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Abstract: The list of means available to the EU for the prevention of conflict is long: development cooperation and external assistance, trade policy instruments, diplomatic instruments and political dialogue, cooperation with international partners and NGOs, as well as the new instruments in the field of crisis management. This article focuses on these measures, in line with the categorisation scheme used by the EU, delineating three types of prevention: operational, structural and systemic. The article describes the legal and policy framework for each type of measure and how they have been implemented. Where possible, it explores the impact and effectiveness of the measures on conflict prevention. It also briefly focuses on some initiatives taken to strengthen the coherence between the different instruments and policies.
Introduction
Faced with violent conflicts in the Balkans and in Africa in the 90s, and their devastating effects on the populations and relevant states as well as the costs to the European Union (EU), the issue of conflict prevention gained importance within the EU, and has been increasingly emphasized as part of EU\textsuperscript{3} external policies.\textsuperscript{4} This increased emphasis coincided with the increased development of the EU’s own potential in the area. At the European Council in Cologne in June 1999, which laid down the foundations for European security and defence policy, the members stressed that the Council should have the ability to take decisions concerning the full range of conflict prevention and crisis management tasks.\textsuperscript{5} From 1999 onwards, more effort was also devoted to articulating an overall framework for preventing conflicts.

Three documents shaped the conflict prevention policy of the EU further. In 2001 the Commission issued a \textit{Communication on Conflict Prevention}.\textsuperscript{6} This made a distinction between long-term and short-term prevention. For long-term prevention, it emphasized the need to address the root causes of conflict, as well as cross-cutting issues such as drugs, small arms and natural resources, which can contribute to tension and conflict. For short-term prevention, it underlined the need to improve its ability to react quickly when a situation in a particular country seems to be entering a downward spiral. It was aimed at improving coordination of the different instruments and increasing ability to apply them more quickly. The need to enhance international cooperation in conflict prevention was also stressed. This approach was largely replicated in the \textit{EU Programme for the Prevention of Violent Conflicts} by the Göteborg European Council in June 2001.\textsuperscript{7} In 2003, the European Council adopted the first strategy for its foreign policy, \textit{A Secure Europe in a Better World}.\textsuperscript{8} This Strategy calls

\textsuperscript{3}The term ‘EU’ will be used in this paper in its wide sense, including the European Community. On 1 December 2009, following the entering into forces of the Treaty of Lisbon, the European Community was replaced by the European Union which succeeds it and takes over all its rights and obligations. The references to the Treaties refer to the consolidated versions of the Treaty on the European Union (\textit{further TEU}) and of the Treaty on the Functioning of the European Union (\textit{further TFEU}), as amended by the Treaty of Lisbon.


\textsuperscript{5}Declaration on Strengthening the Common European Policy on Security and Defence, annexed to the conclusions of the Cologne European Council, Annex III to the Conclusions, dated 3–4 June 1999, par. 1.


\textsuperscript{7}Doc. 9537/1/01 REV 1, 7 June 2001.

\textsuperscript{8}The document was approved at the European Council meeting in Brussels on 12 December 2003.
for an EU more active in pursuing its objectives, through a holistic approach, using the full range of instruments available to it for crisis management and conflict prevention. With the entry into force of the Lisbon Treaty on 1 December 2009 the prevention of violent conflicts has become one of the explicit objectives of the EU’s external action.9

The list of the means available to the EU for the prevention of conflict is long: development cooperation and external assistance, trade policy instruments, diplomatic instruments and political dialogue, cooperation with international partners and NGOs, as well as the new instruments in the field of crisis management. This article focuses on these measures, in line with the categorisation scheme used by the EU, delineating three types of prevention: operational, structural and systemic.10 The term ‘operational prevention’ refers to the relatively short-term measures such as diplomatic, political or crisis management instruments intended to forestall incipient or escalating violence; the term ‘structural prevention’ refers to measures such as developmental measures, or other cooperation instruments intended to address the root causes of conflict; and the term ‘systemic prevention’ refers to global regulatory-level measures intended to address cross-cutting issues.11 This article describes the legal and policy framework for each type of measure, and the way in which these have been implemented. Thereafter, and where possible it explores the impact and effectiveness of the measures in preventing conflict. It also focuses briefly on some initiatives taken to strengthen the coherence between the different instruments and policies.

Before exploring the different types of conflict prevention measures, this article will focus on the concept of conflict prevention, as defined by the EU, and the broader analytical framework. Prevention requires not just a set of instruments, but also agreement and clarity as to what the EU must prevent, what it should prevent as a minimum, and when action should be taken.

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9 Art. 21, 2 c TEU
10 See Annual Reports of the Council on the implementation of the EU programme for the prevention of violent conflict; last report of 2010 (Council Doc. 10477/10).
11 These terms also refer to the UN terminology on types of conflict prevention, see Report of the Secretary-General of the UN, Prevention of armed conflict, 7 June 2001 (A/55/985-S/2001/574), and Report of the Secretary-General of UN, Progress Report on the prevention of armed conflict, 18 July 2006 (A/60/891).
The policy and the actions of the EU can often be placed in a broader international context. The EU is increasingly working in partnership with the UN in conflict prevention. There are other key partners such as the OSCE and NATO. This paper will not however focus on the relationship between the policy and the actions of the EU and other international or regional efforts.

**Concept of Conflict Prevention**

The Commission, in its Communications of 1996 defined ‘conflict prevention’ as “the broad range of policies for anticipating and reacting to social, political and economic factors which could result in the breakdown of a society”. Conflict prevention should not only be interpreted as “easing a situation where the outbreak of violence is imminent”, but also in a wider sense as “preventing the occurrence of such a situation”. Defined in its wider sense, ‘conflict prevention’ is also described by the Commission as ‘peace-building’. It refers to longer-term actions undertaken to enhance structural stability.

In the policy documents of 2001 on conflict prevention, neither the Commission nor the European Council dwell on advancing a definition of conflict prevention, or on the theoretical underpinnings of conflict prevention. Instead, they focus on the instruments available for action, and distinguish between long-term instruments that address the root causes of conflict, (including cross-cutting issues such as small arms, natural resources and the role of the private sector) and short-term instruments able to be deployed when violence is imminent. The ability to react quickly is considered essential: the earlier the EU can take action, the more effective it is likely to be. Further principles of the EU approach to conflict prevention shown in these documents are the importance of ownership, the objective of obtaining more coherence in the use of the different instruments, and the enhancement of international cooperation in conflict prevention.

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The EU conflict prevention policy also entails post-conflict measures. Armed conflicts might re-ignite after a peace settlement. Many conflicts are recurrences of chronic problems. The EU assistance will concentrate on the consolidation of peace through post-conflict measures in order to prevent future conflicts.

From a legal point of view, where post-conflict measures differ, is that they often occur after an agreement, which generally provides a mandate for the international actors to intervene. This is not the case prior to agreement where involvement in a country’s (potential) conflict must be negotiated, (unless authorisation has been obtained from the UN Security Council), or be undertaken indirectly, e.g. through development cooperation or through the support of non-state actors.

**Framework for Conflict Prevention**

**What is to be prevented?**

Prevention requires agreement on the main threats that need to be prevented. Since the early 1990s, conflicts have increasingly shifted from inter-state to intra-state conflicts. Policies were focused on the prevention of civil wars, ethnic conflicts, gross violation of human rights and humanitarian emergencies.

Since September 11 and the bombings in Madrid and London, terrorism, the proliferation of weapons of mass destruction and organised crime have come to the forefront as ‘new’ threats. Discourse on conflict prevention has increasingly shifted to threats facing Europe and the world, and to the enhancement of Europe’s own security. According to the first security strategy of the EU, *A Secure Europe in a Better World* (2003), the European Union faces five threats: terrorism, proliferation of weapons of mass destruction, organised crime, regional conflicts and failed states (later described as “fragile” states). These threats are

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15 See in particular Communication of 11 April 2001 concerning conflict prevention.
17 The EU assistance will focus in particular on rehabilitation programmes, child-related rehabilitation measures and disarmament, demobilisation and reintegration (DDR) programmes as well as programmes supporting reconciliation processes.
20 The document was approved at the European Council meeting in Brussels on 12 December 2003; for a critical analysis, see inter alia Pullinger, S., “Revising the European Security Strategy: Building a secure Europe in a
viewed as dynamic: if they are not tackled, they will grow. Whilst these new threats can certainly be a cause of conflict, or of further escalation, and need to be prevented, they are often a function of the changing environment. Focusing on countering these threats creates a risk of insufficiently addressing the underlying causes. The link between these threats and the root causes of conflict is missing.\textsuperscript{21}

A review of the security strategy was undertaken, under the French EU Presidency, in the second half of 2008.\textsuperscript{22} Threats identified in 2003 have remained important. The effects of environmental degradation and climate change on fragile regions and ill-governed countries have gained attention since the security strategy was drafted.\textsuperscript{23} The security of Europe’s energy has also come increasingly to the fore.\textsuperscript{24} Furthermore, the changing world order is cause for concern, with Russia’s economic and military revival and growing “assertiveness”, and nuclear powers such as Iran and Pakistan.\textsuperscript{25}

\textbf{What should at least be prevented?}

Confronted with the repeated failures of the international community to intervene in cases of mass atrocity and the on-going debate concerning the lawfulness of humanitarian intervention, in 2000 UN Secretary-General Kofi Annan challenged the international community to try to forge consensus around the basic questions of principle and process involved: When should intervention occur? Under whose authority, and How?\textsuperscript{26} In response to this challenge, the independent International Commission on Intervention and State
Sovereignty conceived the concept of the ‘responsibility to protect’.\textsuperscript{27} The virtue of the concept was that it shifted the emphasis from the right of state intervention to the less threatening idea of ‘responsibility’. Each state has a primary responsibility to protect the individuals within it from genocide, war crimes, ethnic cleansing and crimes against humanity. Where the state fails in this responsibility, either through incapacity or ill will, a secondary responsibility to protect falls on the shoulders of the wider international community. The state cannot invoke the principle of non-intervention in internal affairs. The international community has the responsibility to use appropriate means, even force, to help protect the population from genocide, war crimes, ethnic cleansing and crimes against humanity. The Commission indicated that in all cases authorization should be sought from the Security Council prior to any military intervention, but it did not rule out the possibility that the responsibility to protect could ultimately be exercised by the General Assembly\textsuperscript{28} or regional or sub-regional organisations\textsuperscript{29} provided they had a just cause and the right intention, as a last resort, and with proportionate means and reasonable prospects of success. The concept also broadened the scope of humanitarian intervention to include the duty to prevent and the duty to rebuild in addition to the duty to react.

This concept was endorsed in the report of the High-Level Panel on Threats, Challenges and Change set up by the UN Secretary-General and embraced by the UN Secretary-General’s report ‘In Larger Freedom’.\textsuperscript{30} It was subsequently adopted by the General Assembly in the


\textsuperscript{28} The ‘uniting for peace’ resolution 377 of 1950 provides that, “if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately”. The General Assembly can meet within 24 hours to consider such a matter and can recommend collective measures to “maintain or restore international peace and security”. Although the General Assembly lacks the power to direct that action be taken, (it can only make recommendations), a decision, (if supported by an overwhelming majority of member states), would provide a high degree of legitimacy for an intervention, and might incite the Security Council to rethink its position. A two-third majority is required, although it might be difficult to obtain in a situation where the Security Council is not able to reach a consensus. The legality of this resolution is disputed, although the International Court of Justice seems to have accepted it in its advisory opinion of 9 July 2004; see Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, \textit{I.C.J. Reports}, 2004, p. 136.

\textsuperscript{29} The UN-Charter recognizes a legitimate role for regional organisations, but states that no-enforcement action can be undertaken without authorisation from the Security Council (art. 52 and 53 UN Charter); yet, there are recent cases in which approval was sought after the event (Liberia and Sierra Leone). The NATO action over Kosovo also occurred without authorisation from the UN. Some have argued that it was also legitimised a posteriori by UNSCR 1244.

2005 World Summit Outcome Document. By then, its content had become more moderate: the General Assembly agreed “to take collective action in a timely and decisive manner, through the Security Council in accordance with the UN Charter, including Chapter VII, on a case by case basis and in cooperation with relevant regional organisations, as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations from genocide, ethnic cleansing and crimes against humanity”. This statement implies that there is no possibility for a humanitarian intervention in the absence of Security Council authorization. The main contribution of the concept therefore seems to have been the broadening of the scope of humanitarian intervention to include prevention and post-conflict measures. According to Deng, UN Special Adviser on the Prevention of Genocide and Mass Atrocities, the responsibility to protect should be conceived first and foremost as a responsibility to prevent.

It is important that the EU Member States also keep in mind their obligations under the Genocide Convention. Art. 1 stipulates that the contracting states are to undertake to prevent and punish genocide. As the International Court of Justice (further referred to as the ICJ) recently clarified, the scope of a state’s obligation to prevent genocide is directly proportionate to the state’s ability and its influence over the relevant actors. The obligation under the Genocide Convention to prevent genocide is not territorially limited, nor is it dependent on any other single threshold criterion. If a state can exercise influence, it must do this to prevent and stop genocide. The state incurs responsibility if it has manifestly failed to take all measures which were within its power to prevent genocide, and which could have contributed to preventing the genocide. This does not mean, however, that states have the obligation to use force in order to prevent genocide, since they may only act within the limits permitted by international law. However, the more a state can do, the more it must do. The obligation to prevent, and the corresponding duty to act, arise the moment the state learns of,

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31 Paragraphs 138 and 139 of the Outcome Document of the 2005 World Summit; the principle was subsequently reaffirmed by the UN Security Council in Resolution 1674 (2006) on the protection of civilians in armed conflict, adopted on 28 April 2006
33 Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948; entry into force 12 January 1951; Malta has not yet ratified or acceded to the Genocide Convention.
34 Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro ), Judgment of 27 Feb. 2007; the obligation to prevent certain acts exist in most human rights conventions, as well as conventions for the suppression of certain crimes. However, the obligation under most human rights conventions, is contingent upon a state having jurisdiction over a certain person or territory.
or should normally have learned of, the existence of a serious risk that genocide will be committed. Furthermore, art. 8 of the Genocide Convention provides that any contracting state may call upon the competent organs of the UN to take such action as they consider appropriate for the prevention and suppression of genocide.  

The EU Council and the European Parliament welcomed the endorsement of the responsibility to protect. Among the EU institutions, the European Parliament has been most supportive of the principle, and referred to the concept in a number of its resolutions. The Commission and the Council seem to have been more reluctant to invoke it in a concrete situation. Nevertheless, an increasing willingness on the part of the EU to make the responsibility to protect an effective dimension of its foreign and security policy could be noted. It was included in the December 2008 updated version of the European Security Strategy. However, after the French EU Presidency during the second half of 2008, attention to the concept diminished again. The responsibility to protect requires urgent debate within the EU.

The concept requires further clarification. The Commission supports the vision of the UN that the principle should remain restricted to the four most extreme crimes and violations with

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35 For example in the case of Darfur, although it was clear that there was at least a serious risk that genocide was being committed, apart from war crimes and crimes against humanity, the EU avoided characterizing the conflict as genocide, saying that it lacked information, thus avoiding triggering its Member States obligations under the Genocide Convention. However, the European Parliament called the crimes “tantamount to genocide” (see its Resolution of 16 September 2004, P6_TA(2004)0012), following the statement of the US in September 2004 that genocide had taken place and may still be occurring. The International Commission of Inquiry on Darfur was thereafter established pursuant to UN Security Council resolution 1564 (2004), adopted on 18 September 2004 to determine inter alia whether or not acts of genocide have occurred. The Commission concluded that the Government of the Sudan has not pursued a policy of genocide, but by then, much time and many lives had been lost. The discussion is still ongoing, since on 12 July 2010 a second warrant of arrest has been issued by the ICC against president Al Bashir containing three counts of genocide.


38 See parliamentary written questions of Sajjad Karim to the Council and the Commission on 11 December 2006 (E 5623/06 and E5624/06), to the Council on 28 February 2007 on Sudan (H-0192/07) and of Emilio Menendez Del Valle to the Council: on 15 May 2008 on Burma (E2956/08) and on 16 May 2008 on Zimbabwe (E2993/08) and the answers of the Commission and the Council.


40 No debates have taken place anymore on the concept. Also in the European Parliament, no debate is planned for the time being on the concept; interview with MEP on 18 November 2009.
which it is associated.\textsuperscript{41} France, however, has been promoting an extensive interpretation of the principle, including natural disasters.\textsuperscript{42} UN Secretary General Ban-Ki Moon recently repeated that until Member States decide otherwise, the responsibility to protect applies only to the four crimes and violations specified: genocide, war crimes, ethnic cleansing and crimes against humanity. Attempting to extend it to cover other calamities, such as HIV/AIDS, climate change or the response to natural disasters, would in his view undermine the 2005 consensus and stretch the concept beyond recognition or operational utility.\textsuperscript{43}

More clarity is also required concerning the operationalization of the principle. The Commission and the French Presidency shared the view that the greatest potential for realising the concept is in terms of prevention. Response options include a broad range of pacific measures - diplomatic, political and economic. However, the enforcement measures under Chapter VII of the UN Charter may sometimes be necessary. The Council has not yet adopted a common position on the prevention of genocide and mass atrocities, nor on the responsibility to protect.\textsuperscript{44} Permanent members of the Security Council are urged to abstain from using or threatening to use their veto in matters where the responsibility to protect is at stake, and to reach a mutual understanding to that effect.\textsuperscript{45} If a common position were to exist on the prevention of genocide and mass atrocities, France and the United Kingdom as permanent members in the Security Council would have to ensure the defence of this EU position.\textsuperscript{46} The United Kingdom and France often prioritise the promotion of national interests above action on behalf of the EU, thus weakening the influence of the EU in the Security Council.\textsuperscript{47}

\textsuperscript{42} See declaration of French Foreign Minister Kouchner on May 7 2008 on the situation in Burma concerning the humanitarian disaster following Cyclone Nargis.
\textsuperscript{43} Report of the Secretary-General ‘Implementing the responsibility to protect’ A/63/677 of 12 January 2009.
\textsuperscript{44} See also written question of Emilio Menendez Del Valle, Member of the European Parliament (E2956/08) to the Council whether it could draw up a common doctrine concerning the responsibility to protect.
\textsuperscript{45} See Report of the Secretary-General ‘Implementing the responsibility to protect’ A/63/677 of 12 January 2009.
\textsuperscript{46} Art. 34 (2) TEU; moreover, it has been specified that when the EU has defined a position on a subject which is on the agenda of the Security Council, the Member States which sit in the Security Council shall request that the High Representative be invited to present the position of the EU.
\textsuperscript{47} The European Commission recognised cautiously those shortcomings, urging them to explore more systematic ways of fulfilling their commitments; see \textit{The European Union and the United Nations: The Choice of Multilateralism}. Communication from the Commission to the Council and the European Parliament, 10 Sep.
The EU could impose sanctions on the country committing genocide and mass atrocities, and on individuals and non-state entities active in the country, and also on the countries blocking actions by the Security Council. Further work is also required on reforming the functioning of the Security Council to prevent it being blocked. So far, the EU has been unable to agree a common position on UN Security Council reform.

Furthermore, the question is what means and capacities the EU is willing to commit when the Security Council authorizes action? Acceptance of the responsibility to protect implies that the EU should be ready to support Security Council action, including engaging in peace operations each time the principle is invoked by the Security Council.48 However, EU member states contribute only a small amount of troops to UN-led operations. On 31 October 2006, 14.3% of UN military personnel (10,355 persons) came from European Member States. By 31 October 2007, this was 15.3% (11,191 persons). By 31 October 2008 this was 13.4%.49 One concern is the impact of deployment of military and/or civilian forces for EU-operations and/or NATO-operations on the number of persons and financial resources committed by EU states to UN missions.50 The EU could decide on its minimum contribution to UN operations and function as a clearing-house for the contributions of the Member States.51

On the African continent, EU Member States have been almost absent from UN-led operations.52 Guided by the principles of African ownership and partnership, the EU has

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48 The European Security Strategy (2003) underlines that the EU wants international organisations, regimes and treaties to be effective in confronting threats to international peace and security, and must therefore be ready to act when their rules are broken. The resolution of the European Parliament adopted on 6 June 2005 fully subscribes to the need for developed states to engage more actively in peacekeeping operations around the world, and therefore calls for greater efforts by the EU Member States to transform armies into units suitable for deployment in peace-operations and to place contingents on stand-by for UN purposes, and to provide peacekeepers with the right mandates, sufficient capacity and appropriate training.

49 Annual Review of Global Peace Operations 2007; 2008 and 2009, Center on International Cooperation at New York University; most of the European troops in UN missions are deployed in the UNIFIL mission in Lebanon.

50 The total number of military forces deployed in non-UN operations, including under EU, NATO and other international organisations’ mandates equals those deployed in UN operations: by 30 September 2006 74,280 persons (of which 66% NATO and 11% EU operations), by 30 September 2007 76,742 persons (of which 73.5% NATO and 3.3% EU operations).

51 However, the obstacles remain considerable. For some Member States it will be easier to contribute to UN operations than for others, since Member States have different affiliations to other international organizations, (not all are members of NATO), and have undertaken different levels of engagement in ongoing EU and NATO operations. EU Member States also prefer to determine the chain of command and rules of engagement, while at UN-level they only have a limited voice in their determination. In addition, the current military capacity might not suffice for an increased contribution to UN-operations, and, according to some, requires a transformation, and according to others an enlargement of their army.

52 In both 2006 and 2007 less than 3% of UN Military Personnel on the African continent were from Europe.
oriented itself towards financial support and technical assistance.\textsuperscript{53} The AU has also expressed the desire to acquire the maintenance of peace and security on the continent.\textsuperscript{54} In 2003, the EU created the African Peace Facility in order to provide the AU and other regional organizations with the resources to mount effective peace operations.\textsuperscript{55} Nevertheless, sustainable, predictable and flexible funding for African-led peace operations, remains a significant challenge. Furthermore, the African Peace Facility cannot fund the purchase of military equipment or the salaries and military training of soldiers, since its resources come from development aid.\textsuperscript{56} It is essential to work out a mechanism that also allows for the financing of military operations. This does not however exclude the responsibility of EU Member States to engage in UN-operations in Africa when required. There is suspicion that developed states are simply seeking to reduce their direct engagement in peace-keeping in Africa.\textsuperscript{57}

Regional principles of intervention have been developed by the AU. The Constitutive Act of the AU 2002 affirms the right of the Union to intervene in a Member State, pursuant to a decision of the Assembly, in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.\textsuperscript{58} The principles of intervention are only applicable within the territory of the AU. Whatever the intent behind the right to intervene, it cannot override the UN Charter.\textsuperscript{59} It is necessary for the EU to position itself towards such initiatives.

\textit{Early Warning}

Early warning is the essential prerequisite for the planning and implementation of an effective conflict prevention policy. A broad vision on early warning can be distilled from the policy

\footnotesize{\textsuperscript{53} See the Africa-EU Strategic Partnership, A Joint Africa-EU Strategy.\textsuperscript{54} Speech of Mr. M.S. Annadif, Permanent representative of the AU to the EU, on 4 November 2008 during a public hearing on security and development at the European Parliament.\textsuperscript{55} Art. 11 Cotonou Agreement; Decision No 3/2003 of the ACP-EC Council of Ministers on the use of resources from the long-term development envelope of the 9th EDF for the creation of a Peace Facility for Africa (\textit{OJ} L 345 of 31 December 2003); under the 10\textsuperscript{th} European Development Fund €300 million were earmarked for funding the APF for the period 2008-2010, see GAERC meeting of 11 April 2006 (Doc. 7938/1/06 REV 1); Council Regulation (EC) No 617/2007 of 14 May 2007 on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement (\textit{OJ} L 152 of 13 June 2007).\textsuperscript{56} Complementary funds from other international partners or from the EU Member States' own budgets are required for the deployment of a peace mission.\textsuperscript{57} Gray, "Peacekeeping and enforcement action in Africa: the role of Europe and the obligations of multilateralism", \textit{Review of International Studies}, 2005, 207.\textsuperscript{58} Art. 4 (h) of the Constitutive Act; see also Art. 4 (j) 'the right of Member States to request intervention from the Union in order to restore peace and security'.\textsuperscript{59} Art. 103 of the UN Charter provides that in the event of a conflict between the obligations under the Charter and obligations under any other international agreement, the obligations under the Charter shall prevail.}
documents: early warning not only serves to alert the outbreak of violent conflict, but also to prevent violent conflict. According to the EU Programme for Conflict Prevention (2001) successful prevention must be based “on accurate information and analysis as well as clear options for action for both long and short-term prevention”; “Coherence must be ensured in early warning, analysis, planning, decision-making, implementation and evaluation”. According to the European Security Strategy (2003) “conflict prevention and threat prevention cannot start too early; early identification and understanding of risk factors increases the chances of timely and effective action to address the underlying causes of conflict.” Since then, improved early warning, planning and policy has remained on the agenda. The 2008 Review of the European Security Strategy recalled that early warning capabilities still need to be reinforced.

Capacity to produce accurate early warning and analysis

The Commission conducts early warning fact-finding and analyses the information collected. It uses a combination of structural and qualitative sources. A number of data-sets, such as the UNDP Human Development index, Corruption Perceptions index, Carleton Conflict Indicators and Freedom House Rankings, are collected and analysed. To this information, qualitative Conflict Assessments are added. They are prepared on the basis of a ‘Checklist for the root causes of conflict/early warning conflict indicators’. The Checklist covers the following eight areas: legitimacy of the State, rule of law, respect for fundamental rights, civil society and the media, relations between communities and dispute-solving mechanisms, sound economic management, social and regional inequalities and the geopolitical situation. The assumption is that these eight areas reflect the set of four root causes of violent conflict: (1) imbalance in society of political, social, economic and cultural opportunities among different identity groups; (2) lack of democratic legitimacy and effectiveness of governance; (3) absence of opportunities for the peaceful conciliation of group interests and for bridging divides between different identity groups, and (4) lack of a vibrant civil society. For each area a set of indicators has been developed. Before evaluating the indicator, three or four

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60 See Annual Reports on EU activities in the framework of prevention.
62 The Checklist was developed in 2001 in cooperation with the Conflict Prevention Network, a network of academic institutions, NGOs and independent experts, managed by the German Institute for International and Security Affairs.
context-setting questions are posed. This extensive set of questions has to be filled out by the Commission desk officers and Delegations. These country conflict assessments are considered a useful tool, with certain reserves concerning the coverage of the indicators and the weighting between the various problem areas as well as the reliability of the responses. To these country conflict assessments are added regular reporting from Delegations on issues such as human rights, open source information monitoring via the Crisis Room and the Directorate General for Humanitarian Aid’s disaster monitoring system. The outcome of the collection and analysis of this information is not a list of priority countries, but rather groups of countries that are in or close to the “danger zone”. The importance of the exercise is stressed in particular for highlighting “forgotten” conflicts.

A watch list of countries where there is a security risk, in particular for the region or for the EU, has been drawn up by the Commission and the Council Secretariat. This list is updated at the commencement of each EU Presidency. Different analytical units are involved within the Council Secretariat: EU Military Staff, Policy Planning and Early Warning Unit, DG External and Politico-Military Affairs and the Joint Situation Centre. The Council also obtains field information through its network of EU Special Representatives. The watch list is prepared on the basis of an all-source assessment, including intelligence derived from military and non-military sources, information from ministries of foreign affairs and information from the Commission (from DG Relex, from reports of Delegations, etc.). Around 40 countries are currently on the watch list. The watch list does not constitute an analysis of the causes of the conflict and how to tackle them. It serves mainly as a list to orientate policymakers, and can form the instigation for more detailed analysis.

64 According to Stewart analysis of political/societal conflict in practice is scant; more attention is paid to economic and financial issues, and points raised in the check-list, such as civil society and political legitimacy are not dealt with in any depth, Stewart, E., *The European Union and conflict prevention*, Kieler Schriften zur Friedenswissenschaft, 2006, p.111. See also Banim, G., “Early warning for early action”, in *Faster and more united*, Commission, December 2006, p. 272.

65 Interview with an EU official: every desk officer has his background and competences impeding the coverage of the full spectrum of problem areas; moreover, desk officers tend to be too “auto-referential”, rendering a prioritization amongst different countries difficult. However, this problem of subjectivity can be diminished through enhanced training or more consultation with the concerned desk officer or Delegation.


67 Interview with EU official of the Council


69 Art. 33 TEU; see also Grevi, G., “Pioneering foreign policy, the EU Special Representatives”, *Chaillot Paper*, No. 106, ISS, October 2007.

70 Interview with EU official. Most countries remain for years on the watch list.

71 Interview with EU official
The aforementioned units of the Council and the Commission will be transferred to the future European External Action Service (further EEAS) and regrouped\textsuperscript{72}. This action service would also include a unit to deal with conflict prevention and crisis management, including early warning. However, it is still unclear who will staff this unit and where the resources will come from.

*Capacity of these early-warnings to feed into decision-making structures*

The Political and Security Committee (PSC) - comprising all member states at ambassadorial or equivalent level, and attended by a representative of the Commission - monitors the international situation covered by the Common Foreign and Security Policy (CFSP) and contributes to the definition of policies by delivering opinions to the Council.\textsuperscript{73} However the decision as to which countries are put on the PSC agenda is not necessarily influenced by the watch list, but is often event-driven.\textsuperscript{74} The members also draw their information from their own networks and from the information available to them through their own Ministries and allies.

In order to set priorities for preventive actions, at the beginning of each EU Presidency, the Council schedules a broad consideration of potential conflict issues, prepared with the assistance of the High Representative, relevant Council Bodies, (including the PSC), and the Commission, to identify priority areas and regions for the EU.\textsuperscript{75} This debate is conducted on the basis of the watch list of countries.\textsuperscript{76} Nevertheless, other or additional objectives or sensitivities of the Member States seem to lie behind the setting of priorities amongst the countries at risk. The containing of illegal immigration or threats of terrorism are examples of objectives that determine whether or not a response takes place in a given country at risk.\textsuperscript{77} Furthermore, the countries covered by the neighbourhood policy or Partnership agreements are priority areas.

Generally speaking, sufficient and accurate information and analysis is available. National and regional early warning systems are also given more attention, albeit recognising that those

\textsuperscript{72} See Annex to the Proposal for a Council decision establishing the organisation and functioning of the EEAS, 29 June 2010 (11507/10).

\textsuperscript{73} Art. 38 TEU

\textsuperscript{74} Interview with EU official

\textsuperscript{75} EU Programme for Prevention of violent conflicts, 2001, p. 2.

\textsuperscript{76} Banim, G., *o.c.*, p. 271.

\textsuperscript{77} Interviews with EU officials
systems have their limits in the case of political sensitive information. The problems of coordination and information sharing between Commission, Council and Member States that were signalled in the past, seem to have reduced. The problem is mainly the response. Often policymakers were well aware of a looming crisis, but failed to act.

An institutional mechanism for following up the early warning analysis is also lacking. The watch list might be more appropriate as a prevention tool in the medium and long-term. In 2005, an initiative was launched to design pilot preventive strategies for a number of countries specified on the basis of the watch list. These were designed by the Council Geographic Working Groups with input from the Commission to assess how best to use the EU’s full range of policy instruments to prevent instability at national level. A number of EU strategies were developed. These strategies included an assessment of the root causes of the conflict, an evaluation of possible EU leverage to address these root causes, and a prioritisation of policy options. They were useful in the sense that they brought attention to these countries and determined the priorities for action. Yet, implementation hampered proceedings. There was no further monitoring, no follow-up occurred, and no detailed action plan was developed. The Council Secretariat has been considering how to resuscitate a similar initiative, but so far has not taken any further steps. The establishment of the EEAS could help to bridge the gap between early warning and early action.

**Operational Prevention**

Operational prevention is aimed at preventing situations with a clear capacity for violence from degeneration into armed conflict. It refers to measures applicable in the face of immediate crises. Operational prevention can include *inter alia* preventive diplomacy, sanctions or inducements and preventive deployment of a civilian and/or a military mission.

78 See Ruys, T., *Background paper on EU Crisis Management Operations*, Institute for International Law Leuven, May 2007, p. 7; see also Stewart, E.J., *o.c.*, p. 119, according to whom improved integration of the information of the Commission in the politico-military structures of the Council and better coordination between civilian and military early warning would enhance the strength of the EU early warning system; See also Müller-Wille, B., “EU Intelligence Cooperation; A critical analysis”, *Contemporary Security Policy*, 2002, vol. 23, p. 61-86, who signals that Member States remain reluctant to pool military intelligence at EU level.

79 Interview with EU official; see also Banim, G., *o.c*.

80 Interview with EU official

81 The pilot strategies concerned Nigeria, Sri Lanka, Indonesia, Bolivia, Haiti, Turkmenistan, Guinea-Bissau and Guinea Conakry.

82 Interview with EU official

**Preventive diplomacy**

Within the framework of the CFSP, a series of standard diplomatic instruments can be activated. These include *inter alia* declarations, démarches, political dialogue, high-level visits, Special Representatives, dispatch of a fact-finding mission or a team of EU observers, diplomatic recognition, facilitating negotiations and mediation.

**Legal and policy framework**

Art. 25 of the TEU foresees legal instruments such as a Union position or a Union action to pursue CFSP objectives.\(^\text{84}\) In reality, they have been used far less than expected. Instead, CFSP positions or actions are often adopted by ordinary decisions of the Council, by decisions adopted via the simplified written procedure (called silence procedure) or via systematic cooperation between member states.\(^\text{85}\)

Mediation or other types of involvement in the conflict of other states remain dependent upon the consent of the state in question. This consent is sometimes difficult to obtain, as it entails involvement in the internal affairs of the relevant state. The EU normally acts through the legal structures of the third state. It generally favours reform undertaken by the government.\(^\text{86}\)

The High Representative of the Union for Foreign Affairs and Security Policy or the EU Special Representatives can, however, obtain a mandate from the Council to involve non-state actors. When and which non-state actors can be involved is decided on a case-by-case basis. There are no guidelines, except for the exclusion of organisations or individuals on the EU’s list of terrorist organisations.\(^\text{87}\) Support may also be given, without host government consent, to other actors for attempts at mediation, dialogue and reconciliation through the Stability Instrument\(^\text{88}\) and through the European Instrument for Democracy and Human Rights.\(^\text{89}\)

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\(^{84}\) Before the entry into force of the Treaty of Lisbon art. 12 TEU.  
\(^{86}\) Interview with official at the Council of the European Union; e.g. at the events in 2004 in Ukraine the EU did not support “opposition” parties in the run-up to the election, which was the tactic of *inter alia* some US Foundations; see also Gentz, S., *EU influence in conflict: Power to mitigate or to mediate?*, June 2007, publication of the Center for Humanitarian Dialogue.  
\(^{87}\) See Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931 CFSP), *O.J.* L344/93. However, this is also not an absolute principle, e.g. discrete talks were held by the Deputy EU Special Representative of Afghanistan with elements linked to the Taliban in December 2007; cf. interview with official at the Council of the European Union and MEP.  
\(^{88}\) Regulation (EC) No. 1717/2006 of the European Parliament and of the Council of 15 November 2006, establishing an Instrument for Stability, see Art. 3,2 en Art. 4 (3); see also further in this paper.  
\(^{89}\) Regulation No. 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financial instrument for the promotion of democracy and human rights worldwide, see Art. 10; see also further in this paper.
The EU systematically incorporates provisions for political dialogue into its cooperation and association agreements with third countries. The dialogue shall also encompass a regular assessment of the developments concerning human rights, the rule of law, support for democratisation and good governance. The agreements also foresee measures to be applied in the event of violation of an obligation stemming from the respect of human rights, democratic principles, the rule of law and good governance, when political dialogue has failed. Reduction, or even suspension, of assistance are foreseen as a last resort. The consultations between Parties as foreseen in the procedure preceding the application of sanctions, can be real negotiations between parties. The Cotonou Agreement also contains an explicit clause that parties pursue a policy of peace building and conflict prevention and resolution, including activities such as support for mediation, negotiation and reconciliation efforts. But no sanctions are linked to this clause.

The EU has created guidelines on Human Rights and on International Humanitarian Law to set out operational tools for the EU and its institutions and bodies to promote compliance with human rights and international humanitarian law. They aim to address compliance with human rights and international humanitarian law by third states, and, as appropriate, non-state actors operating in third states.

Implementation

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90 E.g. Art. 8 of the Partnership Agreement between ACP and EC, signed in Cotonou on 23 June 2000 and revised on 25 June 2005 (further Cotonou Agreement), see Association agreements concluded in the framework of the neighbourhood policy.
91 E.g. art. 9, 96 and 97 of the Cotonou Agreement; see also Resolution of the European Parliament on the human rights and democracy clause in European Union agreements of 14 February 2006 (P6_TA(2006)0056), advocating that the more explicit type of human rights and democracy clause of the Cotonou Agreement, with detailed procedures for interventions, would be included as a standard feature in EU/third country agreements; see also Bartels, R., Human Rights Conditionality in the EU’s international agreements, Oxford, Oxford University Press, 2005.
92 E.g. in accordance with art. 96 of the Cotonou Agreement, the following eight countries have been sanctioned following the procedure foreseen in the essential elements clause: Haiti, Liberia, Togo, Zimbabwe, Fiji, Central African Republic, Guinea and the Islamic Republic of Mauritania; in Guinea-Bissau it was limited to threats of sanctions (2004/680/EC of 24 September 2004).
93 Art. 11 Cotonou Agreement
94 Concerning Human Rights, the EU has adopted seven sets of guidelines on individual thematic issues: death penalty, torture, human rights dialogues, children and armed conflict, human rights defenders, rights of the child and violence against and discrimination of women; Concerning International Humanitarian Law, see EU Guidelines on promoting compliance with international humanitarian law (for updated version see OJ, 15 December 2009, C303/12; see also brochure ‘Guidelines Human Rights and International Humanitarian Law’, published by the General Secretariat of the Council, March 2009.
The main bulk of declarations, diplomatic démarches and dialogues are devoted to human rights issues.\textsuperscript{95} However, sensitive issues are sometimes only mentioned as a formality or not mentioned at all, when other interests are involved, stability is preferred or the state involved is too powerful.\textsuperscript{96}

In contrast to human rights, ‘democracy’ and ‘good governance’ are not codified in international agreements nor are they universally-agreed concepts. Although the EU has attempted to define these concepts\textsuperscript{97}, it still implies that it is having problems legitimizing its policies, which promote democracy and good governance. In countries not so prone to democracy, in particular in the Mediterranean and Asian regions, less emphasis is placed on democracy than the protection of basis human rights. Furthermore, concerns for security and stability sometimes prevail, which results in support for democratisation being played down. Engagement with civil society is also limited where opposition forces are ambivalent towards democracy.\textsuperscript{98}

In geographical terms, preventive diplomacy has been mainly undertaken in neighbouring countries and in sub-Saharan Africa, with which the EU is already engaged, but differences exist within these regions. The North-African region, and in particular countries such as

\textsuperscript{95} See Keukeleire, S. and MacNaughtan, J., \textit{o.c.}, p. 165.

\textsuperscript{96} E.g. \textit{on Egypt}: the EU-Egypt Action Plan of March 2007 has been criticized by human rights organisations for serious shortcomings on human rights issues (see e.g. article FIDH of 7 March 2007 “Action plans human rights section falls short of NGO expectations”, see also Resolution of the European Parliament of January 17 2008 on the situation in Egypt (P6_TA(2008)0023), urging the EU to put human rights issues very high on its agenda); \textit{on Algeria}: see “Open letter in view of the EU-Algeria Association Council on 24 April 2007” of different human rights organisations on human rights abuses and amnesty for the perpetrators in Algeria; see also “Open letter “ of Amnesty International of 6 March 2008 on EU-Algeria Association meeting of 11 March 2008; \textit{on Tunisia}: see “Open letter in view of the EU-Tunisia Association Council on 11 November 2008” of 10 November 2008 of different human rights organisations on human rights abuses, see also Resolution of the European Parliament of 15 June 2006 on human rights situation in Tunisia (P6_TA(2006)0269) urging the Commission and the Council to discuss the human rights situation in the Association Council; \textit{on Chechnya}, see e.g. Human Rights Watch: ‘EU: seize new opportunities to press Russia on Chechnya, EU engagement key to preventing spread of abuses in the North Caucasus, 7 April 2008; see also Resolution of the European Parliament of 19 January 2006 on Chechnya after the elections and civil society in Russia (P6_TA(2006)0026) urging the Commission and the Council to confront their responsibilities in the face of the most serious human rights violations; see opposition of the Greens/EFA group against the Resolution of the European Parliament of 10 May 2007 on the EU-Russia Summit (P6_TA(2007)0178) for failing to properly address human rights abuses in Russia.

\textsuperscript{97} See \textit{inter alia}, with respect to Africa, the EU has defined ‘democratic principles’ as the right to choose and change leaders in free and fair elections, separation of legislative, executive and judicial powers, guarantees of freedom of expression, information, association and political organisation. The ‘rule of law’ has been defined as permitting citizens to defend their rights which implies a legislative and judicial power giving full effect to human rights and fundamental freedoms and a fair, accessible and independent judicial system. ‘Good governance’ has been defined as including the transparent and accountable management of all a country’s resources for the purposes of equitable and sustainable development (see Common Position of 25 May 2008, \textit{OJ}, 2 June 1998, L158/1.

Algeria and the conflict in Western Sahara have received far less attention than others. In Central and Eastern Europe the EU has been actively and successfully involved in settling conflicts and preventing (further) outbreaks of violence (e.g. Macedonia, Ukraine and Montenegro). On several occasions in the South Caucasus EU diplomacy played a critical role in avoiding conflict, despite being unable to prevent the crisis in South Ossetia from escalating into war in August 2008. The Israeli-Palestinian conflict is also high on the EU agenda. Its role in the peace process has increased over the years, although overall mediation of the conflict remains firmly in the hands of the US. The EU has also often been unable to take a clear stance in sensitive crises, and this has limited its power to influence.

The European Parliament has urged for objective and transparent criteria for human rights and political dialogues, for initiating a consultation procedure and for applying and lifting appropriate measures in the framework of a cooperation or association agreement. In order to foster a common culture of the promotion of human rights, democracy and good governance and of the prevention of conflict, further debate is required as to how the EU should promote those principles more broadly and in concrete cases. A more transparent policy would also make it possible to name and shame Member States that fail to respect the policy.

99 Mainly because member States have difficulties agreeing on a common position; in the case of Algeria, the important position of Algeria as a major supplier of gas has to be taken into account, cf. J.Vaquer i Fanés, “The European Union and Western Sahara”, European Foreign Affairs Review, 9, 1, 2004, pp. 93-113; Gomez, R., Negotiating the Euro-Mediterranean Partnership: Strategic action in EU Foreign Policy, 2003, Aldershot, Ashgate.
101 E.g. the EU Special Representative for the South Caucasus helped mediate a peaceful solution to the crisis over Ajaria, an autonomous province in Georgia in 2004; in June 2008 the EU Special Representative persuaded the President of Georgia not to declare the Russian peacekeeping force in Abkhazia illegal, avoiding that way the escalation of the conflict.
102 Interview with EU parlementarian; e.g. following the Israeli Offensive on the Gaza Strip in December 2008 the EU asked for an immediate and permanent ceasefire on the basis of the UN SCR 1860, but failed to secure this by refusing to exert pressure on Israel and not engaging with Hamas; the EU condemned the attacks on civilian and humanitarian targets, but did not call for an investigation into violations of International Human Rights Law and International Humanitarian Law; the EU has not demanded any investigation nor compensation for destroyed facilities during the conflict; see also resolution of the European Parliament on the implementation of the Goldstone recommendations on Israel/Palestine, 10 March 2010 (P7_TA(2010)0054), see also Tocci, N., and Euro-Mediterranean Human Rights Network, Active but acquiescent: the EU’s response to the Israeli Military Offensive in the Gaza Strip, May 2009; Keukeleire, S., Mac Naughtan, J., o.c., p. 286-288.
Concerning the EU Guidelines on Human Rights and on International Humanitarian Law, a lack of awareness and understanding of, or perceived responsibility for these Guidelines has been identified amongst EU delegations.\textsuperscript{104}

**Evaluation**

No overall impact assessment concerning the EU's preventive diplomacy, nor any evaluation of its effectiveness in conflict prevention could be found. Nevertheless, as mentioned earlier, some successes of the EU's preventive diplomacy could be noted. Yet, the current human rights policy is deemed to be not very effective. Human rights dialogues seem not to produce any change in the behaviour of the countries involved.\textsuperscript{105}

As preventive diplomacy is often undertaken in countries with which the EU has already concluded cooperation or association agreements, preventive diplomacy can be linked to those instruments. However the coordination and coherence between the different instruments can still be improved.\textsuperscript{106} The setting-up of the EEAS provides the opportunity to increase coherence further.\textsuperscript{107}

**Sanctions**

Sanctions, or "restrictive measures" as the EU prefers to call them, include diplomatic sanctions, arms embargoes, trade and financial sanctions, flight bans, restrictions of admission, boycotts of sport and cultural events, and suspension of co-operation with a third country. The EU has made frequent use of them, especially since the 90s. Nevertheless, the EU clearly prefers positive measures to negative, and believes these to be more effective.\textsuperscript{108}

\textsuperscript{104} Internal Document Amnesty International EU Office December 2009.


\textsuperscript{106} E.g. although the elections in December 2007 in Kenya were criticised by the EU for falling short of basic regional and international standards for democratic elections (see Preliminary statement of EU Election Observation mission on 1 January 2008), violence had broken out and although Kibaki was pre-empting negotiations, the European Development Fund disbursed money shortly after the elections to the Kibaki government, see Resolution of the European Parliament of 17 January 2008.

\textsuperscript{107} See Proposal for a Council decision establishing the organisation and functioning of the EEAS, 29 June 2010 (11507/10).

Most likely, positive measures are also easier to agree on, since they tend to entail less risk of negative consequences for the Member States themselves. Positive measures include, amongst others, tariff reductions, guaranteed investments, provision of debt relief, increased assistance in development, reconstruction and compensation. They are often incorporated into cooperation and association agreements. In this case, operational prevention is closely linked to what is usually considered to be structural measures.

**Legal framework**

EU sanctions can be adopted in order to implement a UN Security Council Resolution, or autonomously. The Security Council can impose mandatory peaceful or military sanctions on a Member State, whenever there is a threat to peace, a breach of the peace or an act of aggression. Mandatory sanctions imposed under Art. 41 UN Charter are binding for UN Member States, but the decisions taken by the UN Security Council are not necessarily directly applicable within the Member States. UN Members are therefore legally obliged to comply with a UN resolution by implementing its regulations in the national legal order. They are also authorised to implement Security Council resolutions within an appropriate international agency, such as, for example, the EU.

The EU has wider sanctioning powers than the UN. It can choose to impose sanctions in pursuit of a wider array of objectives, such as the consolidation and the support of democracy, the rule of law, human rights and the principles of international law, or in order to safeguard its own values, fundamental interests, security, independence and integrity. In the policy documents developed by the EU from December 2003 on, it is stressed that, if necessary, the EU will impose autonomous sanctions in support of the fight against terrorism, against the

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109 Art. 41, 42 UN Charter; the interpretation of ‘a breach of the peace or a threat of such a breach’ by the Security Council has widened; sanctions have been used as a tool for repelling aggression (e.g.- Iraq, see UN Doc. S/RES/661 6 August 1990, S/RES/665 25 August 1990), restore democracy (e.g. Haiti, see UN Doc. S/RES/841 16 June 1993), stop large-scale massacres (e.g. Rwanda, see UN Doc. S/RES/918 17 May 1994; S/RES/1011 16 August 1995, Somalia, see UN Doc. S/RES/733 23 January 1992) or pressure regimes supporting terrorist activities (e.g. Libya, see UN Doc. S/RES/883 11 November 1993, Afghanistan see UN Doc. S/RES/1267 15 October 1999, Sudan see UN Doc. S/RES/1054 26 April 1996).

110 Art. 48 UN Charter

111 Art. 21 TEU (before the Treaty of Lisbon art. 11 TEU); the autonomous sanctions are unilateral coercive measures. They may be mere unfriendly but lawful acts - retorsions - covered by the common rules of international law. However, if they violate rules of international law, they become reprisals or countermeasures and are justified only if they fulfil certain conditions, such as the prohibition of the use of force, the respect of fundamental human rights, humanitarian obligations and jus cogens. See draft articles on state responsibility, accepted by the International law Commission on 31 May and 3 August 2001, annex to UNGA Res. 56/83 of 12 December 2001. Furthermore there are also limitations imposed by the WTO to the use of sanctions.
proliferation of weapons of mass destruction, or as restrictive measures to uphold respect of human rights, democracy, the rule of law and good governance.\textsuperscript{112} These areas of action correspond to the key threats to member states in the European Security Strategy.

The legal nature of the measure depends on the area covered. Mostly sanctions are adopted by a Common Position in the framework of the CFSP.\textsuperscript{113} Sometimes a sanction can be immediately put into effect by the Member States, (e.g. arms embargoes or travel restrictions).\textsuperscript{114} Often a sanction has to be executed by an act of the Council, acting by qualified majority on a joint proposal by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission (e.g. commercial sanctions, bans on the movement of capital and on payments).\textsuperscript{115} Since the Treaty of Lisbon, the European Parliament has a formal right to be informed about these measures.

One important element of enforcement is legislation that allows the imposition of sanctions on those who infringe the sanctions regime. Until now, EU legislation has only obliged Member States to pass legislation on penalties, and to make penalties effective, dissuasive and proportionate.

\textit{Policy framework}

In 2001, the Commission declared that the impact of sanctions had been "somewhat disappointing": because of "poor design and poor enforcement, it has generally been a question of too little, too late".\textsuperscript{116} The Commission called for sanctions to be assessed for

\footnotesize{\textsuperscript{112} The \textit{"Basic Principles on the Use of Restrictive Measures (Sanctions)"} (Council Document 10198/1/04) and \textit{"Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the ECFSP"} (Council Document 15579/03, last updated by Council Document 15114/05).

\textsuperscript{113} On the basis of art. 29 TEU

\textsuperscript{114} Art. 346 TFEU: Member States are allowed to take measures they consider necessary for the protection of the essential interests of their security which are connected with the production and trade of arms, munitions and war material. Member States have already national legislation in place which enables them to control most of their external trade in arms. But there are also EU measures in the area of the arms trade (see further in this text ‘weapons’ under ‘systemic prevention’). Restrictions on admission also need to be implemented in the EU via the different migration authorities of the Member States. Nevertheless, travel bans are more easily implemented if there is a general visa requirement for all citizens of a particular country. The introduction of a general visa obligation is to be made at EU-level.

\textsuperscript{115} See art. 215 TFEU; article 215 TFEU brings economic and financial sanctions against third countries together, combining the previous articles 301 and 60(1) TEC. Article 215(2) TFEU offers also a legal base for sanctions against other natural or legal persons and groups or non-State entities. These decisions as such are not new, but previously they were based on the existing provisions in combination with the flexibility clause (Article 308 TEC). Art. 75 TFEU concerns sanctions with regard to capital movements and payments against non-state actors in the context of combating terrorism.

\textsuperscript{116} Communication from the Commission on Conflict Prevention, COM (2001) 211 final, 11 April 2001}
preventive use, in order to deny a potential belligerent the means to start a conflict as, in general, they were imposed after conflicts had broken out. The Commission intended to initiate a debate for this purpose within the Council.

However, in the (few) policy documents developed from December 2003 on, the preventive use of sanctions is not examined.\(^{117}\) It is briefly mentioned that sanctions should be considered part of a more comprehensive policy approach, which should include political dialogue, incentives, conditionality and, as a last resort, the use of coercive measures. The EU does indeed have the advantage of being able to link its sanctions to positive inducements, such as enhanced cooperation, access to aid or even membership.\(^{118}\) Nevertheless, there is no clear approach to assessing the type of sanctions and how to impose them, in particular, before the outbreak of conflict. The initial phases of the decision-making process are currently not very transparent, due to the fact that proposals are usually made by a Member State, and due to the frequent use of encrypted and classified documents.

Nor has the invitation from the Commission led to a Council debate on sanctions as an instrument for conflict prevention.

**Implementation**

The majority of the EU sanctions have been imposed to protect human rights. The type of action that seems to have triggered EU sanctions, more than others, is when government forces, or government-sponsored forces have been responsible for severe abuses of human rights of its own citizens.\(^{119}\) However, reference is also made to maintaining peace and

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\(^{117}\) The “Basic Principles on the Use of Restrictive Measures (Sanctions)” (Council Document 10198/1/04) and “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the ECFSP” (Council Document 15579/03, last updated by Council Document 15114/05).

\(^{118}\) Studies have indicated that positive sanctions succeed more often than negative ones, because they are psychologically easier for the target state to accept, they have spill-over effects on other aspects of the two states’ relationships, they have a positive impact on groups within the target state, winning allies for the initiating state and they offer little economic incentive for outsiders to work to break the sanctions; see Newnham, R.E., *Deutsche Mark Diplomacy: Economic linkage in German-Russian Relations*, University Park, PA, Penn State University Press, 2002; see also Crumm: according to her positives incentives worked well, when they were consonant with the norms on which the relations were built; she also finds a declining utility in capital goods as repeated rewards; see Crumm, E.M., “The value of economic incentives in international politics,” *Journal of Peace Research*, vol. 32, 1995, pp. 313-330. Dorussen’s work points to the need for sanctions strategies that may consist of both negative and positive sanctions, see Dorussen, H., *Mixing carrots with sticks*. Evaluating the effectiveness of positive incentives, *Journal of Peace Research*, 38 (2) 2001 251-262

security, democracy, the rule of law and fundamental liberties. Since 9/11 much time has been spent on sanctions targeting international terrorism, and in particular the freezing of assets. The EU has a list of persons, groups and entities on which it has imposed an asset freeze, as well as a prohibition against making funds or economic resources available to these persons, groups or entities. The move from sanctions against states, towards sanctions against individuals and non-state entities has generated new legal issues, particularly concerning the rights and standing of parties that might be incorrectly listed.

Since the mid-1990s the EU has chosen targeted measures as a main feature of its sanction activity. These include financial sanctions, travel bans for people linked to the regime and diplomatic sanctions. Similar to the UN, arms embargoes have been the most popular type of sanction employed.

In general, the EU has been relatively more active in its direct neighbourhood than in the rest of the world. The EU implemented the Kimberley Process certification scheme for the international trade in rough diamonds, with the aim of conflict prevention, in particular, in Africa.

Measures have also been adopted for in the event of breach of essential obligations of the cooperation and association agreements. However, these have been mainly limited to the African, Caribbean and Pacific-Countries in the framework of the Cotonou Agreement and its

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121 Information from an EU official.

122 Common Position 2001/931/CFSP; as lastly updated by Common Position 2009/67/CFSP.


124 In particular, following the humanitarian consequences of UN sanctions in Iraq and Haiti, sanctions have become more targeted. The concept was developed in part by the Interlaken, Bonn-Berlin and Stockholm processes, commissioned by states, in the period 1998-2003, to improve the impact of UN sanctions, while limiting negative consequences towards the civilian population in the targeted state.

125 Kreutz, J., o.c.

126 EU sanctions have been imposed in the geographical vicinity 13 times, and 15 times in the rest of the world, with the majority in Southeast Asia and sub-Saharan Africa, see Kreutz, J., o.c.
predecessor, the Lomé IV Convention and often in response to military coups.\textsuperscript{127} While in some countries the mechanism foreseen in the Cotonou Agreement has been used as a sanctioning mechanism,\textsuperscript{128} in other countries the mechanism has been used more as a preventive measure: certain states were warned that they are under scrutiny.\textsuperscript{129} The measures employed are mainly the redirection or (temporary) suspension of financial aid and cooperation.

In the EU Generalised System of Preferences (GSP) programme trade preferences may be withdrawn if the beneficiary country seriously and systematically violates the principles of 16 core UN and ILO conventions on human and labour rights.\textsuperscript{130} This sanction mechanism has been very scarcely applied.\textsuperscript{131} The GSP programme also offers positive measures: in addition to the standard trade preferences, GSP+ offers additional preferences for vulnerable developing countries that have ratified and effectively implemented the 16 core UN and ILO conventions on human and labour rights, and 11 other international conventions related to the environment and governance principle.\textsuperscript{132} However, these additional benefits have also been very leniently granted.\textsuperscript{133}

The EU has been criticized for inconsistent implementation and monitoring of its sanctions policy, treating third countries differently, thus triggering criticism for applying "double

\textsuperscript{127} In October 2005 the EU suspended partially the Partnership and Cooperation Agreement with Uzbekistan over human rights concerns. But the suspension was already lifted in November 2006.
\textsuperscript{128} As was the case after the coup d’état in Fidji in 2000 and in 2006, in the Central African Republic and in the Islamic Republic of Mauritania in 2005, or after numerous violations of human rights, democratic principles and the rule of law as in Togo and Zimbabwe.
\textsuperscript{131} Myanmar has been suspended from the GSP Programme since 1997 and Belarus since 2007 on these grounds. Sri Lanka, from which the GSP+ trade benefits will be removed from 15 August 2010 onwards, will still benefit for the standard GSP programme.
\textsuperscript{132} Art. 8 of Council regulation No 732/2008 of 22 July 2008, o.c.; "vulnerable" means in terms of the size of the country or the limited diversification in its exports.
\textsuperscript{133} The GSP+ beneficiaries from 1 January 2009 until the end of 2011 are: Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Paraguay, Peru, Sri Lanka and Venezuela. The eligibility of only two of these countries, El Salvador and Sri Lanka, was the subject of an investigation by the European Commission into the implementation of certain UN and ILO conventions. For El Salvador no withdrawal was decided after the investigation, for Sri Lanka, the GSP+ trade benefits will only be removed from 15 August 2010 onwards.
standards”. Member States have different levels and types of relations with the targeted country, and some Member States might be less willing to take sanctions against a particular state. Countries that are important for commercial or political purposes generally do not suffer, or suffer less, from negative measures. Mainly to increase transparency, the European Parliament proposed that it be involved in all stages of a sanctions process and that systematically clear and specific benchmarks be included, as conditions for the lifting of the sanctions, in addition to the independent evaluation of the reference criteria. Nevertheless, efforts have been made to improve the design and enforcement of sanctions. Information gathering has improved, amongst others, due to the representations from the EU and the Member States in the targeted country, and the compatibility with the legal obligations of the EU is examined. Also, the Representatives of the EU and its Member States tend to report regularly on the impact of the sanctions in the targeted country. In 2004, a specific Council body was set up called ‘Sanctions Formation’ of the Foreign Relations Counsellors Working Party, which is dedicated to exchanging experience and developing best practice in the implementation and application of sanctions. The ‘Sanctions Formation’ has worked on the Best Practices paper, motivation requirements and a number of more technical matters, such as application of restrictions on admission, (inclusion of data in the Schengen database). The EU’s code of conduct on arms export also contains a monitoring mechanism. However, little is known about how the competent authorities in the Member

134 E.g. disagreements on policies towards Cuba or the reluctance of Member States to antagonise major partners such as Russia have led the EU to adopt only “informal sanctions” in Presidency Conclusions.
135 See Hazelzet, o.c. 2001, who compares sanctions against former colonies and shows that certain former colonial powers tend to try to shield their former protectorate from sanctions, while others do not.
136 Recent examples are Nigeria and Ethiopia. Although the reports of the EU Election Observation Missions on the 2007 State and Federal elections in Nigeria and the 2005 National Elections in Ethiopia were very critical about the way elections were held, no sanctions followed. Another example is Uzbekistan. Despite Uzbekistan’s failure to allow an independent and international inquiry into the mass killings that occurred on May 13, 2005 and the further deterioration in human rights in the country, the EU arms embargo was dropped on October 27, 2009, after in 2008 the travel ban for Uzbek officials was already lifted; see also Smith, K.E., “The use of political conditionality in the EU’s relations with third countries: how effective?”, European Foreign Affairs Review, 1998, Vol. 3, pp. 253-274; Kanbur, R., “Aid, conditionality and debt in Africa”, in F. Tarp, Foreign aid and development: lessons learnt and directions for the future, 2000, cf. Dimier, V., “Constructing conditionality: the bureaucratization of EC Development Aid”, European Foreign Affairs Review, 2006, Vol. 11, p. 263-280.
137 See Resolution of 4 September 2008, The evaluation of EU sanctions as part of the EU’s actions and policies in the area of human rights’, see Doc. P6_TA-PROV(2008)0405; interview with EMP: the wish to be associated with the process is mainly in order to be able to have available all of the necessary information.
138 See Hazelzet, o.c.
139 Council Document 5603/04 of 22 January 2004; all EU member states are represented on the sanctions formation, which usually meets every six weeks.
140 Latest version: Council document 8666/08 REV 1 of 24 April 2008
States check compliance and the budget they reserve for it. Nor does the EU’s budget contain standing provisions for the implementation of sanctions or assistance.

**Evaluation**

Sanctions have still mainly been used reactively. The preventive use of sanctions is situated rather at the level of systemic prevention, in particular through arms embargoes and the Kimberley Process Certification Scheme (see further).

Sanction mechanisms could enhance deterrence, but they do not always pay off. However, no impact assessment in respect of the EU’s sanction policy, nor any evaluation of its effectiveness has yet been carried out. It is therefore extremely difficult to gauge the policy’s impact and effectiveness on the ground. And, anyhow, it remains difficult to isolate the influence of the sanctions mechanism from that of other domestic or international actors, and to estimate the effect of this mechanism on a (potential) conflict situation. The question of impact and effectiveness is even more difficult for a complex objective such as conflict prevention. The European Parliament has urged the Commission and the Council to provide an evaluation of the EU’s sanctions policy.

**Preventive Deployment**

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142 E.g. according to the Secretary-General of the UN, the use of Security Council sanctions targeting certain individuals and entities deemed to have contributed to conflicts demonstrated a restraining effect (Report of the SG S2008/18, see par. 14-16).

143 E.g. the de facto exclusion of Belarus from the array of EU external relations policies has not led to any change in the country. The release of some political prisoners in 2008 and the Russian-Georgian war in August 2008 has prompted the EU to rethink how it engages with Belarus. The decision of the EU on October 13 2008 to lift most travel bans for a trial period of 6 months, which was thereafter extended, was however received angrily by leaders of the opposition. E.g. the decision of the European Commission to launch investigations in October 2008 in order to ascertain whether or not Sri Lanka fulfils the conditions to continue to receive GSP+ preferences on the grounds of alleged lack of effective implementation of international UN and ILO conventions and subsequently the decision by the Council of Ministers in February 2010 to withdraw the preferential tariff system GSP+ from the country starting from August 15 2010 because of significant shortcomings in its implementation of three UN human rights conventions, have not led to a change in Sri Lanka.

144 Perez J.N., _o.c._, p. 109; Resolution European Parliament of 4 September 2008, _o.c._

145 Studies indicate that in terms of achieving their foreign policy objectives, sanctions are at least partially successful; see Hufbauer, G.C., Schott, J.J. Elliott, K.A. and Oegg, B., _Economic sanctions reconsidered_, Washington 2007, Peterson Institute for International Economy, pp. 158-159; see also Peter Wallensteen, _A Century of Economic Sanctions: A Field Revisited_, Uppsala Peace Research Paper No. 1. Department of Peace and Conflict Research, Uppsala University, Sweden. 2000. The European Parliament refers to the sanctions applied to South-Africa to underscore the effectiveness of the instrument.

146 Interestingly, a recent study indicates that sanctions imposed against one country in a militarized conflict to a modest extent deterred not only the targeted country, but also other similarly situated countries from engaging in new and different military conflicts over the next five years; Petrescu, I.M., _Rethinking economic sanction success, sanctions as deterrents_, draft paper April 17 2008

147 Resolution of the European Parliament of 4 September 2008, _o.c._
Partly due to the Kosovo crisis and the realisation of Europe’s dependence on the US in defence matters, the EU started to develop a European security and defence policy. At the June 1999 European Council in Cologne, the members agreed that the EU must have the capacity for autonomous military action in order to respond to international crisis. The operational and institutional features were specified further at the December 1999 Helsinki European Council (the military component and the decision to create a rapid reaction facility), and at the June 2000 Feira European Council (the civilian component).

**Legal framework**

Preventive deployment is only possible with the consent of the host state government, (or in the case of a peace agreement, of all parties involved). In the absence of consent, Security Council authorization is required for enforcement operations. The EU operations are adopted by a Joint Action in the framework of the CFSP/CSDP.

Most missions were created at the request of the UN, or a regional organisation, such as NATO or the African Union, either in order to take over their missions, or assist them. All missions have been based on the consent of the host State Government and other parties involved, often backed up by Security Council support or endorsement or authorisation by Security Council resolution, and as such had a clear basis in international law. The legal basis of the EU Rule of Law mission in Kosovo is, however, more ambiguous. It is based on consent from the Provisional Institutions of Self Government, (although not all EU member states have recognised Kosovo as a state), and also on the ‘responsibility to protect’ - despite no Security Council authorization being given.

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148 See art. 42, 1 and art. 43 TEU (former art. 17 TEU); the description of the tasks of EU missions is clearer than in the former art. 17. Whether it really amounts to an expansion of the present competence rather than a more detailed description remains to be seen.

149 Cologne European Council, 3-4 June 1999, Presidency Conclusions

150 Helsinki European Council, 10-11 December 1999, Presidency Conclusions; Feira European Council, 19-20 June 2000, Presidency Conclusions. The possibility of deployment in the framework of UN operations was explicitly mentioned.

151 The operations Artemis (SC resolution 1484 of 30 May 2003), Althea (SC resolution 1575 of 22 November 2004) and EUFOR Chad/RCA (SC resolution 1778 of 25 September 2007), are authorized by the Security Council, but in the respective resolutions, the Security Council also noted the support of the hosted countries for the deployment of the troops; see also Naert, F., *International Law Aspects of the EU’s Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights*, Antwerp, Intersentia, 2009.

152 See Joint Action 2008/124/CFSP of 4 February 2008; the preamble of this Joint Action refers to the UNSCR 1244, which actually seems to be regarded as the legal basis of the mission.
Civilian missions are/have been financed under the budget for CFSP, but military operations cannot be financed from the Union budget. Their operational expenditure is financed by contributions from Member States based on the GNI scale, except where the Council decides otherwise. The Council set up the Athena Mechanism for financing the common costs of military operations. The Lisbon Treaty also provides for a start-up fund available to the High Representative for the purpose of financing preparatory activities for CSDP missions which are not covered by the Union budget. Once set up, the fund should make it easier to prepare effectively and rapidly for action in the context of the CSDP.

Policy framework

According to the Commission, the civilian and military crisis-management tools could be used to deal with the earliest stages of incipient conflict. Though initially designed for crisis management, they could be just as effective in a preventive, “pre-crisis” role. The EU Programme for the Prevention of Violent Conflicts also stated that the Council, assisted by the Secretary-General/High Representative, and the Commission will, (within their areas of competence), examine how to use crisis management capabilities more effectively for preventive purposes.

Military Crisis Management

According to the Helsinki Headline Goal, by 2003 Member States were to be able to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000-60,000 persons capable of the full range of Petersberg tasks. These include humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peace-making. Since the entry into force of the Treaty of Lisbon, conflict prevention and post-conflict stabilisation have been explicitly added to these tasks. By May 2003, the Council

153 A budget of approximately €1 740 million has been foreseen for the period 2007-2013 for CFSP. Although financing under the Union budget is the general rule, in case the budget is not sufficient, art. 41 TEU (previously 28 TEU) offers other possibilities to be decided by the Council: (1) making use of the GNP-key, (2) a unanimous decision otherwise, which could come down to national funding on a “costs lie where they fall” basis.

154 Art. 41 TEU


156 Art. 41.3 TEU


158 See art. 43 TEU (former art. 17.2 TEU).
agreed that the EU had operational capability for the full range of Petersberg Tasks. Nonetheless, there were shortfalls concerning the forces and the strategic capabilities.

The *Military Headline Goal 2010*, endorsed at the European Council in June 2004, reflected the security context after 2001. It focused on the new security threats. Member States committed themselves to being able to respond with rapid and decisive action, applying a fully coherent approach to the whole spectrum of crisis management operations covered by the Treaty of the European Union by 2010.\(^{159}\) The spectrum was extended to include joint disarmament operations and support for third countries in combating terrorism and security sector reform. The concept of EU Battle groups was developed: 1,500 troops (with appropriate support) deployable within 15 days. The aim is to have the capacity to undertake 2 concurrent, single battle-group-size rapid response operations, including the ability to launch these virtually simultaneously.\(^{160}\) Since 1 January 2007, full operational capability has been reached. Yet to date, no EU Battle group has already been employed in support of a CSDP mission. In crisis situations, Member States have preferred to tailor specific force packages on a coalition basis.\(^{161}\) It remains to be seen whether the concept works in practice. It still depends on the rapidity of the political decision-making process. The half-yearly rotation system also entails significant operational challenges.

Civilian Crisis Management

Four priority areas of civilian crisis management were defined at the Feira European Council: police, strengthening the rule of law, strengthening civilian administration and civil protection. Member States were committed to creating by 2003, a pool of 5000 police officers, a pool of judges, prosecutors and civilian administration experts, as well as assessment and intervention teams for deployment at short notice.

In 2004 the European Council approved a new *Action Plan* for civilian aspects of crisis management and also set a *Headline Goal* for civilian crisis management, with objectives to

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\(^{159}\) Headline Goal 2010, Council of the European Union, Doc. 6309/6/04/REV 6, Brussels, 4 May 2004. The initial seeds for the concept of European Battle Groups can be traced back to the Helsinki European Council on 10-11 December 1999: the Presidency conclusions note that special attention will be given to the creation of a rapid reaction capability.

\(^{160}\) Declaration on European Military Capabilities, Military Capability Commitment Conference, 22 November 2004.

\(^{161}\) See Lindstrom, G., ‘Enter the EU Battle Groups, Chaillot Paper, n°97, ISS; February 2007.
be met by 2008.\textsuperscript{162} Two new priority areas for EU civilian crisis management were added: the ability to conduct monitoring missions and the ability to provide support to Special Representatives of the EU.\textsuperscript{163} The EU also needs to be able to contribute to security sector reform and support disarmament, demobilisation and reintegration processes. The link between short-term ESPD operations and medium and long-term Community operations and programmes needs to be improved. Priority was given to the development of rapidly-deployable capabilities of multifunctional "Civilian Response Teams", "packages of experts" tailor-made to suit the needs of the context, and its missions to include conflict prevention.\textsuperscript{164} The Civilian Response Teams became operational in 2006.\textsuperscript{165} Overall, shortcomings in civilian crisis management were identified in issues such as mission support for the planning and conducting of operations, adequate financing, the ability to deploy at short notice and procurement.\textsuperscript{166}

A new Civilian Headline Goal 2010 was approved in 2007 in order to improve the quality of the EU civilian crisis management capability, enhance the availability of Member States to contribute to missions, develop practical and technological instruments in order to support and improve the ability of the EU to plan and conduct missions and identify and exploit synergies inter alia between civilian and military capabilities.\textsuperscript{167}

To overcome the lack of a clear support structure, the Civilian Planning and Conduct Capability was put into place in June 2007 within the Council Secretariat. It established a civilian unified command structure under the political control and strategic direction of the Political and Security Committee and the overall authority of the SG/HR, and led by a civilian operations commander. Subsequently, moves were made in the Council to integrate its

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\textsuperscript{163} For an overview of the capabilities in the six priority areas, see Keukeleire, S. and MacNaughtan, J., o.c., pp. 183-184.

\textsuperscript{164} EU. Doc. 5462/05, 18 January 2005, Civilian Headline Goal 2008 – Proposals by the Council Secretariat on the management of the process during 2005; EU Doc. 10462/05, 23 June 2005, Multifunctional Civilian Crisis Management Resources in integrated format – Civilian Response Teams. Their tasks were envisaged in three areas: assessment and fact-finding missions in a crisis or impending crisis, rapid initial operational presence in the field after a Joint Action is adopted by the Council and support for the instigation of a CCM Mission, reinforcement of existing EU mechanisms for crisis management at national and regional level in response to urgent and distinct need, notably under the auspices of an EUSR function.

\textsuperscript{165} Council Doc. 11013/07, 19 June 2007; in 2009 the CRT concept was revised: this foresees that the CRT pool shall be doubled with a target up to 200 experts with additional fields of expertise, as well as more efficient procedures for decision and deployment (see Council conclusions on ESDP, 17 November 2009).

\textsuperscript{166} Civilian Capabilities Commitment Conference: ministerial declaration, 22 November 2004

\textsuperscript{167} Civilian Capabilities Improvement Conference: ministerial declaration, 19 November 2007
\end{footnotesize}
military and civilian functions and capabilities. Although the European Security Strategy already stressed the particular value of developing operations that integrate both military and civilian capabilities, apart from limited integrated missions like the SSR mission in Guinea-Bissau and DRC, a truly integrated operation has not yet been deployed. In December 2008, the European Council agreed on the creation of the Crisis Management and Planning Directorate within the Council Secretariat in order to integrate the strategic planning of civilian and military operations. Synergies were also being explored in the development and use of civilian and military capabilities. Numerical and precise targets were set to conduct simultaneously a series of civilian and military operations of varying scope.

Implementation: Crisis management operations

In 2003, the EU conducted the first four crisis management operations. Since then, the number of operations has steadily increased to 24 civilian and military operations by April 2010. Fourteen of these are of a purely civilian nature. Seven of them are of a purely military nature. The rest are mixed operations in the field of security sector reform and providing assistance to the AMIS mission. In most cases, military and civilian operations were conducted in the same countries, although not necessarily at the same time.

The growing number of civilian operations and the engagement they require show that the EU has made faster operational progress in the “soft” dimension of crisis management, than in the military one. However, most civilian missions are relatively small, with the exception of the EU Rule of Law mission in Kosovo: with around 2.800 man staff members, this is by far the

169 Council meeting 17 November 2009; related areas include transportation, communication, logistics, protection of deployed personnel and infrastructure, space capabilities and medical support.
170 Inter alia 2 major stabilisation and reconstruction operations, with a suitable civilian component, supported by a maximum of 10,000 man for at least 2 years; 2 rapid response operations of limited duration, using inter alia de battle groups; a civilian-military humanitarian assistance operation lasting up to 90 days and around a dozen of ESDP civilian missions of varying formats, inter alia in a rapid reaction situation, including a major mission which could last several years (see Council, Declaration on strengthening capabilities, 11 December 2008; endorsed by the European Council, Presidency Conclusions, 11-12 December 2008 ).
171 EU Police Mission in Bosnia, the Concordia military operation in the former Yugoslav Republic of Macedonia and its follow up Proxima police mission and the Artemis military operation in DRC.
173 The police mission in Bosnia and Herzegovina (EUPM) was followed by the military operation (EUFOR Althea); the military operation in the FYROM (Concordia) was followed by a police mission (EUPOL Proxima) and then followed by a Police advisory team (EUPAT); the military operation in the DRC (Artemis) was followed by a police mission (EUPOL Kinshasa) and a Security Sector Reform mission (EUSEC). In Darfur the mission was a mixed military-civilian mission (AMIS EU Supporting mission), from the start.
EU’s largest civilian mission ever. Whilst initially military missions were relatively small, their size and difficulty have been constantly increasing since then. In general, however, missions remain small and most take place in the post-conflict phase.

Some duplication has been reported: sometimes the Commission already has long-term cooperation or assistance programs underway in situ. Nevertheless, solutions are being worked out to improve coherence, including integrated civilian–military missions (e.g. EU SSR Guinea-Bissau) and “double-hatting”, which is having the same person head a mission and a Delegation. The setting-up of the EEAS provides the opportunity to increase further coherence.

The EU is more active in its immediate neighbourhood than in the rest of the world. The EUFOR RDC mission deployed in 2006 to support MONUC, during the period encompassing the elections in DR Congo, only numbered around 1,000 soldiers, operating in Kinshasa. It constituted a last resort resource to back up the Congolese police and army and MONUC. The EU did not intervene in Darfur for years. When the AU did opt for an operation, Europe’s approach was to support this operation. Only in 2007 did it decide to establish the EUFOR TCHAD/RCA mission, which took a long time to become operational.

**Evaluation**

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174 While Operation Concordia was relatively small (400 forces), Artemis was already larger (1,800 troops) and more challenging given the fact that it was an autonomous mission, Althea is a large mission (7,000 troops, reduced in 2007 to be around 2,000 now). EUFOR CHAD/RCA involved around 3,700 troops. Cf. Proceedings seminar “Able and willing? Does Europe have the means to stage a military operation if it wants to?” IRRI KIIB, 16 March 2004; cf. Ruys, T., Background paper on EU Crisis Management Operations, Institute for International Law Leuven, May 2007.

175 This was the case for example in Georgia when the rule of law mission took place.

176 According to the final proposal, it shall be made up of a central administration (including a number of geographic as well as multilateral and thematic desks that will coordinate with the relevant services of the Commission and the General Secretariat of the Council and the crisis management and planning directorate, the civilian planning and conduct capability, he EU Military Staff and the EU Situation Centre) and of the delegations to third countries and international organisations; see Proposal for a Council decision establishing the organisation and functioning of the EEAS, 29 June 2010 (11507/10).


179 By UN SC Resolution 1778 of 25 September 2007 (S/RES/1778/2007) the EU was authorised to deploy its forces in Central African Republic and Chad for a period of one year from the time of its declaration of Initial Operating Capability; the operation reached initial operating capability on 15 March 2008 after a long force generation process.
Both the Military and the Civilian Headline Goal stressed that the EU must be able to act with preventive action before a crisis occurs. In practice, because of the cumbersome political decision-making process for crisis response, by the time the decision concerning the military operation is taken and the troops are in place, the crisis has already broken out. Civilian operations are preferred for conflict prevention. Most past and ongoing EU missions have taken place either in acute crisis situations or in post-conflict situations. This was not the case for the rule of law mission in Georgia (EUIUST Themis), the rule of law mission in Kosovo (EULEX KOSOVO) and the mission in support of security sector reform in Guinea-Bissau (EU SSR Guinea-Bissau). Nevertheless, objectives other than conflict prevention also motivated these operations.

Decisions to launch an EU operation are not easily reached. Apart from the humanitarian grounds, other issues such as the international response to the crisis, the domestic reaction, the commitment to a certain country or the geopolitical importance of a country, (etc.), determine whether an operation takes place and in which form. This means that operations do not always take place where they might be most needed from the humanitarian perspective, nor in the form best suited for their effectiveness. The need to create distinct EU operations where the UN is already active, (e.g. in the DRC in 2003 (Artemis) and 2006 (EUFOR DRC) instead of participating in MONUC), should also be questioned. A debate to set the EU priorities amongst (potential) conflicts, in particular taking into account the responsibility to protect, would be welcome.

181 Interview with an official of the Council of the European Union
183 E.g. the decision to launch a very small rule of law mission in Georgia in 2004 was formulated by Estonia and initiated by Lithuania, and considered important as symbolic gesture to support the transition process, see Kurowska, X., “Beyond the Balkans, but still in civilian uniform: Eujust Themis to Georgia”, CFSP Forum, 4 (3), 8-11.
184 See also resolution of European Parliament of 10 March 2010 on the implementation of the European Security Strategy and the Common Security and Defence Policy (P7_TA(2010)0061)
A robust and systematic lessons learned-process has been identified as a concern for immediate action. Mechanisms are to be devised to evaluate the impact of earlier missions and their effectiveness.

**Stability Instrument**

In 2001, a funding mechanism - the Rapid Reaction Mechanism - was created to allow the Community to respond in a rapid, efficient and flexible manner, to crisis situations. Initially, during 2001 and early 2002, the Rapid Reaction Mechanism mainly focused on post-conflict stabilisation efforts. Thereafter, Rapid Reaction Mechanism programmes broadened in scope, adding activities linked to conflict prevention and the fight against terrorism. As of 1 January 2007 the Rapid Reaction Mechanism was replaced by the Instrument for Stability.

**Legal and policy framework**

The Stability Instrument aims, on the one hand, to deliver assistance that allows a timely response in situations of political crisis, violent conflict or disasters. It provides for rapid funding decisions for up to 18 to 24 months, allowing time to secure follow-up funding from the long-term geographic budget lines. On the other hand, the instrument aims to provide long-term assistance that addresses global and trans-regional threats to stability.

The crisis response actions can include support for peace building, fostering stability during political transition, safeguarding human rights and democratic processes. Because they are developed in response to situations of (emerging) crisis, they can not be programmed in advance. Importantly, the measures may also address situations in which the EU has suspended cooperation agreements with a third country. For the longer term actions, the Commission identified the following priorities: (1) the proliferation of weapons of mass destruction, (2) the threats posed by trafficking, terrorism and organised crime and (3)

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185 See The Civilian Headline Goal 2010
186 Council Regulation No. 381/2001 of 26 February 2001; for a list of the programs funded see ec.europa.eu/external_relations/cfsp/cpcm/rrm.
187 Council Regulation No. 1717/2006 of 15 November 2006; The regulation establishing an instrument for stability is based on former art. 179 (1) and 181a of the EC Treaty (currently art. 209 and 212 TFEU). Hence it is based under the legal basis for development cooperation and economic, financial and technical cooperation in coherence with the development policy. The main objective of the instrument should therefore be the eradication of poverty. Actions to combat weapons of mass destruction, terrorism and organised crime do not directly contribute to that end. However, see Case C-91/05, Commission v. Council, judgment of 20 May 2008, where the Court has taken a broad approach to the scope of EC Development Cooperation.
capacity-building within the EU and the international community for effective crisis response.\textsuperscript{188} In a second stage, the Commission identified as an additional priority the threats to critical infrastructure and maritime routes.\textsuperscript{189}

The financial thresholds of percentages that can be allocated to the long-term actions have been inscribed in the regulation:\textsuperscript{190} this can be no more than 27 percent of the total financial envelope. The instrument should primarily be an instrument of crisis response.

A budget of €2 062 million has been foreseen for the period 2007-2013, of which €1 487 million for the short-term component and €484 million for the long-term component. In November 2008 the budget for the short-term component was decreased by €240 million due to a reallocation to the Food Facility.

\textit{Implementation}

The crisis response component of the instrument is under the direct responsibility of the DG Relex of the European Commission. Programmes are often developed by the collaboration of various actors within the EU, with an increased involvement of the Delegations, the international community and civil society. In many cases the Delegations are entrusted with the in-country project-management. Long-term security measures are programmed by DG Relex, but managed under DG Aidco. The crisis preparedness component is managed centrally, by DG Relex.\textsuperscript{191}

Once the EEAS has been established, crisis response actions will fall under the responsibility of the High Representative and the EEAS. The Commission shall be responsible for their financial implementation under the authority of the High Representative in her capacity as Vice-President of the Commission. The Commission department responsible for this implementation shall be co-located with the EEAS. For the long-term actions, the EEAS shall

\textsuperscript{188} European Commission, The instrument for stability, Strategy Paper 2007-2011

\textsuperscript{189} They have been included in the indicative programme for 2009-2011.

\textsuperscript{190} See Art. 24 of the Regulation No. 1717/2006

prepare the decisions regarding the programming, planning and implementation to be taken by the Commission.\footnote{Proposal for a Council decision establishing the organisation and functioning of the EEAS, 29 June 2010 (11507/10).}

In 2007 and 2008, around 76 percent of the money available was allocated to the crisis response component.\footnote{See Report from the Commission to the Council and the European Parliament, Annual Report from the European Commission on the Instrument for Stability in 2007, COM (2008) 181 final, 11 April 2008 and in 2008, COM (2009) 341 final, 9 July 2009.} Geographically, most of the crisis response money in 2007 and 2008 was spent in Sub-Saharan Africa (29%), Asia (19%), the Middle East (12%), Kosovo and Georgia. A broad range of measures was supported.\footnote{Short-term advise to develop and kick-start security sector reform (CAR, DRC, Guinea-Bissau, Lebanon, Palestine, Timor-Leste), measures in areas where EU-missions were deployed (Georgia, Kosovo, DRC, Afghanistan, Chad, Palestine), support to regional peace-building capacity (AU – AMISOM Somalia, AU-UN Mediation in Darfur), Rule of Law and transitional justice (Afghanistan, Kyrgyzstan, Colombia, Haiti, Sierra Leone, Solomon Islands), support to interim administrations (ICO Kosovo), conflict resolution and reconciliation (Sri Lanka, Thailand, Colombia, Uganda, Zimbabwe, Peru, Palestine, Burma, Nepal), post-conflict and -disaster recovery programmes and needs assessments (Bangladesh, Nicaragua, Lebanon, Peru), support to displaced populations (Lebanon, Syria), and conflict resources (dedicated facility): see Annual Report from the European Commission on the Instrument for Stability in 2008, o.c.} Support of EU and UN missions represents an important part of crisis response. Most actions are designed to open the way for long-term programmes under another instrument (EDF, ENPI, DCI, EIDHR).

Concerning the longer term actions, the EU is supporting various actors in the fight against proliferation of weapons of mass destruction, including chemical, nuclear and biological materials or agents, terrorism and trafficking. In geographical terms, the projects are taking place in Afghanistan (for tackling drugs trafficking), Africa (the fight against the illicit accumulation and trafficking of firearms, organised crime and counter-terrorism) and in Latin America and the Caribbean (the prevention and diversion of the drugs precursors). The actions relating to chemical, nuclear and biological materials or agents mainly focus on the former Soviet Union, but other countries are also benefiting from support.\footnote{Western Balkans, Albania, Turkey, Morocco, Tunisia, Egypt, UAE, China and Thailand are benefitting from support.}

As far as the crisis-preparedness component is concerned, in 2007 the Peace-building Partnership was launched, aimed at mobilising and consolidating civilian expertise for peace-building activities.\footnote{See Annual Action Programmes under the Peacebuilding Partnership;} It has built up a network of specialist NGOs with expertise in conflict prevention, crisis management and peace building and supports the strengthening of their capacities. It also supports the strengthening of the cooperation between NGOs and other...
regional and international organisations, such as the UN, and relevant agencies in the Member States. However, the focus of the Peace-building Partnership is rather unclear. It is balancing between support for short-term crisis response capacities and the longer-term peace building and conflict prevention perspective. While in the Stability Instrument, this assistance falls under the perspective of longer-term peace building and conflict prevention., in the Strategy Paper and Indicative Programmes the objectives are broader and suggest support for short-term crisis response capacities.

**Evaluation**

This financial instrument allows to gain time, allowing longer-term structural prevention to work, or to fill the gaps between operational and structural prevention measures. Hence it facilitates a targeted prevention policy that integrates both operational and structural elements. However, the term ‘conflict prevention’ as an area of support has been deliberately omitted, at the instigation of the Council, who considered that this activity fell under its authority. To the Council, the Stability Instrument is mainly an instrument of short-term crisis management.

This stance raises concern, since conflict prevention requires a specific sensitivity. Measures such as the promotion of democracy may prevent conflict, but may also have no impact or even a negative impact, if the relationship between the different variables is not carefully studied. Concern has also been expressed about the long-term financing of conflict prevention activities. For example, the Stability Instrument repealed Regulation No. 1724/2001 of the European Parliament and of the Council of 23 July 2001 concerning action against anti-personnel landmines in developing countries. Thus, the main funds for supporting mine action should come from the geographic instruments, such as the Development Cooperation Instrument or in the case of crisis situation the humanitarian aid instrument. Indeed, a study concerning programming funds conducted amongst the relevant Commission services showed that funds decreased by one third the year after the repeal. In order to counter this downward trend, the Commission committed itself to strengthening

198 Interview with officials at the Council and the Commission. Nonetheless, the activities financed under the Stability Instrument are included in the Council’s annual report on the implementation of the EU Programme for the Prevention of violent conflict.
199 Interview with Commission official.
200 Funding of mine action under the Instrument for Stability is only possible in response to situations of crisis or emerging crisis under the Instrument’s short-term component (article 3(2)(h)).
201 From 69,4 million euro to 40,5 million euro in 2007.
internal coordination in order to ensure that mine action is given proper attention, and in particular that it is integrated into development policies.²⁰² Another example concerns the fight against the proliferation of small arms and light weapons (SALW). A maximum of 7% of the financial envelope of the long-term component can be allocated to measures including the strengthening of the authorities involved in the fight against trafficking inter alia of firearms and explosive materials.²⁰³ The fight against the proliferation of SALW as such is not mentioned as a short-term crisis response activity.²⁰⁴ While the fight against the proliferation of SALW and explosive materials has been identified as one of the most important challenges to be tackled and has been included as a priority area for action for the long-term component of the Stability Instrument, the indicative budget reserved for action remains relatively small.²⁰⁵

No evaluation could yet be found of the impact and effectiveness of the actions undertaken under the crisis response and long-term component of the Instrument for Stability. The Commission announced an evaluation on the basis of measures adopted in 2007 and 2008 insofar as they have advanced enough to allow for useful analysis.²⁰⁶

**Structural Prevention**

Structural prevention refers to structural measures to decrease the risk of conflict in particular states or regions. It emphasizes that the root sources of the conflict, including underlying


²⁰³ See Art. 24 of the Regulation No. 1717/2006; small arms include more arms than firearms and explosive materials.

²⁰⁴ The use of short-term funds for SALW-activities seems also to have been complicated by the ‘ECOWAS court case’ between the Commission and the Council (Case C-91/05, Commission v. Council, judgment of 20 May 2008). Now that the case has been resolved, it seems more likely that both long and short-term components will be used to fund SALW-activities. See also Report of Bromley, M., on the Workshop ‘Conflict Prevention and the Fight against Illicit Trafficking of Small Arms and Light Weapons’, organised by the Madariaga – College of Europe Foundation and the Folke Bernadotte Academy on 16 October 2008.


conflicts of interest and relationships, must be tackled, and that these sources can only be seriously tackled by changing the structures under which a particular space operates.\textsuperscript{207}

The conflict prevention policy of the EU stresses that the root causes of conflict need to be addressed at the earliest possible stage, and in an integrated manner; conflict prevention also needs to be mainstreamed in EU policies and instruments, particularly in the field of development cooperation and other external assistance.\textsuperscript{208} Development policy and other cooperation programs are considered to be the most powerful instruments at the EU’s disposal for treating the root causes of conflict. Local ownership and capacity are emphasised. Whenever possible, the EU needs to align itself with national frameworks.

\textit{Legal and policy framework}

Art. 208 TFEU gives the EU the power to conduct a policy in the field of development cooperation.\textsuperscript{209} Art. 212 TFEU empowers the EU to adopt economic, financial and technical cooperation measures with third countries, other than developing countries.\textsuperscript{210} Art. 217 TFEU empowers the EU to conclude association agreements with third states.\textsuperscript{211}

These policies are made possible through a range of financial instruments.\textsuperscript{212} For its development policy, the EU draws on two different funds: development cooperation with the African, Caribbean and Pacific (ACP) countries and overseas territories is managed through the Cotonou Agreement and financed through the European Development Fund (EDF).\textsuperscript{213} Development cooperation with the rest of the world’s developing countries occurs via the Development Cooperation Instrument (DCI). Assistance can be totally or partially suspended

\begin{footnotesize}
\begin{enumerate}
\item See \textit{inter alia} Ransbotham, O., Woodhouse, T. and Miall, H, \textit{Contemporary Conflict Resolution}, Cambridge, Cambridge University Press, 2005 (who call this ‘deep prevention’).
\item Communication on Conflict Prevention (2001) and EU programme for the prevention of violent conflicts (2001)
\item Before the entry into force of the Treaty of Lisbon: art. 177 EC Treaty
\item Before the entry into force of the Treaty of Lisbon: art. 181a EC Treaty
\item Before the entry into force of the Treaty of Lisbon: art. 310 EC Treaty
\item Partnership Agreement between ACP and EC, signed in Cotonou on 23 June 2000 and revised on 25 June 2005. The revised Agreement entered into force on 1 July 2008. A second revision has been concluded on 19 March 2010, but still needs to be ratified by the signatory parties. The EDF is funded by Member States outside the EU budget. It also implies that Parliament’s control on EDF is very limited.
\end{enumerate}
\end{footnotesize}
in the event that democracy, human rights and rule of law are not respected or conditions for reform are not met. None of the financial instruments mention conflict prevention as one of the measures to be supported. Nevertheless, related measures such as reconciliation, confidence-building, promotion of dialogue, the rule of law and good governance, social rights and human rights and supporting democratisation and institutional reform are mentioned.

Agreements are concluded with each country receiving assistance. Since 1992, the EU has included in all its agreements with third countries a clause defining respect for human rights and democracy as 'essential elements' in the EU’s relationship, also implying that, as a last resort, assistance can be totally or partially suspended if they are not respected. This approach has been further developed in the Cotonou agreement which added good governance as a ‘fundamental element’. Serious cases of corruption constitute a violation of that element and may eventually, as a measure of last resort, lead to the suspension of the agreement. The Cotonou Agreement also contains an explicit clause that parties are to pursue a policy of peace building and conflict prevention and resolution, but this clause is not ‘an essential’ or ‘fundamental’ element’ of the agreement.

Thereafter strategy papers are drawn up on a country or regional basis. These constitute the strategic planning and programming instrument. They consider the political and security situation in a broad context, including the regional dimension, the human rights situation and relevant cultural and social factors with direct impact on the political process. If the country has not reached a situation of structural stability, or shows signs of becoming unstable, more attention should be paid to the analysis of security and stability measures including conflict prevention and management, post-conflict strategies and the introduction of the rule of law and democracy. Action programmes are then drawn up on the basis of the strategy papers.

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214 See Art. 21 of Regulation 1085/2006 establishing the Instrument of Pre-accession; Art. 28 of Regulation 1638/2006 establishing the European Neighbourhood and Partnership Instrument; Art. 37 of Regulation 1905/2006 establishing a financial instrument for development cooperation.

215 See Art. 2 of Regulation 1085/2006 establishing the Instrument of Pre-accession; Art. 2 of Regulation 1638/2006 establishing the European Neighbourhood and Partnership Instrument; Art. 3 of Regulation 1905/2006 establishing a financial instrument for development cooperation.

216 Art. 9 and 97 Cotonou Agreement

217 Art. 11 Cotonou Agreement

Moving from general, abstract statements on conflict prevention in the legal and policy documents towards viable, context-specific and timely preventive measures is not an easy process. To improve the focus on conflict prevention and state fragility within the Commission, horizontal units dealing with these issues have been set up in DG External Relations, DG Development and DG EuropeAid. Their role is to provide thematic support to field and headquarters staff, and to ensure coherence in the mainstreaming of good practice. Their support role has become more important since delegations have gained increased responsibility. The Interservice Quality Group of the Commission has, for example, provided the guidelines or programming fiche on conflict prevention to assist the officials drafting Country Strategy Papers and making decisions on programming.

The future EEAS will absorb the main bulk of DG External Relations responsible for development and the neighbourhood policy, as well as the country desks of the DG Development.\(^{219}\) It will prepare overall aid allocations and strategies for countries and regions, under the responsibility of the development commissioner or the commissioner responsible for the neighbourhood policy. Decisions need to be endorsed by the Commission. Coherence between foreign and development policy is likely to improve.\(^{220}\) However, concern has also been expressed that uniting both policies might make development policy subordinate to foreign policy, and cause it to lose its focus on the development goals.\(^{221}\) The objectives of both policies are different and may even conflict. Neither is it clear how cross-cutting issues such as conflict prevention might inform country programmes. Nevertheless, the EEAS would include a unit to deal with conflict prevention and crisis management.

**Pre-Accession Policy**

In 1999, the EU launched the Stabilization and Association Process for the Balkans.\(^{222}\) This Process is based on a progressive partnership with each country, in which the EU offers a mixture of trade concessions and economic and financial assistance through the Instrument for Pre-Accession, and contractual relationships through the Stabilization and Association Agreements (*further referred to as the SAA*). The ratification of the SAA launches the

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\(^{219}\) Proposal for a Council decision establishing the organisation and functioning of the EEAS, 29 June 2010 (11507/10). Thematic experts of DG Development will remain at DG Development

\(^{220}\) Proposal for a Council decision establishing the organisation and functioning of the EEAS, 29 June 2010 (11507/10).


\(^{222}\) They cover Croatia, Former Yugoslav Republic of Macedonia, Albania, Serbia, Montenegro and Bosnia-Herzegovina.
candidate country on a process ultimately aimed at accession to the EU. The SAA covers areas such as the four freedoms, including the creation of a free trade area, the approximation of legislation to the EU acquis, political dialogue and cooperation in all areas of EU policies. The EU has gone beyond the conditionality it applied to the countries of Central and Eastern Europe and has added further conditions such as a commitment to good neighbourly relations and a readiness to engage in cross-border cooperation with neighbouring countries, concerning issues such as refugee return and combating organised crime, corruption, money laundering, illegal migration and human trafficking, small arms and light weapons, as well as illicit drugs. The regional dimension in particular is more important here, since these countries are bound together by historical, ethnic, political and economic ties. Compliance is requested with obligations under the various peace agreements and with the ICTY and commitments on protecting minorities and on facilitating the return of refugees and displaced persons and the protection of their rights.

The EU also applied further conditionality for Turkey in the framework of its accession policy. Conditions were set regarding the state of democracy, the rule of law, the role of the military and respect for human rights, minority rights and fundamental freedoms.

Assistance on the basis of the Pre-Accession instrument is designed for the same reform priorities. A budget of approximately €7 580 million has been foreseen for the period 2007-2011. For example, 75% of the budget foreseen for the Balkans for the period 2007-2011 is destined for institution building and transition assistance, 7.6% for cross-border cooperation and 9.3% for regional development (only for Croatia and FYROM).

Implementation

The SAAs with Croatia, FYROM, Albania and Montenegro have entered into force. The SAAs with the other countries of the Balkan have been signed, but have not yet entered into force.

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225 The SAA with FYROM was signed on 9 April 2001 and entered into force on 1/4/2004; the SAA with Croatia was signed on 29 October 2001 and entered into force on 1/2/2005; the SAA with Albania was signed on 12 June 2006 and entered into force on 1 April 2009; the SAA with Montenegro was signed on 15 October 2007 and entered into force on 1 May 2010.
Croatia, FYROM and Turkey have the status of candidate-countries and accessions negotiations are ongoing. The Accession Partnerships with Croatia, FYROM and Turkey were updated in 2008, to identify the key priorities for reform in order to further integrate with the EU. The European Partnerships with the other countries of the Balkan were updated in 2007 and 2008, to identify the key priorities for action.

The promise of future accession to the EU in the case of fulfilment of the set conditions has been effective in fostering structural change in the Balkans and in Turkey, as it was before in Central and Eastern Europe. A list of reforms has been adopted, but also the political culture has slowly changed. This is illustrated by the crisis in Macedonia in 2001, during which NATO and EU mediators were able to broker an agreement. This is also illustrated by the fact that in 2004, the prospect of EU membership made Turkey push Turkish Cypriots to accept the UN-proposed ‘Annan Plan’ for the resolution of the Cyprus issue in order to facilitate her own accession. It also stimulated progress on observance of human rights in Turkey, although this remains an important issue of concern. The cooperation with the ICTY has also improved.

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226 The SAA with Bosnia-Herzegovina was signed on 16 June 2008. The SAA with Serbia was signed on 29 April 2008; on June 14 2010 the Council decided to proceed with the ratification process, after the Netherlands dropped objections that Serbia was not cooperating with the ICTY.

227 The European Council of June 2004 granted the status of candidate-country to Croatia, the European Council of December 2005 to FYROM. Accession negotiations with Croatia were opened in October 2005, with FYROM in January 2006. The European Council of December 1999 granted already the status of candidate-country to Turkey. Accession negotiations were opened in October 2005.


233 E.g. the death penalty has been abolished, the state security courts have been dismantled, and cultural and linguistic rights broadened for the country’s minorities.

234 See report of Mr Brammertz, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to the Security Council, June 18 2010 on Serbia’s and Croatia’s cooperation with the court. The report recognizes some improvements, but is still very critical about the cooperation of Croatia and Serbia. Problems of access for the ICTY to important documents in Croatia have still not been resolved and as far as Serbia is concerned, the indictees Mladic and Hadzic remain still at large. The authorities of the Republika Srpska have also repeatedly failed to take action to have Stankovic re-arrested after his escape from prison in 2007.
Nevertheless, mixed messages and double standards on the part of the EU seem to have slowed down the process of change and the pace of reform set in motion by conditionality. Since the rejection of the Constitution and the debate of its ‘absorption capacity’ doubts have arisen about the promise of accession. Reduction of membership prospects makes the political elite and the people lose interest in the EU and reduces its influence. For example, Turkey in its role in the ongoing negotiations on the Cyprus issue, although expressing public support, is far more reluctant than before.235 Neither has the EU applied conditionality evenly throughout the region. For example, the way in which the SAA was signed with Serbia gave the impression that the EU was fudging its ICTY conditionality and being driven by short-term strategic considerations.236

Evaluation

The overall risk of conflict in the region has diminished, but has not disappeared. Borders in the Balkans are far from secure, and the unrest in one part is of great concern to neighbouring countries.237 The EU still has a large operational presence in the region.238 The question of Kosovo’s independence has not been fully resolved.239 The lack of consensus amongst EU Member States on the status of Kosovo has also had an impact on the ability of the EU mission (Eulex) to deliver its mandate.240 The fact that Albanians in Kosovo have their own state, stirs up nationalistic feelings across its borders, in particular amongst the Albanians in Macedonia. Bosnia Herzegovina is still a protectorate.241 There has been little progress in addressing the priority of more functional and sustainable state structures in Bosnia

235 From the last Turkey 2009 Progress Report of the Commission it appears that Turkey has made no progress towards fully implementing the additional protocol to the Association Agreement and has kept its ports closed to the vessels of the Republic of Cyprus. It also has made no progress on normalising its bilateral relations with Cyprus.
236 Despite improved cooperation, Serbia has yet to arrest the tribunal’s most wanted suspect, general Mladic, or fellow indicted suspect Hadzic.
237 On the different border disputes see Progress Reports on candidate and potential candidate countries of the European Commission.
238 Currently the following missions are still ongoing: On 1 January 2003 an EU Police Mission took over from the UN police force in Bosnia-Herzegovina. On 2 December 2004 a European force (Eufor) took over from the Nato troops under Operation Althea in Bosnia-Herzegovina. In 2008 an ESDP mission in the area of the rule of law was launched in Kosovo.
239 Serbia continues to contest Kosovo’s declaration of independence and pursued legal and diplomatic measures to this effect. On 22 July 2010 the International Court of Justice ruled in an advisory opinion that Kosovo’s declaration of independence is not in violation of any applicable rule of international law.
240 Only 22 EU member states have recognised Kosovo. The European Parliament has called in a resolution of 8 July 2010 on all EU Member States to recognise Kosovo’s independence from Serbia (P7_TA(2010)0281).
241 The Office of the High Representative (OHR), an international presence under UN auspices, has been in place since 1995. One of the tasks of the Special Representative of the EU in Bosnia-Herzegovina is to support the planning of a reinforced Union presence in such a way that it can offer Bosnia-Herzegovina sustained and effective support after the envisaged closure of the Office of the High Representative.
Herzegovina. Nationalistic rhetoric by political leaders challenging the Dayton Peace Agreement and the constitutional order remained frequent.

Most states do not function well despite making steady progress. They face problems of poor governance, corruption and organized crime. Furthermore, there is still the problem of impunity in the region for committed war crimes and crimes against humanity. The number of untried cases remains high. Despite regional mechanisms for judicial cooperation, the key states (including Bosnia-Herzegovina, Croatia and Serbia) all prohibit the extradition of their citizens to face trial in other countries.

An evaluation would be welcome, to study the extent to which the root causes of conflict have been effectively addressed, and the effectiveness of these reforms in preventing conflict.

Neighbourhood Policy
The European Neighbourhood Policy (ENP) was developed in 2003-2004, with the objective of promoting security, stability and prosperity among the new neighbours of the enlarged EU, by offering tailor-made financial assistance to support implementation of agreed political and economic reforms, but without EU membership at the end. It builds on existing legal agreements with the countries in question: Association Agreements concluded in the framework of the Euro-Mediterranean Partnership, and Partnership and Cooperation Agreements concluded at the end of the 90s with the New Independent States of Eastern Europe, the Southern Caucuses, Central Asia and Russia. The ENP covers Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

Funding for the activities related to the European Neighbourhood Policy comes primarily from the European Neighbourhood and Partnership Instrument (ENPI). The budget for the

244 Until 31 December 2006, EC assistance to the countries of the European Neighbourhood Policy was provided under various geographical programmes including TACIS and MEDA (apart from thematic programmes such as the European Initiative for Democracy and Human Rights). From 1 January 2007 onwards, as part of the reform
ENPI amounts to €11 181 million for the period 2007-2013, of which a minimum of 95% is for national and multi-country programmes, and a maximum of 5% is for cross-border cooperation programmes.\textsuperscript{245}

\textit{Implementation}

The ENP is implemented through bilateral action plans. These are country-specific, tailor-made political documents, which jointly define an agenda of political and economic structural reforms. The incentives on offer in return for progress in relevant reforms, are greater integration into European programmes and networks, increased assistance and enhanced market access. The implementation of the action plans is monitored through sub-committees with each country.

Action plans have been concluded with Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, Palestinian Territory, Tunisia and Ukraine. There are no association agreements and thus no action plans yet with Belarus and Libya.\textsuperscript{246} The association agreement with Syria still needs to be signed before an action plan can be considered.\textsuperscript{247} An association agreement with Algeria has entered into force, but as yet there is no action plan.\textsuperscript{248}

In some of the action plans, there is reference to the conflict situations in the relevant country, but not in all.\textsuperscript{249} They all mention reform priorities in the area of democracy, the rule of law and human rights, in more or less specific terms depending on the country, but the action plans fail to define clear benchmarks with a timeline for implementation.

\textsuperscript{245} For the breakdown per country, see ‘individual country programs’, www.ec.europa.eu/world/enp/funding_en.htm
\textsuperscript{246} Negotiations on the Framework Agreement with Libya started in November 2008.
\textsuperscript{247} On 14 December 2008 the EU and Syria initialled a revised version of the association agreement, four years after completion of a deal which EU member states refused to sign because political circumstances were so far not right for its signature and ratification. The EU formally agreed to proceed with the signature of the Association Agreement on 27 October 2009. Syria's agreement to sign is pending.
\textsuperscript{248} A roadmap for the implementation of the Association Agreement was agreed by the Association Committee in September 2008.
\textsuperscript{249} E.g. in the action plan of Morocco the conflict concerning the Western Sahara is not mentioned. In the action plans of Armenia and Azerbaijan the wording of the conflict concerning Nagorny Karabakh is different: in the action plan of Azerbaijan one of the actions for a peaceful resolution of the conflict is to intensify the EU dialogue with the states concerned, while in the action plan of Armenia the EU dialogues is with the parties concerned; see also Mirimanova, N., ‘Civil Society Building Peace in the European Neighbourhood: towards a new framework for joining forces with the EU’, Microcon Policy Working Paper 10, March 2010.
Most of the neighbourhood countries have made some progress in political and economic reforms, but at a different pace.\textsuperscript{250} In particular in North Africa and the Middle East political reforms have not been forthcoming.\textsuperscript{251} The implementation of human rights and fundamental freedoms conventions and protocols still raises concern. Little progress has been made on good governance.

The EU has never envisaged sanctions against states that do not respect the action plans, but the kind of incentives the ENP currently offers also seem to be too little to provide any leverage against the relevant states. The EU refuses to consider ENP as a preparation for EU accession, but even free trade and free movement of workers are not a reality. Neither does the ENP specify which rewards will flow from which kind of reforms: the reform priorities are not linked to the benefits of the ENP on offer. As far as the allocation of funding is concerned, the ENPI foresees the Commission taking into account inter alia the progress towards agreed objectives, including on governance and on reform,\textsuperscript{252} but how this will be put in practice, does not appear clear cut.\textsuperscript{253} A first step in the direction of a more clear link, has been the creation of the Governance Facility. This allows top-up allocations in response to governance reforms.\textsuperscript{254}

In its 2007 Communication the Commission pleaded for more incentives, such as free trade agreements, enhanced mobility of people, (visa-facilitation and the cautious “potential opening up of the labour markets in so far this is to the mutual advantage”) and more cooperation in the field of energy and transport.\textsuperscript{255} The lending mandate of the European Investment Bank governing its activities in the neighbourhood was also broadened in size and

\textsuperscript{251} See also Youngs, R., Europe’s flawed approach to Arab democracy, Center for European Reform, October 2006. However, some electoral legislation passed in recent years improved the quality of elections, notably in Morocco and Lebanon.
\textsuperscript{252} See art. 7 of Regulation 1638/2006
\textsuperscript{253} E.g. the ‘commitment to advancing the implementation of the action plan’ is mentioned as an explanation for the increase of the budget 2011-2013 for Egypt and Jordan. For Syria and Libanon, however, the increase is justified to give support to advance the reform agenda, thus \textit{a priori} (see National Indicative Programs 2011-2013).
\textsuperscript{254} Governance reform can still be something different from progress in democratic change and human rights. Nevertheless, it is interpreted in that sense by the European Parliament, see resolution of 15 November 2007 on strengthening the European Neighbourhood Policy (P6_TA(2007)0538).
After Poland and Sweden had called for deeper bilateral and multilateral cooperation between the EU and its Eastern neighbours and following the conflict in Georgia in August 2008, the Commission prepared a proposal for an Eastern Partnership. This foresees a deepening of the EU’s relations with Armenia, Azerbaijan, Georgia, Moldova, Ukraine and potentially Belarus (depending on political progress) within the ENP, through free trade deals, visa liberalisation, closer energy ties, and additional funds as a reward for making democratic and free market reforms. Progress in democratisation, in establishing the rule of law and in meeting human rights obligations will be a precondition for the deepening bilateral relations with the EU. More stringent Association Agreements will be concluded with each country, to replace the current Partnership and Cooperation Agreements. The action plans will be replaced by more precise documents, incorporating benchmarks. A multilateral framework will also be created to foster links between the States, with attention inter alia to conflict prevention and confidence-building. On 7 May 2009 the Eastern Partnership was formally launched. The Commission earmarked €600 million of the ENPI for the Eastern Partnership for the period 2010-2013. Whether this Partnership will have more leverage on the states in question remains to be seen: the strongest incentives such as access to the EU market and visa liberalisation are still quite distant prospects for most countries.

For the Mediterranean region, the Union for the Mediterranean was launched on 13 July 2008. This aims to infuse new vitality into the Euro-Mediterranean Partnership and is essentially a forum for intergovernmental cooperation. It envisages cooperation (regional and

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256 See www.eib.org.
257 Eastern Partnership, 26 May 2008: they pushed for a visa-free regime, a free trade area, increased efforts towards people-to-people contacts, as well as a reform agenda based on similar benchmarks to those of the European Union’s integration process.
259 A study will be launched on the costs and benefits with regard to labour mobility.
260 The negotiations of the first Association Agreement between EU and Ukraine are ongoing. An EU-Ukraine Association Agenda was adopted in November 2009. This Agenda replaces the former Action Plan and will prepare for and facilitate the entry into force of the new Agreement. The EU also launched similar negotiations with Moldova in January 2010.
261 Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009.
262 European Commission, Vademecum on financing in the frame of the Eastern Partnership, 16 December 2009. The resources will be used for mainly three purposes: comprehensive institution building programs, pilot regional development programs and supporting the Eastern Partnership multilateral dimension.
263 However, negotiations on a free trade area are ongoing with Ukraine and preparations are underway to allow for opening negotiations with Moldova, Georgia and Armenia. A dialogue on visa liberalisation is underway with Ukraine and another is set to start with Moldova, see Communication from the Commission ‘Taking stock of the European Neighbourhood Policy’, 12 May 2010, COM (2010) 207.
sub-regional projects) in key areas of common interest (energy, education, trade, business development, pollution control and migration), with the aim of improving the overall political climate in the region. Areas such as conflict prevention and resolution or political reform and democratisation are not being mentioned. Nevertheless, collaboration on various projects may provide a helpful platform to aid rapprochement in the Mediterranean region. Indeed, it may also give the countries involved more room for manoeuvre: countries such as Algeria and Syria, which are not yet (fully) engaged in the ENP, could use the Union to boost their trade and energy relations with Europe, without having to subscribe to the binding conditions the EU attaches to the ENP.

This unequal application of conditionality amongst countries also demonstrates that when it must chose between advancing its own interests – such as stability, security or trade - or risking these by pushing to resolve the conflict or improving democratic reform or the human rights situation, the EU will often prioritize the first. This is even more the case when it is dependent upon the country in question.

Evaluation
In 2006, the Commission itself concluded that little had been achieved towards the resolution of the conflicts in the region.\textsuperscript{265} This conclusion is still valid today.\textsuperscript{266} The number of conflict situations in the neighbourhood remains high, such as in Transnistria, Abkhazia, South Ossetia, Nagorno-Karabakh, the Middle East and Western Sahara. The recent conflict between Georgia and Russia in August 2008 concerning South Ossetia and the Israeli intervention in Gaza in December 2008 - January 2009 have underlined the potential for conflict of the neighbourhood, and hence the importance of an effective instrument to discourage the neighbourhood countries from reckless behaviour.

The policy documents show no clear strategy for proceeding to conflict resolution.\textsuperscript{267} Conflict resolution is seen as an area for enhanced political dialogue and cooperation. Moreover, it is hoped that political and economic reforms will lead to a situation more


conducive to a peaceful solution. Support for existing conflict settlement mechanisms as well as monitoring or peace-keeping operations is assured. The importance of the involvement of civil society is stressed. Clearly, more developed and integrated conflict resolution strategies are needed.

One of the shortcomings of the ENP is that in none of the conflicts in the neighbourhood, with the exception of the Israeli-Palestinian conflict, all parties are involved in the ENP. The Action Plans are concluded with states, not with the other parties involved and only insofar as these states are included in the ENP. The Commission itself in 2007 underscored the importance of promoting similar reforms on both sides, but so far this has not been put into practice. States can also be very cautious concerning their commitments. Some states might not be genuinely willing to peacefully resolve the conflict. They may have internal disincentives to pursue conflict resolution or internal reforms, and the incentives the ENP offers seem to be too little to persuade them to go against these.

**Development Cooperation**

By the mid-1990s, in the aftermath of violent conflicts in Somalia and Rwanda, the Commission proposed changing the focus of development programmes in order to take into account the socio-political impact of assistance. The Commission pointed to the importance of structural stability as the ultimate policy goal, and stated that if aid were to be effective, stability in the recipient countries was paramount. In 2000, the Commission framed a more comprehensive development policy, built around the aim of poverty reduction. This policy was elaborated further in December 2005 in the *European Consensus on Development* and, for the first time, provides a common vision that guides the action of the EU in development cooperation, both at its Member-State and EU levels. It reflects recent commitments in international development, such as those made at UN conferences (Millennium Development Goals), and advances made in development best practice, such as budget support and the Paris

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268 See also Mirimanova, N., *o.c.* (2010).


Declaration on Aid Effectiveness.\textsuperscript{273} While the eradication of poverty remains the primary and over-arching objective of the development cooperation, it has multiple objectives, including expanded political ones, such as the promotion of democracy, good governance and respect for human rights.\textsuperscript{274} It stresses the necessity of developing a comprehensive preventive approach to state fragility and conflict. State fragility is to be prevented through governance reforms, rule of law, anti-corruption measures and the building of viable state institutions, as well as increasing capacity in fragile states. Conflict is to be prevented by addressing its root causes, including poverty, degradation, exploitation and unequal distribution and access to land and natural resources, weak governance, human rights abuses and gender inequality. The principles of the European Consensus were channelled into a regional strategy for Africa, the \textit{European Union Strategy for Africa}.\textsuperscript{275}

Issues such as governance and state fragility thereafter received particular attention. The Commission worked out an approach to enhance good governance (including Security Sector Reform).\textsuperscript{276} Specific documents and strategies have been developed to guide cooperation in the field of security and development.\textsuperscript{277} The Commission is currently working on the approach to be used with respect to conflict and fragile states. In October 2007, it tabled a first Communication proposing pragmatic steps for the EU to engage more effectively in situations of fragility.\textsuperscript{278} In 2010 the Commission and the General Secretariat of the Council are expected to propose an EU Action Plan for situations of fragility and conflict.\textsuperscript{279}


\textsuperscript{274} Issues as the promotion of human rights, democracy, good governance, children's rights and the rights of indigenous peoples are also considered cross-cutting issues that require mainstreaming throughout the activities of the EU. Conflict prevention as such is not mentioned as a cross-cutting issue.


\textsuperscript{277} See further in this paper on the security-development nexus.

\textsuperscript{278} Communication from the Commission, “Towards an EU response to situations of fragility”, 25 October 2007, COM (2007) 643 final; the Communication takes a “whole of government” approach, with special mention of the justice sector and natural resources. It also calls for the engagement of civil society, and other actors in crisis management. Among the outcomes and deliveries of most relevance are the commitment to facilitate the establishment of ad hoc country and thematic teams with the Council Secretariat and Member
The EU has committed itself to play a major role in the acceleration of the provision of aid and the improvement of its quality and impact. It has adopted a timetable for its Member States to achieve 0.7% of GNI as official development assistance (ODA) by 2015, with an intermediate collective target of 0.56% by 2010.\textsuperscript{280} At least half of this increase in aid is to be allocated to Africa. National ownership, donor coordination and harmonisation, starting at field level, alignment with the systems of the recipient country and results orientation have become core principles for delivering improved aid.\textsuperscript{281} More attention has also been paid to coherence between the different policy areas that impact development (trade, agriculture, fisheries, migration, security, humanitarian aid etc.).\textsuperscript{282}

The majority of the EU’s ODA is made up of the EDF and the DCI. The tenth EDF covers the period from 2008 to 2013, and provides an overall budget of €22 682 million.\textsuperscript{283} The DCI has a budget for the period 2007-2013 of €16 897 million.\textsuperscript{284}

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279 It will outline concrete measures on how to enhance the EU response to fragile situations in four key areas: "Whole of the EU" approach, state building, making EU assistance more responsive and effective, and international strategic partnerships; see study ‘Overcoming fragility in Africa, Forging a new European approach’, European Report on Development, 15 October 2009.

280 Council conclusions of May 2005; Presidency Conclusions Brussels European Council, 16-17 June 2005.

281 Council Conclusions of November 2004 on ‘Advancing Coordination, Harmonisation and Alignment: the contribution of the EU’. Further policy documents and an action plan on aid effectiveness were thereafter developed: Communication of the Commission ‘EU Aid: delivering more, better and faster’, COM (2006), 87 final. This action plan has three axes: mapping and monitoring of activities (i.a. the creation of the EU Donor Atlas that has shown the unbalanced distribution of aid), implementing of the collective commitments on harmonising and alignment made in the Paris Declaration (i.a. roadmaps identifying concrete harmonisation issues and joint programming and financing arrangements) and executing the aid effectiveness pillar of the new EU strategy framework, as defined by the European consensus and the EU Strategy for Africa (i.a. division of labour between the Commission and Member States aiming at greater complementarity, as well as ensuring a minimum EU presence in fragile countries and “aid orphans” in particular). See also Communications on ‘Financing for Development and Financial Aid Effectiveness’, COM (2006) 85 final and on ‘Increasing the Impact of EU Aid: a common framework for drafting country strategy papers and joint multiannual programming’, COM (2006) 88 final; the EU Code of Conduct on Complementarity and Division of Labour in Development Policy (2007), the EU Guidelines for Accra (2008), and the Accra Agenda for Action (2008).

282 Commission Communication on “Policy Coherence for Development – Accelerating progress towards attaining the Millennium Development Goals-“, COM(2005)134 final of 12 April 2005 and May 2005 General Affairs and External Relations Council (GAERC) Conclusions on the Millennium Development Goals, Doc. 9266/05); see also further in this paper the section on ‘the quest for more coherence’.

283 Internal Agreement between representatives of the governments of the member states on the financing of the community aid of 17 July 2006: of this amount, EUR 21 966 million is allocated to the ACP countries, EUR 286
Implementation

As a whole, the EU, (EU and the Member States), has managed to substantially increase its aid (although not all Member States have honoured their commitments), but not sufficiently to deliver its collective intermediate target of 0.56% ODA/GNI by 2010. In 2009, financial crisis slowed down the flow of aid: the EU spent €49 bn, corresponding to 0.42% of GNI.\textsuperscript{285}

Africa receives the largest share of EU’s ODA.\textsuperscript{286} Nevertheless, EU policy in general still focuses very much on middle-income countries.\textsuperscript{287} North Africa and Europe are the two regions in which EU funds are well above the Development Assistance Committee’s member average.\textsuperscript{288} Approximately 32% of the total EU external relations budget for the period 2007-2013 goes to (potential) accession candidates and neighbouring countries.\textsuperscript{289} This indicates that the EU’s goals for the enlargement and security of its own region are decisive factors in resource allocation. The EU has been under pressure from some Member States to concentrate more on low-income countries, partly as a means of retaining the poverty focus of its assistance.\textsuperscript{290}

Allocation criteria are complex and lack transparency, even more so for the EDF.\textsuperscript{291} The EU does not have an explicit allocation policy for conflict-affected or fragile states. The absence
of a clearer allocation process risks resulting in a funding gap, when a country is in a situation of deterioration or emerging from conflict. Most ‘aid orphans’ are fragile states with poor governance, which fail to deliver basic services to their people. Yet, this is not always the case: some fragile states are among the top recipients of aid.\textsuperscript{292} In many fragile states the EU is one of the biggest donors.\textsuperscript{293}

Aid for fragile states tends to be delivered by providing public services through contracts with partners, (e.g. companies, NGOs UN agencies), instead of through budget support. Only a low proportion of aid will flow through national procurement and public financial management systems, given their weaknesses.\textsuperscript{294} Budget support will be given if there is enough confidence in the recovery process after a conflict, a positive trend in economic stabilization, and willingness on the part of the authorities to carry out reforms.\textsuperscript{295} In some recent Country Strategy Papers conflict prevention is mentioned as an objective or as a cross-cutting issue to be mainstreamed.\textsuperscript{296} This also implies that partner governments can be held accountable for the way in which they implement these objectives through their budgets.

The policy framework for aid effectiveness is in place, but more effort is required to implement it.\textsuperscript{297} An operational framework for aid effectiveness was established in November 2009.\textsuperscript{298} Funding country development assistance for the ACP countries from the EU budget, (i.e. “budgetisation” of the EDF), as well as synchronising the budget cycles of the EU and the Member States, which would make joint country strategies and multi-annual programmes possible, could further increase efficiency. During recent years the EU has also substantially strengthened its approach to policy coherence for development. Mechanisms to promote

determining the envelope per country; interview with official of EU parliament on 7 December 2009, see also report of DAC 2007.
\textsuperscript{293} E.g. Sierra Leone, Burundi, Somalia, see report DAC, 2007.
\textsuperscript{294} Report of DAC 2007.
\textsuperscript{296} E.g. CSP on Nigeria, on Uganda, on Ivory Coast.
\textsuperscript{298} Council conclusions on an Operational Framework on Aid Effectiveness, 17 November 2009 containing measures in the areas of Division of Labour (selected measures to further implement the EU Code of Conduct on the Complementarity and Division of Labour in Development Policy), Use of Country Systems, and Technical Cooperation for Enhanced Capacity Development.
policy coherence have been put in place\textsuperscript{299}, but capacity to turn commitments into reality still needs to improve.\textsuperscript{300} Conflicting political priorities amongst policies or different interests amongst Member States, and also amongst developing countries, remain major obstacles.

\textit{Evaluation}

Preventing conflicts, or assisting early resolution, may contribute more to development than huge aid flows.\textsuperscript{301} Although conflict prevention has been put on the development agenda, as yet there has been no overall evaluation of conflict prevention policy in this area, or of the impact and effectiveness of development aid on conflict prevention.\textsuperscript{302} More evidence is required of the effectiveness of current conflict prevention policies.\textsuperscript{303}

Furthermore, there is also concern that the recent focus on fragile states is leading to the potential securitisation of development aid.\textsuperscript{304} For example, development assistance has been diverted to objectives such as the funding of the African Peace Facility\textsuperscript{305}, the fight against terrorism and international crime or illegal migration.\textsuperscript{306} Poverty reduction and conflict prevention should remain the core objectives of development assistance. Changes in the

\textsuperscript{299} This includes the Impact Assessment Tool, the Inter-service Quality Support Group, the Inter-Service Consultation process and the Development Committee of the European Parliament.
\textsuperscript{301} Bourguignon, F., a.o. ‘Millennium Development Goals at Midpoint: Where do we stand and where do we need to go?’, European Report on Development, September 2008
\textsuperscript{302} There have been evaluations on related areas such as governance, human rights and electoral support: see http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports. In some national or regional evaluations, in which conflict prevention is set out as an objective for cooperation with the EU, it has been evaluated (to the extent possible).
\textsuperscript{303} The DAC Networks on Development Evaluation and on Conflict, Peace and Development Co-operation have developed guidance on methods for assessing the effectiveness and impact of conflict prevention operations; see Guidance on evaluating conflict prevention and peace building activities, OECD, 2008.
\textsuperscript{304} E.g. Sohet K. (Aprodev), Financial Perspectives 2007-2013 and EU as a global actor, 17 December 2004; Bond, Comments on the EC issues paper, Towards an EU strategic response to situations of fragility in developing countries.
\textsuperscript{305} In 2003 the African Peace Facility was funded with the residue of the ninth EDF. It was considered a once-only operation. However, in 2006, the decision was taken again to finance the APF with funding of the EDF (interview with official of the EU Parliament).
\textsuperscript{306} A recent example is the Court case concerning the financing of a project to enhance the security and management of the borders of the Philippines with development aid: see Case C-403/05 European Parliament vs Commission, Judgment of the Court 23 October 2007. The Court decided that the contested decision pursues an objective concerning the fight against terrorism and international crime which falls outside the framework of the development cooperation policy. So the Commission exceeded the implementing powers conferred by the Council in Article 15 of Regulation No 443/92.
sectoral and geographical allocation of development aid related to the new security threats require further study.\textsuperscript{307}

**European Instrument for Democracy and Human Rights**

The EU has also adopted a number of thematic cooperation programmes that are relevant to structural conflict prevention, in particular the European Instrument for Democracy and Human Rights (EIDHR). This is a financial and policy instrument, which aims to contribute to the development and consolidation of democracy and the rule of law, and of respect of human rights worldwide.\textsuperscript{308} It allows for assistance without the need for a government’s consent, which is a critical feature of cooperation with civil society organisations at national level, especially in the sensitive areas of democracy and human rights. It therefore allows a shift from direct engagement with governments, to the support of other actors. This can be particularly useful in situations of state fragility. It also offers more flexibility and potential to respond to changing circumstances or to support innovation, compared to the long-term programming approach of the geographical programmes.

While, in the past, conflict prevention appeared to be an area of action, (with a very small budget), in the new regulation conflict prevention is no longer referred to as an area of assistance.\textsuperscript{309} However, measures facilitating the peaceful conciliation of group interests can be given assistance, including support for confidence-building measures relating to human rights and democratisation, or through measures to combat discrimination. The main priorities of the instrument are the support of civil society organisations active in the field of human rights, democratisation and conflict management, support for election observation missions and support of actions on issues of human rights and democracy in areas covered by the EU Guidelines (on defenders of human rights, on torture, on death penalty or on children and armed conflict and on the rights of the child, on violence against women, etc.).\textsuperscript{310}

\textsuperscript{307} Interview with official of EU Parliament, 7 December 2009
\textsuperscript{308} The instrument was originally established in 1999 (Regulation No. 975/99 and regulation No. 976/99 concerning operations which contribute to the general objective of developing and consolidating democracy and the rule of law and that of respecting human rights and fundamental freedoms with developing countries and other third countries, prolonged and amended by Regulation 2240/2004 and Regulation 2242/2004 until 31 December 2006). From 1 January 2007 the legal basis of the instrument is Regulation No. 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financial instrument for the promotion of democracy and human rights worldwide, O.J. L 386/1 of 29 December 2006.

\textsuperscript{309} See Art. 2,3 of Council Regulation No. 975/99; Commission staff working document, EIDHR Programming Document 2002-2004; only 4% of the budget had been allocated to conflict prevention in 2002.

\textsuperscript{310} See the Strategy Papers 2007-2010 and 2011-2013
For the period 2007-2013 a relatively modest budget of approximately 1 100 million Euro has been reserved.  

**Implementation**

The budget is mainly allocated for the funding of electoral observation missions and of NGOs and regional and international organisations active in the field of human rights, democratisation and conflict management. Electoral observation missions consume a large part of the budget (up to 25%). A better balance between financing actions concerning human rights as such and electoral observation missions would be preferable.

Geographically speaking, a relatively larger share of the budget has been reserved for supporting actions in the candidate countries and the neighbourhood states. However, the EIDHR still maintains a wide geographical range: around 70 target countries were identified for allocations. Around 400 projects are funded through this budget. This entails substantial fragmentation of an already limited financial envelope.

The funding procedure, (by calls for proposals) has been criticised by NGOs. It is time-consuming and not very flexible, thus making it, in practice, even if this was not meant to be so, unsuitable for rapid assistance for intervention in a growing conflict.

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311 Art. 19 of Regulation No. 1889/2006
312 For the period 2007-2010 131,1 million Euro was reserved, for the period 2011-2013 105,6 million Euro (around 22,35 % of the budget) has been reserved for electoral observation missions. The Commission has committed itself to keep this expenditure within 25% of the EIDHR budget over the seven year period.
313 For the period 2007-2010 208 million Euro was reserved (around 38% of the budget) for this activity, for the period 2011-2013 184,3 million Euro (around 35% of the budget) has been reserved.
See Art. 10 of Regulation No. 1889/2006 for the current criteria of eligibility; funding has been made possible for groups without legal personality. In the period 2001-2004, 80% of the funds went to NGOs, see Youngs, R. et al., “No lasting peace and prosperity without democracy and human rights: harnessing debates on the EU’s future financial instruments”, Report commissioned by the European Parliament, July 2005.
314 Debate on EIDHR at the Subcommittee on Human Rights of the European Parliament on 15/10/09
315 35% of the 56 million Euro reserved for the period 2007-2010 for activities enhancing respect for human rights and fundamental freedoms is allocated for ENPI and Middle East, 55% of the 161 million Euro for the same period for country-based actions strengthening civil society is allocated to ENPI, Middle East and Western Balkans and Candidate Countries. For the period 2011-2013 50% of the 165,4 million Euro for country-based actions strengthening civil society is allocated to ENPI, Middle East and Western Balkans and Candidate Countries.
316 See EIDHR annual action programmes and action fiches
317 According to the Strategy Paper 2011-2013, In total, excluding Election Observation, more than 1600 EIDHR projects are presently ongoing (including both the new Instrument and the old Initiative on Democracy and Human Rights).
318 Cf. interventions of Concord and Plan International during the debate on EIDHR at the Subcommittee on Human Rights of the European Parliament on 15/10/09.
Evaluation

It is a major tool for promoting human rights and democracy in the world, and can be instrumental in conflict prevention. In some countries it provides the sole basis for activities such as the promotion of political and civil rights, election observation and conflict resolution initiatives. However, this instrument has been criticised for playing it too safe. Its ability to fund projects without government consent has in the past been used extremely sparingly, and this instrument has therefore been of limited use in more sensitive political contexts. Clarity is also urgently required concerning how far and under what conditions the EU can engage with opposition parties or with human rights defenders, since the boundaries between them and opposition parties are also sometimes very narrow.

There is no evaluation yet available of the impact and effectiveness of activities funded under the new instrument. The concrete implementation of the majority of EIDHR activities only got underway in the second half of 2008. Given the limited implementation period, hardly any project has been concluded. It is therefore too early to draw conclusions about the way in which EIDHR has fulfilled its objectives.320

Systemic Prevention

Systemic prevention consists of measures addressing global risk of conflict that transcend particular states. It is aimed at improving the regulatory systems at regional or global level, in order to govern some of the sources and accelerators of conflict. It allows action to be taken without taking sides in political disputes. These measures can include decreasing illicit access to potential for violent conflict, (regulation of markets in conflict goods, small arms, etc.), and imposing sanctions for prohibited behaviour through the development of international legality, setting norms and standards, etc.

The EU has subscribed to the international regulatory framework, and has itself undertaken a series of initiatives, but there are still significant challenges to improvement. Four issues will

319 Debate on EIDHR at the Subcommittee on Human Rights of the European Parliament on 15/10/09.
320 However, some specific thematic evaluations have been carried out in the last few years to assess relevance, effectiveness, efficiency and when possible, the impact of actions funded both under the previous and the current EIDHR (see: http://ec.europa.eu/europeaid/what/human-rights/studies_evaluations_en.htm; see also Strategy Paper 2011-2013).
be discussed below: natural resources, weapons, norms and standards for enterprises, and the fight against impunity.

**Regulation of the trade of (certain) natural resources**

The looting of commodities such as diamonds, coltan and timber is considered an important source of revenue for armed groups, and a major incentive for the continuation of armed conflict. The same applies for prohibited goods, such as narcotics. Several initiatives were undertaken to curb the illicit trade in such commodities.

**Legal and policy framework**

The best-known example is the *Kimberly process* for conflict diamonds, a joint initiative of Governments, the diamond industry and civil society to certify that shipments of rough diamonds are free of conflict diamonds. The Security Council first imposed a certification scheme for diamonds in respect of Angola in 1998, in Sierra Leone in 2000, in Liberia in 2003 (including measures for timber) and in Ivory Coast in 2005; and prohibited the import of diamonds not controlled by the certificate of origin system. The EU swiftly adopted council regulations on these UN resolutions, implementing the necessary trade restrictions. Partly because the country-specific UN resolutions appeared to be ineffective and the problem had to be addressed by a global certification scheme for all rough diamonds, the Kimberly process was launched. It resulted in the commencement of the international certification scheme on 1 January 2003, based on national laws and practices, but meeting internationally-agreed minimum standards. It was subsequently implemented by the EU. The EU is, as such, a Member of the Kimberley process. All EU member states are instructed to only import and export rough diamonds through a designated ‘Community Authority’.

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324 See UN Doc. S/RES/1173 (1998), S/RES/1306 (2000), S/RES/1521 (2003), S/RES/1643 (2005); an overview of the UN documents can be found on the website of the Kimberley Process (see previous note).
326 See UN Doc. S/RES/1459 (28 January 2003); it received WTO approval in 2003 (WTO Doc. WT/L/518), for the period of 1 January 2003 to 31 December 2006; it was renewed in 2006 for the period of 1 January 2007 to 31 December 2012 (WTO Doc. WT/L/676).
‘Community Authority’ is responsible for fully monitoring and inspecting importation, for verifying KPCS certificates and issuing and validating uniform Community certificates.

To tackle the importation of illegal timber into the EU, in 2005 the Council adopted a regulation that allowed for the control of the entry of timber into the EU from countries entering into bilateral *Forest Law Enforcement, Governance and Trade* (FLEGT) voluntary partnership agreements with the EU.\(^{328}\) Once agreed, the voluntary partnership agreements (VPAs) include commitments and actions on the part of both parties to halt trade in illegal timber, with a licensing scheme for imports of timber into the EU to control the legality of the timber.

The control of drugs is already an older issue. The EU Drugs Strategy is based on the relevant UN Conventions.\(^{329}\) The emphasis in external action is on assisting third countries to be more effective in the reduction of the demand for and supply of drugs. Cooperation agreements with third countries contain a cooperation clause for drugs control.

**Implementation**

The Kimberley Process Certification Scheme claims that it currently covers 99.8 per cent of the world production of rough diamonds.\(^{330}\) No significant producer countries are outside the system. Yet the effectiveness of the Kimberley Process is questioned. According to Global Witness and Partnership Africa-Canada there is still an extensive illicit trade in rough diamonds. In most cases, government monitoring and oversight of the diamond trade is not effective enough to stop these flows, and enforcement mechanisms are failing or non-existent.\(^{331}\) The UN Group of Experts on Ivory Coast, (currently the only country with a UN embargo on diamond exports), has also found that poor controls are allowing significant volumes of blood diamonds to enter legitimate trade.\(^{332}\) The instrument, as such, does not decrease the state of corruption in a given country, but at least linked to the instruments


\(^{330}\) See website Kimberley Process and Progress Report 2006 of Secretary General of UN.


\(^{332}\) This occurs through Ghana and through non-participants in the Kimberly Process Mali and possibly Burkina Faso: see reports of 8 April 2009 (S/2009/188) and of 9 October 2009 (S/2009/521).
should be effective auditing. The EU does not mention this.\textsuperscript{333} Failure by a participating state to comply with the requirements cannot lead to a formal complaint of breach of contract, since the KPCS is not based on an international agreement.\textsuperscript{334} However, group control seems to work when it is applied.\textsuperscript{335}

The area covered by the FLEGT system is still very limited. Only Ghana and the Republic of Congo have signed currently agreements with the EU. Negotiations are currently going on with Malaysia, Indonesia, Liberia and the Central African Republic. Negotiations have been concluded with Cameroon.\textsuperscript{336} Signing the agreement is not the same as implementing it. To put the system in place (inter alia the setting-up of the legality assurance system and the traceability system) after signature could still take 2 to 3 years.\textsuperscript{337} Furthermore it remains up to the sovereignty of the state to decide what it includes in the legality matrix. While African countries have so far tended to include their whole forestry sector, other countries have not.

Efforts by members can also be easily circumvented. The European Parliament and civil society have called on the Commission to go further and enact legislation prohibiting the import and marketing of timber and timber products produced in breach of the laws of the country of origin.\textsuperscript{338} Yet, it would require an internationally-agreed definition of what constitutes illegal logging or the setting of principles by the EU for production, harvest, processing or transport, since the laws of the countries of origin vary. In December 2006, the Commission launched public consultation for additional options to combat illegal logging.\textsuperscript{339} New measures were announced.\textsuperscript{340} In 2008, the Commission proposed a timber due diligence

\textsuperscript{333} E.g. in the Report on the Implementation of the European Security Strategy of 11 December 2008 is only mentioned that the Kimberley Process and EITI offer an innovative model to address the problem of the ruthless exploitation of the natural resources.

\textsuperscript{334} The E.C. and the participating states in Interlaken in November 2002 have just adopted a document that describes the process and what has to be done (see website Kimberley process).

\textsuperscript{335} The Republic of Congo was found not to apply the requirements of the Kimberly Process Certification Scheme. Other participant states decided not to accept imports of rough diamonds from the Republic of Congo. The Republic of Congo repaired its shortcomings and was re-admitted in November 2007. Yet, the Republic of Congo could have pointed out that the Kimberley Scheme is a voluntary mechanism and might have challenged its exclusion on the basis of the Cotonou Agreement.

\textsuperscript{336} See website European Commission:
http://ec.europa.eu/development/policies/9interventionareas/environment/forest/forestry_intro_en.cfm

\textsuperscript{337} According to the website of the European Commission the first FLEGT based export licences from Ghana are expected to be issued by December 2010.

\textsuperscript{338} Resolution of the European Parliament of 7 July 2005 (P6_TA(2005) 0300); see also resolution of 24 April 2008 (P6_TA(2008)0179); see campaign of Greenpeace “Ban on illegal timber”, see also report of Friends of the Earth Netherlands, Building on forest destruction, Timber use in EU financed building projects, March 2008.

\textsuperscript{339} A synthesis report on this consultation is available at http://ec.europa.eu/environment/forest/flegt.htm.

regulation, to tackle timber trade with countries that have not signed VPAs.\textsuperscript{341} Anyone importing timber into the EU from countries with no VPA would be required to use the due diligence system, to ascertain if products are legal and to identify the country of origin of their timber, and whether it was harvested according to the relevant laws of that country. The standard of such a system is of course lower: operators need to ensure legality ‘to their best ability’. Moreover, in some cases it is very difficult for even the best-intentioned company to discover the illegality of timber.

Concerning drugs control, despite the actions undertaken, production of cocaine and opium has remained at a fairly constant level over the last few years and is becoming increasingly concentrated in Afghanistan and Columbia.\textsuperscript{342} Promoting changes in the regulation in order to deprive the narcotics of their risk premium could be another option, but this option was and is not taken by the EU.

\textit{Evaluation}

Revenues from trade in natural resources provide income for armed groups and form an incentive to continue a conflict.\textsuperscript{343} Yet, apart from the drugs regulations, the current regulatory framework for natural resources is very scant and mainly voluntary. Hence, the effectiveness of the mechanisms is limited.

The KPCS system claims to cover most of the trade in rough diamonds, but this claim has been questioned by NGOs and by reports by UN experts (see above). Moreover, the main reason that there are currently few ‘conflict diamonds’, is because the only country with a UN embargo on diamond export is the Ivory Coast, a minor export country.\textsuperscript{344} Furthermore, the system uses a strict definition of ‘conflict diamonds’. Conflict diamonds are defined by the KPCS as rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments. This implies that when governments finance their war activities through the trade of diamonds, these diamonds are not considered as conflict


\textsuperscript{343} See e.g. Reports of the panel of experts concerning Côte d’Ivoire November 7 2005 (S/2005/699) and 9 October 2009 (S/2009/521)

\textsuperscript{344} Resolution 1643 (2005), renewed until 31 October 2010 by resolution 1893 (2009); For numbers on production, see World mineral production 2003–2007, British Geological Survey.
Also, polished diamonds fall outside the definition. This is important because Cutting and Polishing Centres have been set up in non-participating countries. These legally export diamonds inside KPCS territory without a certificate.  

No VPA has been concluded with the top-timber producing countries. The bilateral and voluntary approach means that high-risk countries can remain outside the system. There is also the risk of circumventing through countries or operators that ask few questions about the origin of the timber and laundering. Moreover, VPAs will probably only have limited impact on producing countries, as Europe imports only a fraction of all the rough tropical timber consumed, and the Regulation only applies to imports of rough or primary processed timber. Countries will normally be more inclined to make an effort if their ‘legal’ timber products get a premium price on EU markets in exchange for their efforts to guarantee legality. This is currently not the case. As a further incentive, the EU should envisage how it could guarantee that market premium, (and in compliance with the rules of the WTO).

*Weapons*

*Legal and policy framework and implementation*

*Small Arms and Light Weapons*

The action undertaken by the EU against small arms and light weapons (SALW), in particular in Africa, has been mainly reactive, with participation in post-conflict disarmament, demobilisation and re-insertion (DDR) and security sector reform (SSR) programs. Yet, several preventive action initiatives have also been undertaken. These measures are

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345 E.g. Zimbabwe’s armed forces, under the control of the President, are engaging in forced labor of children and adults and are torturing and beating local villagers on the diamond fields of Marange district (see reports of Human Rights Watch, ‘Diamonds in the Rough’ of 26 June 2009 and ‘Deliberate Chaos, Ongoing human rights abuses in the Marange Diamond Fields of Zimbabwe, June 2010). While the review mission of the KPCS recommended suspension of Zimbabwe and the appointment of a human rights expert to examine further abuses in Marange, the KPCS group's plenary instead gave the priority on ‘avoiding the illegal trade of those diamonds’. It asked Zimbabwe to adhere to a work plan that Zimbabwe had proposed. The plan commits the country to a phased withdrawal of the military without specific time lines, directs police to provide security for the area, and provides for a monitor, agreed to by both Zimbabwe and the Kimberley process, to examine and certify all shipments of diamonds from Marange; see communiqué Kimberley Process Plenary Session, 5 November 2009, message of Human Rights Watch of 6 November 2009 and discussion at the Belgian Ministry of Foreign Affairs on 13 November 2009. Although Zimbabwe did not respect the work plan (see quoted report of Human Rights Watch), by September 2010 Zimbabwe will be able to carry out again 2 supervised exports of rough diamonds from Marange; see Press Release World Diamond Council, 19 July 2010.


347 For the list of timber products: see annex II of Regulation 2173/2005.
principally aimed at increasing control over the export of weapons, increasing the transparency of arms exports and strengthening the control mechanisms in affected states.

The first initiative to control the exportation of weapons was a Council Regulation (1994) that established a Community regime for the control of exports of dual-use items and technology. In 1997 the European Council adopted the *Programme for Preventing and Combating Illicit Trafficking in Conventional Arms*. This commits EU-members to strengthening national measures and to assisting other countries in combating arms trafficking, particularly small arms.

In 1998 a *Code of Conduct on Arms Exports* to third countries was adopted. The Code covered all conventional weapons, not only small arms. It sought to create "high common standards" for all EU Members States to use when making arms-export decisions: it contained eight criteria, which all member states were obliged to consider when granting an arms export licence. It also sought to increase transparency in arms exports, by establishing a notification, consultation and reporting mechanism among EU Member States. The Code only became legally binding for Member States ten years after its adoption. The content of the Common Position which replaces the Code of Conduct, is largely identical to the content of the Code. Ultimate responsibility for arms exports remains with the Member States. With several EU Member States being large global exporters, including to developing countries, observance

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349 European Council, *EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms*, Brussels, 26 June 1997 (9057/97). "Illicit trafficking in arms" is understood to cover that international trade in conventional arms which is contrary to the laws of states and/or international law.


351 Council Common Position 2008/944/CFSP of 8 December 2008, *OJ* (2008) L 335/99; the Code of Conduct was originally not adopted in the form of a legally binding act, nor did it constitute an international agreement; see Council reply to written question No. E-2691/02, *OJ* (2003) C137/E/137; yet in practice some member states had already incorporated the code of conduct in their legislation, as is for example the case in Belgium.

352 The criteria for arms exports are mainly the same (respect of international humanitarian law has been added), but the scope is wider. E.g. the common position covers also brokering and intangible transfers of software and technology.

353 Cf. Congressional Research Service, *Conventional Arms Transfers to Developing Nations 1999-2006*, 26 September 2007; in the 2003-2006 period the four major European suppliers (UK, France, Germany and Italy) concluded 23% of all arms transfer agreements with developing countries. According to the Small arms Survey 2007 Germany, Italy, Belgium and Austria were in 2004 amongst the top exporters of small arms.
of the Code has sometimes been problematic.\footnote{\textit{E.g.} in 2002, Belgium approved—in contravention of the E.U. Code of Conduct— an arms transfer to Nepal, a country in conflict whose government had been implicated in a pattern of serious human rights abuses involving abduction, torture, and summary executions. The Nepal arms affair led a Belgian government minister to resign and prompted the federal parliament to strengthen the national law of 5 August 1991 on arms export.} It has also been noted that the recently acceded countries Rumania and Bulgaria have not yet fully met their responsibilities under the Code.\footnote{\textit{See Dansaert, P. and Johnson-Thomas, B., ‗Illicit brokering of SALW in Europe: lacunae in Eastern European arms control and verification regimes‘, IPIS, 2009.}} The Code has increased the transparency of arms exports in several EU Member States, although reporting is not yet as transparent as it could be in every country, and minimum standards for arms exports could be stricter.\footnote{\textit{There are countries which neither report the details of their exports, nor declare any denial of the licensing of exports of weapons, see \textit{Annual reports in conformity with operative provision 8 of the European Union Code of Conduct on Arms Exports}; \textit{http://www.consilium.europa.eu/export-controls}; see also Bromley, M., ―The Impact on Domestic Policy of the EU Code of Conduct on Arms Export‖, \textit{SIPRI Policy Paper No. 21, May 2008}. Transparency could also improve on the compliance with arms embargoes.}}

An arms control agreement can only be effective if it also licences and controls the activities of arms brokers. In 2003, the Council adopted a \textit{Common position on the control of arms brokering}, in order to avoid circumvention of the embargoes on arms exports and of the criteria set out in the EU Code of Conduct.\footnote{\textit{Council Common Position 2003/468/CFSP, \textit{OJ} (2003) L 156/79; this common position came following the \textit{UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition} which requires states to implement control measures on the firearms trade and asks states to consider regulating the activities of brokers. The Protocol was adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005. It is the first legally binding instrument on small arms to be adopted on a global level.}} The Common Position could, however, be strengthened, e.g. concerning the extraterritorial activities of brokers\footnote{\textit{See Art. 2.1 of the Common Position: Member States are only obliged to take all the necessary measures to control brokering activities taking place within their territory. They are “encouraged to consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory”. Not all Member States have implemented such legislation.}}\footnote{\textit{These related activities can include services such as negotiating logistics, providing transportation, freight forwarding or financing arms transfers. \textit{Art. 2.3 of the Common Position limits its application to negotiating or arranging transactions of arms transfer from one country abroad to another country abroad.}}}, the control of brokering-related activities\footnote{\textit{See Art. 4: Member States may require brokers to obtain written authorization to act as brokers as well as establish a register. Not all Member States have done this.}}\footnote{\textit{See Eleventh Annual Report according to operative provision 8 of the European Union Code of Conduct on Arms Exports, \textit{OJ} C265/1, 6 November 2009, table C; common positions are legally binding for the member states, though implemented through national laws and procedures.}} and the screening of brokers.\footnote{\textit{Some Member States still need to implement fully the Common Position on arms brokering.}}

In 1998, the Council also adopted a Joint Action aimed at combating the accumulation and spread of small arms and light weapons by building consensus, in regional and international forums and among affected states, on the measures mainly concerning import, export,
production and control, and on providing assistance to programs and projects to contribute to those measures.\textsuperscript{362} The EU is financing several projects based on this joint action.\textsuperscript{363}

In 2005, the European Council aimed to develop a more comprehensive and coherent approach through the \textit{Strategy to combat illicit accumulation and trafficking of SALW and their ammunition}.\textsuperscript{364} This document stresses the importance of combating the illicit spread of SALW in conflict prevention. It focuses on two particular areas, namely Eastern Europe with the weapons stockpiles problem and Africa, the continent of destination. The EU Strategy on SALW lists all the available European instruments and develops a plan of action.\textsuperscript{365} The Strategy also affirms the need for complementarity at global, regional and national levels.

In 2008, the Council also reached an agreement on the inclusion of a SALW clause in mixed agreements, (including economic and political elements), with third countries and on a reference text.\textsuperscript{366} The clause was not intended to become an essential element in the agreement, as is the case for the weapons of mass destruction clause.\textsuperscript{367} So far, only in the recently revised version of the Cotonou Agreement which has not yet entered into force, has the clause on SALW been further elaborated, but not to the extension foreseen by the Council.\textsuperscript{368} In some action plans in the framework of the neighbourhood policy a SALW


\textsuperscript{364} E.g. assistance to the Cambodian Government in a programme of collection, storage and destruction of SALW, supporting the destruction of SALW stockpiles in Albania and Ukraine.

\textsuperscript{365} The EU Strategy on SALW provides for the setting up of mechanisms for exchanging information on the lines of trafficking in SALW, notably as part of the monitoring of embargoes by the UN and the EU, including strengthening European controls of illicit SALW air transport; the development of cooperation with African regional organizations such as ECOWAS, the SADC and ECCAS, in particular, with a view to developing their cross-border control capacities; putting the fight against illicit trade in SALW on the agendas of political dialogues and action plans conducted by the EU with the principal Eastern and South-East European countries exporting SALW and/or possessing surplus stocks of SALW (including Ukraine, Russia, and Moldavia).

\textsuperscript{366} Council Conclusions on the inclusion of a SALW article in agreements with the EU and third countries, doc. 17186/08, 17 December 2008.

\textsuperscript{367} If a clause is an essential element, it means that if one party deems the other party to have not respected the clause, it can, if political dialogue fails, take appropriate measures, including, in the last resort, suspension of the agreement.

\textsuperscript{368} Second revision of the Cotonou Agreement, signed on 19 March 2010; in 2009 agreement was also reached with South Korea and Iraq on the inclusion of a SALW clause in the respective treaties being negotiated with the EU, see Eight Progress Report on the Implementation on the EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition, as endorsed by the Council on 8 December 2009 (17389/09).
clause as well as the alignment with the code of conduct can be found, but they are not legally binding.

At global level, the EU supports increased transparency of the UN register of conventional arms to which member states are invited to report annually, on a voluntary basis, their imports and exports of certain types of conventional weapons.\(^{369}\) By increasing the transparency of Member States’ conventional weapons holdings and acquisitions, it aims to prevent excessive and destabilizing accumulations of arms. Its utility is currently marred by incomplete, inadequate, untimely and inaccurate reporting.\(^{370}\) Reporting is only requested for all major conventional weapons. The EU supports the inclusion of information on small arms and light weapons in the Member States’ annual report to the Register. Furthermore, the EU is in favour of making the UN International Tracing Instrument of Illicit Small Arms and Light Weapons legally binding.\(^{371}\) Global standards for the marking and tracing of SALW are essential for tracking the illicit trade of these weapons. The EU also supports a global, legally-binding Arms Trade Treaty.\(^{372}\) All EU Members States voted in favor of the UNGA resolutions adopted in 2006 and 2008, establishing a Group of Governmental Experts and an Open-ended Working Group with the task of studying the feasibility, scope and draft parameters of an Arms Trade Treaty.\(^{373}\)

**Weapons of Mass Destruction**

The non-proliferation of weapons of mass destruction has for a long time been one of the policy priorities of the CFSP. However, particularly after the terrorist attacks in the US in 2001, and with the concern about the nuclear capabilities of Iraq, Iran and North Korea, the proliferation of weapons of mass destruction (WMD), and especially their acquisition by non-state actors, the EU has made moves to enhance its role as a non-proliferation actor. In June 2003, the European Council adopted an *Action plan for the implementation of the basic principles of an EU Strategy against the proliferation of weapons of mass destruction*. In

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\(^{369}\) Statement on behalf of the EU by Ambassador Bernhard BRASACK, Geneva on 27 February 2007 on transparency in armaments. The UN register was established by the General Assembly of the UN in 1991; see UN General Assembly Resolution 46/36 L, 6 December 1991.


\(^{371}\) The instrument was adopted by the General Assembly of the UN in December 2005; in February 2008 the EU also adopted a Joint Action to sponsor regional seminars for the promotion of the International Tracing Instrument in Africa, Latin America and the Caribbean and in South East Asia.


\(^{373}\) UN GA Resolution 61/89 (2006); UN First Committee GA Resolution of 17 October 2008.
December 2003, the European Council adopted the EU Strategy against Proliferation of Weapons of Mass Destruction, as a complement to the European Security Strategy.\(^{374}\)

In the field of nuclear weapons, rather than the weapons’ mere existence, the EU sees their proliferation and their means of supply as a threat to international peace and security.\(^{375}\) This limited stance can be explained by the diverging views on the role of nuclear deterrence, with France and UK as nuclear powers versus the rest of the Member States preventing the EU from rejecting nuclear weapons outright.\(^{376}\) All EU Member States have ratified the Treaty on the Non-Proliferation of Nuclear Weapons (1971). The EU recognizes the Non-Proliferation Treaty (NPT) as the cornerstone of the non-proliferation regime. Yet, the NPT has been eroded, because of lack of compliance with existing commitments, withdrawal or threats of withdrawal, a changing international security environment and the diffusion of technology.\(^{377}\) The Council was able to reach consensus around a common position with a view to strengthening the outcome of the 2010 Review Conferences of the Parties to the NPT.\(^{378}\) The EU played a greater role during the conference and was able to adhere relatively well to its common position during the negotiations at the Conference. The EU was also positive about the outcome of the Conference.\(^{379}\) The EU also supports several other international non-

\(^{374}\) Council, Doc., 15708/03, 10 December 2003..


\(^{376}\) However, the situation has started to improve since 2008 because there has been a modification of the position in the United Kingdom and most recently in France; see also Resolution of the European Parliament on the Treaty on the Non-Proliferation of Nuclear Weapons of 10 March 2010 (P7_TA-PROV(2010)0062).

\(^{377}\) See Report of the UN Secretary-General’s High-Level Panel on Threats, Challenges and Change, A more secure world: Our shared responsibility, o.c.


\(^{379}\) Statement by High Representative Ashton on the outcome of the NPT Review Conference, Brussels, 28 May 2010; see also Parliamentary Update (SEDE Subcommittee), 2 June 2010, by Paul Sturm, ISIS Europe. For the outcome of the Conference see Final Document, New York 2010, NPT/CONF.2010/50 (Vol. I): The conclusions for follow-on actions on disarmament contain strong commitments towards the reduction of nuclear weapons. However, non-strategic weapons are not explicitly mentioned, referring to all types of weapons at all locations. While the terms used are more all-encompassing, they are also less focussed. The conclusions do also not include an immediate entry into force of a moratorium on the production of fissile material for nuclear weapons.
proliferation instruments and mechanisms such as the *International Code of Conduct against Ballistic Missile Proliferation*\textsuperscript{380}, the *Comprehensive Nuclear Test-Ban Treaty*\textsuperscript{381} and the *Nuclear Suppliers Group*.\textsuperscript{382}

In contrast, in the field of biological and toxin weapons and chemical weapons, all Member States agree on the banning of these weapons, and the EU clearly advocates making the ban universal.\textsuperscript{383} All Member States have ratified the *Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological and Toxin Weapons* (1972) and the *Convention on the Prohibition of Development, Production and Stockpiling of Chemical Weapons and on their Destruction* (1993).

In 2003, the Council adopted the non-proliferation clause of weapons of mass destruction (the WMD clause), to be included as an essential element clause in all new, renewed or revised mixed agreements between the EU and third countries.\textsuperscript{384} So far, only three mixed agreements with WMD clause have entered into force.\textsuperscript{385} The WMD clause has also been included in the action plans drawn up in the framework of the neighbourhood policy. Implementation has had limited success: most agreements only impose conditionality on the existing non-proliferation obligations and not on new non-proliferation instruments or

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\textsuperscript{381} The Treaty was opened for signing in 1996. All EU Member States have ratified the Treaty, but to date it has not yet entered into force.

\textsuperscript{382} See www.nuclearsuppliersgroup.org


\textsuperscript{384} Council of the EU, “Mainstreaming non-proliferation policies into the EU’s wider relations with third countries”, 19 November 2003, doc. nr. 14997/03; the clause has 2 parts, the first being a commitment to all non-proliferation policies already signed, the second including additional commitments to take steps to sign, ratify or accede to and fully implement all other international instruments and to establish an effective system of national export controls; the first part is an ‘essential element’, the second part might be considered as ‘essential elements’ on a case-by-case basis; see also Grip, L., “The EU non-proliferation clause: a preliminary assessment”, SIPRI Background Paper, November 2009.

\textsuperscript{385} The revised Cotonou Agreement and the Stabilisation and Association Agreement with Albania and with Montenegro; According to the Council ’s Progress Reports on the WMD Strategy, the EU has concluded negotiations with almost 100 countries for agreements that include a clause compatible with the WMD standard clause.

In the Cotonou Agreement and the Agreements with Albania and Montenegro only the first part of the clause has the status of an essential element. Hence no formal conditionality is attached to progress in ratifying additional international non-proliferation instruments nor in developing their national export controls.
improvements in their export controls; the principle has been abandoned in negotiations for a free trade agreement with India. The EU has no strategy for dealing with the clauses when they become an obstacle to other interests such as its trade interests. If the EU wants other countries to take its demands seriously, the EU needs to apply the clauses in a uniform manner.

**Evaluation**

In conflict-prone areas the proliferation of cheap, portable weapons is particularly dangerous. They can be a factor in the violent escalation of a conflict. The Commission, in its Communication on Conflict Prevention of 2001, stressed that ‘small arms are “the weapons of mass destruction” of the poor’ and that ‘they are responsible for more deaths and injuries and have had a greater destructive influence on political and social structures, than any other category of weaponry’. However, the fight against the proliferation of WMD has received more attention and financial resources than the fight against SALW. For example, the WMD clause to be included in agreements with third countries dates back to 2003; while the SALW-clause only came into existence in 2008, because during the negotiations on the WMD-clause an increasing number of third countries required that this be complemented by an article addressing the illicit accumulation and trafficking of SALW. The fulfilment of states’ existing international obligations to counter the proliferation of WMD and their means of delivery is considered an essential, and hence a conditional element of bilateral relations. This is not the case with the SALW clause. Joint Actions and Council Decisions in the field of SALW have also been attributed only limited financial resources compared to Joint Actions and Council Decisions in the field of WMD. Nevertheless, some EC initiatives also supported a range of activities that are related to SALW. In the past this was complicated, because of inter-institutional struggles between the Commission and the Council. While the Commission holds the view that the fight against SALW is part of its development

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389 E.g. SALW and DDR-initiatives have been included in some country strategy papers; these operations are financed under the European Development Fund. Some support can also be given through the Stability instrument (cf. supra).
390 Case C-91/05: the Court of Justice annulled on May 20 2008 the decision of the Council, OJ C171/2, 5 July 2008; the Court of Justice sided with the Commission: if a measure can be adopted within an intergovernmental pillar and within the EC, it should always be adopted within the latter; see also Bromley, M., Report on conflict prevention and the fight against illicit trafficking of small arms and light weapons of 16 October 2008, o.c.
cooperation policy, the Council remained wary of granting the Commission competence to pursue objectives such as conflict prevention through its external assistance programs.

The impact of the current actions is difficult to measure. For example, while the refusals of export licences and the current reporting practice amongst EU Member States are encouraging, the available assessments of the export of SALW during the lifetime of the EU Code of Conduct conclude that there has been no discernible decrease in transfers to countries of concern. Differences between Member States in legislation and policies can be exploited by arms brokers and continue to be so. Nevertheless, the fact that the Code of Conduct has become legally binding gives the instrument a different status, and this makes the EU a credible actor, as a promoter of an international arms trade treaty, a legally binding international instrument regulating the arms trade. As far as the use of clauses in agreements with third countries is concerned, the SALW clause not being an essential element of the agreement is unlikely to have much impact. The WMD clause has potential for impact, but the agreements that have been made so far, were all with countries that have not much significance from a non-proliferation perspective. The EU has also for the most part failed to impose the inclusion of the ratification of new non-proliferation instruments or the improvement of national exports controls as an essential element. Hence, it places little pressure on states to develop their non-proliferation policies further in line with the EU.

Setting norms and standards for enterprises in conflict regions

Corporate activities can contribute to conflict in a given society or they can even be the cause of conflict. The extractive industries accounted for most allegations of the worst abuses, up to and including violations of human rights, complicity in crimes against humanity, large-

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391 Jackson, T., Marsh, N. and Thurin, A., “The efficacy of EU export control measures concerning small arms and light weapons”, Small Arms and Light Weapons Transfers, UNIDER, Geneva, 2005; Trinchieri, L., Is the 1998 Code of Conduct on arms exports adequate to support the EU’s promotion of Human Rights?, Hamburger Beiträge zur Friedensforschung und Sicherheitspolitik, No.149, Hamburg, January 2008, see also Bromley, M., “The Impact on Domestic Policy of the EU Code of Conduct on Arms Export”, SIPRI Policy Paper No. 21, May 2008 (concerning the export practices of the Czech Republic, the Netherlands and Spain): government officials insisted that the Code of Conduct had not forced any changes in domestic decision making about what and where arms should be exported. Wider economic and political factors have played a far more decisive role in determining where and when arms have been exported.

392 See also resolution of the European Parliament of 24 April 2009 requesting an evaluation of the effectiveness of the uses of clauses on non-proliferation of WMD in agreements concluded between the EU and third states (P6_TA(2009)0333).

393 There is only one exception: the revised Trade and Development Cooperation Agreement with South Africa.

scale corruption, violations of labour rights, and a broad array of abuses in relation to local communities, especially indigenous people.  

Legal and policy framework

There has been a proliferation of voluntary company and industry codes and standards of best practices to address corporate responsibility. In 1976 the OECD adopted a set of *Guidelines for Multinational Enterprises*. A year later the ILO adopted a *Tripartite Declaration of Principles concerning Multinational Enterprises*. In 2000 *Global Compact*, a network of offices and agencies of the UN, enterprises and social and civil organisations became operational. It made a list of principles to respect regarding human rights, labour rights, the protection of the environment and anti-corruption. In 1998, the UN Sub-Commission on the Promotion and Protection of Human Rights fuelled by escalating reports of corporate human rights abuses, established a working group on business and human rights to make recommendations and proposals relating to the working methods and activities of transnational corporations. In 2003, the Sub-Commission approved its draft *Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to Human Rights*. It concluded that while states have the primary responsibility to ensure respect of and protect human rights recognized in international as well as national law, transnational corporations and other business enterprises, within their respective spheres of

395 See Interim Report of the Special Representative of the Secretary-General of the UN on the issue of human rights and transnational corporations and other business enterprises, J. Ruggie, who surveyed sixty-five instances recently reported by NGOs (UN Doc. E/CN.4/2006/97). Two-thirds of the total occurred in the extractive sector (see paras. 24-30). The Special Representative stresses that it seems reasonable to assume that particularly egregious cases or firms already targeted for a campaign would have been selected as subjects, so these reports are unlikely to be a representative sample of all situations, but of the worst. The foods and beverages industry is a distant second, followed by apparel and footwear, and the information and communication technology sector. The foods and beverages industry’s chief challenges tend to concern questions of land tenure and water, coupled with labour rights. Abuses of labour rights also constitute the core issue in apparel and footwear. In both sectors, the labour rights issues tend to involve supply chains. In information and communications technology, the emerging concern is infringements on freedom of expression and privacy rights, with possible additional adverse consequences for the right to life, liberty, and security of the person. According to Ruggie, the abuses mainly occurred in low-income countries or on the low side of the middle-income category, characterized by weak governance. Nearly two-thirds of these countries either recently emerged from or still were in conflict.


397 The Declaration was also revised in 2000; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 83 *ILO OFF. BULL.* (ser.A), No.3 (2000).

398 See www.globalcompact.org

activity and influence, have corresponding legal duties. This could be the first initiative towards the adoption of non-voluntary norms for enterprises and hence accountability, but so far they have not been adopted. The Human Rights Commission requested for further study on the issue and requested the UN Secretary-General to appoint a special representative. John Ruggie was appointed. He distanced himself from the draft norms of the Sub-Commission and developed the ‘protect, respect and remedy policy framework’. According to this framework, the state has the duty to protect against human rights abuses, enterprises have the responsibility to respect human rights, and there need to be more effective access to remedies for victims. Hence only the state can be held accountable. Enterprises have the responsibility to respect human rights, because “it is the basic expectation society has of business”, but not out of a legal obligation that international human rights law imposes directly on enterprises.

In Europe, the debate on corporate social responsibility versus accountability started with the publication in 2001 by the Commission of a Green Paper to collect different viewpoints on this issue. After the consultation process the Commission adopted a Communication in 2002. The Commission saw a limited role for the EU, enabling a public framework in order to make corporate social responsibility profitable to enterprises. It could promote good practice, and, given the diversity of existing instruments, seek convergence. In order to make progress on these issues, a Multi-Stakeholder Forum on corporate social responsibility was announced, whose purpose was to facilitate dialogue between business and stakeholders. The Forum took place in 2004. Subsequently, in 2006 the Commission presented a new Communication on corporate social responsibility. The Commission abandoned its earlier view and opted for a completely voluntary approach. It chose clearly in favour of businesses. The Communication also announced the launch of a new European Alliance for Corporate

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400 It also requires that corporate compliance be monitored by national and international agencies and that victims are given effective remedies.
402 In 2008 his mandate was extended until 2011 to operationalizing the framework and promoting it (see his progress report of 9 April 2010, A/HRC/14/27).
403 COM(2001) 366 final, Commission Green Paper 2001 “Promoting a European Framework for Corporate Social Responsibility”. There had been some earlier initiatives, see inter alia the resolution of the European Parliament in 1998 “European criteria for European companies operating in developing countries: towards a European code of conduct”, A4-0508/98; the proposed strategy consisted of a mixture of voluntary and binding approaches to control and follow up companies operations worldwide.
Social Responsibility. This aims to bring together European enterprises willing to respect minimum social and environmental standards, such as the ILO Conventions and the OECD Guidelines. No commitment to standards or principles is required.\textsuperscript{407} Contrary to the Multi-Stakeholder Forum, the Alliance only unites enterprises, which means that the furtherance of corporate social responsibility has been entrusted exclusively to them.

Following the uptake of the “Protect, Respect and Remedy Framework”, developed by John Ruggie, the Swedish and Spanish EU Presidency, in the second half of 2009 and the first half of 2010, have committed to promote the framework and put into practice at EU-level\textsuperscript{408} The European Commission has ordered studies on current legal dispositions and on responsible supply-chain management.\textsuperscript{409}

Furthermore, several transparency initiatives have been taken.\textsuperscript{410} One such initiative is the \textit{Extractive Industries Transparency Initiative}, launched in 2002, which brings together governments, international organisations, companies, civil society organisations and investors.\textsuperscript{411} Under the initiative oil, gas and mining companies commit to publicly disclosing payments they make to governments, and the governments in turn agree to publish the payments they receive. The initiative is voluntary for governments, but once they sign up they commit themselves to implementing the initiative and the companies are legally required to disclose their governments payments. The European Investment Bank decided to endorse and support the initiative.\textsuperscript{412}

\begin{footnotesize}
\begin{enumerate}
\item According to the Communication 2006: “It (the Alliance) is not a legal instrument and is not to be signed by enterprises, the Commission or any public authority. It is a political process to increase the uptake of CSR amongst European enterprises.”
\item They are expected by June 2010.
\item See for example “The Global Reporting Initiative”, launched in 1997 by the UN Environment Programme and a coalition of NGOs from the US (www.globalreporting.org); “The Publish What You Pay Campaign”, launched in 2002 by a consortium of NGOs (www.publishwhatyoupay.org).
\item See www.eitransparency.org.
\item See, www.eib.org; still the support of EIB is controversial. NGOs pointed to the controversial loan granted by the EIB in July 2007 to the Tenke Fungurume Mining SARL (TFM) project, a major mining project in the Democratic Republic of Congo (DRC), a project notorious for the lack of transparency and the alleged corruption surrounding it. EIB lending in Africa takes place under the Cotonou Agreement, which aims at “reducing poverty with the objective of sustainable development.” EIB also claims that it “applies EU standards and international best practice in all projects it finances.” However, the Tenke loan flatly contradicts both these stated aims. See all.africa.com, Ghana, European Investment Bank supports EITI, 17 March 2008.
\end{enumerate}
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Since the adoption of the Transparency Obligations Directive in 2004, companies listed on European stock exchanges must also fulfil minimum transparency requirements.\textsuperscript{413} The Transparency Obligations Directive does promote the disclosure of payments to governments by extractive companies listed on European Stock Exchanges, but unfortunately in very weak terms.\textsuperscript{414} The Directive only asks member states to ‘encourage’ this form of disclosure, rather than making it mandatory.

\textit{Implementation}

The European Alliance for Corporate Social Responsibility claims that at least, more than 230 companies and organisations support it.\textsuperscript{415} However, since support requires no commitment to standards or principles, compliance is not certain. In fact there are companies in the alliance that being scrutinised by NGOs for violations of human, social and environmental rights, e.g. BP, Shell and Nestlé.\textsuperscript{416} There is no indication that the Alliance is doing any monitoring to see whether companies involved are doing what they promised to do.\textsuperscript{417}

Civil society and the European Parliament have already expressed their discontent with the policy of the Commission. The European Parliament has favoured a mixed approach, combining voluntary and mandatory mechanisms. In 2007, in a resolution the European Parliament insisted, inter alia, on the commitment to incorporating existing internationally-agreed standards and principles, and on a multi-stakeholder approach, and also on the application of independent monitoring and verification.\textsuperscript{418} It suggests benchmarks of success for the Alliance, such as the increase in the uptake of best practices by enterprises, the development of new models for best practices, the identification and promotion of specific EU action and regulation to support corporate social responsibility and an assessment of the impact of these initiatives on the environment and on human and social rights.

\textsuperscript{414} According to recital 14 of the Transparency Obligations Directive “the home Member State should encourage issuers whose shares are admitted to trading on a regulated market and whose principal activities lie in the extractive industry to disclose payments to governments in their annual financial report. The home Member State should also encourage an increase in the transparency of such payments within the framework established at various international financial fora.”
\textsuperscript{415} See the website of CSR Europe http://www.csreurope.org/pages/en/supporters.html.
\textsuperscript{416} See advocacy briefing of the European Coalition for Corporate Justice, November 2006.
\textsuperscript{417} Information was requested several times to the Alliance, but no answer was received.
Concerning the Extractive Industries Transparency Initiative, 28 countries have currently been accepted as candidate countries.\footnote{Concerning the Extractive Industries Transparency Initiative, 28 countries have currently been accepted as candidate countries.} Once a country has gained the status of candidate, it has two years in which to be validated as a compliant country. Apart from Azerbaijan, Liberia and Timor Leste, no other country has yet received the status of compliant country.\footnote{For most candidate-countries the deadline for validation expired on 9 March 2010. As these countries were not ready by then, for most of them the deadline has been postponed.} The voluntary approach to financial transparency might not work in countries in which the ruling elites benefit from a veil of secrecy over the management of resource revenues. Also, the EITI is currently limited to three sectors: the oil, gas and mining sectors. The EITI multi-stakeholder groups in some countries have included other areas, (such as Liberia including forestry), but that goes beyond the EITI requirements. This makes the initiative less significant for countries with other main export products, e.g. cocoa for the Ivory Coast.\footnote{Moreover, countries can also request and obtain exemptions for a specific sector.}

A European level review of the Transparency Obligations Directive was planned in 2009 in terms of its operation and implementation.\footnote{A European level review of the Transparency Obligations Directive was planned in 2009 in terms of its operation and implementation.} No country decided to implement the non-binding recital concerning the disclosure of payments to governments by extractive companies. There is little chance of this recital becoming mandatory in the near term.\footnote{No country decided to implement the non-binding recital concerning the disclosure of payments to governments by extractive companies. There is little chance of this recital becoming mandatory in the near term.}

**Evaluation**

\footnote{Concerning the Extractive Industries Transparency Initiative, 28 countries have currently been accepted as candidate countries.}{Guinea has voluntarily suspended its EITI Candidate status in the EITI starting from 19 December 2009, in view of the political situation in the country.}

\footnote{For most candidate-countries the deadline for validation expired on 9 March 2010. As these countries were not ready by then, for most of them the deadline has been postponed.}{See www.eitransparency.org, website; for an evaluation of the first 4 years, see also Eye on EITI, by Publish What You Pay and Revenue Watch Institute, October 2006.}

\footnote{Interview with the official, responsible for the follow-up of EITI; at Belgian Ministry of Foreign Affairs, November 13 2009; the EITI Board agreed to grant extensions to 16 countries during its meeting in Berlin 15-16 April 2010. The Board did not approve the request for an extension of the deadline from Equatorial Guinea. Sao Tome and Principe’s application for a voluntary suspension was not approved. As a consequence of these decisions, these countries are no longer considered candidate countries.}{Interview with the official, responsible for the follow-up of EITI; at Belgian Ministry of Foreign Affairs, November 13 2009; the EITI Board agreed to grant extensions to 16 countries during its meeting in Berlin 15-16 April 2010. The Board did not approve the request for an extension of the deadline from Equatorial Guinea. Sao Tome and Principe’s application for a voluntary suspension was not approved. As a consequence of these decisions, these countries are no longer considered candidate countries.}

\footnote{The EITI multi-stakeholder group in the Ivory Coast can include cocoa into its EITI implementation, but it is not a requirement in order to become a compliant country.}{The EITI multi-stakeholder group in the Ivory Coast can include cocoa into its EITI implementation, but it is not a requirement in order to become a compliant country.}

\footnote{According to the EITI International Secretariat (message of January 21 2010), it is up to the EITI Multi-stakeholder group in the country to decide the scope of their EITI programme. But if a country only includes a small part of its mining activities into its EITI programme without justification, the EITI Validator is likely to make a recommendation that the country should include more of the sector into the EITI programme, or even recommend that they do not become compliant.}{According to the EITI International Secretariat (message of January 21 2010), it is up to the EITI Multi-stakeholder group in the country to decide the scope of their EITI programme. But if a country only includes a small part of its mining activities into its EITI programme without justification, the EITI Validator is likely to make a recommendation that the country should include more of the sector into the EITI programme, or even recommend that they do not become compliant.}

\footnote{An external Study on the Application of the Transparency Directive was conducted for the European Commission (December 2009). The European Commission is currently preparing a report on the operation of the Directive (cf. Article 33) which will be published later in 2010 (see ec.europa.eu/internal_market/securities/transparency/index_en.htm).}{An external Study on the Application of the Transparency Directive was conducted for the European Commission (December 2009). The European Commission is currently preparing a report on the operation of the Directive (cf. Article 33) which will be published later in 2010 (see ec.europa.eu/internal_market/securities/transparency/index_en.htm).}

\footnote{Information obtained from ‘Publish What You Pay’ on March 23 2010.}{Information obtained from ‘Publish What You Pay’ on March 23 2010.}
The current EU legal framework applicable to European companies worldwide operations is characterised by a lack of protection against violations of human, social and environmental rights outside the EU. The current soft norms are too weakly formulated to ensure that all corporations abide by them. There is also no indication of monitoring and reporting on human, social and environmental rights behaviour by enterprises. It is therefore doubtful that the current framework efficiently does deter corporate misconduct and hence contribute to conflict prevention.

**Fight against impunity – the International Criminal Court**

**Legal and policy framework**

The adoption of the Rome Statute in 1998 creating the International Criminal Court (ICC) was an important step in the commitment of the international community to deter the most serious crimes of genocide, crimes against humanity, war crimes and the crime of aggression.\(^{426}\) The ICC was established to put an end to impunity, and thus to contribute to the prevention of these worst crimes.\(^{427}\) The jurisdiction of the Court can be triggered through referral of the situation by the Security Council, by a State Party or at the initiative of the Prosecutor.\(^ {428}\)

All of the Member States of the EU have ratified the Rome Statute.\(^{429}\) However, EU Member States failed to agree a common position on the crime of aggression amongst themselves before the Review Conference of the Rome Statute in June 2010, which adopted a resolution amending the Rome Statute to include a definition of the crime of aggression and the

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\(^{426}\) Rome Statute of the International Criminal Court, 17 July 1998, UN Doc. A/Conf. 183/9 (1998), entered into force on 1 July 2002; concerning the crime of aggression, the Court shall only exercise jurisdiction over crimes of aggression committed one year after the ratification or acceptance of the amendments by 30 States Parties and following at least a two-thirds vote of the Assembly of States Parties after January 1 2017 (Review Conference of the Rome Statute, 13\(^{th}\) Plenary Meeting, June 11 2010, I.C.C. Doc. RC/Res. 6)

\(^{427}\) See Preamble of the ICC Statute.

\(^{428}\) Art. 13, 14 and 15 of the ICC Statute; in the case of the crime of aggression however, when a State Party or the Prosecutor takes the initiative, the Court does not have jurisdiction over the crime of aggression when it arises from an act of aggression by a State Party that previously declared to the Registrar of the Court that it does not accept the Court’s jurisdiction on aggression or when committed by non-party State’s nationals or on non-party States territory. In the absence of determination by the Security Council of an act of aggression within 6 months after the notification of the Prosecutor of the UN Secretary-General, the Prosecutor may only proceed with an investigation, provided he has obtained the previous authorisation by the Pre-Trial Division of the Court (in accordance with the original procedures under art. 15) (see Review Conference of the Rome Statute, 13\(^{th}\) Plenary Meeting, June 11 2010, I.C.C. Doc. RC/Res. 6).

\(^{429}\) The Czech Republic was the last to finally ratify the Rome Statute on 8 July 2009. The Statute entered into force for the Czech Republic on 1 October 2009.
conditions according to which the Court could exercise jurisdiction with respect to the crime.\textsuperscript{430} \textsuperscript{431}

The EU has been an active promoter of the ICC. It played an important role in securing the necessary number of ratifications to have the Statute enter into force, which happened in 2002. Notwithstanding the fact that these days the ICC is fully functional, the task has not been accomplished. Many countries in the world, among them major economic and political powers, have not yet ratified the ICC Statute. The EU is trying to achieve wider acceptance of the statute and its implementation through various instruments and channels, such as political démarches, political dialogue, statements, negotiations and the inclusion of an ICC-clause in agreements with third countries.\textsuperscript{432}

The EU Council has also adopted several decisions in the area of Justice, Freedom and Security to strengthen cooperation among the Member States in the investigation and prosecution of genocide, crimes against humanity and war crimes at national level.\textsuperscript{433}

In April 2006, the assistance and cooperation between the EU and the ICC was structured in an agreement.\textsuperscript{434} The agreement aims, inter alia, to facilitate cooperation, support, assistance, the exchange of information and consultation in matters of mutual interest, and deal with issues pertaining to the immunity of EU personnel and the security of EU operations and

\textsuperscript{430} A common position was expected by the end of the Swedish Presidency, but did not succeed; Statement by Ms. Elinor Hammarskjöld, of the Swedish Ministry for Foreign Affairs, on behalf of the Swedish Presidency of the European Union during a debate at the European Parliament (organised by European Parliament Group of Parliamentarians for Global Action) on 15 October 2009.

\textsuperscript{431} EU meetings during the Conference appeared to be merely moments of sharing of information rather than trying to reach an agreement on amendment proposals (interview with participant of the Review Conference on June 27 2010).


\textsuperscript{434} Agreement between the ICC and the EU on Cooperation and Assistance of 10 April 2006 (2006/313/CFSP), \textit{OJ} L115 of 28 April 2006
activities. Since the setting-up of the ICC, EU Member States have been the main contributors to the budget of the ICC.\textsuperscript{435}

\textit{Implementation}

Some EU Member States still need to adapt their domestic legislation in order to fully implement the Rome Statute. This implies providing a concrete legal basis for cooperation with the ICC and domestication of the crimes under the Rome Statute. The ICC also relies on states for witness relocation and the enforcement of sentences. So far, only a few EU Member States have entered into witness relocation agreements, and into enforcement agreements with the Court.\textsuperscript{436}

The EU has provided the ICC with political support in its external relations. It has supported other States in their endeavours to ratify and implement the Statute, and has taken up the issue of the ICC in its bilateral contacts with other States and organizations. The Balkan countries have all ratified the Rome Statute and their policy regarding the ICC is followed up.\textsuperscript{437} Since its revision in 2005, the Cotonou Agreement between the ACP countries and the EU contains a clause in which the parties agree “to seek to take steps towards ratifying and implementing the Rome Statute”.\textsuperscript{438} References in this kind of agreements can provide effective leverage for persuading these countries to accede to the ICC. However, the EU could do more to encourage other countries to become Member States. Turkey, although a candidate country, has not ratified the Rome Statute. The EU has put pressure on Turkey to become a member of the Statute, but this is not in itself a requirement in the framework of its accession policy. Neither have most countries integrated in the neighbourhood policy ratified the Rome Statute.\textsuperscript{439} For countries such as Ukraine, Moldova, Armenia, Azerbaijan and Lebanon, the Commission has included the accession or initiation of the accession to the Rome Statute as a

\textsuperscript{435} Up to July 2007 Member States accounted for 75.6\% of the total assessed contributions to the ICC; from the accession of Japan in July 2007 this part has decreased to 57.4 \%; See booklet: The European Union and the International Criminal Court.

\textsuperscript{436} Speech of Judge Sang-Hyun Song, President of the International Criminal Court during a debate at the European Parliament (organised by European Parliament Group of Parliamentarians for Global Action) on 15 October 2009.

\textsuperscript{437} I.c. FYROM, Croatia, Albania, Montenegro, Bosnia-Herzegovina and Serbia; see also Progress Reports of the Commission.

\textsuperscript{438} Art. 11 of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part; the revised agreement was signed on 25 June 2005 and entered into force on 1 July 2008.

\textsuperscript{439} With the exception of Georgia and Jordan.
point for action in the action plans. ICC seems not to be mentioned in other action plans or only in very indirect terms.\textsuperscript{440}

The EU and its Member States could do more to endorse the decisions of the ICC in the public arena, since the ICC as a judicial institution cannot defend its own decisions. The biggest obstacle to conducting judicial proceedings remains the lack of arrest and surrender of suspects. The EU should also be willing to adopt measures against regimes that fail to comply with ICC arrest warrants. For example, despite Sudan’s defiant non-cooperation with the ICC, so far, no sanctions have been taken by the EU against the individuals responsible for non-cooperation, let alone measures to prevent business and other economic or trade relations between these individuals, or any legal entity or corporation controlled by them, and European companies.\textsuperscript{441} The EU has indicated its willingness to adopt additional targeted sanctions, and has threatened to do so, but as yet has not done so.\textsuperscript{442}

\textit{Evaluation}

Too many countries still fall outside the jurisdiction of the ICC. To have more impact, its reach should be broadened by the addition of new parties to the Statute. The greater the number of States ratifying it, the better its legitimacy and influence worldwide will be. Cooperation should also become systematic, since the ICC cannot enforce its own decisions. Currently, it still depends too often on political will. The capacity of national courts should also be enhanced, since the ICC should only be one part of a worldwide system of criminal justice.

The deterrent function of the ICC is difficult to prove. In cases of mounting conflict, early indication that the Security Council, the Prosecutor of the Court, or a State Party are

\textsuperscript{440}The action plans of Israel, Morocco, Palestinian Authority and Tunisia do not contain an ICC-clause. In the action plan on Egypt, one of the actions is ‘to promote a dialogue on the ICC’. The action plan on Israel aims to ‘to promote co-operation on issues such as fight against impunity of authors of genocide, war crimes and any other crime against humanity.’

\textsuperscript{441} See Resolution of the European Parliament on Sudan and the International Criminal Court of 22 May 2008 urging the European Council of 19-20 June 2008 to adopt targeted measures; president al-Bashir, nor Sudan’s former Minister of the Interior Ahmad Harun and former Janjaweed militia leader Ali Muhammad Ali Abd-Al-Rahman against whom already in April 2007 two arrest warrants were issued by the ICC, are not on the list of targeted persons of EU sanctions in force. According to a MEP Germany, France and Britain block additional sanctions to Sudan (interview MEP on 18 November 2009).

\textsuperscript{442} See Declaration by the Presidency on behalf of the European Union on the Anniversary of the referral of the situation in Darfur/Sudan to the ICC of 31 March 2008; see Presidential conclusions of 20 June 2008, Council Doc. 11018/08; see also Resolution of the European Parliament on Sudan and the International Criminal Court of 22 May 2008 urging the European Council of 19-20 June 2008 to adopt targeted measures.
monitoring the situation and are willing to use their powers under the Rome Statute, might deter parties from committing or continuing genocide, crimes against humanity or war crimes. So far, however, only on 31 March 2005 did the Security Council refer the situation in Darfur since 1 July 2002 to the Prosecutor of the Court.\(^{443}\) The Prosecutor of the Court has so far only recently taken the initiative to request an investigation, concerning the post-election violence 2007–2008 in Kenya.\(^{444}\) In the three other situations – Uganda, the Democratic Republic of the Congo and the Central African Republic – the States Parties to the Rome Statute have themselves referred the situations occurring on their territories to the Court. The novel interpretation of Art. 14 of the Rome Statute that a State could also actually refer itself to the Court, emerged within the Office of the Prosecutor during 2003.\(^{445}\) The Prosecutor encouraged voluntary referrals by States Parties to trigger the jurisdiction of the Court. Yet, this policy is not without risk.\(^{446}\) Self-referral by States might implicate the Court in the internal political game of that State. It also entails the risk that it will lead to prosecutions on only one side of the conflict, the non-state actors. The Prosecutor has great discretion in the selection of cases he chooses for prosecution, but a government will indeed rarely be willing to prosecute itself. If the Prosecutor focuses on state actors, the chances that State Parties will respond to an invitation in the future from the Court will become slim. The extent to which Uganda and DRC were really unwilling or unable to carry out the investigation or prosecution of rebel groups has also been questioned.\(^{447}\) Since the Court was established to fight against impunity for the most serious crimes, the Court should give priority to those situations and cases in which perpetrators can still act unpunished.

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\(^{443}\) S/RES/1593 (2005); the EU was instrumental in paving the way for the security council referral of the situation to the ICC; the EU called in 2004 on the UN to establish a Commission of Inquiry into crimes committed in Darfur; on the basis of the Commission of Inquiry’s recommendations, the EU called on the UN Security Council to refer the Darfur situation to the ICC.

\(^{444}\) The Prosecutor has submitted his request to the Pre-Trial Chamber of the ICC on 26 November 2009. On 31 March 2010, the Pre-Trial Chamber granted the Prosecutor’s request to commence an investigation on crimes against humanity allegedly committed in Kenya.


\(^{447}\) The LRA can be brought to justice in Uganda if they can be apprehended. The problem of impunity in Uganda lies rather in the fact that the Ugandan army is committing atrocities without being prosecuted; see concerning the situation in Uganda and in the DRC: Schabas, W.A., “First Prosecutions at the International Criminal Court”, Human Rights Law Journal, 2006, vol. 27, p. 25-40. Concerning the Central African Republic, the referral was endorsed by the Court of Cassation, which said its justice system was unable to carry out the complex proceedings necessary to investigate and prosecute war crimes. This was also pointed out by local human rights groups. Interestingly, in a letter of August 2008, President Bozize, allegedly fearful that the ICC could also launch proceedings against him, called on the UN Security Council to declare CAR courts competent to try any war crimes committed in the country since the end of the 2003 coup in which he seized power; see article by Glassborow K. and Gouby M., ‘Bozize call for end to ICC probe under scrutiny’, produced by Institute for War and Peace Reporting, January 2009.
The slowness with which the Court proceeds also hinders true confidence in the deterrent function of the Court. For example, the situation in Darfur was referred to the Court by the Security Council in May 2005. The first arrest warrants were only issued in May 2007, and in the case of Al Bashir only in March 2009.\textsuperscript{448}

The impact of the Court arrest warrants on a conflict is difficult to predict. They might negatively interfere with ongoing negotiations, because the indicted party will hold on to power at any price, because it fears that once removed from power, it will face prosecution.\textsuperscript{449} However, they may also potentially be a tool for bringing the indicted party to the negotiating table, in order to stop its marginalisation and have the arrest warrants lifted.\textsuperscript{450} Yet, the latter can only be possible if the arrest warrants are able to be executed and are believed to be executable. According to a recent study of Human Rights Watch, evidence suggests that at minimum the indictments have not precluded peace talks, and at times they have benefited peace processes through the process of marginalisation of the leaders suspected of serious crimes.\textsuperscript{451} Furthermore, the research suggests that the promotion of international justice for serious crimes may have a positive impact on the development of domestic law enforcement tools. At the very least, the prosecutions by the ICC have increased awareness of what constitutes serious international crimes.

\textbf{The Quest for More Coherence}

The Council and the Commission, since the entry into force of the Treaty of Lisbon assisted by the High Representative of the Union for Foreign Affairs and Security Policy, are responsible for ensuring the consistency of the EU external policy as a whole and between these and its other policies and must cooperate to this end.\textsuperscript{452} The increased awareness of the

\textsuperscript{448} See also the Observations of professor Antonio Cassese on Issues Concerning the Protection of Victims and the Preservation of Evidence in the Proceedings on Darfur Pending before the ICC, \textit{Situation in Darfur, Sudan} (ICC-02/05), Pre-Trial Chamber I, 25 August 2006 and of UN Commissioner for Human Rights Louise Arbour, \textit{Situation in Darfur, Sudan} (ICC-02/05), Pre-Trial Chamber I, 10 October 2006.

\textsuperscript{449} See e.g. Andrew Natsios, "Beyond Darfur: Sudan’s Slide Toward Civil War," \textit{Foreign Affairs}, May/June 2008.

\textsuperscript{450} E.g. the issuance of the arrest warrants for leaders of the LRA appears to have increased the LRA’s interest in participating in peace talks held in Juba between 2006 and 2008 in order to have them lifted. Yet peace talks stalled in April 2008, possibly because the leaders of the LRA lost their apprehension of the issued warrants of arrest.


\textsuperscript{452} Art. 21, par. 3 TEU (before the entry into force of the Treaty of Lisbon art. 3 TEU)
need for more coherence has led to initiatives for more coherence between humanitarian aid, security and development aid.\textsuperscript{453}

\textbf{Linking Relief Rehabilitation and Development (LRRD)}

In the 1980s concern about the "grey zone" between humanitarian assistance and development aid grew. Gaps in the response to conflicts could play a role in the development of the conflict itself. Concern also grew about the role humanitarian agencies could play in prolonging or deepening the structures responsible for conflict, or even in providing an incentive to continue a war.

In its Communication of 1996 on LRRD the Commission underlined the links between humanitarian assistance and development: humanitarian assistance needed to take into account the long-term developmental aspects and vice versa.\textsuperscript{454} Humanitarian assistance was considered an instrument for preventing conflict and promoting conciliation. In its Communication of 2001 the Commission stressed the importance of an integrated approach, but it considered the linkage of humanitarian and development assistance more the task of rehabilitation and development instruments.\textsuperscript{455} It also referred the responsibility for conflict prevention to development cooperation. The \textit{European Consensus on Humanitarian Aid} followed that turn, stating clearly that humanitarian aid is not a crisis management tool and underlined its neutral, impartial and independent nature.\textsuperscript{456} It reiterated that humanitarian, development and other relevant aid instruments should work better together, in particular in situations of fragility and post-conflict.

An inter-service LRRD study group was established in 2003, in which the different commission services (DG ECHO, DGRELEX, DG Development and EuropeAid) are

\textsuperscript{453} I will focus on EU policy and institutional coherence. I will not go into the search for more coherence between the EU level and the national level or between the EU’s actions and the activities of other international actors and civil society.


involved, intensifying sharing of information and coordination.\textsuperscript{457} DG ECHO works on exit and transition strategies to avoid the prolongation of humanitarian operations in situations where development cooperation would be more appropriate. In 2006 a list of pilot countries was drawn up, in which the LRRD approach received particular attention.\textsuperscript{458} Where the capacity and readiness of the development side of the Commission to get involved in protracted crises was initially rather hesitant, some change has been noted.\textsuperscript{459} They are gradually starting to step in earlier. The Commission increasingly adopts a double-forked approach to crises, involving both short-term relief as well as a set of longer-term activities. The country strategy papers (CSP) are subject to an inter-service consultation process involving all external relations services of the Commission.\textsuperscript{460} For example, several CSPs under the 10\textsuperscript{th} EDF include commitments to incorporate humanitarian issues and provide a transition. The stability instrument also makes it possible to fill gaps in the transition period.

DG ECHO also seeks for complementarity with other donors for countries where ECHO’s main sectors (health, food security and water sanitation) are not the focal sectors in the CSPs.

\textbf{Security-Development nexus}

In the framework of more policy coherence for development objectives, more attention has been paid to the coherence between development and security policies. The \textit{European Security Strategy} (2003) and the \textit{European Consensus on Development} (2005) stress both the links between development and peace and security: “there can be no sustainable development without peace and security, and without development no sustainable peace will occur”. But the EU has not dwelt on the relation between development, poverty and conflict. Instead, it has identified some initial actions to create increased coherence in some of the areas spanning the security-development nexus: strategic planning, Security Sector Reform (SSR), partnerships with regional and sub-regional organisations and humanitarian aid and security.\textsuperscript{461}

\textsuperscript{457} See Report and Operational Conclusions of the LRRD/DPP Interservice Group, 27 October 2003.
\textsuperscript{458} See annual reports on humanitarian aid of the Commission (ECHO), in particular the annual report of 2007. This (non-exhaustive) list of pilot countries included Kenya, Liberia, Mauritania, Sudan and Uganda.
In the area of strategic planning, further cooperation and coordination between Council structures, Commission services and Member States has been envisaged. In the area of SSR, an increased number of development support, EU missions and bilateral activities of Member States are taking place. To improve coordination and cooperation, in 2006 the EU developed a Policy Framework for SSR.\(^{462}\) This is now being developed further and followed-up.\(^{463}\) The EU has concluded a partnership on Peace and Security with Africa, in particular with the African Union as institutional actor. Their Joint Strategy identifies strategic priorities in the areas of peace and security, governance and human rights, trade and regional integration and other development issues.\(^{464}\) The African Peace Facility was created to support African-owned and led peace operations and to strengthen the capacity of the African Union and the sub-regional organisations. In 2007 the African Union and the EU decided to broaden the scope of the African Peace Facility to cover conflict prevention and post-conflict stabilisation too. The African Peace Facility is financed by EDF’s development funds.\(^{465}\)

In the field of humanitarian aid, the “humanitarian space” is increasingly eroding, with a growing number of countries in which access to beneficiaries has become more difficult or impossible, and a worsening security situation for beneficiaries and aid workers alike. Numerous governments continue to disregard the commitments made under international humanitarian law.\(^{466}\) The scope for interaction and cooperation between military/security forces and humanitarian actors has been identified in order to secure the provision of humanitarian aid.

**Evaluation**

While progress has been made, further steps are needed to improve coherence. This implies the strengthening of mechanisms in the Commission and the Council, in order to take more account of humanitarian, development and security concerns when taking decisions. It also implies improving the manner in which different measures complement or succeed each other, and improvement of the transition between the different financial instruments. It also implies

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\(^{463}\) SSR programs are currently implemented in DRC, Guinea Bissau, Afghanistan and the Balkans; see also Spence D. and Fluri, P. (eds.), The European Union and Security Sector Reform, John Harper Publishing, 2008.

\(^{464}\) Joint Africa-EU strategy, December 2007

\(^{465}\) The legal basis is art. 11 of the Cotonou Agreement; the decision to finance the African Peace Facility under the 9th EDF was considered at the time a one-time operation; but in 2006 it was again decided to finance the APF under the 10th EDF (interview with an official of the European Parliament on 7 December 2009).

choosing the right financial instruments. Furthermore, issues such as the protection of the humanitarian space cannot be dealt with solely on a technical level, they also require continued political impetus.

With the Lisbon Treaty in force, the High Representative of the Union for Foreign Affairs and Security Policy has been appointed to increase coherence of the EU’s external action. The High Representative is also Vice-President of the Commission and Chairwoman of the Foreign Affairs Council. She will be assisted by the future EEAS, which will combine most of the DG External Relations and DG Development of the Commission, the EU Delegations in third Countries and most of the Council General Secretariat. To what extent the High Representative and the EEAS enhance the capacity for increased coherence, remains to be seen.

**Conclusions**

The conflict prevention debate within the EU has focused more on concrete policies, the development of instruments and, recently, the improvement of their coherent use than on the theoretical underpinnings of conflict prevention. More clarity is required concerning what needs to be prevented. More research is still needed into the root causes of conflict, how they should be weighed against each other, and how they are linked to the identified threats. More clarity is also needed as to how conflict is prevented. Measures such as the promotion of the rule of law, good governance or democratisation might contribute to the prevention of conflict, but might just as well have no or even a negative impact, if the relationship between the different variables is not carefully studied. Poverty reduction, it is said, must contribute to conflict prevention, but there are still many questions about the links between poverty and conflict and the impact of development aid. Policies and instruments may not have the expected leverage, or might interfere differently than expected.

A debate is needed on whose conflict prevention is to be prioritised. As the principle of the responsibility to protect has been accepted, the EU should at least prioritize prevention and

467 E.g. the use of development funds for peace and security purposes as has been the case with the African Peace Facility has been criticised in that regard. The concept of Official Development Assistance adopted by the Development Assistance committee of the OECD, to which the EU is committed, states clearly that it concerns official financing administered with the promotion of the economic development and welfare of developing countries as the main objective.

468 Art. 18 TEU

469 Art. 27.3 TEU; the EEAS will normally be established by the end of 2010.
the protection of the populations concerned against genocide, war crimes and crimes against humanity. However, the discourse on conflict prevention post 9/11 has increasingly shifted towards ‘new’ threats such as terrorism, organised crime and weapons of mass destruction confronting Europe and the world, and the enhancement of the EU’s own security. In general, instruments have been used more in the immediate neighbourhood, and in particular in Central and Eastern Europe, with the prospect of enlargement. The real priorities of the EU in conflict prevention, in its policies and resource allocation, and how they might have changed over time, require further study.

This overview shows the important toolbox the EU has for addressing (potential) conflict situations, including significant and sustainable financial instruments. While there is a main policy framework on conflict prevention, more thought is required concerning an improved use of the available tools, and in a preventive instead of a reactive manner. Long-term cooperation programmes are considered most effective for addressing the root causes of conflict, but the current instruments seem not always to offer sufficient leverage, and are still too inflexible in the event of a (mounting) crisis. Operational prevention measures still too frequently take place too late, and in a fragmented way. A comprehensive approach should be developed. This implies improving the manner in which different measures complement or succeed each other, and improvement of the transition between the different financial instruments. The need to ensure better coherence between the different instruments has been acknowledged and solutions have been worked out. The transition between short-term actions (crisis management) and long-term actions has already been made easier by the Stability Instrument. The appointment of the High Representative of the Union for Foreign Affairs and Security Policy and the establishment of the EEAS towards the end of 2010 provide the opportunity to further increase coherence. The EEAS would also include a unit dealing with conflict prevention and crisis management, which would enable it to adequately mainstream conflict prevention throughout the different actions and programmes.

In addition, at implementation level, instruments are not always consistently applied, and countries are not treated equally. Often, policymakers were also well aware of a looming crisis, but failed to act. The EEAS could help to develop a more transparent policy and to bridge the gap between early warning and early action. Whether it will deliver this potential capability remains to be seen.
As far as systemic prevention is concerned, the EU has subscribed to the international regulatory framework relevant for conflict prevention, and has itself undertaken a series of initiatives. However, this regulatory framework can still be significantly developed further, in particular in the areas of natural resources, SALW and the setting of norms for enterprises in conflict regions. Monitoring and oversight can also be strengthened.

Finally, more evidence is needed of the effectiveness and impact of the current conflict prevention policies. Very few evaluations or impact assessments could be found on this issue.