



Coherence and efficiency of the EU external policy related to conflict and crisis

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Executive Summary

The present Report is part of Work Package 10 (WP 10) 'Human Rights Violations in Conflicts' of the FP7 research project 'Fostering Human Rights Among European (External and Internal) Policies' (FRAME). On the basis of the previous research developed in WP 10, this report is aimed at providing policy recommendations on how to foster the coherence and efficiency of the EU external policy related to all phases of crisis and conflicts to prevent and overcome violence through the critical assessment of the instruments available to the EU to integrate human rights, international humanitarian law and democracy/rule of law principles.

Information was gathered and analysed in previous reports of WP 10. First, FRAME Report D. 10.1 entitled 'Survey study on human rights violations in conflict-settings' explores the various patterns of human rights violations related to conflict and violent crisis situations, with a specific focus on the rights of vulnerable groups, as well as on the role of non-state actors as key players in the context of new forms of violence and war. Second, FRAME Report 10.2 entitled 'Applicable regulatory frameworks regarding human rights violations in conflicts' analyses and clarifies the relationship between the regulatory frameworks applicable in conflict situations: international human rights law (IHRL), international humanitarian law (IHL) and the legal regime for humanitarian assistance, as well as international refugee law (IRL) and international criminal law (ICL) with particular attention given to vulnerable groups in conflict situations. Third, FRAME Report 10.3 'Case study: CSDP' provides a critical assessment of the integration of human rights, humanitarian law and democracy/rule of law principles and tools into EU CSDP policy and missions. The report looks into the framework and implementation of the EU policy on human rights and gender mainstreaming in CSDP and in relation to the promotion and protection of human rights of vulnerable groups. The report examines the applicability of human rights and IHL to CSDP and the existing safeguards that seek to prevent violations of human rights and IHL in the course of the mandate.

The recommendations provided in the present report also take due account of existing lessons learned and best practices, not only at the EU level but at the level of other crisis management actors, in particular the United Nations (UN). In addition, there are references to other studies in the area of CSDP containing recommendations in relation to more concrete issues that fall outside the scope of the present Deliverable 10.4.

The study is structured in five chapters, including the introduction. The second chapter contains general recommendations to the EU on external action, which also concern Member States' relations with third countries and organisations. The third chapter provides recommendations on the EU's comprehensive approach to conflict and crises and how it can be improved with regards to crisis management policies to strengthen support to human rights policies. The fourth chapter addresses several aspects related to the EU intervention in conflict and crisis situations: applicable law, responsibility and accountability. As analysed in previous reports, the inter-operability between IHL and IHRL has also implications for EU crisis management interventions, in terms of the applicable legal framework and responsibility in the for violations of the applicable norms. The last chapter focuses on the protection of vulnerable groups in EU crisis management interventions, providing recommendations for the improvement of the implementation of current policies and for the adoption of new frameworks for other groups. In this regard, gender mainstreaming, the protection of children in armed conflict and the protection of civilians have been subject to more

extensive policies and protection in the conduct of operations. However, other groups such as refugees, internally displaced persons (IDPs) and minorities whose rights are directly affected by EU security policies have not received attention to the same extent.

List of abbreviations

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

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

FRAME	Fostering Human Rights among European Policies
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FYROM	The Former Yugoslav Republic of Macedonia
HoM	Head of Mission
HQ	Headquarters
HRRP	Human Rights Review Panel
HR/VP	European Union High Representative for Foreign Affairs and Security Policy and European Commission Vice-President
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
IcSP	Instrument contributing to Stability and Peace
IDP	Internally Displaced Person
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IFS	Instrument for Stability
IOM	International Organization for Migration
IRL	International Refugee Law
JHA	Justice and Home Affairs
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
OPLAN	Operations Plan
OSCE	Organization for Security and Co-operation in Europe

PMG	Politico-Military Group
PMSCs	Private Military and Security Companies
PoC	Protection of Civilians
PSC	Political and Security Committee
RCA	République centrafricaine (Central African Republic)
RoE	Rules of Engagement
RoL	Rule of Law
RUoF	Rules on the Use of Force
SAR Convention	International Convention on Maritime Search and Rescue
SOFA	Status of Forces Agreement
SOMA	Status of Missions Agreement
SOP	Standard Operating Procedures
SSR	Security Sector Reform
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution

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I. Introduction

The European Union (EU) seeks to ensure that human rights are respected in the course of all its actions within its borders and abroad as well as promote the observance of human rights by other international actors. However, the applicability of international human rights instruments, and International Humanitarian Law (IHL) where appropriate, to EU external policies is a complex issue, as the EU itself is not party to the main legal human rights instruments.¹

The aim of this report is to provide policy-makers and mission personnel with recommendations on how to foster the coherence and efficiency of EU crisis management policies related to all phases of conflicts to prevent and overcome violence through the integration of human rights, IHL and democracy and rule of law principles with a particular focus on the protection of vulnerable groups.

Our study draws from the premise that the EU's commitment to human rights, as a guiding objective for its security and defence policy must be a matter of fact and not just a mere political commitment or statement. Pursuant to Article 6(3) of the Treaty on the European Union (TEU), the EU is bound to respect human rights in all its institutions and activities. In accordance with article 3(5) TEU, these obligations, which constitute general principles of EU law, apply with regard to the implementation of the external action, including Common Security and Defence Policy (CSDP) operations.²

Information was gathered and analysed in previous reports of WP 10, aiming at enhancing the existing legal corpus to adequately reflect the configuration of contemporary armed conflict and to take into consideration the specific needs of the most vulnerable groups. In addition, these reports aimed to determine whether a general EU policy exists, with regard to the external promotion and protection of human rights and international humanitarian law in armed conflicts and crises.

First, the FRAME Report D. 10.1 entitled 'Survey study on human rights violations in conflict-settings'³ explores the various patterns of human rights violations related to conflict and violent crisis situations, with a specific focus on the rights of vulnerable groups, as well as on the role of non-state actors as key players in the context of new forms of violence and war.

Second, the FRAME Report 10.2 entitled 'Applicable regulatory frameworks regarding human rights violations in conflicts'⁴ analyses and clarifies the relationship between the regulatory frameworks

¹ The first human rights treaty ratified by the EU itself was the UN Convention on the Rights of Persons with Disabilities on 23 December 2010. See, European Commission, 'EU ratifies UN Convention on disability rights', 5 January 2011 <http://europa.eu/rapid/press-release_IP-11-4_en.htm> accessed 20 June 2016.

² Article 3(5) TEU has to be read in connection with Article 21(1) TEU which explicitly calls for the guidance of the principles of 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law' on the EU's actions on the international scene.

³ Carmen Márquez Carrasco (editor and main co-author), Laura Iñigo Álvarez, Nora Loozen and Elizabeth SalmónGárate, 'Report survey study on human rights violations in conflict-settings' (2014) FRAME Report 10.1, <<http://www.fp7-frame.eu/wp-content/materiale/reports/08-Deliverable-10.1.pdf>> accessed 20 April 2016.

⁴ Carmen Márquez Carrasco, Joana Abrisketa, Elizabeth Salmón, MaríaNagore, Chiara Marinelli, Rita Zafra, Rocío Alamillos Sánchez, Laura García Martín, Laura Iñigo Álvarez, 'Report on applicable regulatory frameworks regarding

applicable in conflict situations: international human rights law (IHRL), international humanitarian law (IHL) and the legal regime for humanitarian assistance, as well as international refugee law (IRL) and international criminal law (ICL) with particular attention given to vulnerable groups in conflict situations.

Third, the FRAME Report 10.3 'Case study: CSDP'⁵ provides a critical assessment of the integration of human rights, humanitarian law and democracy/rule of law principles and tools into EU CSDP policy and missions. The report looks into the framework and implementation of the EU policy on human rights and gender mainstreaming in CSDP and in relation to the promotion and protection of human rights of vulnerable groups. The report examines the applicability of human rights and IHL to CSDP and the existing safeguards that seek to prevent violations of human rights and IHL in the course of the mandate.

The recommendations provided in the present report also take due account of existing lessons learned and best practices, not only at the EU level but at the level of other crisis management actors, in particular the United Nations (UN). The report also includes reference to other studies in the area of CSDP containing recommendations in relation to more concrete issues that fall outside the scope of the present Deliverable 10.4. It is also necessary to consider the vast amount of articles and studies produced by academics, non-governmental organisations, UN agencies and independent research institutions that provide suggestions to improve CSDP performance with regards to human rights.

As it has been pointed out, the research leading to this report is based on the analysis of previous deliverables, which used different methodologies, in particular, desk research of primary and secondary sources and semi-structured and confidential interviews. Regarding desk research, legal and policy documents on IHRL, IHL and ICL were analysed in conjunction with international case law and secondary sources, such as literature and doctrine. Semi-structured interviews were conducted with EU officials based in Brussels and deployed in mission areas, as well as with experts from institutions that are involved in human rights and gender mainstreaming in EU crisis management. Additionally, the research also took account of the working experience of one of the authors at the European Union Rule of Law Mission in Kosovo (EULEX Kosovo).

The study is structured in five chapters, including the introduction. The second chapter contains general recommendations to the EU on external action, which also concern Member States' relations with third countries and organisations. The third chapter provides recommendations on the EU comprehensive approach to conflict and crises and how it can be improved with regards to crisis management policies to strengthen support to human rights policies. The fourth chapter addresses several aspects related to the EU intervention in conflict and crisis situations: applicable law, responsibility and accountability. As analysed in previous reports, the inter-operability between IHL and IHRL has also implications for EU crisis management interventions, in terms of the applicable legal framework and responsibility in the for violations of the applicable norms. The last chapter focuses on the protection of vulnerable groups in EU

human rights violations in conflicts' (2015) FRAME Report 10.2 <<http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-10.2.pdf>> accessed 20 August 2016.

⁵ Carmen Márquez Carrasco, Cristina Churruca Muguruza, Rocío Alamillos Sánchez, 'Case Study: CSDP' (2016) FRAME Report D 10.3 (forthcoming).

crisis management interventions, providing recommendations for the improvement of the implementation of current policies and for the adoption of new frameworks for other groups. In this regard, gender mainstreaming, the protection of children in armed conflict and the protection of civilians have been subject to more extensive policies and protection in the conduct of operations. However, other groups such as refugees, IDPs and minorities whose rights are directly affected by EU security policies have not received attention to the same extent.

II. General considerations

The TEU establishes that respect for human rights is part of the EU's values, on which the Union is founded.⁶ Human rights must guide EU external action⁷ and be promoted outside the EU.⁸ The EU human rights standard is based on the common constitutional traditions of the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the EU Charter of Fundamental Rights, as well as international instruments for the protection of human rights ratified by the Member States. In addition, the EU is also committed to respect and promote the compliance with IHL as the law applicable to armed conflicts, in particular the 1949 Geneva Conventions and the Additional Protocols.⁹ Both IHRL and IHL are complementary branches of law applicable in armed conflict and crisis settings, although they differ in various ways.¹⁰

The EU should seek to attain to its firm commitment to the promotion and respect of IHRL and IHL where applicable during its interventions in armed conflict and crisis scenarios by means of unilateral declarations and by adopting any other legal measures to pursue this objective. The political message contributes to create an international consensus on the importance of political engagement for assuring the respect of international human rights and international humanitarian law worldwide.

The EU's signature and ratification of human rights, international humanitarian law and international criminal law instruments will reinforce and secure the promotion and protection of these rules while providing a valuable example to the international community of the importance of self-commitment to prevent and prosecute international crimes. The Lisbon Treaty that came into force in 2009 gives the EU full legal personality to access international legal instruments. The Lisbon Treaty has conferred legally binding status on the EU Charter of Fundamental Rights, abiding the EU institutions, and the Member States in the implementation and interpretation of EU Law.¹¹ Moreover, the TEU sets the EU's duty to accede to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).¹²

Despite these advancements in the EU legal basis, there remains a pressing need to ensure EU compliance with human rights standards as guaranteed by the UN Charter and UN human rights treaties. The current methods of securing human rights within the EU do not provide the level of protection required to Member States by virtue of their treaty obligations. The scope of the 'general

⁶ Article 2 TEU.

⁷ Article 21(1) TEU.

⁸ Article 3(5) TEU.

⁹ See Council of the European Union, 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL)' (2009) OJ C 303. All EU Member States are Parties to the Geneva Conventions and their Additional Protocols and thus under the obligation to abide by their rules.

¹⁰ See Carmen Márquez Carrasco, Joana Abrisketa, Elizabeth Salmón, MaríaNagore, Chiara Marinelli, Rita Zafra, Rocío Alamillos Sánchez, Laura García Martín, Laura Íñigo Álvarez, 'Report on applicable regulatory frameworks regarding human rights violations in conflicts' (2015) FRAME Report 10.2 <<http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-10.2.pdf>> accessed 20 August 2016, Section II.

¹¹ Article 6(1) TEU.

¹² Article 6(2) TEU..

principles' of EU law has been based predominantly on the provisions of the ECHR.¹³ However, the ECHR is largely confined in the scope of civil and political rights.¹⁴ Consequently, a wide range of economic, social and cultural rights, as well as more specific rights articulated in relation to vulnerable groups, such as women and children, are potentially excluded from protection.

With regards to the EU treaty-making power, this power has been explicitly established in matters concerning its Common Foreign and Security Policy (CFSP) in Article 24 TEU. Article 216 of the Treaty on the Functioning of the European Union (TFEU) states that:

1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.
2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

Pursuant to Article 218 of the TFEU the Council will request the opinion of the Court of Justice as to whether an envisaged signature and ratification of international law instruments by the EU is compatible with the Treaties. Additionally, the Council will require the consent of the EU Parliament before concluding the accession to international legal instruments.¹⁵

In any event, whether the EU sets its human rights obligations through unilateral declaration, accession to treaties or any other means, these rules should be made available to its armed forces and mission personnel in a clear manner to provide guidance in the performance of their duties.

With regards to IHL obligations the EU may materialise its engagement by including express reference in the legal bases of its policies and more concrete rules in its operational documents to effectively guarantee observance by EU personnel deployed in mission areas. Moreover, the EU could adopt a more general policy instrument listing the IHL norms by which all EU institutions and Member States should abide in the context of EU crisis management. The European Union Guidelines on promoting compliance with international humanitarian law updated in 2009 do not provide an adequate basis as they focus on respect for IHL by third countries rather than compliance by the EU institutions and its Member States

¹³ Case C-540/03, *Parliament v Council* [2006] ECR I-5769, para 35. For cases reiterating the privileged place of the European Convention see Case C-260/89, *ERT* [1991] ECR I-2925, para 41; Opinion 2/94, *Accession of the European Community to the European Convention for the Safeguard of Human Rights and Fundamental Freedoms* [1996] ECR I-1759, para 33; Case C-274/99 P, *Connolly v Commission* [2001] ECR I-1611, para 37; Case C-94/00, *RoquetteFrères* [2002] ECR I-9011, para 25; Case C-112/00, *Schmidberger* [2003] ECR I-5659, para. 71; Case C-36/02 *Omega* [2004] ECR I-9609, para 33.

¹⁴ There are some exceptions, such as the right to property and the right to education, guaranteed under Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1952) C.E.T.S. No. 9.

¹⁵ Article 218 TFEU.

themselves.¹⁶

General considerations:

- **The EU should commit itself to respect IHL and IHRL by means of a declaration and expressly mentioned it in the legal bases of its policies, accession to international law instruments or by any other adequate means to favour better compliance with these rules.**
- **The EU should make IHL and human rights rules clear and easily accessible to its personnel, including armed forces and mission staff acting under its mandate.**

¹⁶ Council of the European Union, 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL)' (2009) OJ C 303.

III. EU comprehensive approach to conflict and crises

Over the years, a distinctive EU approach to security has emerged, which is characterised by a broad, multidimensional and comprehensive notion of security. This approach is characterised by its focus on the treatment of root causes of instability and insecurity and its clear preference for international co-operation and partnership and compliance with the rule of law. The promotion and support of human rights, democracy, and the rule of law has been a key component of the EU's approach to security policy. Human rights, democracy and the rule of law are seen as the basis of security and threats to these elements constitute the roots of instability.¹⁷

The current context of insecurity and conflict led to the adoption of the ESS in 2003¹⁸ and a report on its revision in 2008¹⁹ that incorporates the concept of human security. Furthermore, a EU comprehensive approach to crisis has been adopted to coordinate all EU instruments and actors involved. In view of the reluctance to recognise human security as the framework for CSDP operations, the implementation of the EU comprehensive approach to crisis is seen as some form of endorsement of the concept of human security in a more flexible manner.²⁰ More than ten years after its adoption, the strategy has been updated with the adoption of the European Union Global Strategy (EUGS) in June 2016.²¹ The EUGS sets as a priority of the EU the adoption of an integrated approach to conflict and to contribute to the resilience of states and societies.²²

A. General considerations

EU crisis management has become a broad-ranging activity that not only cuts across all forms of EU external action but also concerns the internal security agenda. EU crisis management implies a combination of security-related activities and Commission-led programmes. Crisis management goes beyond the CSDP to include the European Commission and more recently Justice and Home Affairs (JHA) agencies.²³

¹⁷ The ESS emphasises the strong link between security, human rights and the rule of law by stating that 'spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order', European Council, 'A Secure Europe in a Better World: European Security Strategy' (2003) 10.

¹⁸ European Council, 'A Secure Europe in a Better World: European Security Strategy' (2003).

¹⁹ European Council, 'Report on the Implementation of the European Security Strategy: Providing Security in a Changing World' (11 December 2008) S407/08.

²⁰ Henri Bentégeat, 'What Aspirations for European Defence?' in Álvaro de Vasconcelos (ed), *What Ambitions for European Defence in 2020?* (EUISS, 2nd edn, 2009) 97-105, 104

²¹ Additionally, the idea to produce a 'white book' or sub-strategy on the CSDP has become a prominent feature in the in the framework of discussions for the EUGS; Sven Biscop, 'Out of the Blue: a White Book' (European Geo Strategy, 22 November 2015) <<http://www.europeangeostrategy.org/2015/11/out-of-the-blue-a-white-book/>> accessed 20 August 2016.

²² European Council, 'A Global Strategy for the European Union's Foreign And Security Policy – Shared Vision, Common Action: A Stronger Europe' (June 2016) <https://europa.eu/globalstrategy/sites/globalstrategy/files/about/eugs_review_web_0.pdf> accessed 20 August 2016.

²³ 'FRONTEX in the southern Mediterranean Sea in cooperation with EUNAVFOR Med, or in the Aegean Sea with the NATO-led operation; that of EUROPOL in Kosovo alongside EULEX, as well as EUROPOL and EUROJUST with

One important corollary of the EU comprehensive approach to crises is the so-called ‘security-development nexus’.²⁴ This approach entails that in any crisis situation, a decent level of security is a precondition to sustainable development, while development, in turn, allows for peace to endure. Despite this well-defined framework, the EU faces difficulties in turning its comprehensive approach into comprehensive action.²⁵ The success of such EU comprehensive responses is conditioned by the dynamics of the complex political, economic, development and security context it is trying to influence. The EU has to foresee and establish means to overcome possible difficulties otherwise EU policies and particularly crisis management actions may have a detrimental effect on human rights situations.

It is also necessary to mention the ‘train and equip’ initiative, which is aimed at supporting countries and regional organisations to take responsibility for their own security. Somalia and Mali have been identified as priority pilot cases, together with the strengthening of the African Peace and Security Architecture (APSA).²⁶ This is particularly relevant in view of the difficulties encountered by the military EU Training Missions EUTM Mali and EUTM Somalia which have had limited impact in their activities due to the shortage of equipment of the Malian and Somalian armies.

In view of the scope of tasks undertaken by recent CSDP missions and operations, and the increasing concerns about organised crime, international terrorism and irregular migration flows it is necessary to ensure coherence and consistency in EU response management, particularly with regards to the cooperation between Frontex and European Commission projects and CSDP actions. Providing assistance to the EU’s neighbour countries in establishing the rule of law is a key element in providing and maintaining stability. However this trend also poses a risk of securitising EU policy areas to an extent that threatens the EU’s commitment to promote and protect human rights. Focusing on technical assistance rather than political dialogue with neighbour countries undermines the EU’s credibility and effectiveness. Furthermore, there is an imbalance between protection measures for refugees and migrants and actions aimed at tackling migrant smuggling and human trafficking. Actions to restrict

EUBAM Libya; or EUROPOL and EUROJUST in the EU counter-terrorism political dialogues in MENA countries and Turkey, all attest to an evolution that brings JHA agencies into the world of crisis management’, Thierry Tardy, ‘Civilian Crisis Management: Towards a New Paradigm’ (June 2016) EUISS Brief Issue no 23 available at <http://www.iss.europa.eu/uploads/media/Brief_23_CCM.pdf> accessed 8 July 2016.

²⁴ Council of the European Union, ‘Security and development – Conclusions of the Council and the Representatives of the Governments of the Member States meeting within the Council’, Brussels (20 November 2007). See Hans Merket, ‘The EU and the Security-Development Nexus: Bridging the Legal Divide’ (2013) 18 (4) *European Foreign Affairs Review*, 83-101.

²⁵ See Nicoletta Pirozzi, ‘The EU’s Comprehensive Approach to Conflict Management’ (June 2013) DCAF EU Crisis Management Paper Series, 17-20 <http://www.dcaf.ch/content/download/133240/2067752/file/Pirozzi_EU-CM.PDF> accessed 12 September 2016.

²⁶ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council ‘Capacity building in support of security and development: Enabling partners to prevent and manage crises’ (2015) JOIN(2015) 17 final.

irregular entry and stay have already driven migrants and refugees to use more dangerous routes to enter Europe.²⁷

Key recommendations:

- The EU needs to **make the ‘Train and Equip’ instrument available to CSDP** missions and enhance the capacity of law enforcement institutions in third countries and regional organisations to take responsibility for their own security, so they can increasingly prevent and manage crises by themselves with respect to the rule of law and human rights.²⁸
- The EU should, in particular, focus on the need to **improve the linkage between short-term stabilisation actions** (i.e. CSDP) **and longer-term development** and reform programmes (i.e. EC programmes).
- **The EU should ensure a balance is struck between measures** tackling migrant smuggling and measures protecting migrants, i.e. security policies and policies of humanitarian and development nature.
- **The EU should ensure the appointment of experts on migration and/or human trafficking** to ensure provide adequate protection of vulnerable groups, particularly in the conduct of CSDP border missions or other CSDP missions or operations whose activities that might have a direct impact on those groups.
- A properly conceived mission in the Mediterranean should include an **active search-and-rescue program** that would resort to adequate non-military capabilities

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

An EU comprehensive security approach requires working closely with international and regional organisations and third states as stated in Article 21 of the TEU and the ESS.²⁹ The EU is committed to developing an effective partnership with third states, particularly the US,³⁰ including the participation of non-EU states in CSDP missions and operations. The EU also attempts to engage with international and regional organisations in the area of crisis management such as the UN, the North Atlantic Treaty

²⁷ Carmen Márquez Carrasco, Cristina Churruca Muguruza, Rocío Alamillos Sánchez, ‘Case Study: CSDP’ (2016) FRAME Report D 10.3 (forthcoming) 165-166.

²⁸ The so-called ‘train and equip’ initiative builds, inter alia, on lessons from the CSDP military training missions in Somalia and Mali where the trained troops lacked very basic equipment. To date there are no dedicated EU instruments or mechanisms to address these needs, in particular for military recipients. The ongoing debate within the OECD in Paris on the definition of Official Development Assistance is also relevant in this context. See Thierry Tardy, ‘Enabling partners to manage crises. From ‘train and equip’ to capacity-building’ (November 2015) EUISS Brief Issue no 18 <http://www.iss.europa.eu/uploads/media/Brief_18_Train_and_Equip.pdf> accessed 22 July 2016.

²⁹ Council of the European Union, ‘European Security Strategy: A Secure Europe in a Better World’ (2003) 9.

³⁰ Rafał Domisiewicz and Eva Gross, ‘Breaking New Ground: EU-US Cooperation in Crisis Management’ (May 2014) EUISS Briefing no. 15 <http://www.iss.europa.eu/uploads/media/Brief_15_EU_US_cooperation_in_crisis_management.pdf> accessed 23 July 2016.

Organization (NATO), the African Union (AU) and the Organization for Security and Co-operation in Europe (OSCE).

The experience of CSDP missions and operations to date³¹ shows that they have been usually deployed in states or regions already populated rather densely by an international presence. Therefore, ensuring appropriate coordination and seeking synergies with the other actors present on the ground is crucial not only to effectively achieve the EU mandated objectives, but also to ensure that the civilian population is protected.

Key recommendations:

- **Strengthening EU partnerships with regional and sub-regional organisations** such as AU or Economic Community of West African States (ECOWAS)³² that go beyond financial support. Regional organisations understand the local situation and are often more accepted than outsiders and more committed to engage for the long term. This requires closer cooperation between CSDP, EU delegations and EU Special Representatives.
- **Providing support to African peace and security objectives** is more than ever a cornerstone of the Africa-EU partnership. Efforts should continue to support the AU with renewed focus on capacity building efforts, including through the 'Train & Equip' initiative.
- The EU and NATO need to redefine their relationship and opt for flexible cooperation in response to current security threats based on minimum human rights standards criteria.
- Setting up a human rights and gender **network to facilitate exchange of best practices between human rights and gender experts and of the focal points of CSDP and their counterparts at the UN, AU, NATO, OSCE and other partners**.³³ Develop an IT platform for exchange of best practices including related areas such as the rule of law and Security Sector Reform (SSR).³⁴
- **A new framework for CSDP co-operation with all non-EU states contributors** has to be developed to complement the existing bilateral agreements and to ensure a minimum human rights and humanitarian standards in the conduct of operations. Similar initiatives to the CSDP Panel within the Eastern Partnership could serve to enhance cooperation and consistency in the participation of non-EU actors through concrete initiatives such as the generation of courses, study visits and dialogues at expert level, that will also focus on human rights, gender and the rule of law among other topics.

³¹ See the ongoing and completed CSDP missions and operations at <http://eeas.europa.eu/csdp/missions-and-operations/index_en.htm> accessed 20 August 2016.

³² The Economic Community of West African States or ECOWAS is a regional organisation founded in 1975 with the Treaty of Lagos. The EU therefore has a continuous and long-standing political dialogue with ECOWAS. The main EU-ECOWAS shared political priorities include Peace and Security, the fight against drugs and drug trafficking, migration issues and improved governance.

³³ Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' (2010) 17138/1/10.

³⁴ See European Commission, 'New proposals to improve the EU's support for security and development in partner countries' Press release Strasbourg (5 July 2016).

- **Ensuring that all non-EU contributing states to CSDP missions and operations adhere to minimum human rights standards**, and securing respect for those rules through specific provisions in the participation and partnership agreements concluded between the EU and third parties.

C. EU engagement in the prevention of conflict and violations of IHL and IHRL

The EU has advanced in its efforts to linking crisis management capacities to longer-term conflict prevention strategies. Conflict prevention has been a priority for all EU external action and it is therefore an important element in all its external relations. The policy was defined in the Commission Communication on the European Union and the issue of Conflicts in Africa: Peace-building, Conflict Prevention and Beyond (1996), the Commission Communication on Conflict Prevention (2001) and the EU Programme for the Prevention of Violent Conflict adopted by the European Council at its meeting in Göteborg in June 2001.³⁵

The Joint Communication 'EU's Comprehensive Approach to External Conflicts and Crises'³⁶ acknowledges that crisis management alone cannot bring about sustainable solutions to violent conflict and crises. Yet in the short-term, CSDP can provide the stability for longer-term conflict prevention work to take root and in turn, prevent the recurrence of violent conflict.

The EU has often declared in public statements its role as advocate for IHL,³⁷ the conventional and customary rules IHL and for an early ratification of the statute of the International Criminal Court (ICC) to fight impunity for serious crimes and violations of humanitarian law. The EU's external policies should place greater emphasis in promoting observance of IHRL and IHL by third countries and its Member States. The EU may propose clauses on the respect of these rules when entering into bilateral and multilateral dialogues and agreements with third states and other international organisations. These efforts are more likely to succeed when they are undertaken in times of peace and lower levels of violence. The mutual engagement on the respect of IHRL and IHL is a powerful and meaningful way of assuring that the EU also abides to these rules.

The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy sets specific actions for promoting the universality of human rights by universal adherence to these rules as follows:

³⁵ Council of the European Union, 'European Union Programme for the Prevention of Violent Conflicts' (2001) 9537/1/01.

³⁶ European Commission and High Representative of the European Union, 'Joint Communication to the European Parliament and the Council: The EU's comprehensive approach to external conflict and crises' (24 June 2013) JOIN(2013) 30 final <http://www.eeas.europa.eu/statements/docs/2013/131211_03_en.pdf> accessed 20 August 2016.

³⁷ More recently, on the conflict in Yemen, see European Parliament resolution of 25 February 2016 on the humanitarian situation in Yemen (2016/2515(RSP)). On the conflict in Syria, see Joint statement the High Representative/Vice-President Federica Mogherini and EU Commissioner for Humanitarian Aid and Crisis Management Christos Stylianides on air strikes against UN/Syrian Red Crescent humanitarian aid convoy in Syria, Brussels, 20 September 2016 <http://ec.europa.eu/echo/news/joint-statement-air-strikes-against-unsyrian-red-crescent-humanitarian-aid-convoy-syria_en> accessed 20 September 2016.

- (a) Intensify the promotion of ratification and effective implementation of key international human rights treaties, including regional human rights instruments.
- b) Encourage third countries to fully cooperate with UN Special Rapporteurs and Independent Experts on human rights, including through issuing standing invitations and receiving such experts.³⁸

The 2012 EU Strategic Framework and its Action Plans also pledged to make more efforts supporting compliance with IHL through a systematic use of political dialogue and demarche campaigns to encourage third countries to ratify core IHL instruments and implement IHL obligations.³⁹ To this end, the EU calls upon States that have not yet done so to adhere to, and implement, IHL instruments. The EU Guidelines on International Humanitarian Law, adopted in 2005 and updated in 2009, promote compliance with IHL by third states and non-state actors although they include little guidance for actions of the EU or its Member States.⁴⁰

The central instrument in the EU's bilateral relations is political dialogue. The EU human rights dialogues constitute a useful instrument to create close relations with other international organisations and third states, particularly in politically sensitive contexts, and to examine human rights issues in greater depth.⁴¹ These dialogues should evolve towards more concrete human rights commitments and agreements between the EU, third states and organisations. Statements and demarches also constitute a complementary tool that can be issued both preventively and reactively to address negative and positive developments.

Key recommendations:

- **Establish conflict prevention as a stated objective of the CFSP.** Whilst conflict prevention is an implicit objective of CFSP⁴², explicitly including the prevention of violent conflict as an objective would provide a treaty basis for ensuring coherence and consistency among EU external policies.
- When developing its relations with third states and other international organisations the EU should demonstrate its strong commitment to promote respect for the conventional and customary rules of **IHRL and IHL as being a central component of its partnerships, agreements and actions.**

³⁸ Action 4 entitled 'Universal adherence' in Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (2012) 11855/12.

³⁹ Action 21 entitled 'Compliance with International Humanitarian Law (IHL)' in Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (2012) 11855/12.

⁴⁰ Council of the European Union, 'Updated European Union Guidelines on Promoting Compliance with International Humanitarian Law (IHL)' (2009) 2009/C 303/06.

⁴¹ Council of the European Union, 'EU Guidelines on Human Rights Dialogues with Third Countries' (2001) 14469/01.

⁴² Article 11(3) TEU expressed as 'preserving peace and strengthening international security'.

- The EU should **employ political and legal conditionality mechanisms to favour the prevention of violations of IHL and IHRL** within states experiencing or at risk of entering an armed conflict.⁴³
- **The EU should ensure the establishment of efficient monitoring mechanisms to assess compliance with IHRL and IHL by third countries** and enable a timely and adequate EU response.

D. EU support for international criminal law and transitional justice

The EU's commitment to enhance human rights protection necessarily implies support for international criminal justice as many international crimes simultaneously amount to serious violations of human rights.⁴⁴ In this regard, it has been noted that international criminal tribunals enforcing ICL and IHL are 'an instrument for the indirect protection of human rights'.⁴⁵ Supporting the international criminal courts and the ICC means support for ICL as a process of making, interpreting and enforcing rules about bringing individuals accused of perpetrating the most serious crimes of international concern, such as genocide, crimes against humanity and war crimes, to justice.⁴⁶ In this regard, the EU and its Member States have played a significant role in the creation and development of the ICC. Although the EU is not itself party to the ICC,⁴⁷ all Member States are signatories to the Rome Statute of the ICC as well as the Agreement on Privileges and Immunities of the ICC (APIC).⁴⁸ In addition, the EU supports the effective functioning of the Court and promotes the widest possible participation in the Statute through different means such as dialogues and political declarations, financial and technical support and the use of ICC clauses.⁴⁹ In 2011, the Council adopted Decision 2011/168/CFSP⁵⁰ that establishes the current

⁴³ Legal conditionality involves withholding humanitarian assistance and cooperation in response to violations of IHL and IHRL. Political conditionality implies withholding assistance and cooperation in economic, social and political matters as a means to meet specific foreign policy objectives such as to start peace negotiations or conduct elections. See Svea Koch, 'A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union' (2015) 75 *World Development*, 7–108.

⁴⁴ Mikaela Heikkilä, *Coping with international atrocities through criminal law: a study into the typical features of international criminality and the reflection of these traits in international criminal law* (ÅboAkademi University 2013) 165 <https://www.doria.fi/bitstream/handle/10024/92548/heikkila_mikaela.pdf?sequence=2> accessed 1 September 2016.

⁴⁵ Carmen Márquez Carrasco and Laura Íñigo Álvarez, 'Is the EU an effective promoter of the ICC?' (30 June 2015) FRAME <http://www.fp7-frame.eu/is-the-eu-an-effective-promoter-of-the-icc/#_ftnref6> accessed 20 July 2016.

⁴⁶ The EU has long supported tribunals enforcing international humanitarian and criminal law such as the International Criminal Tribunal for the former Yugoslavia (ICTY) established in 1993 and the International Criminal Tribunal for Rwanda (ICTR) established in 1994.

⁴⁷ The EU enjoys observer status through the EEAS in the Assembly of States Parties of the Statute of the ICC, the political organ entrusted with the administrative and institutional issues although this status does not confer speaking rights.

⁴⁸ At present, all 28 EU Member States are States Parties to the Rome Statute, and with the ratification in 2011 by the Czech Republic and Malta of the Agreement on Privileges and Immunities of the ICC (APIC), the EU has accomplished what has been an official objective since 2003.

⁴⁹ For all the actions in support of the ICC, see General Secretariat of the Council, 'The European Union and the International Criminal Court' (February 2008) <http://www.consilium.europa.eu/uedocs/cmsupload/icc_internet08.pdf> accessed 20 August 2016.

⁵⁰ See Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court, repealing Common Position 2003/444/CFSP; Wanda Troszczyńska-Van Genderen, 'Mainstreaming Support for the ICC in the EU's Policies' (2014) EXPO/B/DROI/2013/28

framework for EU support for the ICC and the 2011 Action Plan that operationalises the Decision through a step-by-step process.⁵¹ However, more needs to be done in terms of implementation and to ensure consistency and coherence between all its instruments and policies in matters that concern the crimes within the ICC's jurisdiction.

CSDP missions and operations are deployed in conflict and crisis situations where the legacies of war crimes, genocide, crimes against humanity and other gross violations of human rights are relevant. It is important to note the adoption of the 'EU's Policy Framework on support to transitional justice'⁵² aimed at providing guidance for EU support to transitional justice mechanisms and processes and enhancing the EU's ability to play a more active and consistent role. The EU concept for support to the Security Sector Reform (SSR)⁵³ acknowledges the potential role of CSDP missions in supporting transitional justice mechanisms relevant for security and justice sector reform. The document EU support to Disarmament, Demobilisation and Reintegration (DDR)⁵⁴ also notes that the EU should ensure respect for human rights and carry out DDR support in relation to efforts in the area of reconciliation and transitional justice.

In practice the EU struggles to be coherent and consistent towards third parties in providing support to international criminal courts and transitional justice initiatives in third countries. Despite policy provisions in support of the ICC, 'CFSP instruments have not been mandated to support its work, even in ongoing situations'⁵⁵ with few exceptions.

Key recommendations:

- The EEAS, the High Representative, the EUSRs and EU Delegations should raise the issue of **ICC ratification and implementation in its bilateral relations and agreements** concluded with third countries.
- The EU and its Member States could make better use of technical support options available and consider the **appointment of ICC experts to EU Delegations and war crimes experts to CSDP missions and operations** where appropriate.

<[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433844/EXPO-](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433844/EXPO-DROI_ET(2014)433844_EN.pdf)

DROI_ET(2014)433844_EN.pdf> accessed 30 August 2016; Agreement between the International Criminal Court and the European Union on Cooperation and Assistance, ICC-PRES/01-01-06.

⁵¹ Council of the European Union, 'Action Plan to follow-up on the Decision on the International Criminal Court' (2011) 12080/11 <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2012080%202011%20INIT>> accessed 20 August 2016.

⁵² Council of the European Union, 'EU's support to transitional justice - Council conclusions (16 November 2015)' (2015) 13576/15 <<http://data.consilium.europa.eu/doc/document/ST-13576-2015-INIT/en/pdf>> accessed 20 July 2016.

⁵³ Council of the European Union, 'EU Concept for ESDP Support to Security Sector Reform (SSR)' (2005) 12566/4/05.

⁵⁴ Council of the European Union, 'Draft EU Concept for support to Disarmament, Demobilisation and Reintegration (DDR)' (2006) 13727/4/06 REV 4.

⁵⁵ The author also notes that in some cases such as the EUSRs for the Great Lakes and AU have contributed to the work of the ICC despite this not being defined in their mandates. Laura Davis, *EU Foreign Policy, Transitional Justice and Mediation Principle, Policy and Practice* (Routledge 2014) 96.

- The **planning** process for each CSDP mission and operation should assess **how to support the transitional justice process, contribute to the fight against impunity and support institutional reform.**
- Where appropriate, **the mandates of CSDP missions or operation and EUSRs will include support for war crimes investigations**, particularly in countries where the ICC and other international criminal courts are active. Amongst all the EU Special Representatives appointed to crisis situations, only those covering Sudan, Mali, Mauritania and Niger are mandated to support the work of the ICC.⁵⁶ The guidelines on compliance with IHL explicitly include the possibility of **CSDP missions to help prevent violations of IHL or to assist war crimes investigations.** However, only EULEX Kosovo has been mandated to support war crimes investigations, despite the presence of numerous CSDP missions and operations in countries where the ICC is active.⁵⁷
- Where appropriate, **the mandates of CSDP missions or operations and the EUSRs will include support and promotion of transitional justice efforts.**
- **CSDP support to transitional justice or post-conflict justice reform** involves multiple layers in society, from state institutions to community-based initiatives. The EU should reinforce its relations with Civil Society Organisations (CSOs) and not focus its relations exclusively to state authorities.
- CSDP missions and operations will draw attention to their **support of transitional justice processes and the achievement of its goals in their reports.** Many CSDP actions take place in post-conflict contexts where support to transitional justice is crucial to secure peace in the long-term either through monitoring activities, SSR and capacity-building support.
- In the same terms expressed above, CSDP missions and operations will draw attention to their **support of the work of criminal courts (particularly the ICC) and the achievement of its goals in their reports.**
- The EU, including CSDP missions and operations, should **prioritise support to the protection of victims and witnesses of serious crimes** even before a special court is established or the international criminal court initiates a process.
- CSDP missions **monitoring the implementation of peace agreements** should pay particular attention to constitutional review and transitional justice as key elements to break the ongoing cycle of violence.

⁵⁶ See Council Decision 2013/527/CFSP of 24 October 2013 amending and extending the mandate of the European Union Special Representative for the Horn of Africa (2013) OJ L 284/23; Council Decision 2014/130/CFSP of 10 March 2014 extending the mandate of the European Union Special Representative for the Sahel (2014) OJ L 71/14.

⁵⁷ See Article 3(d) Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2008) OJ L 42/92.

E. Private actors and the use of Private Military and Security Companies (PMSCs)⁵⁸

The EU should acknowledge that private actors too are potential violators of IHL and IHRL. The EU and its Member States are increasingly relying on private contractors in CSDP missions and operations.⁵⁹ Due to the growing roles of PSCs in EU crisis management it is necessary to consider the possible impact that private security contractors can have with regards to the respect of human rights and in achieving the objectives of the mission. The regulatory framework applicable to PMSCs in the context of conflict and crisis is insufficient both at the international and EU level.⁶⁰ The issue of accountability of the PMSCs and of their employees is one of the main concerns that arise in this regard. It is therefore necessary to harmonise the legislation concerning the private security industry at the European level including their involvement in the area of CSDP.⁶¹

A number of regulatory initiatives have been developed at the international level with a view to improving monitoring and oversight of the private military and security sector. The most relevant is the Montreux Document, a set of guidelines based on existing international law.⁶² Other initiatives include the Draft of a possible Convention on Private Military and Security Companies⁶³ and the International

⁵⁸ See Stuart Wallace, FRAME Report 'Case Study on Holding Private Military and Security Companies Accountable for Human Rights Violations', Deliverable 7.5 (2016) <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/25-Deliverable-7.5.pdf>> accessed 20 August 2016.

⁵⁹ The EU has employed private security guards to protect the EUPOL headquarters in Afghanistan, EULEX premises in Kosovo and to guard the EUPOL mission in the Democratic Republic of Congo (DR Congo). Elke Krahnmann and Cornelius Friesendorf, 'The Role of Private Security Companies (PSCs) in CSDP Missions and Operations' (2011) European Parliament EXPO/B/SEDE/FWC/2009-01/LOT6/10/REV1, 11-17.

⁶⁰ Carmen Márquez Carrasco, Cristina Churruca Muguruza and Rocío Alamillos Sánchez, 'Case Study: CSDP' (2015) FRAME D 10.3 (forthcoming).

⁶¹ See Priv-War, 'Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services' (2011) Recommendation no 8 <http://priv-war.eu/wp-content/uploads/2013/03/Priv-War_Recommendations-FINAL-.pdf> accessed 20 August 2016. The project PRIV-WAR (European Community's 7th Framework Programme) assesses the impact of the increasing use of private military companies and security companies (PMCs/PSCs) in situations of armed conflict and examines the regulatory framework at national, European and international levels, with a view to ensuring improved compliance with international humanitarian law and human rights. In relation to CSDP see Nigel D. White and Sorcha Macleod, 'EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility' (2008) 19(5) *The European Journal of International Law* 965–988; Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press 2011).

⁶² ICRC, 'The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (2009) <https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf> accessed 1 August 2016.

⁶³ The Human Rights Council has decided to establish an open-ended intergovernmental working group on the elaboration of a legally binding instrument on the regulation, monitoring and oversight of the impact of the activities of private military and security companies on the enjoyment of human rights. United Nations Human Rights Council, 'Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination' (2 July 2010) A/HRC/15/25.

Code of Conduct for Private Security Service Providers.⁶⁴

The lack of minimum standards, regulation and supervision poses a risk that PMSCs may operate inconsistently with EU human rights standards. The EU human rights guidelines and CSDP policy documents are too broad and ambiguous to apply to contract PMSCs.⁶⁵ As the operational planning documents are classified it is not possible to assess whether they include provisions applicable to private contractors. The Generic Standards of Behaviour in ESDP Operations adopted in 2005 explicitly stipulates the applicability of IHL and IHRL to internationally and locally contracted civilian personnel.⁶⁶ In the SOFAs, SOMAs and ROEs, private contractors are explicitly excluded from its scope of application.⁶⁷ The eventual responsibility of the EU for violations committed by private contractors can be understood as falling within the scope of Article 340.2 TFEU that formulates EU's non-contractual liability for any damage caused by its institutions and servants, thus including private contractors authorised to fulfil EU official duties.⁶⁸

Key recommendations:

- The EU should **raise awareness among private actors who may be directly or indirectly involved in conflict situations on the respect for the rules of international law**, particularly of PMSCs contracted in the framework of EU CSDP missions and operations.
- In principle, the **EU and its Member States should refrain from outsourcing to PMSCs tasks that may amount to a direct participation in hostilities** and prohibit registration or licencing of companies, which perform services amounting to a direct participation in hostilities.⁶⁹

⁶⁴ International Code of Conduct for Private Security Service Providers' Association, 'International Code of Conduct for Private Security Service Providers' (2010), <http://www.icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf> accessed 20 August 2016.

⁶⁵ Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management' in Francesco Francioni and NatalinoRonzitti (eds), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press 2011) 318-319.

⁶⁶ Council of the EU, 'Generic Standards of Behaviour for CSDP Operations', 18 May 2005, 10.

⁶⁷ Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management' in Francesco Francioni and NatalinoRonzitti (eds), *War by Contract. Human Rights, Humanitarian Law, and Private Contractors* (Oxford University Press 2011), 319. See *inter alia* Council Decision 2009/29/CFSP of 22 December 2008 concerning the conclusion of the Agreement between the European Union and the Somali Republic on the status of the European Union-led naval force in the Somali Republic in the framework of the EU military operation Atalanta Agreement between the European Union and the Somali Republic on the status of the European Union-led naval force in the Somali Republic in the framework of the EU military operation Atalanta, Art. 1(3)(g); Council Decision 2010/464/CFSP of 6 August 2010 on the signing and conclusion of the Agreement between the European Union and the Republic of Uganda on the Status of the European Union-led Mission in Uganda.

⁶⁸ ECJ, Case C-519/04 P 316 *Meroni & Co, Industrie Metallurgiche SpA v High Authority* [1958] ECR 133, 42-47; Case 33/82 *Murri Frères v Commission* [1985] ECR 2759, para 36.

⁶⁹ France, Germany, Italy, Portugal, Finland and the Netherlands' military activities are considered to be the exclusive competence of the State. As a tendency, private military services are tolerated only in post-conflict situations for purposes of stabilisation. However, in other Member States, including the United Kingdom, such restrictions do not apply. Ottavio Quirico, 'National Regulatory Models for PMSCs and its Implications for Future International Regulation' (2009) EUI Working Papers MWP 2009/25, 5 <http://cadmus.eui.eu/bitstream/handle/1814/11759/MWP_2009_25.pdf?sequence=1&isAllowed=y> accessed 25 August 2016.

- **The EU should adopt self-regulatory acts applicable to PMSCs or formulate adequate provisions in the agreements concluded with host and third contributing states** as a guarantee of accountability and control of PMSCs' activities.⁷⁰
- With regards to military operations, **PMSCs' personnel could be incorporated into the armed forces** of the contributing states **to ensure greater uniformity** in terms of the applicable legal framework, training and reporting.⁷¹
- The EU should seek to include **explicit provisions on the applicability of human rights and IHL standards and minimum training in the contracts** concluded between the Operation Commander or the Head of the Mission and the PMSCs.

F. Adoption of a human security approach to conflict and crisis

The human security approach focuses attention on the security of the individual and society at large rather than the territorial integrity of the state. Human security is different than state security as it encompasses a range of different factors such as economic, social and environmental factors, which could pose a risk to individuals. The 1994 UNDP's Human Development Report focused on human security and highlighted its relevance for achieving objectives related to sustainable development, peace and the protection of human rights.⁷² Further, the human security approach, by focusing on the individual, implies that attention be made to different segments of the population, such as women, children, refugees or minorities whose different security needs and perceptions are often overlooked by traditional state-centred security models. Human security recognises and addresses the different degrees of vulnerability of these groups to security threats. However, it does not see them merely as victims but also as key actors in building a more secure society.

The concept of human security is closely linked to human rights, understood as the freedom from fear and freedom from want. Both the concept of human security and human rights place the individual human being at the centre.⁷³ The human security doctrine is considered to have influenced 'some of the analytical parts of the European Security Strategy of December 2003', without, however, being explicitly

⁷⁰ Mirko Sossai and Christine Bakker, 'The Role of EU External Relations in Ensuring Compliance with Human Rights and Humanitarian Law by Private Contractors' in Christine Bakker and Mirko Sossai (eds), *Multilevel Regulation of Military and Security Contractors: The interplay between international, European and domestic norms* (Hart Publishing 2012), 87-88.

⁷¹ James K Wither, 'European Security and Private Military Companies: The Prospects for Privatized "Battlegroups"' (2005) 4(2) *Connections: The Quarterly Journal*, 107-126.

⁷² UNDP, 'Human Development Report 1994' (Oxford University Press 1994) <http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf> accessed 20 August 2016. See also the later development of the concept of human security in the United Nations Commission on Human Security, 'Final Report of the Commission on Human Security' (2003), 4 <<http://www.unocha.org/humansecurity/chs/finalreport/English/FinalReport.pdf>> accessed 25 July 2016.

⁷³ On the difference between human rights and human security, 'human security is thus a broader concept, comprising fundamental rights as well as basic capabilities and absolute needs. Human security, in contrast to human rights, seems to comprise threats that human rights are not primarily concerned with' Gerd Oberleitner, 'Human Security and Human Rights' (2002) European Training and Research Centre on Human Rights Occasional Paper Series 8, 6-7.

mentioned.⁷⁴ With regards to CSDP, focusing exclusively on state security may limit its contribution to long-term peace. In the following section, we will outline the key aspects of the human security approach that could enhance the effectiveness of CSDP action.⁷⁵

The number of SSR CSDP missions is on the rise, however they are largely state-centric, mainly aimed at strengthening the state apparatus. Human security is often seen as a by-product of good governance at the state level rather than a central element. This understanding of human security is revealed by the lack of participation from civil society actors in the planning and implementation of SSR programmes.

Key recommendations:

- Adoption of an **EU declaration of human security principles** that will provide the basis for the **adoption of a new strategic framework for CSDP** and for other EU external policies.
- **Adoption of ‘human security’ CSDP mandates** and make them clear and accessible to mission personnel and forces.
- **Human security principles should inform the evaluation** of CSDP actions and the European Commission’s security related programmes.
- **The principles of human security should also be incorporated into CSDP training programmes** as a way of developing a common operating culture that will in turn enhance the protection and promotion on human rights and to integrate a gender perspective to crisis management actions.
- **Peace building activities that focus on young people** who are often the target of recruitment efforts by armed groups. A specific focus on education is an effective measure to prevent conflict and serious human rights violations and to avoid children and young people in particular becoming the next generation of combatants. A focus on the needs of young people may also serve to prevent them from voluntarily joining terrorist groups.
- The EU should **pay more attention to local communities** in its response to crises as well as in its funding policies. Local communities play a key role in prevention, recovery and reconciliation.
- The adoption of a **conflict sensitivity approach** would benefit EU CSDP missions and operations in the identification of opportunities to promote peace in a particular context by, for instance, including the perspectives of vulnerable groups.
- Many of the political differences between Member States’ positions on CSDP can be traced back to different understandings of what type of security it should support. By **adopting a common ‘human security’ approach in the area of CSDP** the EU will not only improve the effectiveness and long-standing impact of the mission but will also ensure the promotion of human rights in its crisis management policy.

⁷⁴Antonio Missiroli, ‘Foreword’ to John Kotsopoulos, ‘A Human Security Agenda for the EU?’ (2006) European Policy Centre Issue Paper No 48 <http://www.epc.eu/documents/uploads/245249_Human%20Security%20IP.pdf> accessed 20 July 2016.

⁷⁵ Some of these recommendations were already proposed in the Human Security Study Group (HSSG), ‘A European Way of Security: The Madrid Report’ (2007), 23-25 <<http://www.lse.ac.uk/Depts/global/PDFs/Madrid>> accessed 10 July 2016.

- **Civil society should be viewed as a valuable source of knowledge, expertise and analysis** that allows missions and operations to work more effectively as they would receive information about the conflict situation across the country and the impact of their activities, particularly in contexts where the government is not able to provide security to the population due to a lack of legitimacy or capacity.

IV. European Union intervention in conflict and crisis situations: applicable law, responsibility and accountability

A. Applicability of IHL to EU interventions in conflict situations

The EU is a subject of obligations and duties⁷⁶ deriving from general rules of international law (including customary international law),⁷⁷ EU law and international agreements to which the EU is a party.⁷⁸ In this sense, the legal framework applicable to the EU can be divided into the internal legal framework (EU law) and the external legal framework (international law and, to a certain extent, the national law of the host country).⁷⁹ Thus, general principles and instruments of international law applicable to EU CSDP missions and operations could fall under both internal and external legal frameworks.⁸⁰ The framework of international law governing EU crisis management operations draws on a number of branches of international law: IHRL, IHL, IRL and ICL.

The legal basis for EU crisis management operations ultimately begins with the TEU that provides a framework, resources and procedures for implementing the Common Foreign and Security Policy (CFSP). CFSP decisions are generally taken unanimously by Member States, including the Council Decisions establishing CSDP missions or operations. The TEU asserts the applicability of general principles of international law to the EU, and that human rights are to guide the EU's external action. However, the main question remains to what extent IHRL applies to CSDP missions and operations. An added difficulty in determining the applicable law is the involvement of different actors in CSDP operations ranging from EU bodies, Member States and third contributing parties.

IHL applies generally in situations of armed conflict and occupation. The qualification of a situation as an 'armed conflict' is a contentious matter, and more challenging for internal conflicts than international

⁷⁶ The ICJ originally dealt with the notion of subject of International Law or international personality of an international organisation in the *Reparations for injuries suffered in the service of the United Nations*, Advisory Opinion [1949]. The notion of 'international legal status of international organisations' and the notion of 'subject of international law' are matters of extensive doctrinal debate. See Frederik Naert, *International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Intersentia 2010) 261-268.

⁷⁷ In relation to customary international law as a source of EU law please see *inter alia* Joined Cases 21-24/72, *International Fruit Company v. Produktschap voor Groebtenen Fruit*, [1972] ECR 1219; Case C-286/90, *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* [1992] ECR I-6019; Case T-115/94, *Opel Austria v Council* [1997] ECR II-39; Case 162/96, *Racke v Hauptzollamt Mainz* [1998] ECR I-3655. See also *inter alia* Allan Rosas, 'The European Court of Justice and Public International Law' in Jan Wouters, Andre Nollkaemper and Erika De Wet (eds), *The Europeanisation of International Law* (TMC Asser Press 2008), 71-85, 79-78.

⁷⁸ International Court of Justice (ICJ), *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion* [1980], para 37; Christian Tomuschat, 'The International Responsibility of the European Union' in Enzo Cannizzaro (ed), *The European Union as an Actor in International Relations* (Kluwer Law International 2002) 177-191.

⁷⁹ See Frederik Naert, 'Legal Aspects of EU Operations' (2011) 15 *Journal of International Peacekeeping*, 218-242.

⁸⁰ Gentian Zyberi, 'The Applicability of General Principles and Instruments of International Law to Peace Missions of the European Union' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation: A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 21-37.

conflicts.⁸¹ The EU should qualify the conflict situation prior to its intervention on the basis of international law in order to avoid legal uncertainty. A common situation of legal uncertainty arises when there are overlapping regimes applicable to the same factual situation, as has been explored in more depth in FRAME Deliverable 10.2, particularly with regards to IHRL and IHL in situations of armed conflict.⁸² Mission personnel and forces should perform their functions within concrete and clear legal boundaries. Consequently, EU mission personnel and armed forces should have a sufficient knowledge and a clear understanding of their obligations under international law and in relation to the types of situation where they intervene.

The qualification of a situation of armed conflict is key to determine the applicability of IHL. Nonetheless, the distinction between an armed conflict and other situations of violence is not clearly stated in the Geneva Conventions. Common Article 3 states in broad terms the conditions for the existence of an armed conflict ‘not of an international character’ and which emerges on the territory of one of the parties to the Geneva Conventions. On the other hand, Article 1 of Additional Protocol II provides that the material protection granted by the Protocol does not apply ‘to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts’.⁸³ The Rome Statute establishing the International Criminal Court includes a reference to this distinction. Article 8 of the Rome Statute specifies that the provisions related to war crimes apply to ‘armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups’. Courts and tribunals generally look to two primary criteria—the intensity of the violence and the organisation of the parties—to ‘distinguish [...] an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law.’⁸⁴ The fulfilment of these criteria should be determined on a case-by-case basis.

In general terms, the EU and its Member States accept that if EU-led forces become a party to an armed conflict, IHL will fully apply to them. The EU is arguably bound by customary IHL, while its Member States’ forces also remain bound by their IHL treaty obligations. Furthermore, IHL will not necessarily apply to all EU military operations nor is it necessarily considered the most appropriate standard as a matter of policy when not applicable as a matter of law.⁸⁵

In most operations the EU looks to human rights law as a more appropriate standard. With regards to

⁸¹Jelena Pejic, ‘The protective scope of Common Article 3: more than meets the eye’ (March 2011) 93(881) *International Review of the Red Cross*, 5-7

⁸²Carmen Márquez Carrasco, Joana Abrisketa, Elizabeth Salmón, María Nagore, Chiara Marinelli, Rita Zafra, Rocío Alamillos Sánchez, Laura García Martín, Laura Íñigo Álvarez, ‘Report on applicable regulatory frameworks regarding human rights violations in conflicts’ (2015) FRAME Report 10.2 (2015) <<http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-10.2.pdf>> accessed 20 August 2016.

⁸³Article 8(2)(d) Additional Protocol II to the Geneva Conventions.

⁸⁴International Criminal Tribunal for the Former Yugoslavia (ICTY), Case IT-94-1-T, *Prosecutor v. Tadić* [1997] Opinion and Judgement, 572.

⁸⁵Frederik Naert, ‘Observance of international humanitarian law by forces under the command of the European Union’ (2013) 95 (891/892) *International Review of the Red Cross*, 640.

the applicability of IHRL, it is widely accepted that it also applies to situations of armed conflict. This is the view expressed by principal international humanitarian law treaties,⁸⁶ international human rights law treaties⁸⁷ and a wide range of international courts and international law bodies.⁸⁸ The relationship between international human rights law and international humanitarian law has also been subject to extensive study among experts and academics.⁸⁹ Despite the strong emphasis placed by the EU on the applicability of human rights to CSDP, significant legal, conceptual and practical obstacles have hindered their practical implementation.⁹⁰

Key recommendations:

- The **EU should qualify the situation in which it intervenes on the basis of international law.** However, this qualification should not put at risk the application of the highest standard of protection to civilians under IHL or IHRL.
- The mandates and operational documents should clarify as much as possible the applicable law and specify whether IHL and/or IHRL apply. However, the mandate should retain a certain level of flexibility, thereby giving due regard to the potential evolution of the situation. In this respect, it should **avoid vague references to ‘the applicability of IHL, human rights law or international law’** that do not clarify whether, when or which of those rules are actually applicable and may require determination by the Operation Commander.
- **Whether IHL and/or IHRL are applicable to the mission as a matter of law and/or as a matter of policy,** each CSDP mission and operation should operate within a clear and concrete human rights and IHL framework.

⁸⁶ Article 72 Additional Protocol I; Preamble Additional Protocol II to the Geneva Conventions.

⁸⁷ Article ICCPR; Article 15 ECHR.

⁸⁸ See *inter alia* International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* [1996] Advisory Opinion Rep 226, para 25; International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* [2004] Rep 136, para 106; International Court of Justice (ICJ), *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* [2005] Rep 168, para 216; International Law Commission (ILC), ‘Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law’, Report of the Study Group of the International Law Commission (2006) A/CN.4/L.682, para 104; Human Rights Committee (OHCHR), General Comment No. 31 (2008) HRI/GEN/1/Rev. 9 vol I, 243, para 11.

⁸⁹ See Daphna Shraga, ‘The Interplay between Human Rights and International Humanitarian Law in UN operations’ in Erika de Wet and Jan Kleffner, *Convergence and conflicts of Human Rights and International Humanitarian Law in Military Operations* (Pretoria University Law Press 2014) 211-225; Noam Lubell, ‘Parallel Application of International Humanitarian Law and International Human Rights Law: An Examination of the Debate’ (2007) 40(2) *Israel Law Review*, 648-660; Cordula Droege, ‘The Interplay between International Humanitarian law and International Human Rights Law in Situation of Armed Conflict’ (2007) 40(2) *Israel Law Review*, 310-355; Cordula Droege, ‘Elective Affinities? Human Rights and Humanitarian Law’ (2008) 90(871) *International Review of the Red Cross*, 501-548

⁹⁰ See Wanda Troszczyńska-Van Genderen, ‘Human rights challenges in EU civilian crisis management: the cases of EUPOL and EUJUST LEX’ (August 2010) EUISS Occasional Papers, 8 <<http://www.iss.europa.eu/uploads/media/OccasionalPaper84.pdf>> accessed 5 August 2016.

- To provide a definition of the ‘Best European Practice and standards’ or otherwise avoid reference to it. The reference in the CSDP legal basis and policy documents to vague terminology such as ‘international standards’ or ‘best European practice and/or standards’ should either be avoided or defined. It is difficult to determine the content of these statements, as there is no official definition of these terms. Such imprecise provisions may lead to confusion over the scope and application of international law instruments that affects the consistency of the CSDP mission or operation as a whole.⁹¹

B. Use of force

IHL does not necessarily apply in all EU military operations. Indeed, so far, EU-led forces have not become engaged in combat as a party to an armed conflict in any of the EU’s military operations.⁹² Since 2008 the EU has been directly negotiating and concluding Status of Forces Agreements (SOFAs) with third countries applicable to its military operations.⁹³ The minimum content of any SOFA signed between the EU and a third country should include: scope of application, applicable law to EU forces, privileges and immunities, identification of EU personnel and jurisdiction. In addition to these agreements, most EU military deployments that entail a certain degree of use of force are backed by prior authorisation of the UN Security Council and following a decision of the Council establishing the framework of the military operation. However, it should be noted that some clauses included in these SOFAs might conflict with IHL, in particular the provisions on absolute criminal jurisdictional immunity in the host country where the armed forces are deployed.⁹⁴

EU military personnel may resort to the use force in two situations: for self-defence and to attain the objectives of the mission. With regards to the latter, resort to the use of force may not be envisaged solely for situations of armed conflict. The use of force maybe essential in some scenarios to protect civilians, to assist in return and settlement of refugees and IDPs, to secure access to humanitarian aid and to ensure the conclusion of safe and democratic elections, amongst others. Furthermore, although the use of force is generally understood to encompass armed force only, limitations in international and national law affect all forms of measures taken by military forces that encroach upon the freedoms of individuals. These include measures such as identity checks, searches, detention or retention. Such

⁹¹ One may also consider that there are not one but many ‘European standards’ on the basis of the national standards of each contributing states.

⁹² Frederik Naert, ‘The Application of Human Rights and International Humanitarian Law in Drafting EU Missions’ Mandates and Rules of Engagement’ (2011) KU Leuven Institute for International Law, Working paper 151 <<https://www.urm.lt/uploads/default/documents/Lietuva%20regione%20ir%20pasaulyje/Isidarbimas/mandates.pdf>> accessed 20 August 2016.

⁹³ See Aurel Sari, ‘The European Union Status of Forces Agreement (EU SOFA) (2008) 13 (3) *Journal of Conflict and Security Law*, 353-391.

⁹⁴ The EU Model SOFA grants EU missions personnel immunity from the criminal jurisdiction of the host state ‘under all circumstances’. See Ramses A. Wessel, ‘Immunities of the European Union’, (2013) 10 (2) *International Organisations Law Review*, 137-160, 148. See also Section IV. D.

measures should respect human dignity and local customs as much as possible, and therefore need an appropriate legal basis in order to be legitimate.⁹⁵

In the conduct of crisis management operations a proper understanding and application of the rules of engagement (RoE) are essential to secure the success of a CSDP action. All use of force must always be in conformity with international standards, especially international law, customary international law and the guiding principles of the EU. EU policymakers and military commanders alike need to understand the legal bases and the limits to authority and use of force for accomplishing the mission. Therefore, they also need to be aware of the status of forces agreements, the role of the International Criminal Court, the applicability of IHL and IHRL. The Operation Commander establishes the concept of operations (CONOPS) and develops an operation plan (OPLAN), keeping the Force Commander closely involved. The military operation plan will also include the request for needed rules of engagements (RoE). The same procedure applies to the civilian mission-specific rules on the use of force (RUoF), where needed.

The EU should define the specific RoE framing each intervention of its armed forces in third countries as a means to prevent legal uncertainty and impunity in relation to the application of IHL. These rules, which set out the terms of engagement and responsibility of the EU, provide EU-led forces with clear rules for action and responsibility in case of violation of those rules. The RoE are not used to assign tasks or give tactical instructions but rather to define the intensity or nature of the force to be used. Depending on the operation or mission, this gives the Operation Commander a certain level of flexibility to tailor the potential use of force to any situation.

In view of the concurrence of EU military and civilian components in the same country or region, civil-military coordination and cooperation is crucial to restoring law and order in the crisis region. This combination of civil and military elements may have an impact on the RoE because the military may be involved in supporting the civilian aspects of the operation, possibly through the use of force.

Key recommendations:

- The EU should **include in the Status of Forces Agreements (SOFA) with host countries provisions** to prevent legal uncertainty and impunity in relation to the application of IHL. These agreements should be negotiated with due regard paid to the EU's obligations under international law and in accordance with the UN Charter and the principles and rules of the general conventions applicable to the conduct of military personnel.
- When recourse to the use of force is considered to be necessary to mission accomplishment, the legal basis must include a **reference to the applicable IHL instruments** and specify the main rules and principles that the EU military personnel must respect.

⁹⁵ Federal Ministry of Defence and Sports of the Republic of Austria, 'Handbook on CSDP Missions and Operations: The Common Security and Defence Policy of the European Union' (2015) <https://eeas.europa.eu/csdp/structures-instruments-agencies/european-security-defence-college/pdf/handbook/final_-_handbook_on_csdp_missions_and_operations.pdf> accessed 15 July 2016.

- The legal basis must set a **remedy mechanism for victims to claim compensation for damages following illegal or disproportionate recourse to the use of force.**
- EU-led operation personnel must have access to and understand the RoE. The RoE should be made available and training on their use be provided.
- **Partial declassification of the RoE provisions** containing rules and principles that EU military personnel must observe and the actions that can be brought against them in the event of serious abuses and breaches of these rules.
- The RoE should provide clear **guidance in terms of military-civil interactions** in the areas of deployment, particularly in such contexts where civil and military CSDP missions operate.
- Observance of the RoE and respect for IHL and human rights may require equipping **the mission with appropriate means** such as new technologies, sufficient and appropriate capabilities and the provision of specific training to military personnel.

C. Accountability and the role of civil society⁹⁶

CSDP missions and operations should approach and involve the local communities where they are working in different stages such as in undertaking assessments, analysis, planning, programming and evaluations. This premise should inform the work of all EU missions and operations, although the modality of involvement will depend on the context.⁹⁷ This involvement of civil society in the missions' work should go beyond merely consulting communities and should actively include them in their work.⁹⁸ For these purposes, EEAS and CSDP personnel should identify individuals and Civil Society Organisations (CSOs) that are generally perceived to be credible voices in their communities and involve them in the mission's work. Furthermore, in many contexts in which EU missions work, state and society may not always be 'separate in the way that such a separation emerged in the western state formation experience. A local traditional or civil society leader may also be a leader of an armed group, a local politician and a local businessman.'⁹⁹ The EEAS and mission staff will have to identify those that have more power and those that are excluded in decision-making processes.

⁹⁶ Accountability should be here understood as part of a broader process of citizen control of those who make political decisions to those who choose them is a fundamental part of democratic government. The involvement of civil society organizations (CSOs) is widely regarded as enhancing transparency and accountability and, more generally, the democratic quality of political processes. On the engagement of the EU with CSOs, see Wolfgang Benedek, Mary Footer, Jeffrey Kenner, Maija Mustaniemi-Laakso, Reinmar Nindler, Aoife Nola, Stuart Wallace, FRAME Report 7.2 'Improving EU engagement with Non-State Actors' (2015) 91-136 <<http://www.fp7-frame.eu/wp-content/uploads/2016/08/14-Deliverable-7.2.pdf>> accessed 20 August 2016.

⁹⁷ See Cedric de Coning, John Karlsrud and Paul Troost, 'Towards More People-Centric Peace Operations: From 'Extension of State Authority' to 'Strengthening Inclusive State-Society Relations' (2015) 4(1) *International Journal of Security & Development* <<http://www.stabilityjournal.org/articles/10.5334/sta.gl/>> accessed 1 September 2016.

⁹⁸ United Nations, 'Uniting Our Strengths for Peace: Politics, Partnerships and People - Report of the High-level Independent Panel on United Nations Peace Operations' (2015) 66.

⁹⁹ Cedric de Coning, John Karlsrud and Paul Troost, 'Towards More People-Centric Peace Operations: From 'Extension of State Authority' to 'Strengthening Inclusive State-Society Relations'' (2015) 4(1) *International Journal of Security & Development* <<http://www.stabilityjournal.org/articles/10.5334/sta.gl/>> accessed 1 September 2016

In practice, engagement with civil society remains poor and inconsistent both at Brussels and field level. The CSDP decision-making and planning structures should maintain more systematic contact with CSOs in Brussels and request input at relevant stages of CSDP making. At present such relations depend on the personal capacity of individual officers or the willingness of certain units and departments within the EEAS.

With regards to the accountability of CSDP missions towards local society, this issue entails an assumption of responsibility for actions of the mission and the capacity to be able to respond to complaints and ensure transparency for its activities and decisions.¹⁰⁰ The notion of accountability concept of CSDP missions and operations is complex and includes diverse inter-related dimensions. The document entitled 'EULEX accountability' defines it in terms of three operational, internal and external dimensions and establishes specific accountability mechanisms for each of them.¹⁰¹

Key recommendations:

- The mission or operation should provide **transparent and timely information about its mandate and activities to civil society**, journalists and people on a daily basis **through appropriate channels** depending on the context.
- **Increasing cooperation with CSOs**, ranging from grass-roots movements to specialised organisations that support high-level negotiations, with respect to informing, implementing and evaluating CSDP missions and operations.¹⁰² This inclusive approach may require a more proactive attitude and transparency from the EU, and the establishment of communication channels to call for contributions, particularly in the area of deployment.¹⁰³
- The EU should **raise awareness among all mission staff and troops on the importance of co-operation with CSOs** as an opportunity for increasing the effectiveness and accountability of CSDP missions.
- **Develop a policy for cooperation with CSOs for each mission or operation.** This policy could be included as an annex of the OPLAN and include a contact list of the main local CSOs in the area of deployment.

¹⁰⁰ See Monica Blagescu, Lucy de Las Casas and Robert Lloyd, *Pathways to Accountability: The GAP Framework* (One World Trust 2005) <http://www.oneworldtrust.org/publications/doc_view/210-pathways-to-accountability-the-gap-framework?tmpl=component&format=raw> accessed 26 July 2016.

¹⁰¹ EEAS, 'EULEX Accountability' <<http://www.eulex-kosovo.eu/docs/Accountability/EULEX-Accountability-05.01.2010.pdf>> accessed 26 July 2016.

¹⁰² See *inter alia* the Civil Society Dialogue Network (CSDN), a mechanism for dialogue between civil society and EU policy-makers on issues related to peace and conflict. The CSDN is managed by the European Peacebuilding Liaison Office (EPLO), a civil society network, in co-operation with the European Commission (EC) and the European External Action Service (EEAS), see <<http://eplo.org>> accessed 12 August 2016.

¹⁰³ See the main difficulties encountered by CSOs in the case of EULEX Kosovo in Malin Palm, 'Accountability and Effectiveness of CSDP Missions: The Role of Civil Society - The Cases of EULEX (Kosovo) and EUPOL COPPS (Palestinian Territories)' (June 2010) EPLO, 13-14 <http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/CSDP/EPLO_CSDP_WG_Study_Accountability_and_Effectiveness_of_CSDP_Missions.pdf> accessed 15 July 2016.

- CSDP missions and operations can **establish advisory groups** that provide input into and feedback on the EEAS' conflict analysis, planning, programming and contribute to the evaluation of its activities. The feedback provided by these advisory groups can enable the Head of the Mission or Operations Commanders to cease and/or amend the actions that have a negative impact on local societies.
- **Organise meetings** between mission staff members at all levels and from all units, and representatives of CSOs, in order **to gather updated information about the situation in the host country**, and to disseminate information about the mission activities. These meetings serve as an opportunity to examine the possibility of involving CSOs in joint situation analysis, scenario planning and regulatory impact assessments.
- **Ensure that time and budget is allocated for human rights and gender experts** to participate in meetings with CSOs and to engage in follow up activities. Appoint a civil society liaison officer where appropriate.
- Produce and disseminate a **thematic study on lessons learned and best practices on cooperation between CSDP and CSOs**, both on ground and in Brussels, and in all stages of CSDP.
- **Develop a database of relevant CSOs** active in host countries and at the Brussels level. The mapping exercise should focus on those organisations working in areas of common concern such as human rights organisations, organisations specialised in gender-based violence, legal aid organisations, etc.
- **Invite representatives of CSOs and individual experts to contribute to in-service training** in order to ensure that mission personnel and forces receive relevant information on the cultural context, gender issues and human rights.
- **Make available to the public relevant documents** such as assessment reports and performance evaluations of CSDP missions and operations and partially disclose the content of operational documents, such as the Code of Conduct, annexes on human rights and gender policies, etc.
- Include as part of CSDP mandates the **support for the restoration and strengthening of inclusive state-society relations** and define specific tasks thereof.
- **Strengthen trust vis-à-vis the local political authorities** through regular contacts, in particular the Head of Mission or Operations Commander, and the authorities of the host state. Contacts between the mission and local authorities are often limited at the technical level while contact of a more political nature is viewed as exclusive to the respective EU Delegation or EUSR.

D. Responsibility for human rights violations

The EU is liable for violations of IHL and human rights law committed by CSDP personnel in third countries and by private contractors acting on its behalf. Breaches of international law committed by mission personnel and forces undermine the EU's legitimacy and obstruct efforts to promote human rights and the rule of law abroad. The acts of CSDP personnel should, on the one hand, respect and be guided by human rights and on the other hand, should assist local authorities in meeting their human

rights obligations.¹⁰⁴ However a number of legal and practical difficulties make it difficult holding EU missions accountable for their activities.¹⁰⁵ As noted, a ‘particularly thorny issue concerns the attribution of the wrongful acts committed by EU military operations: since they are composed of personnel made available to the Union by its Member States and third States, it is not immediately obvious which party—the EU, the contributing States or both—should bear responsibility for their conduct.’¹⁰⁶

Pursuant Article 340(2) of the TFUE states that the ‘EU must compensate for any damage caused by its institutions or its servants in the performance of their duties.’ However, the Court of Justice of the European Union (CJEU) does not have jurisdiction over CSDP to deal with cases of reparation for damages incurred during in the course of operations.¹⁰⁷ It is not clear whether this provision could apply to mission personnel on the ground as only EU staff members at headquarters may fall within the category of ‘servants’ of the EU.¹⁰⁸ In turn, the EU has established a remedy mechanism, which relies on EU Member States courts and that is only applicable to those areas of EU external policy that fall outside the scope the jurisdiction of the CJEU, such as the CSDP domain.¹⁰⁹ Article 19(1) TFEU provides that ‘Member states shall provide remedies sufficient to ensure legal protection in the fields covered by Union law’, including the CSDP. Pursuant to Article 274 TFEU ‘[s]ave where jurisdiction is conferred on the [Court of Justice] by the Treaties, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.’¹¹⁰

The existing cases of misconduct of EU personnel are surrounded by uncertainty and are not informed. The main causes of abuse are lack of knowledge and adequate training, the lack of specific accountability mechanisms and the difficulty for individuals affected during EU crisis management operations to access justice.¹¹¹ EU mission personnel and forces are often granted full diplomatic immunity established in agreements on status of forces (SOFAs)¹¹² for military operations, and status of

¹⁰⁴ Clara Rey Sánchez, ‘Clarifying Mechanisms and Procedures for Accountability in Case of Violations’ in Milena Costas Trascasas (ed), *Mainstreaming human rights in EU CSDP missions: a transversal analysis* (Low Cost Books 2012) 487-494.

¹⁰⁵ Frederik Naert, *International Law Aspects of the EU’s Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights* (Intersentia 2010), 463–540.

¹⁰⁶ Aurel Sari and Ramses A Wessel, ‘International Responsibility for EU Military Operations: Finding the EU’s Place in the Global Accountability Regime’ in Bart Van Vooren, Steven Blockmans and Jan Wouters (eds), *The EU’s Role in Global Governance: The Legal Dimension* (Oxford Scholarship Online 2013)

¹⁰⁷ Art. 24(2) TEU and Art. 275 TFEU.

¹⁰⁸ Frederik Naert, ‘Responsibility of the EU Regarding its CSDP Operations’ in Malcolm Evans, Panos Koutrakos (eds), *The International responsibility of the European Union. European and International Perspectives* (Hart Publishing 2013), 329-330.

¹⁰⁹ Art. 24(1) TEU and Articles 275, 340 and 19(1) TFEU.

¹¹⁰ Art. 343 and 274 TFEU and Protocol No 7 on the privileges and immunities of the EU

¹¹¹ Gentian Zyberi, ‘The Applicability of General Principles and Instruments of International Law to Peace Missions of the European Union’ in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation: A Duty to Respect and to Protect?* (2012) CLEER Working Papers 2012/6, 35

¹¹² Council of the European Union, ‘Draft Model Agreement on the Status of the European Union-led forces between the European Union and a host State’ (2005), 8720/05.

missions (SOMAs)¹¹³ for civilian missions.¹¹⁴ Many experts have noted that in the case of EU missions, privileges and immunities are much more extensive and are not only conferred on those in high ranks and on senior staff.¹¹⁵ However the exemption from local jurisdiction contained in SOFAs and SOMAs should not necessarily lead to impunity as these agreements also set up specific claim mechanisms. The EU Model SOFA and SOMA grant EU missions personnel immunity from the criminal jurisdiction of the host state 'under all circumstances'.¹¹⁶ The Sending State retains 'all the criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State'.¹¹⁷

There is only one example of human rights accountability mechanism, which is the Human Rights Review Panel (HRRP) to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. The HRRP is not a judicial nor a disciplinary body and its decisions and recommendations to the Head of the Mission are of a non-binding and non-pecuniary nature.¹¹⁸

With regards to CSDP military operations, it is not clear whether only the troop-contributing Member States, or the EU too, are responsible for violations of IHL and human rights. The EU could be subject to IHL obligations if its troops become party to an armed conflict. There are differing views about this issue: some suggest applying the test of effective control over the forces to determine whether it is the EU or the contributing state party to the conflict while others defend the view that the responsibility is shared between the sending state and the EU.

With regards to the responsibility for human rights and IHL violations by private contractors, the decisive factor for EU responsibility is whether these actions can be attributed to the EU. In such cases, it is

¹¹³Council of the European Union, 'Draft Model Agreement on the status of the European Union Civilian Crisis Management Mission in a host State' (2005), 10564/05.

¹¹⁴The SOFAs and SOMAs are bilateral or multilateral treaties that regulate the exercise of the host state's jurisdiction over the mission or operation and its members. EU SOFAs and SOMAs often include exemptions from local criminal jurisdiction.

¹¹⁵See more extensively Aurel Sari, 'The Conclusion of International Agreements by the European Union in the Context of the ESDP' (2008) 57(1) *International and Comparative Law Quarterly*, 53-86; Aurel Sari, 'Status of Forces and Status of Mission Agreements under the ESDP: The EU's Evolving Practice' (2008) 19(1) *The European Journal of International Law*, 67-100.

¹¹⁶Article 6(3), EU Model SOFA; Article 6(3), EU Model SOMA

¹¹⁷Article 8, EU Model SOFA; Article 8, EU Model SOMA. Furthermore, the mission's personnel are exempt from the civil and administrative jurisdiction of the host state "in respect of words spoken or written and all acts performed by them in the exercise of their official functions" in Article 6(4), EU Model SOFA; Article 6(4), EU Model SOMA.

¹¹⁸ Human Rights Review Panel <<http://hrrp.eu/>> accessed 5 August 2016. See also European Commission for Democracy through Law (Venice Commission), 'Opinion on the Existing Mechanisms to Review the Compatibility with Human Rights Standards of Acts by UNMIK and EULEX in Kosovo', adopted 17-18 December 2010, Opinion no 545 / 2009, CDL-AD(2010) <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)051-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)051-e)> accessed 28 August 2016.

commonly agreed that the international organisation should exercise ‘effective’ or at least ‘overall’ control over the conduct of the private contractor.¹¹⁹

Key recommendations:

- **Facilitate access to the competent contributing state jurisdictions to repair the damages** suffered by the actions of EU personnel and forces in an effective, rapid and adequate manner. For this purpose it is crucial to provide clear and appropriate information to the local population on the existing legal remedies, the contributing states and about the procedure to file a complaint. Human rights, gender and legal experts should be knowledgeable about these procedures for referral of potential queries.
- The EU should establish strong channels of communication to **provide information and facilitate access to the available claim mechanisms** set up in the SOFAs and SOMAs. Access and understanding of EU CSDP-related agreements and policies might require appropriate means and additional efforts from communication and media units within CSDP missions and operations.
- **Immunities and privileges should be proportionate** to the objective of enabling EU mission personnel and forces to carry out their mandate. The EU and contributing states commit to waiving immunities granted regarding claims in relation to allegations of serious breaches of IHL and human rights committed by personnel acting under its mandate.
- **Revise and update the ‘Generic Standards of Behaviour for CSDP Operations’** adopted by the Council of the EU in 2005 and ensure that they are applied.¹²⁰
- The training provided to mission staff and troops should include **reference to the charges that could be brought against personnel in case of abuse or misconduct.**
- **Disseminate information among the Head of Missions and Operation Commanders about criminal offences committed by mission staff members** in the host state, which have been heard by courts in EU Member States or other countries without revealing the identity of the individuals concerned.
- Develop a set of **common standards** and encourage contributing states to apply them in their approaches **to disciplinary cases** and to disseminate information about the disciplinary measures that have been taken against mission staff members and military personnel without revealing the details of specific cases.
- Establishment of a **central EU body for dealing with reparation for damages** incurred during EU missions and operations or extend the CJEU jurisdiction over CSDP to address these claims.¹²¹

¹¹⁹Article 340(2) TFEU stipulates the non-contractual liability for any damage caused by its institutions and servants. Thereby ‘servants’ of the Union include not only civil servants but also private contractors authorised by the Union to fulfil official duties.

¹²⁰ The ‘Generic Standards of Behaviour for CSDP Operations’ are complementary to the legal obligations of personnel, and draw special attention to specific criminal activities, namely organised crime, corruption, human trafficking and child abuse. Council of the European Union, Generic Standards of Behaviour for ESDP Operations (2005), 8373/3/05.

- **Setting accessible accountability mechanisms in the host state** similar to the HRRP, particularly for missions and operations with executive mandates, without prejudice of the Member States' jurisdiction.
- Include specific provisions in the legal basis of CSDP missions and operations to determine primary **liability if EU forces become party to an armed conflict**. As the situation in the mission area evolves, the EU and its Member States should acknowledge the potential obligations of EU-led forces under IHL.

E. Accountability towards the European Parliament

The European Parliament (EP) contributes to the development of coherent human rights policies in several ways particularly through the Subcommittee on Human Rights (DROI). The EP has been supportive of the deployment of CSDP missions and operations to advance the protection of the lives and rights of the population in countries like South Sudan, Libya or the Sahel.¹²² However, the EP has no formal say in authorising the launch of a EU crisis-management mission or operation. It can neither co-decide on legal obligations nor on individual mission budgets.¹²³ The role of the EP in the area of CFSP/CSDP is restricted to being regularly informed on the development of foreign and security policy and to taking into due consideration its recommendations. Since the entry into force of the Lisbon Treaty, the EP has gained slightly more power, however it does not define whether the EP should be consulted before or after a CSDP mission is deployed.¹²⁴ The 2010 'Declaration on Political Accountability' issued by High Representative Ashton, reaffirms the obligation of the HR/VP and the EEAS to inform and take into consideration the EP's views and provides for instruments to improve transparency in the area of CFSP/CSDP.¹²⁵

In order to compensate its lack of power in the field of CSDP, the EP has developed informal practices and tools to provide some sort of democratic scrutiny. For instance, it regularly addresses questions to the HR/VP and the Council, examines the developments in plenary sessions, committee meetings, in hearings and workshops, sends EP committees on field trips, and elaborates reports and recommendations. The EP has also established a practice of 'ex-ante scrutiny' and a sub-committee on Security and Defence was set up under the Committee on Foreign Affairs. Nevertheless, these proactive

¹²¹ Pursuant Article 340(2) TFEU, the EU must compensate for any damage caused by its institutions or its servants in the performance of their duties. However, the CJEU has no jurisdiction over CSDP (Articles 24(2) TEU, 275 TFEU). See Frederik Naert, 'Responsibility of the EU Regarding its CSDP Operations' in Malcolm Evans and PanosKoutrakos (eds), *The International responsibility of the European Union. European and International Perspectives* (Hart Publishing 2013) 313-338.

¹²² Wanda Troszczyńska-Van Genderen, 'Human Rights in CSDP: a view from the European Parliament' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect* (2012) CLEER Working Papers 2012/6, 82.

¹²³ Jan Wouters and Kolja Raube, 'Seeking CSDP Accountability Through Interparliamentary Scrutiny' (2012) 47(4) *The International Spectator: Italian Journal of International Affairs*, 162.

¹²⁴ Article 36 TEU.

¹²⁵ High Representative of the European Union, 'Declaration by the High Representative on Political Accountability' (3 August 2010) OJ C 210/1; Wanda Troszcynska-Van Genderen, 'The Lisbon Treaty's provisions on CFSP/CSDP State of implementation' (2015) European Parliament DG EXPO/B/PolDep/Note/2015_263, 8-9.

initiatives are insufficient in providing substantial control mechanisms over a policy field exclusively dominated by the Member States.¹²⁶

An Inter-Parliamentary Conference on CFSP/CSDP was set up in 2012¹²⁷ to facilitate the parliamentary scrutiny function on CFSP/CSDP by the EP and national Parliaments, including its human rights aspects.¹²⁸ Despite all these advancements their adoption has not yet cured the problem of a lack of parliamentary accountability.¹²⁹

Key recommendations:

- **Strengthen the role of the EP in the area of CSDP** by ensuring there is a consultation prior the decision to establish a CSDP mission or operation.
- Organise **field visits and follow-ups** of CSDP missions and operations in a more systematic manner.¹³⁰

¹²⁶ Péter Bajtaj, 'Shaping and controlling foreign policy: Parliamentary diplomacy and oversight, and the role of the European Parliament' (2015) DGEXPO/B/PolDep/Note/2015_200, 31 <[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549045/EXPO_STU\(2015\)549045_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549045/EXPO_STU(2015)549045_EN.pdf)> accessed 15 July 2016.

¹²⁷ The Conference is composed of 6 delegates per Member State and 16 delegates from the EP. Moreover, EU candidate countries and European member countries of NATO (excluding EU Member States) can be represented by a delegation of 4 observers each. The HR/VP is also invited.

¹²⁸ Wanda Troszcynska-Van Genderen, 'The Lisbon Treaty's provisions on CFSP/CSDP State of implementation' (2015) European Parliament DG EXPO/B/PolDep/Note/2015_263, 8-9; Jan Wouters, Laura Beke, Anne-Luise Chané, Nicolas Hachez and Kolja Raube, 'Enhancing cooperation between the European Parliament and EU national Parliaments on EU human rights policy' (2014) European Parliament EXPO/B/DROI/2013/20, 18; Jan Wouters and Kolja Raube, 'Seeking CSDP Accountability Through Interparliamentary Scrutiny' (2012) 47(4) *The International Spectator: Italian Journal of International Affairs*, 149-163; Inter-Parliamentary Conference, Conclusions of the Inter-Parliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defense Policy (September 2013) <http://www.lrs.lt/intl/presidency.show?theme=279&lang=2&p_eventguid=1ce0171a-1309-477c-ae0c-a784d73fd8aa> accessed 3 August 2016. See also Article 9 and 10 of the Protocol on the Role of National Parliament in the European Union (2004) OJ C 310/204.

¹²⁹ Jan Wouters and Kolja Raube, 'Seeking CSDP Accountability Through Interparliamentary Scrutiny' (2012) 47(4) *The International Spectator: Italian Journal of International Affairs*, 162.

¹³⁰ MEPs delegations occasionally make on-site visits to the operational areas to monitor the activities of CSDP missions and operations. Wanda Troszczyńska-Van Genderen, 'Human Rights in CSDP: a view from the European Parliament' in Aurel Sari and Ramses A. Wessel (eds), *Human Rights in EU Crisis Management Operation. A Duty to Respect and to Protect* (2012) CLEER Working Papers 2012/6, 80.

V. The EU policy on the promotion of human rights and gender into CSDP missions and operations

A. The EU policy on human rights and gender mainstreaming in CSDP

The integration of human rights in EU external policies has progressively materialised in a set of human rights guidelines and mechanisms promoting respect for human rights in third countries.¹³¹ Human rights guidelines focus on diverse topics included in the EU Strategic Framework and Action Plans on Human Rights and Democracy namely: the death penalty; torture and other cruel, inhuman or degrading treatment or punishment; the promotion and protection of freedom of religion or belief; human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; human rights dialogues with third countries; children and armed conflict; human rights defenders; IHL; the rights of the child; violence against women and girls and discrimination against them; and, freedom of expression. There are, however, some priority areas and groups that might be of relevance in the conduct of EU crisis management actions that have not received much attention in terms of policy, such as persons belonging to minorities, indigenous peoples, refugees and migrants.¹³²

Since 2005 the EU has developed more concrete political measures on the incorporation of human rights and gender issues into the CSDP.¹³³ Policy documents have been developed on the inclusion of human rights and gender, as well as on more concrete subject-areas such as the protection of civilians, the mainstreaming of human rights and gender into all stages of CSDP missions and operations, generic standards of behaviour and disciplinary procedures for mission and operation personnel, and on children affected by armed conflict. Despite all these advancements, the EEAS has to further improve the implementation of these commitments. Except for certain vulnerable groups such as women or children, there is no need for new comprehensive policies or more guidelines. Rather, more human and financial resources are needed to further the application of EU documents and to continue the monitoring and assessment of these efforts.

The EU has no civilian or military standing forces. On the contrary, it essentially relies on seconded personnel from Member States. In addition, the training in CSDP remains a Member States' prerogative that in terms of human rights varies across the EU.¹³⁴ Most staff stays apart from the local communities and often stays for a few months only, a period, which cannot be deemed sufficient to understand and develop familiarity with the mission area. Furthermore, the training for mission personnel and forces is

¹³¹ See all updated EU Human Rights Guidelines in EEAS, 'EU Human rights guidelines' <http://eeas.europa.eu/delegations/council_europe/more_info/eu_human_rights_guidelines/index_en.htm> accessed 20 August 2016.

¹³² Cristina Churruga and Maria Nagore, 'The EU's Framework for the Promotion of Human Rights and Democracy Support' (2015) 53 *Cuadernos Europeos de Deusto - The European Union's Policy for Human Rights and Democracy support: a critical assessment*, 33; Interview with EPLO Officer.

¹³³ See Annex IV, Carmen Márquez Carrasco, Cristina Churruga Muguruza, Rocío Alamillos Sánchez, 'Case Study: CSDP' (2016) FRAME D 10.3 (forthcoming).

¹³⁴ Daniel Korski and Richard Gowan, 'Can the EU Rebuild Failing States? A Review of Europe's Civilian Capacities' (2009) ECFR, 43 <http://www.ecfr.eu/page/-/ECFR18_-_Can_the_EU_rebuild_failing_States_-_a_Review_of_Europes_Civilian_Capacities.pdf> accessed 15 August 2016.

crucial to develop a common understanding of human rights and gender mainstreaming among personnel from the EU institutions and the Member States. Training also improves the quality of CSDP mission personnel, which in turn directly influences the effectiveness with which they fulfil their tasks.

Key recommendations:

- The EU **needs to be able to deploy mission staff and forces rapidly** and to let them operate closely with local populations. **A more flexible mandate** will allow mission leaders and staff to be able to make political decisions and disburse funds to support initiatives that enhance human rights and gender without fearing that their decisions will be dismissed in Brussels.
- The **policy documents on human rights and gender mainstreaming should be revised**, updated and avoid vague expressions on human rights measures such as ‘where relevant’ or ‘where appropriate’. A new policy document on human rights and gender mainstreaming would concretely address current threats to the security of civilians and address the specific need of vulnerable groups, without prejudice of further development of these areas in separate strategies.
- The human rights content of the training provided by national institutes across the EU should be **standardised**, and the training provided should be **tailored** to the specific mission context where feasible. The EU could provide **‘training for trainers’** to meet standardisation and interoperability requirements.
- **Invite experts and experienced organisations** to provide their support in preparing and delivering the **training** for staff and forces involved in EU crisis management at all levels.
- With regards to capacity building and SSR missions, the EU should adopt a **‘programmatically approach’** to statistically measure the progress of local institutions, including their respect for and promotion of human rights and a gender perspective.
- Appointing **Lessons Learned and Best Practice officers** for each CSDP missions and operation and providing specialised training to all officers in the field and Brussels level.
- **Compiling lessons learned and best practices** of human rights and gender mainstreaming, making them public to the appropriate extent and for them **to serve the development of CSDP training curricula**.
- Including **independent experts, alongside EU staff, for the evaluation of CSDP missions and operations, in order to provide a more impartial approach**.
- Rely on the use of **available tools on human rights and gender mainstreaming** (e.g. from the UN, independent institutes, etc.) rather than develop yet another set of training tools and guidance materials.
- Establish a central database together with a **network of human rights and gender contact points** for the exchange of best practice and to share experiences and lessons learnt from successes and failures.

- The EU should support the **strengthening knowledge bases through academic and other external studies and consultations with experts** on different human rights aspects, particularly with regards to vulnerable groups.
- The EU and the contributing states must provide **adequate financing, time and staff resources** for the effective mainstreaming of human rights and gender into CSDP missions and operations.
- **Human rights and gender advisors must be located in the EEAS** to secure human rights and gender mainstreaming from the outset and to define and secure its implementation in the legal and operational basis of CSDP actions.

B. Gender mainstreaming in CSDP missions and operations¹³⁵

The EU has launched a wide-ranging policy on ‘Women, Peace and Security’ covering humanitarian aspects, development, security and foreign relations, crisis management and long-term reconstruction. The EU has made commendable efforts towards incorporating the UN Security Council Resolution 1325 (2000) on women, peace, and security in its CSDP.¹³⁶ Although the policy framework on gender mainstreaming is well developed, its implementation in EU military and civilian crisis management operations has proved challenging, particularly with regards to raising awareness among the actors involved in the different stages of CSDP that the inclusion of a gender perspective in its activities is crucial to the achievement of the objectives mandated.

The EU commitment to promote gender mainstreaming exists in several key policy documents, such as the ‘Comprehensive approach to the EU implementation of the UNSC Resolutions 1325 and 1820 on women, peace and security’. An evaluation of the EU actions regarding gender issues from within the context of the CSDP framework takes into account internal and external dimensions that determine the impact of this policy. The ‘Checklist to ensure gender mainstreaming and the implementation of UNSCR 1325 in the planning and conduct of ESDP operations’¹³⁷ and the document on the ‘Implementation of UNSCR 1325 in the context of ESDP’ constitute the main policy documents in the integration and mainstreaming of a gender perspective in the field of CSDP.¹³⁸ These policy documents address the integration of a gender perspective in all stages of CSDP. Gender issues should be therefore included as a factor for consideration in the planning, implementation, monitoring and lessons learned process of CSDP operations and should be incorporated into the supporting and operational documents of these activities. The study of CSDP missions and operations demonstrate that the EU has progressively

¹³⁵ See the definitions on ‘gender’, ‘gender mainstreaming’ and ‘gender-based violence’ in Council of the European Union, ‘Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security’ (2008) 15671/1/08 REV 1, 5-6. For critiques of these definitions see Giji Gya, ‘Implementation of EU Policies Following the UN Security Council Resolution 1325’ (2010) European Parliament EXPO/B/DROI/2009/26, 37

¹³⁶ Council of the European Union, ‘Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security’ (2008) 15671/1/08 REV 1; Council of the European Union, ‘Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP’ (2008) 15782/08

¹³⁷ Council of the European Union, ‘Checklist to ensure gender mainstreaming and implementation of UNSCR 1325 in the planning and conduct of ESDP Operations’ (2006) 12068/06

¹³⁸ Council of the European Union, ‘Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP’ (2008) 15782/08

advanced in its commitment to promote the protection and participation of women. The key to produce a change in implementing gender mainstreaming is well known but a real change requires greater willingness and leadership on the part of Member States.¹³⁹

Nevertheless, most of the CSDP legal bases and mandates do not contain any reference to women or gender issues. At best, an explicit mention to these issues has been included at later stages in the review of these documents. Also, the appointment of gender experts and advisors has been a best practice followed in the field of crisis management. Initially the gender questions were not treated as autonomous but as another aspect of the human rights policy to be monitored. Gender aspects have also been progressively included in the training curricula for CSDP mission personnel, although as revealed in the FRAME Deliverable 10.3 the development and provision of training on gender issues remains inconsistent among Member States.¹⁴⁰

Effective gender mainstreaming in EU crisis management operations still remains a major challenge. This is partly due to structural difficulties, organisational cultures, limited training and expertise and even a lack of interest in the political-strategic planning structures.¹⁴¹

The percentage of women in CSDP missions and operations, and inside the EEAS planning structures remains unsatisfactory, particularly with regards to the number of women appointed to senior posts. This trend undermines the credibility of the EU in promoting women's participation and gender equality and generates criticism over the EU's double standards when promoting UNSCR 1325 in external affairs.¹⁴² To understand why women remain underrepresented in CSDP missions and operations, the methods of recruitment must be examined for both national, seconded and contracted personnel. Nonetheless it should be noted that gender mainstreaming should not be merely understood as gender balance. It is important to establish a CSDP mission or operation that is capable of conducting gender mainstreaming and undertaking gender specific measures when working to reach the mandate objectives.

In more general terms, gender mainstreaming 'requires a change of mind-set at all levels in the

¹³⁹ Alfredo Pardo Martínez, 'The implementation of the Gender Perspective in the EU civilian and military missions: Leadership wanted' (October 2015) Egmont Security Policy Brief no 67 <<http://www.egmontinstitute.be/wp-content/uploads/2015/10/SPB67-Pardo.pdf>> accessed 20 July 2016.

¹⁴⁰ Carmen Márquez Carrasco, Cristina Churruca Muguruza and Rocío Alamillos Sánchez, 'Case Study: CSDP' (2015) FRAME D 10.3 (forthcoming).

¹⁴¹ At the time of preparing D 10.3 there was only one Human Rights and Gender Advisor appointed at the CMPD and two focal points, one for each body, the CPCC and the EUMC respectively.

¹⁴² See Maline Meiske, 'Gender balancing in CSDP missions' (2015) EUISS Alert Issue no 51 <http://www.iss.europa.eu/uploads/media/Alert_51_Gender_in_CSDP.pdf> accessed 20 July 2016; European Peacebuilding Liaison Office, 'Towards a Peacebuilding Strategy for the EEAS' (2010) <http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/EEAS/EPLO_EEAS_WG_Statement_Towards_a_Peacebuilding_Strategy_for_the_European_External_Action_Service.pdf> accessed 20 July 2016; European Peacebuilding Liaison Office, 'Conflict Prevention and Peacebuilding inside the EEAS' (2011) <http://www.eplo.org/assets/files/2.%20Activities/Working%20Groups/EEAS/EPLO_Statement_EEAS_Feb2011.pdf> accessed 20 July 2016.

structures of both civilian and military, national and international planning, which resist change if there is insufficient short-term gain.¹⁴³ Despite the gender mainstreaming efforts in place, it remains a major challenge for military and civilian personnel to understand and effectively integrate a gender perspective in the performance of their duties, as this aspect may have not been an integral part of their training or education.¹⁴⁴ As such, an effective gender mainstreaming policy to EU crisis management goes beyond the scope of CSDP. The EU should advocate for the inclusion of a gender perspective in the training curricula for military and police academies and in the justice system. Additionally, the EU could develop common minimum criteria for the recruitment of contracted and national seconded personnel and military forces to CSDP missions and operations.

Key recommendations:

- **Advocate** for ratification and observance of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** and the implementation of **UN Security Council Resolutions on Women, Peace and Security**.¹⁴⁵
- **Gender mainstreaming** across all relevant EU policy frameworks and development cooperation instruments, particularly within **country level strategies**. Setting benchmarks for progress in this area and individual budget lines.
- **Revise national recruitment processes and the establishment of common minimum criteria** for both contracted and seconded personnel with the aim to increase the number of women in CSDP, particularly at the senior level.
- **Promote the inclusion of a gender perspective in the training curricula of national military and police academies.**
- The inclusion of a **module on gender mainstreaming in all CSDP-related training**, both in relation to in-mission and pre-deployment training sessions.

¹⁴³ Alfredo Pardo Martínez, 'The implementation of the Gender Perspective in the EU civilian and military missions: Leadership wanted' (2015), The Royal Institute for International Relations Security Policy Brief no 67, 2. <<http://www.egmontinstitute.be/wp-content/uploads/2015/10/SPB67-Pardo.pdf>> accessed 20 July 2016.

¹⁴⁴ *ibid* 2. As noted only 17 out of 28 Member States have adopted a national action plan for the implementation of UNSCR 1325. See also Jesús Ignacio Gil Ruiz, 'Women, NATO and the European Union' in Spanish Ministry of Defence. 'Strategic Dossier 157-B: The role of women and gender in conflicts' (June 2012) 85-126, 119-120.

¹⁴⁵ UN Security Council Resolutions on Women, Peace and Security: UNSCR 1325 (2000) on women, peace and security and the incorporation of a gender perspective into peacekeeping missions; UNSCR 1327 (2000) on the role of women in conflict prevention and resolution and peacebuilding; UNSCR 1366 (2001) on DDR in UN peacekeeping and peacebuilding mandates; UNSCR 1408 (2002) on civil society initiatives in the region, particularly gender-focus initiative, and their contribution towards regional peace. ; UNSCR 1820 (2008) on sexual violence in conflict and post-conflict situations and asking the Secretary-General for a report with information on the systematic use of sexual violence in conflict areas and proposals to minimize the prevalence of such acts; UNSCR 1888 (2009) strengthening efforts to end sexual violence against women and children in armed conflict; UNSCR 1889 (2009) to ensure that women's protection and empowerment is taken into account during post-conflict needs assessment and planning; UNSCR 1960 (2010) establishing a monitoring, analysis and reporting mechanism on conflict-related sexual violence; UNSCR 2106 (2013) on accountability for perpetrators of sexual violence in conflict and stressing women's political and economic empowerment; UNSCR 2122 (2013) addressing persistent gaps in the implementation of the women, peace and security agenda.

- **Gender mainstreaming assessments** not only in terms of percentage and number of female staff members but also with regards to their position in the CSDP and EEAS structures, the functions performed and their impact on the overall capacity of the CSDP mission and operation to effectively conduct gender mainstreaming and undertake gender specific measures in the attainment of the objectives mandated.
- Gender mainstreaming requires the commitment of EU Member States **at the highest level** and should not be included in CSDP missions and operations merely at the last minute.
- Appointment of **gender focal points** in all departments, sections and/or units at all levels of CSDP planning and implementation will serve to guarantee the inclusion of a gender perspective in the performance of functions of a different nature and will avoid relegating gender mainstreaming efforts to gender and/or human rights experts and advisors. This inclusive initiative will also serve to raise awareness on the importance of gender mainstreaming among all personnel involved in the different stages of CSDP.
- **Gender advisors and contact points must be close to the command of the operation or Head of Mission**, and must be able to participate in strategic meetings.
- **Refrain from double-hatting human rights and gender experts** and provide enough sources to them to develop initiatives on the ground.

VI. Enhancing the protection of vulnerable groups in EU crisis management

The first FRAME Deliverable 10.1 revealed that some groups of population - such as women and children - experience and act differently in the context of violence and post-conflict reconstruction.¹⁴⁶ Some individuals or groups would even experience multiple forms of vulnerability. Nonetheless, in order to ensure long-term and sustainable peace, individuals considered as belonging to vulnerable groups should also be viewed as key actors in peace processes and the wider conception of governance. The protection and promotion of human rights of certain categories of persons has been gradually developed in both legal and policy terms at the international, regional and EU level. Children and women have been clearly addressed in a number of EU policy documents applicable to crisis management operations. However, other 'priority' groups that were identified in the EU Strategy and Action Plans on Human Rights and Democracy have not been considered to the same extent.

A. Definition of 'vulnerability' or 'vulnerable groups'

Vulnerability is not an easy category to define as it often carries a stigma with it.¹⁴⁷ The term vulnerability is used to denote groups that require special attention to ensure that they enjoy their human rights, because they are the people whose rights are most at risk of being violated, particularly in the context of crisis or armed conflict. The lack of a common definition and criteria to identify vulnerable people hinders the capacity of the EU to effectively promote their rights during CSDP interventions.

'Vulnerability' has multiple meanings and usages within each of the EU's internal and external policies.¹⁴⁸ Thus, the meaning of vulnerability has to be assessed within the specific context of each policy, notwithstanding the risk of inconsistencies in the determination of the most disadvantaged groups.¹⁴⁹ In the area of CSDP some groups such as children and women have been identified as such at

¹⁴⁶ See Carmen Márquez Carrasco (editor and main co-author), Laura Iñigo Álvarez, Nora Loozen and Elizabeth Salmón Gárate, 'Report survey study on human rights violations in conflict-settings' (2014) FRAME Report 10.1, <<http://www.fp7-frame.eu/wp-content/materiale/reports/08-Deliverable-10.1.pdf>> accessed 20 April 2016, Section VI, A and B.

¹⁴⁷ See Samantha Besson, 'La vulnérabilité et la structure des droits de l'homme – L'exemple de la jurisprudence de la Cour européenne des droits de l'homme' in Laurence Burgorgue-Larsen (ed), *La Vulnérabilité saisie par les juges en Europe* (Pedone 2014), 59-85; Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law' (2013) 11 (4) *International Journal of Constitutional Law* 1056; Alexandra Timmer, 'A Quiet Revolution: Vulnerability in the European Court of Human Rights' in Martha Fineman and Anna Grear (eds), *Vulnerability – Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013), 147-170; Michael O'Boyle, 'The notion of "vulnerable groups" in the case law of the European Court of Human Rights' (2016) *European Commission for Democracy through Law (Venice Commission)* <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-LA\(2016\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-LA(2016)003-e)> accessed 13 August 2016.

¹⁴⁸ See *inter alia* European Council, 'The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens' (2010) OJ C115/1, para 2.3.3; Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (2012) 11855/12, 2-3.

¹⁴⁹ See Joana Abrisketa, Cristina Churrua, Cristina de la Cruz, Laura García, Carmen Márquez, Dolores Morondo, María Nagore, Lorena Sosa, Alexandra Timmer, 'Human rights priorities in the European Union's external and internal policies: an assessment of consistency with a special focus on vulnerable groups' (2015) FRAME D 12.2, 16-23 <<http://www.fp7-frame.eu/wp-content/uploads/2015/08/FRAME-Deliverable-12.2-Submitted-30-July->

the policy level. However, it is necessary to extend this protection to other groups such as minorities, refugees, and internally displaced persons (IDPs) who are often in the area of influence of CSDP missions and operations.

Additionally, it is necessary to set criteria that allow for the identification of vulnerable groups prior to the establishment of a CSDP mission or operation. The appointment of a human rights expert focused on the promotion and protection of the rights of vulnerable people and who is appointed to the strategic-operational planning structures would ensure efficient implementation of this identification process for vulnerable groups.

Key recommendations:

- The EU must **identify the most vulnerable population** in situations of crisis or armed conflict in order to implement adequate measures to protect them. For this purpose the EU should **define the criteria** to identify vulnerable groups.
- The EU should establish **specific measures for the protection and promotion of rights** of those categories of population whose rights are systematically abused and violated in situations of conflict and crisis.
- Consideration could be given to establishing a **pool of experts on a number of human rights-related themes** (CAAC, gender, migration, victims of human trafficking etc.) with the appropriate knowledge and expertise to be drawn on in missions or in emergencies, and who could promote the development aspect in a pragmatic and practical way.
- The **EUSRs** could also be tasked to support and ensure consistency among all EU actions to ensure the effective protection and promotion of the rights of vulnerable populations. The EUSRs may create **special groups dedicated to the protection of specific categories of people**. Another alternative could be the appointment of a 'Special Representative' or similar post for specially protected persons and groups to centralize all the activities to the protection of vulnerable groups in all external policy areas.¹⁵⁰

2015.pdf> accessed 15 August 2016; Alexandra Timmer, Jenny Goldschmidt, Antoine Buyse and Anja Mihr, 'Concepts of human rights, democracy, and the rule of law: a literature review' (2013) FRAME Deliverable 3.1, 36 <www.fp7-frame.eu/wp-content/materiale/reports/01-Deliverable-3.1.pdf> accessed 15 August 2016. See also Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law' (2013) 11 (4) *International Journal of Constitutional Law*, 1056.

¹⁵⁰ ATLAS, 'Explanatory Report: Recommendations on International Humanitarian Law and Human Rights Law in Situations of Armed Conflict' (2010) 48 <http://www.philodroit.be/IMG/pdf/IHL_Recommendations_Explanatory_Report_En_Final_deliverable_01.02.2011.pdf> accessed 15 August 2016.

B. Children affected by armed conflict (CAAC)

Children¹⁵¹ are a particularly vulnerable population in contexts of crises and armed conflict, subject to a multitude of violations of their human rights, often with serious and irreversible physical and psychological consequences. Children are also exposed to many forms of violence and abuse such as recruitment and abduction by armed groups, being killed or maimed, sexual and gender-based violence, forced labour and trafficking. IHL and IHRL afford special protection to children because of their special vulnerability in times of crisis and armed conflict. The protection of children in such situations requires the implementation of coordinated actions that integrate their needs in a systematic way.

Legal standards on child protection affected by armed conflict have been developed in different fields of international law. At the United Nations several actors are involved in addressing the issue, in particular the Secretary General for Children and Armed Conflict (SRSG) and the Security Council Working Group on Children and Armed Conflict which focuses on six grave violations: killing and maiming of children; recruitment or use of children as soldiers; sexual violence against children; attacks against schools and hospitals; denial of humanitarian access for children; and abduction of children.¹⁵²

The EU has a fairly comprehensive policy framework that addresses the extreme vulnerability of children affected by armed conflict that foresees the implementation of special protection measures including the preservation and safeguarding of the child's physical and mental integrity, and the recognition of their special needs in terms of health, education, culture and the development of their well-being. In particular, the EU has focused on the situation of young girls in armed conflict and child soldiers.¹⁵³

The protection and promotion of the rights of children is a priority for the EU, as reflected in the Guidelines for the Promotion and Protection of the Rights of the Child (2007), the Guidelines on Children in Armed Conflict (last update from 2007) and the Checklist for the Integration of the Protection of Children Affected by Armed Conflict into ESDP Operations (last update in 2008). The EU places particular emphasis on the protection of children from the effects of armed conflict and requires, amongst other actions, that CSDP missions and operations systematically monitor and report on the situation of children, focusing on certain violations and abuses such as recruitment of children by armed groups and sexual and gender based violence.¹⁵⁴ Whereas no new policy instruments are required, the 2007

¹⁵¹ Children are defined as persons under the age of 18 according to Article 1 of the Convention of the Rights of the Child (CRC).

¹⁵² The mandate of the Special Representative of the Secretary-General for Children and Armed Conflict was established by the UN General Assembly Resolution A/RES/51/77. The Security Council Working Group on Children and Armed Conflict was established in July 2005 pursuant to Security Council resolution 1612 which established a reporting mechanism on use of child soldiers.

¹⁵³ See Wouter Vandenhoele and Yannick Weyns, 'Child Soldiers and the EU policy on Children and Armed Conflict' (2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24, vi, <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET\(2014\)433845_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET(2014)433845_EN.pdf)> accessed 29 July 2016.

¹⁵⁴ Council of the European Union, 'Update of the Guidelines on Children and Armed Conflict' (2008), para 11. These six grave violations against children during times of armed conflict are considered war crimes. For more information see United Nations, 'The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation' (2009, updated November 2013) Office of the Special Representative of the Secretary General For

Guidelines on Children in Armed Conflict could be strengthened with regards to long-term processes of recovery and reintegration, although it is mainly at the level of implementation that major improvements are needed.¹⁵⁵

The Council's Human Rights Working Group (COHOM) is responsible for the implementation and follow-up of these policies. To this effect it has adopted the EU Implementation Strategy on Guidelines for Children and Armed Conflict in 2006 and reviewed it in 2010. Furthermore, the EU has set a list of priority countries, which was later decided to match the list established by the UN.¹⁵⁶ Many CSDP missions and operations are present in priority list countries,¹⁵⁷ and given the strong focus of EU assistance on national security forces through training or Security Sector Reform support, an official policy needs to be elaborated on the support to forces listed as perpetrators of serious violations against children in the annual reports of the UN Secretary General.

The EU has a range of diplomatic and financial support at its disposal and a clear effort by the EU institutions is visible, with regards to these CAAC-related issues. However, there is little known on the issue of diplomatic instruments.

Key recommendations:

- **Adopting a broad focus on children affected by armed conflict** without limiting attention to child soldiers. With regards to child soldiers, the CSDP contribution necessarily needs to be complemented by long-term, community-based recovery and rehabilitation interventions.
- **Advocate for the universal ratification and observance** of the Convention on the Rights of the Child (CRC) and the **Optional Protocol on Children and Armed Conflict** among Member States and towards third countries.
- **CAAC mainstreaming across all relevant EU policy frameworks** and development cooperation instruments, particularly within **country level strategies**. Setting benchmarks for progress in this area and individual budget lines.

Children and Armed Conflict, Working Paper No. 1. <<http://www.un.org/children/conflict/documents/SixGraveViolationspaper.pdf>> accessed 20 August 2016.

¹⁵⁵ WouterVandenhoe and Yannick Weyns, 'Child Soldiers and the EU policy on Children and Armed Conflict' (2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24, vi <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET\(2014\)433845_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET(2014)433845_EN.pdf)> accessed 29 July 2016.

¹⁵⁶ Council of the European Union, 'Revised Implementation Strategy of the EU Guidelines on Children Affected by Armed Conflicts' (2010) 17488/10. For the latest list of priority countries see Annex I 'List of parties that recruit or use children, kill or maim children, commit rape and other forms of sexual violence against children, or engage in attacks on schools and/or hospitals, or abduct children in situations of armed conflict on the agenda of the Security Council' and Annex II 'List of parties that recruit or use children, kill or maim children, commit rape and other forms of sexual violence against children, or engage in attacks on schools and/or hospitals, or abduct children in situations of armed conflict not on the agenda of the Security Council, or in other situations' in UNSG, 'Annual Report of the Secretary-General on Children and Armed Conflict' (20 April 2016) A/70/836–S/2016/360.

¹⁵⁷ At present, the following EU CSDP missions and operations are deployed in priority countries: Afghanistan, Central African Republic, Democratic Republic of the Congo, Mali and Somalia.

- Setting stronger political mandates for the Heads of EU Delegations and missions through the adoption of **specific child protection tasks in the mandate** and/or operational documents to promote and protect children's rights, particularly for countries included in the UN Special Representative on Children in Armed Conflict's priority list. More generally, the EEAS should encourage its delegates to fully bring the issue into the political dialogue with national governments.
- **Ensure the presence of specific expertise on CAAC within all institutions**, including headquarters and in EU Delegations.
- **Appointment of CAAC experts** to CSDP missions and operations where appropriate, according to the context of deployment.
- **Inclusion of CAAC in the training curricula** for mission personnel, forces and staff of EU Delegations.
- The **agreements concluded between the EU and third countries** in the context of CSDP interventions may also **include specific provisions** regarding the protection of children's rights and the EU's commitment to support their fulfilment in accordance with the mission's mandate.¹⁵⁸
- **Supporting the work of the ICC** and raising accountability issues for serious human rights violations related to CAAC in their relations with third countries.
- The establishment of a **coordination unit within the EEAS to ensure an integrated and consistent approach to CAAC** is pursued between the different EU institutions and Member States. The unit will support EU missions and agents in CAAC target countries and produce an annual report on the implementation of the EU CAAC strategy.
- The **COHOM should strengthen follow-up on EU CAAC policies** by holding sessions dedicated to this issue and to identify strategic approaches and linkages with UN initiatives.
- To maintain a **regular dialogue** with relevant actors in order to **assess the implementation of the EU Guidelines on CAAC**.

C. Refugees and internally displaced persons (IDPs)

An increasing number of CSDP mandates include specific provisions on the protection of refugees and internally displaced persons (IDPs) such as EUFOR Thad/RCA, EUFOR RCA. The EU's 'Draft Guidelines on the Protection of Civilians in EU-led Crisis Management Operations' have placed special emphasis on refugees and IDPs, amongst other vulnerable groups within the population, who are in need of special protection and assistance.¹⁵⁹ However, this human rights focus on refugees and IDPs is rather limited to providing protection, and it does not envisage measures to promote their participation in peace building

¹⁵⁸ See *inter alia* the agreement concluded between the EU and the Central African Republic on the transfer of detainees by EUFOR RCA, for example, outlines special treatment conditions for minors; see Council Decision 2014/537/CFSP of 3 July 2014 on the signing and conclusion, on behalf of the European Union, of the Agreement between the European Union and the Central African Republic concerning the detailed arrangements for the transfer to the Central African Republic of persons detained by the European Union military operation (EUFOR RCA) in the course of carrying out its mandate, and concerning the guarantees applicable to such persons, Art. 4(3)

¹⁵⁹ Council of the European Union, 'Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations' (2003), 9, para 20.

and post conflict processes.¹⁶⁰ Furthermore, as refugee movements tend to regionalise the effects of conflict, securing the protection and promotion of the rights of refugees and IDPs serves to prevent spill over of violence and tensions elsewhere.

Key recommendations:

- Adoption of a more concrete policy framework on the protection and promotion of the rights of refugees and IDPs in contexts of conflict and crises and **the development of specific activities and checklists for its effective operationalisation** in EU crisis management interventions.
- **Appointment of advisers or experts on the protection of refugees and IDPs** where appropriate.
- Acknowledge the **protection of refugees and IDPs** and their rights in the provision of **country-specific trainings for EU personnel** and the forces to be deployed.

D. Minorities and other groups

Minority issues lie at the heart of many of the world's conflicts. Yet, minority rights have not received much attention as part of EU crisis management policies.¹⁶¹ Many CSDP missions and operations have been deployed in contexts where the root causes of conflict and tensions were minority component such as in Kosovo, Ukraine, RCA and FYROM to mention some. Indeed, through CSDP missions and operations the EU will focus on providing assistance on reforms rather than dealing with the causes of conflict directly.¹⁶²

The human rights policy framework applicable to external action and EU crisis management in particular provides little guidance to tackling the extreme vulnerability of religious, ethnic, national and other minorities. The training provided to CSDP mission personnel and forces should address the relevance of respect and the promotion of minorities' human rights during armed conflict, in post-conflict situations and particularly in terms of conflict prevention. The EU 'Guidelines on the promotion and protection of freedom of religion or belief' draw attention to the rights of religious minorities.¹⁶³ These guidelines also foresee that 'EU missions (EU Delegations and Member States Embassies and Consulates) form a key

¹⁶⁰ In April 2016, the European Commission, in association with the European External Action Service (EEAS), adopted a new development-led approach to forced displacement, aimed at harnessing and strengthening the resilience and self-reliance of both the forcibly displaced and their host communities, however there is no mention of CSDP; European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Lives in Dignity: from Aid-dependence to Self-reliance: Forced Displacement and Development' (2016) COM(2016) 234 final, <http://ec.europa.eu/echo/files/policies/refugees-idp/Communication_Forced_Displacement_Development_2016.pdf> accessed 1 April 2016.

¹⁶¹ Interview with EPLO officer.

¹⁶² Natalia Shapovalova and Olga Burlyuk, 'The situation of national minorities in Crimea following its annexation by Russia' (2016) EP/EXPO/B/DROI/FWC/2013-08/LOT1/05, 38-39 accessed 17 August 2016.

¹⁶³ Council of the European Union, 'EU Guidelines on the promotion and protection of freedom of religion or belief' (2013), para 47 <[https://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_\(june_24_2013_fac\).pdf](https://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_(june_24_2013_fac).pdf)> accessed 20 August 2016.

component in early warning. EU missions, in co-ordination with any relevant CSDP missions, will monitor respect for freedom of religion or belief in third countries and will identify and report on situations of concern’.

There are other groups that have been addressed in EU policy documents such as Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons and human rights defenders.

Key recommendations:

- **CSDP strategic and operational planning teams should take due account of the needs of vulnerable minorities**, the impact of the CSDP mission or operation on their rights and to seek ways to contribute to the promotion of their rights in the achievement of the mandated objectives.
- Adoption of a **more concrete policy framework on the promotion and protection of the rights of minority groups** in situations of conflict and crisis and the development of specific activities and checklists for its effective operationalisation in CSDP.
- Reinforce the EU’s commitment to **promote non-discrimination and integration of national, ethnic, religious and other minority groups in the course of its capacity building and SSR activities** by promoting the recruitment and the enlisting of individuals belonging to vulnerable minority groups.
- Consider the provision of **more human resources and increment the budget of human rights experts** to expand their activities and strengthen support to LGBTI groups, human rights defenders and victims of human trafficking.
- Adoption of a **more concrete policy framework on the promotion and protection of the rights of victims of human trafficking** in the context of EU crisis management.

VII. Conclusions

The present report formulates policy recommendations aimed to improve the coherence and efficiency of the EU's external policy related to all phases of crisis and conflict and to prevent and overcome violence through the integration of human rights, IHL and democracy/rule of law principles, in order to meet the challenges of protecting and promoting human rights in EU external policies.

The EU has made considerable progress in its commitment to ensure respect for and to promote human rights and IHL in the field of crisis management. However, it should be noted that the EU's contribution to the promotion and protection of human rights has to be assessed in conjunction with other actions taken in parallel which could contribute to the promotion of human rights more than a given mission does. With the aim of increase coherence and consistency in all its external actions, the EU has institutionalised its comprehensive approach to crises and conflicts that where first in place for the regions of the Sahel and Horn of Africa.

The EU has developed numerous policy documents on key human rights priorities applicable to the area of CSDP. Yet, such advancements need to be systematically and efficiently integrated in CSDP. At the same time, human rights and gender mainstreaming actions entail a risk of individualising these aspects rather than constituting cross-cutting issues. The tendency to include human rights as a 'tick the box' exercise has often led them to be marginalised from the mission objectives. Human rights values should be considered as being in the EU's own interest, in order to ensure the effective and long-lasting results of CSDP actions.

The explicit mention of the applicability of human rights, and IHL where appropriate, in CSDP legal basis and policies is necessary to determinate the responsibility for violations of human rights and IHL in the conduct of EU missions and operations. The sole reference to 'human rights', 'gender', 'humanitarian norms' or 'international or European standards' does not provide sufficient guidance on the specific norms applicable. Specific reference to human rights and humanitarian duties and obligations of the mission or operations will fill the gap between the different treaty obligations and interpretations of the contributing states. In addition, specific remedy mechanisms responding to human rights violations, and facilitating access to the Member States jurisdictions should be established where appropriate.

Expertise on human rights, IHL, gender and vulnerable groups should be made available at all stages of CSDP. Staffing and human resources is a critical issue and the number of officials working primarily on human rights and gender issues constitute a small percentage of EEAS officials and CSDP missions and operations. Improving training in human rights and gender issues for all officials and for the experts in other fields and for those at Headquarters could represent a great improvement not just to the EU's overall understanding of and performance on human rights issues, but would also contribute to consistent and coherent mainstreaming of human rights in other policy areas.

One of the key recommendations of this study is related to the need for further reinforcement of human rights and gender mainstreaming at the decision-making and planning stage which is crucial to secure the effective promotion and protection of human rights at the implementation stage. Finally, another

outstanding issue refers to the fact that certain categories of vulnerable groups have been addressed in EU policies and instruments to a far lesser extent. This is the case, for example, of minorities, refugees, IDPs and victims of human trafficking who are exposed to higher levels of violence and human rights violations in many of the scenarios where CSDP missions and operations have been deployed.

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