cologne European Council, 1999). At the Nice Summit in December 2000 new innovations were created such as the High Representative for Common Foreign and Security Policy, the Political and Security Committee, the EU Military Committee and the EU Military Staff (Nice European Council, 2000). At the Laeken Summit in December 2001, the European Council officially confirmed that the Union is capable of undertaking wide range of military and civilian crisis management operations from peace missions and rule of law to protection of human rights (Council of the EU, 15891/05, 2005).

As far as the military capabilities, member-states at the Helsinki Summit in December 1999, introduced the Headline Goal declaring that EU is capable of setting 60.000 troops, deployable for 60 days and sustainable for one year (Helsinki European Council, 1999). In 2004, the Headline Goal was further elaborated introducing the battle groups, European Defence Agency, European Gendarmerie Force and civil-military cells. Regarding civilian crisis management capabilities, at the European Council Summit in Santa Maria de Feira in June 2000 action areas were confirmed: police, rule of law, civil administration and civil protection, subsequently complemented with monitoring and support for EU's special representatives (Santa Maria de Feira European Council, 2000).

At the beginning, nearly 400 experts have been named by member-states to cover human rights, including a few human rights experts. Since 2008, member-states started to increase the number of human rights experts in line with EU human rights policy and presently more than 5.500 police officers, more than 600 rule of law experts, 500 for civil administration and nearly 5000 for civil protection are dealing with human rights issues.

In the ESDP frame, the human rights are included in the following structures:

- Council Working Group on Human Rights;
- CFSP's HR Personal Representative on Human Rights;
- Directorate-General IV dealing with Transatlantic Relations, UN and Human Rights, Directorate-General VII with ESDP, Directorate-General VIII with Defence Aspects, and Directorate-General IX with Civilian Crisis Management and Coordination.

However, it may be concluded that the human rights are not shaped as a separate category of tasks within ESDP activities of civilian crisis management.

2. ESDP and Human Rights

The Lisbon Treaty in article 2 stipulates that the “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights” as values common to the member-states, while in article 6 is stipulated that the “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union”, as well as that the “Union shall accede to the European Convention for the

Protection of Human Rights and Fundamental Freedoms ... as they result from the constitutional traditions common to the member-states” (Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 83/1, 2010). Regarding quoted standards, the Court of Justice of the EU draws its inspiration not only from the ECHR and constitutional traditions of the member-states, but also from the international instruments for protection of human rights to which member-states are signatories (European Court of Justice, Case C-540/03, 2006).

Title 5 of the Lisbon Treaty, in the CFSP provisions, underlines several goals, from which one of them points out that the “Union shall define and pursue common policies and actions ... in order to ... consolidate and support democracy, the rule of law, human rights and the principles of international law.“ Such commitment also covers the ESDP as a part of the CFSP. On one side, it is underlined that the EU’s political goals are oriented towards all external actions, and on the other side, with its acts the Union is obliged with human rights.

Serious problem that might arise in every peace mission is the human rights violation from the member-states staff participating in the mission. Does the local population, in such case, have access to effective legal remedy? This reaches the issue of extraterritorial importance and applicability of human rights conventions ratified by member-states participating in missions (European Court of Human Rights, Appl. No. 52207/99, 2001).

As a consequence of EU’s commitments on human rights, the Council adopted numerous guidelines for human rights: on death penalty (1998), on torture and other cruel, inhuman and degrading treatment (2001), on dialogue with third countries regarding human rights (2001), on children in armed conflicts (2003), on the protection of human rights defenders (2004), conclusions on promoting gender equality and gender mainstreaming in crisis management (2006), as well as the guidelines on the promotion of international humanitarian law as an instrument for promoting human rights.

3. Standards for Mission’s Personnel

In line with the EU’s commitments, several legal obligations persist for the personnel engaged in ESDP operations. The personnel must apply provisions of the international law, including the law in armed conflicts and the law of the state subject of intervention. The operational plan for Concordia military operation in Macedonia underlines that the “the use of force by EU forces will be governed by the principles of necessity and proportionality (Council of the EU, 7855/03, 2003). While the bases of the EU’s mission in Macedonia include UN determinations, EU forces will respect local law”. Therefore, the confirmation for applying the law of the region at stake from the beginning of the intervention is a necessary precondition; if the local law reflects the human right in better manner, it

must be applied. Mission personnel must respect international human rights and standards in all times and full cooperation is needed with all human rights mechanisms.

On the other side, the local population are the main victims of internal conflicts and in order to protect them it is of great importance to promote rules for appropriate use of force and code of conduct. Standards of behaviour were drafted after several accusations in Bosnia (Human Rights Watch, 2002). In November 2003, “Draft guidelines on Protection of Civilians in EU-led crisis management operations”, were adopted, as well as the “Generic Standards of Behaviour for ESDP Operations” in May 2005 (Council of the EU, 14805/03, 2003; Council of the EU 8373/3/05, 2005). The Draft Guidelines were developed in order to secure that the needs for protection, right and assistance for civilians are fully addressed in EU’s crisis management operations. The Generic Standards complement the Guidelines and legal obligations according international law and the law of the participating states.

What are the procedures if misconduct emerges, such as the human rights violations, which is considered to be quite serious and sensitive issue? There is no available information on cases of human rights violations in EU operations. However, there are examples of neglect of duty or malfeasance in EU operations, confirmed in PROXIMA and Aceh (International Crisis Group, 2006). In cases of misconduct or violation additional disciplinary measures are to be undertaken, independent of possible criminal procedures. Regarding criminal procedures, the mission’s personnel are under exclusive jurisdiction of their states and such exclusivity may result in problematic jurisdiction gaps, especially in cases of misconduct against the local population. Regarding military operation, for example, Operation Artemis in Congo, underlines that in the time of the operation the personnel of the sending state is under immunity from arrest or detention and immunity from legal process regarding any act done by them (Joint Action 2003/423/CFSP).

Common for the civilian operations personnel are “granted all privileges and immunities equivalent to that of diplomatic agents, according Vienna Convention on Diplomatic Relations of 18 April 1961, subject to which the EU member-states shall have priority of jurisdiction” (Council of the EU, 15705/1/03, 2003). Only the HR may waive the personnel’s immunity “where such immunity would impede the course of justice,” but only with explicit consent of the sending state (Council of the EU, 13972/04, 2004). The Council Decision on Conclusion of an agreement between EU and Indonesia on the mission’s monitoring status in Aceh (MMA) and its staff secured that the personnel shall not be liable to any form of arrest or detention and execution measures shall not be undertaken, except in civilian procedure cases regarding their official functions. Therefore, the MMA personnel had immunity from the jurisdiction of Indonesia, but was subject of jurisdiction from their sending states (Council of the EU, 12504/05 2005).

The rules and procedures for disciplinary measures for misconduct differ for civilian and military personnel. In the case of the military operation in Congo, EU secured that the personnel of the sending states remain members of their armed forces, thus under its command and under its law

during the operation. In cases of misconduct by the mission's personnel, the Operational Command is responsible for disciplinary measures. If such case is reported to the authorities of the domestic state, the Operational Command shall be informed and the person in question shall be handed over the Operational Command; disciplinary measures shall be undertaken and, if necessary, effective repatriation (Council of the EU, 10773/03, 2003). For civilian missions, the Head of mission is usually responsible for disciplinary control over the staff. Regarding civilian personnel of member-states, third parties or EU institutions, full disciplinary jurisdiction is retained by relevant national authorities or authorities within the EU institutions (Council Joint Action 2005/643/CFSP). The final disciplinary sanction is dismissal and return to the sending state, which should undertake additional measures regarding criminal jurisdiction.

4. ESDP Operations and Human Rights (case studies)

Concordia (Macedonia). The first EU military operation Concordia in Macedonia started on 31st of March, upon the request of the government of Macedonia, and lasted until 15th of December with the objective to improve the overall security situation and contribute for stable and safe environment to allow implementation the Ohrid Framework Agreement from August 2001 (Council Joint Action 2003/92/CFSP). Regarding the human rights aspect, **human rights were not explicitly mentioned in the mandate.** The provisions for visible military presence, especially in areas of potential instable and ethnic tension, in order to support confidence building and stability and support for international community monitors, contributed for the stabilization and improvement of the security situation, which in turn had great meaning for the protection and promotion of human rights.

EUFOR ALTHEA (Bosnia and Herzegovina). In BiH, EU sends its largest ESDP military operation, EUFOR ALTHEA, on 2nd of December 2004, in an environment where numerous regional and international actors are operating (Council Joint Action 2004/570/CFSP). The main responsibility for human rights is entrusted to the OSCE mission. In addition to its main mission for securing free and safe environment, ALTHEA also is tasked to secure fight against organized crime and to offer capacity building for local authorities and law enforcement agencies.

At the beginning, ALTHEA was criticized for its limited defined mandate, focusing more on the organized crime and for including monitoring tasks even though the EU already had two missions in BiH which carried monitoring tasks and related to security and law enforcement issues (International Crisis Group, 2004). Despite the assumptions that ALTHEA might be a test for ESDP capabilities, there were various activities in areas of human rights importance, **although the mission's mandate does not directly refer to human rights.** That includes special support for the International Criminal Tribunal for former Yugoslavia (ICTY) and relevant authorities, including detention of persons indicted for war crimes (Council of the EU 15891/05, 2005). In 2004 the Amnesty

International called the EU to secure that the EUFOR ALTHEA actively seeks those indicted by the ICTY for genocide, war crimes and crimes against humanity, since the organization accused SFOR for human rights violations, including unlawful detention (Amnesty International, 2004). EUFOR collected intelligence on criminal networks supporting the suspects of war crimes and conducted search operations and attempts to apprehend fugitives. As a conclusion, EUFOR actively contributed for the environment in BiH that is favourable for establishing a human rights culture. This was confirmed by the polls which showed that the population looked at the ALTHEA as an essential part for the security and stability (WEU Inter-parliamentary Assembly, 2006).

EUPM (Bosnia and Herzegovina). EU Police mission in BiH started in January 2003 with 500 international police officers, replacing the UN's international police officers established according to the Dayton Agreement of 1995 (Council Decision 2002/845/CFSP). When the initial period of three years expired at the end of 2005 (EUPM I), EU agreed on a refocused mandate for lower-scale mission (EUPM II). EUPM I mandate focused mainly on strengthening the state security institutions, support for local police in the fight against organized crime, conducting inspections and monitoring of police operations and supporting the implementation of police restructuring. In EUPM mandate, **these responsibilities are not explicitly connected with human rights.** However, many of the EUPM tasks represent important steps to prepare the ground for human rights culture: capacity and institution building in the field of policing and the rule of law and protection of refugees. Regarding the importance of human rights within the mission's work, the HR in a letter from 2nd of December 2002 to Amnesty International, clarified that: "A professional, European police service is one that incorporates a human rights-based approach into all aspects of its work ... we will mainstream a human rights-based approach ... include human rights reporting in their reports from the field.

EUPOL PROXIMA (Macedonia). The second ESDP Police mission, EUPOL PROXIMA, started upon the request of the President Trajkovski – firstly from 15th of December 2003 until 15th of December 2004, but latter extended for an additional year (Council Joint Action 2003/681/CFSP; Council Joint Action 2004/789/CFSP). In line with the Framework Agreement from August 2001, PROXIMA focused on gradual stabilization of the country. According to former Head of Mission, Jürgen Scholz, **PROXIMA had strong human rights focus (not mentioned in the mission's mandate)** which embraced the human rights tasks of monitoring and capacity building. Other activities directly connected with human rights included monitoring the treatment of detainees in police stations with subsequent reports to the government and international organizations. Included in the fight against human trafficking, PROXIMA's main objective regarding this matter was to raise the awareness and to improve the capabilities in investigating suspicious cases. It was confirmed that the human rights aspect found expression in the planning of the operation and in the work of the mission. Human rights knowledge was taken into consideration during the selection of the personnel and included in the training. One of the organizations PROXIMA cooperated with was OSCE, which had special mandate for dealing with human rights issues.

Artemis, EUFOR Congo and EUSEC Congo. EU, in response to the UN's General Secretary Request, deployed its mission Artemis in Congo on 12th of June 2003, after a series of human rights violations in the Ituri province (Council Joint Action 2003/423/CFSP). The operation was first out of Europe and first autonomous outside NATO. Mission tasks were stabilizing the security conditions and improvement of the humanitarian situation in Bunia (Ituri's capital city), protection of the civil population, the UN staff and the humanitarian presence. Still, atrocities continued because of the mission's limited mandate, which, according Amnesty, contributed the human rights violations to continue during 2005 and 2006 and until today EU faces accusations that not enough effort has been made towards improvement of the situation in Congo (Amnesty International, 2006).

For that cause, EU undertook second autonomous mission in Congo that lasted from 25th of April till 30th of November 2006, in time of state elections and for purpose of stabilizing the situation. **Although human rights were not mentioned in the mandate**, this second mission was much more relevant for human rights protection and protection not only of the physical safety of the population but also of their ability to exercise political rights. The mission was the first to have Gender Advisor on the field for integration of gender perspective and strong focus on women's rights. Two central human rights focal points were assigned for the operation in Operation Headquarters and Field Headquarters responsible for all operational legal issues, particularly the Law of Armed Conflicts, human Rights Law and others. The decision not to appoint human rights advisors but focal points is because of the mission's short period (4 months) and the permanent presence of the UN and EU. Further, legal advisor in the Field Headquarters acted as a Gender Officer. These focal points were able to secure respect of human rights and establishment of efficient reporting system for controlling the personnel's conduct and evaluation of the human rights situation.

The third operation in Congo refers to security sector reform and started in June 2005. It is a mission for capacity building by assigning military experts in the administration with mandate to support the security sector reforms and to promote policies compatible with human rights and international humanitarian law, with democratic standards, rule of law, etc. (Council Joint Action 2005/355/CFSP) Human rights thus were specifically emphasized in the mandate. Practical goal of the mission was to assist the authorities in establishing a national army, by integrating all former rebels. Still, it was confirmed that although there were examples of positive conduct, also persisted the routine use of physical violence against civilians committed by soldiers. As a result, the army is still far the largest human rights violator.

Monitoring mission in Aceh. Monitoring mission in Aceh (MMA), established in September 2005 is the first ESDP monitoring mission and first mission in Asia (Council Joint Action 2005/643/CFSP). Mission activities opened the road for peace in Aceh, by signing the Memorandum of Understanding (MoU) between the Government of Indonesia and the Free Aceh Movement (FAM) on 15th of August 2005. The MMA goal was to help the Government of Indonesia and the FAM in

their implementation of the MoU. According to the MoU terms, the MMA had the task to monitor the human rights situation on the field. Monitoring focused on demobilization of the FAM and integration in the entire legal system and establishment of an independent judicial system. Further, the mission had the duty to rule on amnesty cases. Still, the monitoring of human rights was limited to human rights violations that happened after the signing of the MoU, which meant that the MMA was not mandated to inspect previous human rights violations and the EU was criticized for not including transitional justice in the mission's mandate.

Another goal of the mission was strengthening the civil society and national institutions in the field of human rights with the intention of facilitating the implementation of the human rights. The mission thus explicitly had human rights in its mandate regarding the monitoring function. Human rights were also mentioned in the MoU as the basis of the Law of Governing Aceh and special training on human rights. For that purpose, the European Commission supported the creation of a Human Rights Court and a Commission for Truth and Reconciliation. For the first time in one ESDP mission, the HR's personal representative on human rights was consulted to give advice on human rights aspects and for the first time the EU sent human rights monitors in a context of a crisis management operation and for the first time one mission appointed a deputy head of mission for amnesty, reintegration and human rights.

5. Conclusions and Recommendations

EU's military operations were able to contribute towards creation of a safe environment in crisis regions which is a pre-condition for protection of human rights and prevention of further violence. For example, EU's mission mandate in Congo, explicitly mentioned that the policies are to be promoted compatible with mission tasks and be carried out in full respect of human rights.

Regarding civilian operations, only two of them – EUJUST LEX in Iraq and MMA – had an explicit mandate in conducting human rights related tasks. However, all missions dedicated significant attention to human rights protection. Most of the human rights activities in ESDP crisis management operations are short-term measures for securing the protection of human rights and the rule of law, since most of the EU's operations had short-term instruments which cannot provide lasting results. The human rights aspects within the missions and operations, may contribute to stability and conflict prevention, particularly if embedded in a long-term strategy involving other civilian actors.

Although the human rights policy development in ESDP, it is still comparatively young. Progress is necessary in strengthening the human rights and gender mainstreaming, as well as the improvement of training and evaluation procedures of ESDP operations. The respect of human rights entered in many ESDP documents, but in practice, human rights are included only in a limited extent. Still, there is an increase of efforts for strengthening the human rights in ESDP missions. Human rights and gender advisors are already part of some missions, while human rights experts opened discussions

for including the human rights aspects in all future ESDP missions, as well as the education and training of mission's personnel on human rights issues. On the other side, it is still difficult to identify explicit and systematic approach for human rights as an aim within the ESDP frame.

These recommendations are of significant importance for human rights aspects in ESDP missions: (a) EU should emphasize the civilian aspect of ESDP missions and use their potential for proactive design of civilian intervention; (b) Human rights components in EU missions should be based on strong and comprehensive mandate, which should establish clear directions for mission's personnel to report on human rights violations by the conflicting parties; (c) Every mission should include permanent human rights and gender advisors in the headquarters; (d) All ESDP missions should implement EU's human rights guidelines; (e) EU should work on detailed regulations for dealing with allegations on human rights violations by the mission's personnel; (f) EU should evaluate its missions with their impact on human rights and draw lessons for future missions; (g) EU member-states in cooperation with the EU Council, should work on human rights elements to be integrated in all education courses by the European Security and Defence College and to secure training on human rights for the mission's personnel; (h) EU should provide consultations and regular dialogues with international, national and local NGO's for human rights for the whole period of missions.

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