

**The European Union and Transitional Justice: Human Rights and Post-Conflict
Reconciliation in Europe and Beyond**

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Abstract:

Since the end of the Cold-War, the field of transitional justice has metamorphosed from an initially narrow focus on justice and retribution to a much more complex study of how human rights abuses, genocide and other mass atrocities are confronted by societies emerging from violent conflict or transitioning to democratic forms of governance. A primary focus on the roles of states and institutional arrangements within states to confront human rights abuses has given way to much more complex understanding of transitional justice that incorporates various levels of analysis (international, national and local) and various actors of the global governance puzzle: states, IGOs, NGOs, epistemic communities, and global policy networks. While much scholarly attention centers on UN efforts to facilitate transitional justice in post-conflict settings, this paper shifts the focus to the European Union, a largely ignored participant in transitional justice efforts. This paper examines how and why the European Union develops and promotes transitional justice policies as part of both its enlargement strategy as well as its broader foreign and security policies outside the European context.

Transitional Justice

The International Center for Transitional Justice (ICTJ) defines transitional justice as “a response to systematic or widespread violations of human rights. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy.”¹ Transitional justice emerged as both a field of practice and field of scholarly inquiry in the 1980s and 1990s in response to dramatic political changes occurring in Latin America, Central and Eastern Europe, and South Africa. In each case, the transition to democracy included public demands to acknowledge and redress human rights abuses committed by former regimes. Since then, a variety of mechanisms developed to confront legacies of abuse (e.g. gross civil, political and other human rights violations, genocide and other war crimes, sexual violence, torture, disappearances) in times of transition, whether from authoritarianism to democracy or from war to peace. Such mechanisms typically fall into two categories: judicial and non-judicial. The former concentrates on trials (civil or criminal), either at the national or international level, or through special courts; the latter encompasses a range of activities, including truth commissions, institutional reform, amnesty, vetting, dismissals, reparations, rehabilitation, memorialization, reconciliation projects,² demobilization, disarmament and reintegration (DDR), and more recently Security Sector Reform (SSR). Regardless of

¹ ICTJ website, <http://www.ictj.org/en/tj/>. Accessed January 4, 2009.

² “Reconciliation” is a term often found in transitional justice approaches and literature, but there is little consensus as to what it means and how it is achieved. ICTJ is working on establishing a commonly held definition to guide transitional justice efforts. To that end it endorses the civic trust model of reconciliation, stating that “[t]rust involves more than relying on a person to do or refrain from doing certain things; it also involves the expectation of a commitment to shared norms and values. The sense of trust at issue here is not the profound sense of trust characteristic of relations between intimates, but rather, 'civic' trust, which can develop among citizens who are members of the same political community but are nonetheless strangers to one another. . . . In this view, reconciliation is the condition under which citizens can once again trust one another as citizens. That means that they are sufficiently committed to the norms and values that motivate their ruling institutions; sufficiently confident that those who operate those institutions do so also on this basis; and sufficiently secure about their fellow citizens' commitment to abide by these basic norms and values.” See ICTJ website, <http://www.ictj.org/en/tj/784.html>.

which approach or combinations of approaches are implemented, all of them share a common set of mutually reinforcing goals: promoting justice, accountability, reconciliation, and the rule of law; deterring future human rights violations; establishing democratic institutions; restoring dignity to those who suffered abuse; and memorializing those who perished. Thus, today one asks "...not *whether* something should be done after atrocity but *how* it should be done"(Nagy 2008: 276) (emphasis in original).

Transitional justice scholarship has evolved quickly since the early 1990s.³ Initially, the literature focused heavily on the judicial dimensions of transitional justice, with legal scholars making some of the most important original contributions to the field (Adams 1993; Bassiouni 1996; Benomar 1993; Berat 1993; Cohen 1995; Nino 1991, 1996; Orentlicher 1991; Pion-Berlin 1993; Roht-Arriaza 1990). Moving beyond a narrow legal focus the field now includes detailed analyses of the various mechanisms of transitional justice, including truth commissions (Berat and Shain 1995; Cassel 1993; Crocker 2000; Ensalaco 1994; Goldstone 1996; Hayner 1994, 1996, 2002; Medeloff 2004; Pasqualucci 1994; Payne 2007; Van Zyl 1999; Wechsler 1990); vetting and lustration (Blankenburg 1995; Cepl 1993; Crossley-Frolick 2007; David 2003, 2006; Ellis 1996; Letki 2002; Los 1995; Offe 1993; Stinchcombe 1995; Welsh 1996); amnesties (Boed 2000; Du Bois-Pedain 2007; Marxen 1996; Orentlicher 1997; Roht-Arriaza and Gibson 1998; Sadat 2006; Stahn 2002; Wilson 2001); reparations (Asmal 1992; Barkan 2001; Couillard 2007; De Greiff 2007; Parker and Chew 1994; Rubio-Marín and de Greiff 2007; Southern 1993); public memory efforts (Barsalou and Baxter 2007; Jelin 2007; Levinson 1998; Naidu 2006) and, more recently disarmament, demobilization and

³ For a survey of developments dating back to the immediate post-World War II period see Ruti Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16(2003): 69-94.

reintegration (DDR) (de Greiff, 2009; Knight and Ozerdem 2004; Theidon 2007) and security sector reform (SSR) (Dhungana 2007; Mobekk 2006; Loden 2007). Scholars are also exploring previously ignored avenues of inquiry, including the role of gender in transitional justice (Bell, Campbell and Bell and Ní Aoláin, 2004; Bell and O'Rourke, 2007; Hamber 2007; Ní Aoláin 2006; Ní Aoláin and Rooney 2007), the linkage between transitional justice and economic development (Boettke and Coyne 2007; Duthie, 2008; Miller 2008), and local or indigenous approaches to transitional justice (Arriaza and Arriaza 2008; Baines 2007; Daly 2002; Karekezi, Nshimiyimana, and Mutamba 2005; Lundy and McGovern 2008; Shaw 2007; Theidon 2006; Waldorf 2006).

In spite of this impressive evolution, there are still many questions in need of answers. One such question revolves around the role of international organizations in promoting transitional justice. While some analyze UN efforts to facilitate transitional justice, particularly in post-conflict settings (Akhaven 1998; Bassiouni 2002; Buergenthal 1994; Cardenal 1992; Goldstone 1997; Matheson 2002; Stahn 2002; Strohmeyer 2001a, 2001b; Thallinger 2007; Tolbert and Solomon 2006; Wuhler 1999), the European Union is a largely ignored actor in the promotion of transitional justice efforts.⁴

This paper attempts to start addressing this gap by surveying EU activities to promote transitional justice. I start from the premise that the EU is an actor on the world stage, with its own unique capabilities and influence consistent with the concept of

⁴ An extensive review of the literature reveals no concerted scholarly attention to the EU's place in the international landscape of transitional justice. The single exception to this is a working paper published by FRIDE, Fundación para las Relaciones Internacionales y el Diálogo Exterior, a think tank based in Madrid, Spain focusing on democratization, peace, security and human rights, and humanitarian action and development. See María Avello, "European efforts in Transitional Justice," Working Paper 58, June 2008. Iavor Rangelov and Marika Theros's, "Transitional Justice in Bosnia and Herzegovina: Coherence and Complementarity of EU Institutions and Civil Society," in *Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development*, eds. Kai Ambos, Judith Large and Marieke Wierda, Berlin: Springer Verlag, 2009, pp. 357-389, examines the EU's promotion of transitional justice in Bosnia-Herzegovina.

“ethical power Europe” (EPE). I argue that the EU’s promotion of transitional justice reflects yet another facet of its role as an ethical power placing human security concerns at its center.

Transitional Justice in the EU-Ethical Power Europe and a Human-Centered Approach to Security

Francois Dûchene first introduced the concept of “civilian power” as an international role identity for the EU in 1972 when it was still a small arrangement consisting of the original six member states (1972: 32-47). Dûchene and other proponents of the “civilian power” model, such as Maull (1990, 2000) argue that the EU’s uniqueness as an international actor rests on its use of diplomacy, cooperation and economic means to promote international stability, as opposed to military measures. Since Dûchene first introduced the term, several variations have emerged, including “normative” (Manners 2002, 2006), “civilizing” (Mitzen 2006), and “ethical” (Aggestam 2004, 2008) power. Robert Kagan provides another variation on this theme by summoning the Roman goddess of love to describe the European proclivity to rely on international law and diplomacy (Venus) to tackle global problems, including the promotion of peace and stability, as opposed to a muscular military approach (Mars) frequently embraced by the United States (Kagan 2003).

It is beyond the scope of this paper to delineate the finer points of difference between these various permutations in the discourse, or to reconcile their discrepancies in an effort to establish common definition. As Sjursen points out, “it is difficult to find a single consistent definition of ‘normative,’ ‘civilian,’ ‘ethical,’ ‘civilizing’ power Europe”, even if each model presupposes a normative dimension to the EU’s foreign

policy (2006b: 236; 2006a: 170). At the same time it is important to stress that by using the term “ethical power” I do not suggest that that EU is simply “doing good” (Aggestam 2008: 2; Sjursen 2006a: 170). Nor do I argue that ethical powers endeavor *only* to use non-military means to achieve their ends. A preference or inclination for non-military instruments to address foreign policy issues does not *ipso facto* preclude the use of military force when circumstances dictate it.⁵ Such binarism obscures a far more complicated reality revealing the EU’s well stocked foreign policy toolbox to achieve its foreign policy objectives. The tools fall along a continuum ranging from hard (military) to soft (diplomacy/trade/foreign and technical assistance). The ethical power Europe model acknowledges this assortment of tools, yet recalibrates our attention to ethical and normal considerations in determining which tools to deploy, civilian or military, and the changing role of military power since the end of the Cold-War (Aggestam 2008: 3). The fulcrum is the question of legitimacy, particularly when military means are chosen (Matlary 2008: 134). The European Security Strategy (2003) underscores the need for a mixture of approaches in the face of new threats in the twenty-first century stating

In contrast to the massive visible threat in the Cold War, none of the new threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of instruments. Proliferation may be contained through export controls and attacked through political, economic and other pressures while the underlying political causes are also tackled. Dealing with terrorism may require a mixture of intelligence, police, judicial, military and other means. In failed states, military instruments may be needed to restore order, humanitarian means to tackle the immediate crisis. Regional conflicts need political solutions but military assets and effective policing may be needed in the post

⁵ Stavri Stavridis, for example, argues that only by having a military capability can the EU succeed as a civilian power. See Stavridis, S. (2001) Militarizing the EU: the Concept of Civilian Power Europe Revisited. *The International Spectator* 35: 17-21. Hans Maull’s examination of Germany’s behavior in the context of the Kosovo crisis indicates that conceptions of civilian power do not automatically exclude the possibility of military force. It depends on the context and the willingness to modify the preexisting role concept “by integrating the possibility of the use of force under certain circumstances.” See Hans Maull (2002) German Foreign Policy, Post-Kosovo: Still a ‘Civilian Power?’ *German Politics* 9, p. 18.

conflict phase. Economic instruments serve reconstruction, and civilian crisis management helps restore civil government.⁶

The EPE perspective is sensitive to a number of factors that take us further in understanding why the EU would advance transitional justice efforts in the first place. It acknowledges changes in the EU's projection of both civilian and military power through the European Security and Defense Policy (ESDP), one of the EU's main mechanisms for promoting transitional justice; it emphasizes the EU's growing international role beyond the confines of Europe; it integrates the importance of ethical and normative concerns in formulating foreign policy with heightened attention to human rights, democracy, humanitarian intervention, and international criminal justice (i.e. support for the ICC and ending impunity for leaders accused of gross human rights violations); and it recognizes the important role that member states play in promoting a normatively focused agenda for the EU, independent of the community oriented policies such as development (Aggestam 2008: 3-4).

The EU's promotion of transitional justice demonstrates both an ethical power role with a human-centered approach to security. First introduced in 1994 in the UN's Human Development Report, the term 'human security' illustrates an evolving security paradigm "where the point of reference is the *individual* person and his or her right to personal security," and not territory or borders (Matlary 2008:135). While the concept is not new, it has only recently emerged in discussions concerning the EU's security paradigm. In 2004, a decade after the UNDP's report, the EU's High Representative for Common Foreign and Security Policy, Javier Solana, requested that the Study Group on

⁶ European Council, *A Secure Europe in a Better World: European Security Strategy*, Brussels, 12 December 2003. <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>, accessed December 20, 2008.

Europe's Capabilities at the London School of Economics examine how the ESS could be further developed using the concept of human security as a starting point. In September 2004 the Study Group issued its Barcelona Report entitled "A Human Security Doctrine for Europe."⁷ It defines human security as

...individual freedom from basic insecurities. Genocide, wide-spread or systematic torture, inhuman and degrading treatment, disappearances, slavery, and crimes against humanity and grave violations of the laws of war as defined in the Statute of the International Criminal Court (ICC) are forms of intolerable insecurity that breach human security.⁸

The Report represents the first "coherent attempt to develop a policy for intervention based on individual rights to security—not only in terms of policy and legal principles...but also in terms of the needs of civilian–military integration" (Matlary 2008: 139). The insecurities that the Report highlights are precisely those that transitional justice mechanisms seek to address and ultimately prevent. Evaluating the ESS five years after its launch, the European Council continues to stress the importance of "mainstreaming human rights" in its ESDP missions "through a people-based approach coherent with the concept of human security."⁹ In the context of the EU, the human security approach encompasses a variety of concepts and concerns, including crisis management, conflict prevention, peacebuilding, and transitional justice.

The EU and Transitional Justice

⁷ *A Human Security Doctrine for Europe, The Barcelona Report of the Study Group on Europe's Security Capabilities*, September 2004.

⁸ *Ibid.*, 9.

⁹ *Report on the Implementation of the European Security Strategy*, Brussels 11 December 2008, p. 10. <http://www.consilium.europa.eu/showPage.aspx?id=266&lang=GA>, accessed January 10, 2009. See also *Report on Implementation of the European Security Strategy: Providing Security in a Changing World* http://www.europa-eu-un.org/articles/en/article_8370_en.htm, accessed January 10, 2009.

Transitional justice is a relatively new area of concern for the European Union. Indeed, until recently it was largely absent from EU policies promoting democracy, the rule of law and human rights. But that does not mean that it was ignored. It is, as Avello (2008: 9) asserts, “*de facto* part of the programme and policy of the EU.” This “*de facto*” status means that scholars of transitional justice are challenged to clarify EU nomenclature; identify efforts that, in retrospect, qualify as transitional justice approaches even if they are not labeled as such; elucidate the different meanings associated with the term “transitional justice;” and explain how transitional justice is operationalized in a variety of EU contexts. And until recently, the lack of terminological clarity made pinpointing exactly where transitional justice promotion is domiciled in the EU’s complex architecture a rather vertiginous undertaking. To further complicate matters, there is no specific reference to transitional justice in the corpus of treaties establishing the European Union. Nonetheless, we know that transitional justice is advanced by a variety of actors, both horizontally across its various institutions, and vertically within the pillar structure. Thus, transitional justice is a cross-pillar activity with a myriad of financing instruments, regulations and programs that are not always coordinated in any obvious or perhaps meaningful way.

Lacking a consistent overarching framework, legal or otherwise,¹⁰ the EU approaches transitional justice from primarily two perspectives. First, transitional justice mechanisms are nested in various policies that promote human rights, development, democracy, and enlargement under what is known as the Community Pillar (First Pillar) of the EU. In these instances, decisions are made using the so-called “Community

¹⁰Heiner Hänggi and Fred Tanner identify a similar predicament in the area of the EU’s involvement in Security Sector Reform (SSR). See Heiner Hänggi and Fred Tanner, ‘Promoting Security Sector Governance in the EU’s Neighbourhood’, Chailiot Paper no. 80, July 2005.

method”: the Commission holds a monopoly on the right of initiative; the Council employs the qualified majority voting rule; and the European Parliament takes a more active role in co-legislating with the Council.

In addition to the Community Pillar, the EU promotes transitional justice as part of its Common Foreign and Security Policy (Second Pillar), filtered through the prism of the European Security and Defense Strategy (ESDP). From this vantage point transitional justice mechanisms are embedded with other peace-building and security-oriented tasks, such as crisis-management, security sector reform (SSR), and disarmament, demobilization and reintegration (DDR). In some cases involving peacebuilding (e.g. Bosnia and Herzegovina), transitional justice concerns are linked with future enlargement scenarios. In contrast to the “Community method,” the Council plays the dominant role on CFSP matters. Its acts are binding, and its decisions, which often represent a greater intrusion on state sovereignty, rely on the principle of unanimity.

In spite of the differences in pillar logics and focus, EU policies promoting transitional justice are increasingly tailored to complement its broader security interests, both in Europe and beyond. These interests put a high premium on the protection of human rights, the promotion of democracy, and the rule of law, all of which are key to human security, the “new” strategic narrative for Europe (Kaldor, Martin and Selchow 2007: 273).

Transitional Justice, Human Rights and Democratization under the Community Pillar

Under the Community pillar the EU’s transitional justice policies are coordinated largely from the Commission’s Directorate-General for External Relations (DG RELEX), and the Directorate-General for Enlargement (DG Enlargement). Funding is often

managed through EuropeAid, the Directorate-General of the Commission responsible for implementing external aid programs and projects around the world. Transitional justice mechanisms are prioritized in a number of Community programs, all of which qualify as development assistance. It is also pursued under the Community pillar as part of its enlargement strategy. In these cases, the emphasis is on pre-accession assistance, conditionality, and the ability of candidate countries to meet the requirements outlined in the so-called “Copenhagen Criteria.”¹¹

EIDHR

In 1994 the European Parliament created the European Initiative for Democracy and Human Rights (EIDHR) as a means to consolidate previously separate budget items for the promotion of human rights, democratization and conflict prevention. EIDHR provided for the delivery of assistance without host government consent, offering civil society organizations an avenue of support even if governments were denied other sources of EU funding due to human rights violations. In 1999 the Council passed two regulations, 975/1999 and 976/1999 providing a legal basis and overarching framework for activities carried out under EIDHR.¹² In May 2001, the Commission adopted a communication on the EU's role in promoting human rights and democratization in third countries. It underscored a number of important points: the need for a more coherent and consistent approach to human rights and democratization; higher prioritization of human

¹¹ To be eligible for membership applicant countries must meet three criteria: political: stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; economic: a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; acceptance of the Community *acquis*: the ability to assume the obligations of membership, including adherence to the aims of political, economic and monetary union. For the European Council to decide to open negotiations, the political criterion must be satisfied. The EU's pre-accession strategy and accession negotiations provide the framework and instruments for meeting the criteria. See http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm

¹² Council Regulations 975/1999 and 976/1999 adopted on April 29, 1999, OJ 120/8 of May 8, 1999.

rights and democracy in the EU's relation with third countries (via diplomacy, trade and assistance); a "more strategic approach" to the EIDHR focusing on thematic priorities and "target countries" for human rights measures; and mainstreaming its various assistance programs (PHARE, TACIS, ALA, MEDA, CARDS, European Development Fund).¹³

In 2005-2006, EIDHR launched four thematically focused campaigns to solicit proposals for funding: promoting justice and the rule of law, fostering a culture of human rights, promoting the democratic process, advancing equality, tolerance and peace. While there was no specific reference to transitional justice, each campaign included funding opportunities for projects that would unquestionably fall under the rubric of transitional justice mechanisms, e.g. international criminal tribunals, conflict resolution via dialogue and other peaceful means. Each campaign included selected projects for funding. Global projects covered one or more priorities in two or more eligible regions; regional projects covered one or more priorities in one eligible region; and national projects covered one or more priorities in one eligible country. The budget for 2005-2006 was 106 million Euros per year.¹⁴

In December 2006 the European Council and European Parliament established a successor program to the European Initiative for Democracy and Human Rights entitled the European Instrument for Democracy and Human Rights, known by the same acronym EIDHR, as a "self-standing" financing instrument for the promotion of democracy, human rights, and the rule of law in non-EU countries.¹⁵ EIDHR complements other EU

¹³ European Commission: COMM 2001, 252 Final.

¹⁴ <http://europa.eu/scadplus/leg/en/lvb/r10110.htm>, accessed January 10, 2009.

¹⁵ Regulation (EC) No 1889/2006 of the European Parliament and of the Council, adopted December 20, 2006, OJ L 386: 29.12.2006.

programs that promote democracy and the rule of law, including those that provide financial and technical co-operation such as the Development Co-operation Instrument (DCI), the European Neighborhood Partnership Instrument (ENPI) and the Instrument for pre-Accession (IPA), and the Instrument for Stability (IS). The new instrument reflects the EU's position that human rights and democracy are "global public goods... requiring a transnational approach" supported by a commitment to multilateralism.¹⁶

The scope of the instrument refers to a variety of assistance measures that promote and support democratization and human rights, including for the first time since the EIDHR framework was launched in 1994, a specific reference to transitional justice and other truth and reconciliation mechanisms. EIDHR's Strategy Paper for 2007-2010 outlines five objectives related to democracy and human rights promotion that includes several references to transitional justice. For example, Objective 2 calls for "strengthening the role of civil society in promoting human rights and democratic reform, in facilitating the peaceful conciliation of group interests and in consolidating political participation and representation."¹⁷ The importance of transitional justice and reconciliation is recognized as helping build "consensus on disputed or controversial areas of policy in deeply divided society..." In a separate section addressing the issue of children in armed conflict, the Strategy Paper draws an explicit link between disarmament, demobilization and reintegration (DDR) programs "and transitional justice frameworks, tracing family members, promoting redress and social integration, supporting psycho-social rehabilitation programs focused on children..."¹⁸ While

¹⁶ European Instrument for Democracy and Human Rights (EIDHR), Strategy Paper 2007-2010, DG Relex/B/1 JVK 70618, p. 3.

¹⁷ Ibid., p. 8.

¹⁸ Ibid., p. 11.

separating out budget allocations for transitional justice projects is difficult, for the period running from 2007-2010 EIDHR has allocated over €208 million for projects covered under objective 2, and €7 million to projects involving children and armed conflict.

EIDHR complements the Instrument for Stability, another critical EU funding program that supports transitional justice.

Instrument for Stability

Recognizing the connection between conflict prevention, crisis management and peacebuilding, the Instrument for Stability (IfS) began in January 2007 as a successor program to the Rapid Reaction Mechanism (RRM), a civilian analogue to the Rapid Reaction Force (RRF).¹⁹ It replaced several instruments in the fields of drugs, mines, displaced persons, crisis management, rehabilitation and reconstruction. To enhance its “crisis response toolbox,”²⁰ with both long and short term components, the Instrument provides economic and technical support with partner countries in contexts of crisis, emerging crisis, and stable conditions. In stable contexts the focus is on cooperation and capacity building on two fronts: to address global and transregional threats that can unleash another wave of instability; and to improve state and non-state actors' preparedness to address pre- and post-crisis situations. In July 2008 the Commission drew special attention to the importance of transitional justice in IfS supported projects in

¹⁹RRF was established in the wake of the Balkan wars as a mechanism for the rapid deployment troops (60,000 in 60 days per the “Headline Goal” of the Helsinki Summit in 1999) to prevent the outbreak of violence. RRM was established in February 2001 as a mechanism for quick response to crisis or pre-crisis situations to preserve or reestablish civilian structures and institutions for economic, political and social stability. It was managed by the Unit for Conflict Prevention and Crisis Management (CPU) of the DG for External Relations. See Regulation(EC) No 1717/2006 of the European Parliament and of the Council, adopted November 15, 2006, OJ L 327: 24.11. 2006; NGO Voice: EU Crisis Management-A Humanitarian Perspective, Briefing Paper, Brussels, 2004, p. 4. IfS was conceived of as supporting the United Nations Interim Mission in Kosovo and the office of the High Representative in Bosnia and Herzegovina.

²⁰ REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT- Annual report from the European Commission on the Instrument for Stability in 2007 – Executive Summary, Brussels, 11.4.2008, COM(2008) 181 final, p. 4.

its decision to establish a funding facility of € 12 million under the IfS framework for ad-hoc tribunals and transitional justice initiatives “to encourage reconciliation and help build sustainable peace in post crisis situations.”²¹ This funding facility allows the Commission to rapidly mobilize resources in the form of policy advice, technical, logistical and financial assistance in the support individual actions and projects. The IfS has supported multiple transitional justice projects, including the International Criminal Court, special tribunals and grassroots movements dedicated to ending impunity.²² In 2007, the Instrument for Stability supported multiple transitional justice efforts, including projects dedicated to conflict-resolution and reconciliation in Haiti, Afghanistan, Columbia, Uganda, Zimbabwe, Myanmar, and Thailand.²³

In addition to this initiative, the Instrument for Stability launched a Peace-Building Partnership (PbP) in November 2007, again with an emphasis on capacity building in crisis situations. The primary purpose is to support NGOs in developing early-warning systems, providing mediation services and spearheading reconciliation processes in post-conflict situations. But PbP is also envisioned as collaborative program with other IGOs, especially the UN through the United Nations Development Program (UNDP), regional organizations, and EU Member State programs dedicated to training for civilian stabilization missions.²⁴

Instrument for Pre-Accession

²¹ IP/08/1057, Brussels, 1 July 2008.

²² Sari Kouvo “Transitional Justice and Institutional Reform: The 4th Transitional Justice Mechanism,” ICTJ Essentials Course on Transitional Justice: The European Experience, Leuven, Belgium, 12-14 November 2008.

²³ REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT- Annual report from the European Commission on the Instrument for Stability in 2007 – Executive Summary, Brussels, 11.4.2008, COM(2008) 181 final, p. 8.

²⁴ https://webgate.ec.europa.eu/tariqa/PeaceBuilding/;http://ec.europa.eu/external_relations/ifs/index_en.htm Accessed January 11, 2009.

In January 2007 the European Commission launched the Instrument for Pre-accession (IPA) as the Community's financial instrument for the Stabilization and Association Process (SAP).²⁵ Assistance is provided on the basis of the European Partnerships with potential candidate countries and the Accession Partnerships with candidate countries, namely, the Western Balkan countries, including Kosovo under UN Resolution Security Council Resolution 1244 and Turkey. The IPA provides assistance depending on the progress of beneficiary countries and their needs as reported in Commission evaluations and annual strategy papers. Assistance is provided to support political reform, particularly institution building, strengthening the rule of law, human rights, protection of minorities and the development of civil society with a special emphasis on transition assistance, institution building, regional and cross-border cooperation, human resources and rural development, depending on a country's status. Candidate countries such as Croatia receive funding in all areas, while potential candidate countries such as Bosnia and Herzegovina receive assistance that is exclusively focused on transition assistance, institution building and cross-border cooperation. IPA can support a variety of efforts that support the goals of transitional justice. For example, in Bosnia and Herzegovina, IPA funds have been directed toward judicial reform to support to the State Court and the State Prosecutors' Office to strengthen capacity for the prosecution of war crimes;²⁶ to build the capacity of civil society;²⁷ to address the needs of vulnerable groups, including women, children, minorities, those with disabilities and the

²⁵ IPA replaced CARDS, the Community Assistance for Reconstruction, Development and Stabilisation, as the EU's main instrument of financial assistance for the Western Balkans. Council Regulation (EC) 1085/2006 establishing an Instrument for Pre-Accession (IPA) [2006] OJ L210.

²⁶ Commission Decision C(2008)5659/2 of 09/10/2008 adopting a National Programme (Part I) for Bosnia and Herzegovina under the IPA Transition Assistance and Institution Building Component for 2008.

²⁷ Project Fiche – IPA Annual Action Programme 2007 for Bosnia and Herzegovina-“Capacity building of Civil Society to take part in policy dialogue.”

poor;²⁸ and to assist with the return and reintegration of refugees and internally displaced persons.²⁹

CFSP, ESDP and Transitional Justice

The EU's promotion of transitional justice is not confined to the Community Pillar. Indeed, transitional justice is an increasingly important component of the EU's broader foreign and security policy goals. The European Security and Defense Policy (ESDP), established at the Helsinki Summit in December 1999, is part of the CFSP that emphasizes the development of civilian and military capabilities for international crisis management.³⁰ In June 2000 the European Council in Feira, Portugal initiated a new civilian component to ESDP focusing on police (e.g. training, advising, substituting for local police forces); strengthening the rule of law (including assistance in reform of judicial and penitentiary system); and strengthening civilian administration and civil protection. At the Laeken European Council Meeting in December 2001 ESDP was pronounced operational, and in 2004 the Council added monitoring as an ESDP priority "for conflict prevention/resolution and/or crisis management and/or peacebuilding."³¹

ESDP is supported by a variety of structures for civilian crisis management.³² One of them, the Political and Security Committee (PSC),³³ explicitly addressed the

²⁸ Project Fiche – IPA Annual Action Programme 2007 for Bosnia and Herzegovina- Enhancing the Social Protection and Inclusion System for Children in Bosnia and Herzegovina.

²⁹Project Fiche – IPA Annual Action Plan 2007 for Bosnia and Herzegovina -Reconstruction of Social and Technical Infrastructure facilities (schools, kindergartens, health centers, small bridges, roads etc) in support to the sustainable return.

³⁰ This builds on the Petersburg Tasks outlined at the Western European Union (WEU) conference in 1992 and include: humanitarian and rescue tasks, peacekeeping, combat forces in crisis management, including peace-making.

³¹ EU Council Secretariat-Background-European Security and Defense Policy: the civilian aspects of crisis management, May 2007.

³² According to Renata Dwan, civilian crisis management "is an area where the EU has made the fastest operational progress." Moreover, she explains that the term "civilian crisis management" has no analog in the context of the UN, OSCE or any other regional organizations. See Renata Dwan, "Civilian tasks and

importance of transitional justice in a March 2006 seminar focusing on transitional justice in the context of the EU's crisis management, conflict resolution and peace-building activities.³⁴ The meeting's draft document acknowledged a gap in the EU's crisis management capabilities and recommended that ESDP missions "take full account of the developing international standards which provide parameters and guidance on policy options for justice and accountability, in particular guidelines established by the UN in this field."³⁵ Harmonizing EU and UN efforts underscores the critical need for cooperation between the two organizations, as already evidenced in the area of peacebuilding. The evolution of transitional justice in the context of ESDP demonstrates that the EU's and the UN's goals have largely converged. The EU has, for all intents and purposes, followed the UN's lead.³⁶ And what the EU cannot or will not do on its own, it does in cooperation with other multilateral organizations, including the UN, the OECD³⁷ and the Council of Europe, and other regional and multilateral organizations.

capabilities in EU operations," in Marlies Glasius and Mary Kaldor, eds. *A Human Security Doctrine for Europe: Project, Principles, Practicalities*, London: Routledge, 2006, p. 264-265.

³³ Established in January 2001, the PSC meets at the ambassadorial level and is responsible for all CFSP issues. Council Decision of 22 January 2001, OJ L 27/1, 30.1.2001.

³⁴ PSC convened the seminar with subsequent discussions in CIVCOM and PMG about how transitional justice could be included in the context of ESDP operations.

³⁵ Council of the European Union, 10674/06, 19 June 2006. For previous drafts see Council of the European Union, 10300/06, 9 June 2006 and Council of the European Union, 10300/1/06 Rev 1, 16 June 2006.

³⁶ See Report of the Secretary General, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, 23 August 2004; EU Presidency Statement- Statement by H.E. Mr. Dirk Jan van den Berg, Ambassador, Permanent Representative of the Netherlands to the United Nations, on Behalf of the European Union- *The rule of law and transitional justice in conflict and post-conflict societies*, October 6, 2004, PRES04-237EN. There are instances, however, where the EU deviates from UN policy. EUPM replaced the UN's own mission in Bosnia-Herzegovina (UNMIBH) in 2003 and did not support the idea of a institutionalizing a vetting process to examine the pasts of new police recruits. See *Case Studies Series: Bosnia and Herzegovina: Selected Developments in Transitional Justice*, International Center for Transitional Justice, October 2004, p. 13, footnote 57.

³⁷ This is particularly the case in the area of Security Sector Reform. In this instance the OECD has taken the lead through its DAC Network on Conflict, Peace and Development Co-operation, an international forum that brings together conflict prevention and peace-building experts from bilateral and multilateral development agencies, including the UN, EU (Commission), IMF and World Bank to address issues of security and development, peacebuilding and evaluation. The CPDC is a subsidiary group of the OECD Development Assistance Committee (DAC).

The most significant element in the draft document that emerged from the 2006 seminar recommended the inclusion of transitional justice mechanisms during the planning phases of ESDP operations, including criminal prosecutions, truth commissions, reparations programs, and vetting.³⁸ It proposed that planners carefully consider “the exit strategy for an ESDP operation and the continuing situation on the ground following the departure of an ESDP operation.” In other words, winning the peace should be central to planning ESDP operations and that requires a careful examination of the situation on the ground and tailoring transitional justice activities to meet tangible needs before a mission is deployed. In order to effectively do so, the EU must generate its own transitional justice expertise; train its personnel in the area of transitional justice to support future crisis management operations; develop guidelines for ESDP missions consistent with UN standards in the area of transitional justice; and integrate transitional justice concerns in the mandates of EU Special Representatives.³⁹

The 2006 *Presidency Report on ESDP* highlighted once again the need to develop transitional justice approaches in the context of ESDP missions.⁴⁰ And more recently, in 2008 the General Secretariat of the Council issued a compilation of public documents addressing the issue of mainstreaming human rights and gender into ESDP. It includes the draft document from the PSC’s 2006 seminar, signaling perhaps that concern about transitional justice is not fleeting, but rather a topic of ongoing discussion linked to

³⁸ Council of the European Union, 10674/06, 19 June 2006, p. 3.

³⁹ *Ibid.*, 4.

⁴⁰ *Presidency Report on ESDP*, Council of the European Union, Brussels, 12 June 2006.

broader, cross-cutting concerns about mainstreaming human rights and gender perspectives into ESDP missions.⁴¹

ESDP missions focus on establishing secure environments where the rule of law and human rights are respected. Thus, all of them contribute, in one way or another, to the promotion of transitional justice, whether through specific ESDP mission tasks such as security sector reform, vetting, reform of judicial system, or by building a safe and secure environment for the EU to implement its communitarized cooperation programs, such as EIDHR.⁴² Indeed, many aspects of civilian crisis management in ESDP mandates overlap with first-pillar initiatives underscoring once again that the EU's promotion of transitional justice is a cross-pillar endeavor.

Transitional Justice, ESDP and Enlargement: The Case of Bosnia Herzegovina

In 2003 the EU launched its first two ESDP civilian crisis management missions: the EU police mission in Bosnia Herzegovina (EUPM) and the EU Police Mission in the Former Yugoslav Republic of Macedonia (PROXIMA).⁴³ There are currently thirteen ESDP missions around the world. Seven qualify as civilian crisis management missions, with varying mandates centering on police, rule of law, and/or security sector reform.⁴⁴ These include EU Police Mission in Bosnia Herzegovina (EUPM); EU Integrated Rule of Law Mission for Iraq (EUJUST LEX); EU security sector reform mission in the

⁴¹ *Mainstreaming Human Rights and Gender into European Security and Defence Policy*, General Secretariat of the Council, 2008.

⁴² Avello, p. 7 refers to this as the EU's "indirect" promotion of transitional justice.

⁴³ PROXIMA was completed in December 2005. For details about EUPM see Stefano Recchia, *Beyond International Trusteeship: EU Peacebuilding in Bosnia and Herzegovina*, Occasional Paper no. 66 (Paris: EUISS, February 2007).

⁴⁴ Police missions cover several areas, including assistance and training and to replace local forces where they are lacking; Rule of law missions are dedicated to the reform and strengthening local legal/judicial systems; security sector reform missions are multifaceted, and can include the military, police, judicial system, penal institutions, intelligence services, border guards, as well as irregular forces, e.g. non-state paramilitary organizations, guerilla forces, and liberation armies.

Democratic Republic of the Congo (EUSEC RD CONGO); EU Police Mission for the Palestinian Territories (EUPOL COPPS); EU Police Mission in Afghanistan (EUPOL AFGHANISTAN); EU mission in support of Security Sector Reform in Guinea-Bissau (EU SSR Guinea-Bissau)⁴⁵; European Union rule of law mission in Kosovo (EULEX KOSOVO). (See Table 1)

The EU's promotion of transitional justice in the context of ESDP missions warrants further amplification. Currently, three ESDP civilian missions, European Union Police Mission in Bosnia Herzegovina (EUPM), EU Military Operation in Bosnia and Herzegovina (EUFOR-Althea), and the European Union rule of Law Mission in Kosovo (EULEX KOSOVO)⁴⁶ blend transitional justice concerns with enlargement and preparing potential candidate countries for future admission to the EU.⁴⁷ I briefly focus here on the case of Bosnia and Herzegovina.

The EU's support for transitional justice mechanisms in Bosnia and Herzegovina (BiH) is animated by two, interrelated impulses: peace-building via ESDP and enlargement, with the former providing essential, indeed indispensable, support for the latter.⁴⁸ In terms of peace-building, there are currently two ESDP missions in BiH, both of which have mandates that incorporate transitional justice concerns. Launched in

⁴⁵ This mission follows the guidelines of the "Africa-EU Strategic Partnership" adopted at the EU-Africa summit in Lisbon, Portugal in 2007. See http://www.consilium.europa.eu/uedocs/cmsUpload/080604Guinea-Bissau2_EN.pdf; Accessed January 10, 2009. Demonstrating the cross-pillar quality of such operations, the mission complements the activities under the European Commission's Instrument for Stability (IFS).

⁴⁶ EULEX is the largest ESDP mission to date.

⁴⁷ European Union Military Operation in the former Yugoslav Republic of Macedonia (EUFOR Concordia), March 31, 2003–December 15, 2003; European Union Police Mission in the former Yugoslav Republic of Macedonia (EUPOL Proxima), December 15, 2003–December 14, 2005; the EU Police Advisory Team in the Former Yugoslav Republic of Macedonia (EUPAT), December 15, 2005–June 14, 2006. The completed civilian and military missions in Macedonia fall into this category as well. In contrast to Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia is considered a candidate country.

⁴⁸ See Rangelov and Theros, "Transitional Justice in Bosnia and Herzegovina," p. 367.

January 2003, European Union Police Mission in Bosnia Herzegovina (EUPM) replaced the UN-led International Police Task Force (IPTF). It was the first ESDP mission with a focus on police reform and enhancing the rule of law in an effort to build a professional and multi-ethnic police force in accordance with European and international standards. In December 2004 the European Council established the EU Military Operation in Bosnia and Herzegovina (EUFOR-Althea) in December 2004 with an initial force level of 7,000 troops.⁴⁹ As stability has returned to the region force levels have consistently declined. As of this writing, approximately 2,000 troops serve in EUFOR. Both missions emphasize predominantly judicial mechanisms of transitional justice. Indeed, EUFOR's main purpose is to support the ICTY and local authorities in the detention of persons indicted for war crimes. EUPM has indirectly supported the ICTY's mission in the reform of the police, but stopped short of implementing any further transitional justice measures such as vetting. As noted above, EUPM succeeded the UN-led IPTF which was part of the larger UN Mission in Bosnia (UNMIBH). Between 199-2002 UNMIBH vetted approximately 24,000 police officers. But its success has been questioned, both by the public and by former officers.⁵⁰ Moreover, once EUPM replaced UNMIBH it did not put new recruits through a similar vetting process and indeed abjured from instituting new

⁴⁹Council Joint Action 2004/570/CFSP of 12 July 2004. Operation ALTHEA was launched following a decision by NATO to conclude its SFOR (Stabilization Force) Operation. UN Security Council Resolution 1575 authorizes the deployment of an EU force in BiH under Chapter VII of the UN Charter to ensure continued compliance with the Dayton/Paris Agreement and to help build a safe and secure environment in BiH. EUFOR's primary contribution to transitional justice is in providing support to the International Criminal Tribunal for the former Yugoslavia (ICTY) in the pursuit of persons indicted for war crimes, although responsibility for full cooperation with ICTY rests not with EUFOR but with Bosnian authorities. See EU Military Operation in Bosnia and Herzegovina http://consilium.europa.eu/uedocs/cmsUpload/081204%20Factsheet%20EUFOR%20Althea%20-%20version%2013_EN.pdf

⁵⁰Freeman, Mark. *Bosnia and Herzegovina: Selected Developments in Transitional Justice*. ICTJ Case Studies Series. New York: International Center for Transitional Justice. October 2004, p. 13.

vetting processes or guidelines.⁵¹ Police with questionable pasts remained on the police force and EUPM has shown little eagerness to address this lingering concern.

Nonetheless, it appears that progress was made to reform the police, particularly in the areas of quality and trust. A survey conducted in 2005/2006 by Oxford Research International for the UNDP found that Bosnians have come to trust the police more than other national or international institutions.⁵²

Bosnia and Herzegovina's future membership prospects in the EU provide a second set of motivations for promoting transitional justice. The Thessaloniki European Council meeting in 2003 established a framework for the eventual membership of Balkan countries with the Stabilization and Association Process (SAP).⁵³ It was only in 2008, however, that the EU and BiH signed a Stabilization and Association Agreement (SAA)⁵⁴, the first step in a much longer process to assist and assess potential candidate countries in building the capacity necessary for them to successfully adopt and implement EU law. To achieve its goals for membership, BiH must successfully demonstrate its commitment to the Copenhagen Criteria, the political, economic and institutional requirements for candidate countries. The Criteria emphasize the importance of democracy, the rule of law, respect for human rights, and the protection of minorities. In addition, there are special conditions for SAP in this region, including full cooperation with the ICTY (International Criminal Tribunal for the Former Yugoslavia), the establishment of mechanism for the return of refugees and internally displaced persons,

⁵¹ Ibid. See also Rangelov and Theros, p. 361, 371.

⁵² Cited in International Crisis Group, *Bosnia's Incomplete Transition: Between Dayton and Europe*, Europe Report No. 198, March 9, 2009, p. 11.

⁵³ See The Council of the European Union, Thessaloniki European Council Presidency Conclusions, 1 October 2003, 11638/03, pp. 12-13;

⁵⁴ 2008/211/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC, *Official Journal L 080*, 19/03/2008 P. 0018 – 0031

respect for human and minority rights, and a pledge to regional cooperation. Thus, when it comes to the issue of EU enlargement and the accession of new members, transitional justice is coupled with the concept of conditionality. Theoretically, if BiH fails to make good on the requirements of the SAA and the Copenhagen Criteria, including those that either implicitly or explicitly trigger the need for transitional justice mechanisms, its aspiration for membership will be delayed, if not derailed entirely.

Some scholars argue that the emphasis on criminal prosecutions at the ICTY, particularly in the context of SAP and conditionality, has “dominated” transitional justice concerns at the expense of domestic approaches (Rangelov and Theros 2009: 368). It should be noted, however, that truth seeking and other local or domestic approaches, such as reconciliation initiatives, educational reform, repatriation of refugees, and memorialization are frequently and generously supported under communitarized first pillar financing instruments, particularly EIDHR.⁵⁵ What is certainly open to debate, however, is how important transitional justice concerns are to the EU’s broader engagement in Bosnia and Herzegovina, particularly when it comes to the issue of future accession. To be sure, the EU increasingly acknowledges the importance of transitional justice in the context of peace-building. The bigger question is whether the EU is tone deaf to a more “justice-sensitive approach” to enlargement that more assertively promotes the need to confront the past in an effort to move forward.⁵⁶

⁵⁵ EIDHR has supported multiple programs in Bosnia and Herzegovina dedicated to domestically focused truth and reconciliation efforts, education, tolerance, memorialization, the protection of minority rights. See European Initiative for Democracy and Human Rights, 2000-2006, European Commission, http://ec.europa.eu/europeaid/where/worldwide/eidhr/documents/eidhr_compendium_by_project_theme_final_15_09_08_en.pdf

⁵⁶ Rangelov and Theros underscore this point repeatedly in their analysis of EU transitional justice efforts in Bosnia and Herzegovina. The International Crisis Group notes that conditionality is a powerful tool at the EU’s disposal, but its utility is not limitless and “should be applied with a delicate mixture of flexibility

Answering this question is beyond the scope of this paper, but the intense focus on the ICTY in the context of ESDP may in part be explained by both its high profile,⁵⁷ including its international backing, and the decision-making process whereby missions are established, namely at the Council level where individual state interests play more of a role and consensus is often reached by a series of compromises. In terms of the latter, varying levels of political will to “do more” and the different levels of importance that member states attach to transitional justice complicate the tasks of integrating such concerns even more explicitly into ESDP mandates and then implementing them in the field. By contrast, aid programs that are directed from the Commission are less politicized in the sense that individual member states have a far more muted voice. Regardless, this example demonstrates that transitional justice is now an integral component of both peace-building and enlargement interests in the Balkans. Yet it also underscores that despite rhetorical commitments to do more and to be more systematic about it, the EU’s promotion of transitional justice is often bedeviled by different agendas and modes of decision-making across the pillar structure, raising concerns about operational coherence and the long-term prospects for transitional justice in the region.

Transitional Justice, ESDP and the EU’s External Relations: The Democratic Republic of Congo

In contrast to ESDP missions in Europe’s wider backyard, in places where the issues of peace-building and enlargement are often intertwined, ESDP missions in Africa,

and firmness, because it can easily misfire...” See *Bosnia’s Incomplete Transition: Between Dayton and Europe*, p. 20, footnote, 186.

⁵⁷ Natascha Zupan describes the ICTY as “one of the key—if not *the* key-transitional justice mechanism” in the former Yugoslavia. See Zupan, “Facing the Pact and Transitional Justice in Countries of Former Yugoslavia,” p. 328.

Asia and elsewhere are focused more on deploying the EU's crisis management capabilities to further its broader external relations goals. Several of these missions put SSR at the center of the mission. Increasingly, transitional justice and SSR are viewed as mutually supporting methodologies in post-conflict situations, particularly when it comes to issues related to judicial systems, police, correctional systems, the military, and the supervision of such institutions (Mobekk: 2006, 5). Indeed, they share similar goals: accountability for past crimes, capacity building to strengthen the rule of law, and deterrence (Mobekk: 2005, 6). Security sector reform frequently includes the practice of vetting to reestablish integrity and rule of law in security focused institutions.

The ICTJ recognizes the importance of what it calls “justice-sensitive SSR” as a means to deter future human rights abuses and to promote the rule of law. Justice-sensitive SSR rests on several points: building institutional integrity and legitimacy in the security sector to overcome the distrust that is prevalent in societies with legacies of abuse; empowering citizens; and enhancing coherence with other transitional justice mechanisms.⁵⁸ According to recently issued OECD guidelines, SSR is not just a series of technical procedures and actions, but “has an explicitly political objective—to ensure that security and justice are provided in a manner consistent with democratic norms, human rights principles and the rule of law.”⁵⁹ Security sector reform and human security go hand in hand. Justice sensitive SSR programs aim to turn institutions that are supposed to protect the population into protectors and to end what are often deeply ingrained patterns of abuse and violence. If successful, SSR programs can facilitate the implementation of

⁵⁸ <http://www.ictj.org/en/tj/783.html>

⁵⁹ DAC Guidelines and Reference Series, *OECD/DAC Security System Reform*, 2005, p. 21.

other transitional justice measures to address issues of accountability, e.g. criminal trials, truth-seeking efforts, reparations.

One of the EU's more ambitious efforts on the SSR front is its security sector reform is taking place in the Democratic Republic of the Congo (DRC) where there are two ESDP missions with mandates to support SSR in two key areas: the EU Police Mission in the DRC (EUPOL RD CONGO)⁶⁰ and the EU Security Sector Reform Mission in the DRC (EUSEC RD CONGO)⁶¹. EUPOL RD CONGO provides advice on reforming the police (the PNC -*Police Nationale Congolaise*) and improving relations between the police and criminal justice system. EUSEC RD CONGO focuses much of its efforts on assisting Congolese authorities with the tasks of integrating, restructuring and rebuilding the Congolese army. Both missions are facing the complicated tasks of reforming and rebuilding a security sector that was never designed to protect the population and, in fact, is often the source of serious abuse and violence directed at the people.⁶² To supplement the peacebuilding tasks of the ESDP missions, a range of funding instruments and technical assistance are provided in communitarized EU programs, such as the European Development Fund (EDF), and more recently, the Initiative for Peacebuilding (IfP).⁶³

Conclusion

⁶⁰ Council Joint Action 2008/485/CFSP, June 2008.

⁶¹ Council Joint Action 2005/355/CFSP, May 2005.

⁶² Laura Davis, *Justice-Sensitive Security Sector Reform in the Democratic Republic of the Congo*, Initiative for Peacebuilding, February 2009, p. 15.

⁶³ *Ibid.*, p. 28.

Civilian crisis management is a central focus of the European Security and Defense Policy (ESDP) and is now considered the “core” of a human security based approach (Dwan 2006: 265). Increasingly, the most overt expression of the EU’s support for transitional justice occurs in the context of EDSP, but without additional support provided by communitarized programs “winning the peace” would be that much more difficult. In examining how the EU’s ESDP capabilities and missions have evolved, as well its first pillar instruments dedicated to the promotion of democracy, development and human rights, we observe an expanding EU international role that explicitly integrates the importance of ethical and normative concerns in formulating foreign policy, particularly in the areas of human rights and the security of individuals. Such concerns animate, indeed permeate, the EU’s newly launched efforts in the area of transitional justice. The ethical power Europe model emphasizes what the EU does, and what the EU does in promoting transitional justice is to help establish the conditions for legitimate political authority, legitimate institutions, and the rule of law, all of which are preconditions for ensuring human security. (Table 2)

Table 1: CURRENT CIVILIAN CRISIS MANAGEMENT ESDP OPERATIONS

Operation Name	Mandate/Objective	Type
EUPM (Bosnia-Herzegovina)	“to establish effective policing arrangements under BiH ownership in accordance with the best European and international practice. EUPM aims through mentoring, monitoring, and inspecting to establish a sustainable, professional and multiethnic police service in BiH.” ⁶⁴	Police
EUJUST LEX (Iraq)	“to strengthen the rule of law and promote a culture of respect for human rights in Iraq” ⁶⁵	Rule of Law
EUPOL COPPS (Palestinian Territories)	“to contribute to the establishment of sustainable and effective policing arrangements and to advise Palestinian counterparts on Criminal Justice related aspects under Palestinian ownership in accordance with the best international standards, in co-operation with the EU institution building programmes conducted by the European Commission as well as other international efforts in the wider context of security sector including criminal justice reform.” ⁶⁶	Police
EUSEC RD CONGO	“provides advice and assistance to the Congolese authorities in charge of security while ensuring the promotion of policies that are compatible with human rights and international humanitarian law, gender issues and children affected by armed conflicts, democratic standards, principles of good public management, transparency and observance of the rule of law” ⁶⁷	Security Sector Reform
EUPOL AFGHANISTAN	“to contribute to the establishment of sustainable and effective civil policing arrangements that will ensure appropriate interaction with the wider criminal justice system under Afghan ownership.” ⁶⁸	Police
EU SSR Guinea-Bissau	“provide the local authorities with advice and assistance on SSR in order to contribute to creating the conditions for implementation of the National SSR Strategy (adopted by the authorities of Guinea-Bissau and endorsed by the international donors round table for Guinea-Bissau at its meeting in November 2006), in close cooperation with other EU, international and bilateral actors, and with a view to facilitating subsequent donor engagement.” ⁶⁹	Security Sector Reform
EULEX KOSOVO	“to support the Kosovo authorities by monitoring, mentoring and advising on all areas related to the rule of law, in particular in the police, judiciary, customs and correctional services.” ⁷⁰	Rule of Law

⁶⁴ http://www.consilium.europa.eu/uedocs/cmsUpload/081029-FACTSHEET_EUPM-version5_EN.pdf

⁶⁵ http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=823&lang=en

⁶⁶ http://www.consilium.europa.eu/uedocs/cmsUpload/090121FACTSHEETEUPOLCOPPSversion11_EN.pdf

⁶⁷ http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=909&lang=en

⁶⁸ http://www.consilium.europa.eu/uedocs/cmsUpload/081208FACTSHEET_EUPOL_Afghanistan-v13_EN.pdf

⁶⁹ http://www.consilium.europa.eu/uedocs/cmsUpload/080604Guinea-Bissau2_EN.pdf

⁷⁰ http://www.consilium.europa.eu/uedocs/cmsUpload/081216%20FACTSHEET%20EULEX%20Kosovo%20-%20version%205_EN.pdf This is the largest civilian mission to date, with 1300 international and 500 local staff.

Table 2: EUROPEAN UNION TRANSITIONAL JUSTICE MECHANISMS

	Pillar I: Community Pillar/Commission			
Instrument/ Mechanism	EIDHR	IfS	PbP	IPA
Oversight/ Management	DG Relex	DG Relex	DG Relex	DG Enlargement
Activities	strengthening the rule of law; civil society dialogues; reconciliation efforts; Disarmament, Demobilization Reintegration (DDR); promoting redress	Ad hoc tribunals; Support for ICC; Reconciliation efforts; Conflict-resolution efforts	Reconciliation efforts	institution building; strengthening the rule of law; human rights, protection of minorities; development of civil society

	Pillar II:CFSP/European Council
Instrument/Mechanism	ESDP
Oversight/Management	PSC, CIVCOM
Activities	Security Sector Reform (SSR); Strengthening the rule of law; Strengthening institutions of civilian administration; Disarmament, Demobilization Reintegration (DDR)

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