

PLEASE NOTE! THIS IS SELF-ARCHIVED VERSION OF THE ORIGINAL ARTICLE

To cite this Article: Crete, A. ; di Martino, A. ; Nemedi, M. & Taitto, P. (2017) Civilian and Military Personnel in CSDP Missions and Operations. Bruxelles: European Parliament.

DOI: 10.2861/354308

URL:

http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578035/EXPO_STU%282017%29578035_EN.pdf

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**Civilian and military
personnel in CSDP
missions and operations**

SEDE



WORKSHOP

Civilian and military personnel in CSDP missions and operations

ABSTRACT

The workshop was organised on January 26, 2017 at the initiative of the Subcommittee on Security and Defence (SEDE) with the aim to highlight trends, challenges and recommendations regarding civilian and military personnel deployed in CSDP missions and operations in particular in the areas of force generation, training and the national follow-up on crimes and offences perpetrated during deployment.

Annalisa Creta is research fellow of the Sant'Anna School of Advanced Studies in Italy, specialised in civilian crisis management with a particular focus on training issues. Petteri Taitto is affiliated with the Laurea University of Applied Sciences in Finland as principal scientist. Alberto di Martino is full professor of criminal law at the Sant'Anna School of Advanced Studies in Italy.

This paper was requested by the European Parliament's Sub-Committee on Security and Defence.

English-language manuscript was completed on 16 February 2017.

Printed in Belgium.

Authors: Annalisa CRETA, Alberto di MARTINO, Mark NEMEDI, (Sant'Anna School of Advanced Studies, Pisa, Italy) and Petteri TAITTO (Laurea University of Applied Sciences, Vantaa, Finland). The paper has been developed under the overall scientific supervision of Professor Andrea de Guttry, Director of the DIRPOLIS Institute, Sant'Anna School of Advanced Studies, Pisa, Italy.

Official Responsible: Jérôme LEGRAND.

Editorial Assistant: Ifigeneia ZAMPA and Elina STERGATOU.

Feedback of all kind is welcome. Please write to: jerome.legrand@europarl.europa.eu.

To obtain copies, please send a request to: poldep-expo@europarl.europa.eu

This paper will be published on the European Parliament's online database, '[Think tank](#)'.

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

ISBN: 978-92-846-0643-6 (pdf)

ISBN: 978-92-846-0642-9 (paper)

doi:10.2861/354308 (pdf)

doi:10.2861/2668 (paper)

Catalogue number: QA-01-17-100-EN-N (pdf)

Catalogue number: QA-01-17-100-EN-C (paper)

Table of contents

Programme of the workshop	5
Biographical summaries of the speakers	6
Part I: Contributions of the speakers	7
Part II: Discussion	8
ANNEX 1: BACKGROUND NOTE	14
1 Introduction	14
1.1 Objective, methodology and structure of the paper	15
2 CSDP Personnel-related challenges	15
2.1 Force generation	15
2.2 Training	17
3 Member States' follow-up on crimes committed in CSDP missions and operations	21
3.1 Methodological questions	21
3.2 Conditions of Member State follow-up	22
3.3 Practical aspects	23
4 Concluding observations	24
5 Bibliography	27
6 References to Member State legislation	29
ANNEX 2: PRESENTATION SLIDES	30

WORKSHOP

POLICY DEPARTMENT, DG EXPO
FOR THE SUBCOMMITTEE ON SECURITY
AND DEFENCE (SEDE)



Thursday, 26.01.2017 – **10:30-12:30**
PAUL-HENRI SPAAK BUILDING - ROOM **P4B001**
CONTACT AND REGISTRATION: poldep-expo@europarl.europa.eu

CIVILIAN AND MILITARY PERSONNEL IN CSDP MISSIONS AND OPERATIONS



L000000 001 Designed by the Multimedia Creative Services, Unit A. Multimedia Unit / Printed by the Commission Printing Unit / ISO 15924:2004, sRGB Display

PROGRAMME OF THE WORKSHOP

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT



For the Sub-Committee on Security and Defence (SEDE)

WORKSHOP

Civilian and Military Personnel in CSDP missions and operations

Thursday, 26th January 2017
Brussels, **Paul-Henri Spaak Building, Room (P4B001)**
09.30-12.30h

PROGRAMME

- 10.30-10.35** **Welcome and introductory remarks by**
- **Ms Anna Elżbieta FOTYGA**, Chair of the Sub-Committee on Security and Defence (SEDE)
- 10.35-11.05** **CSDP capacities: human resources & training: trends, challenges and lessons**
- **Dr Annalisa CRETA**, Research Fellow at the Sant'Anna School of Advanced Studies of Pisa, specialised in civilian crisis management with a particular focus on training issues. Dr Creta holds a PhD in Public International Law from the Sant'Anna School, and a European Master's degree in Human Rights and Democratization from the European Inter-University Center for Human Rights and Democratization (EIUC), Venice.
 - **Mr Petteri TAITTO**, Principal Scientist at the Laurea University of Applied Sciences, Finland, focusing on training and education related issues in the EU. He has earlier coordinated CSDP mission related trainings at the ESDC and holds a Master of Education from Jyväskylä University and a General Staff Officer degree from the National Defence University.
- 11.05-11.20** **Aspects related to national follow up to crimes and offences committed during deployment in mission**
- **Professor Alberto DI MARTINO**, Full Professor of Criminal Law at the Sant'Anna School of Advanced Studies of Pisa. Pr Di Martino has, among his many publications, been the author of a book on rules of extraterritorial criminal jurisdiction.
- 11.20-12.20** **Q&A**
- 12.20-12.30** **Concluding remarks by**
- **Ms Anna Elżbieta FOTYGA**, Chair of the Sub-Committee on Security and Defence (SEDE)

BIOGRAPHICAL SUMMARIES OF THE SPEAKERS

Dr Annalisa CRETA

Dr Annalisa CRETA is a Research Fellow at the Sant'Anna School of Advanced Studies of Pisa, Italy, where she focuses on issues related to civilian crisis management, with a particular emphasis on training related matters. There, she is responsible for the management of a research project on "Training for CSDP and UN personnel: recent challenges". With a PhD in Public International Law from the Scuola Sant'Anna, she also holds a European Master's degree in Human Rights and Democratization from the EIUC, Venice – Italy and graduated in Political Sciences at the University of Pisa. Before joining the research staff of the Scuola in 2008, she served for several years as a human rights officer in the United Nations Office of the High Commissioner for Human Rights in Geneva, Switzerland. She also worked as a consultant for various UN agencies and the Italian MFA on human rights related issues.

Mr Petteri TAITTO

Mr Petteri TAITTO is Principal Scientist at the Laurea University of Applied Sciences, Finland. His previous positions include Training Manager at the ESDC/EEAS (2014-2016), with the responsibility to coordinate CSDP mission related training, Project Leader and Head of Training positions at the Crisis Management Centre Finland (2007-2013), Principal Instructor at the Emergency Services College (2004-2006), teacher at the National Defence College (1995-1997) and in various positions in the Finnish Defence Forces (1990-2003). In 2013, he held a presidency of International Association of Peacekeeping Training Centres (IAPTC). He holds a Master of Education from Jyväskylä University and a General Staff Officer degree from the National Defence University. He is a EU Civil Protection coordination expert and a member of EU Civilian Response Team (CRT). His crisis management mission experiences are from UN missions in the Balkans.

Professor Alberto DI MARTINO

Professor Alberto DI MARTINO is Full Professor of Criminal Law at the Sant'Anna School of Advanced Studies of Pisa, Italy (since 2002). He also lectures in International and Comparative Criminal Law at the University of Pisa. He has been Visiting Fellow at the Max-Planck-Institut für ausländisches und internationales Strafrecht in Freiburg i. Br. and the Institut für Kriminalwissenschaften of the J.W. Goethe-Universität in Frankfurt a.M.; he has also been Gastprofessor at the Law Faculty of the University of Hamburg. His academic production counts more than 100 publications. Among the others, he is author of a book on rules of extraterritorial criminal jurisdiction [The Frontier and The Criminal Law. Nature and Context of Rules on Transnational Criminal Law], and editor of the Italian translation of the professor Werle's book "Volkerstrafrecht" (Principles of International Criminal Law). He has been a member of the Italian delegation to the OECD Working Group of Bribery in International Business Transactions. His main areas of research relate to: sources and theory of Criminal Law; internationalization of the criminal justice system; Criminal Law and Public Administration; Criminal Tax Law; migration and criminal justice system; penitentiary law.

PART I: CONTRIBUTIONS OF THE SPEAKERS¹

The contributions of the speakers to the workshop 'Civilian and Military Personnel in CSDP missions and operations' held on Thursday, 26th January 2017, 09.30-12.30h in Brussels, the Paul-Henri Spaak Building, Room (P4B001) were submitted in form of an integral **background note** summarising the relevant aspects of the topics addressed at the workshop.

THE BACKGROUND NOTE IS ANNEXED TO THIS REPORT.

¹ Introduction" has been written by Annalisa Creta; "CSDP Personnel-related challenges" has been written by Annalisa Creta (force generation) and Petteri Taitto (training); "Member States' follow-up on crimes committed in CSDP missions and operations" has been written by Mark Nemedi with the contribution of Alberto di Martino. The "Concluding Observations" is the result of a common effort of all authors.

PART II: DISCUSSION

Mr Michael GAHLER underlined the importance of receiving reporting on practical challenges such as those presented in the workshop. He pointed out that in the everyday, CSDP missions and operations are well-known and that Member States consider carrying out such missions important. However, the practical challenges often only turn up after that and this is why such work is really important.

He wanted to know which Member States have an above average representation by personnel and which take less than average of the workload. Decisions are always made unanimously, but then, when it becomes concrete, there are always Member States who do more than they should according to their size and those that do less. He asked, if possible, for statistical information.

His second question concerned whether it is true that it is easier to get soldiers than civilian officials for CSDP missions and operations considering that military personnel can be ordered.

He also wanted to know, when personnel is needed, what the principle of selecting such personnel was, whether this was done on the basis of the first-come-first-served principle or depended on quotas that have to be respected within each of the missions. In case yes, he pointed out, that could mean additional difficulties. Mr Gahler stressed that he would prefer politically that this be based purely on ability and fitness for purpose, and then the principle of taking the first qualified person who applies. His question was directed at the relevant practice in the field.

Mr Gahler further emphasized that he is of the opinion that pre-deployment training should be funded from the CSDP budget. He was surprised to hear that funding is dependent on discussions with Member States in each case. This additional effort seems adventurous. He wanted to know if there could be an initiative to achieve that Member States accept that missions should naturally be financed from the CSDP budget.

He also inquired whether it would not be more promising for recruitment purposes to actually pay the personnel for the entire duration of the operation from the EU budget on a level equally attractive to everyone. Were there such a mechanism, the Member States would perhaps be more ready to send personnel as they can at the same time also save their own funds. This would essentially mean to turn around the now applicable principle, there would be no need to beg for personnel, but a payment system would be created that can be offered as an attractive alternative to the personnel as opposed to staying home. And since this would be paid from the EU budget, Member States would perhaps have the incentive to request something in return and send their personnel, perhaps their best personnel.

Mr Gahler further inquired if people can themselves apply for participating in CSDP missions speaking in particular of people who have already participated in a mission. He wanted to know if there is a need to concretely request these people from the Member States or whether the EU depends on the willingness of the Member States to supply personnel. This, in his opinion, would be relevant to the question of institutional memory mentioned in the presentations. If there are always new people recruited, no one might remember how someone performed last time. He pointed out that this could be an incentive to say that someone who applied and is qualified should be taken. He asked if there is a chance that Member States would accept such a 'reversed' procedure and the fact that they have to fundamentally accept that their personnel who applied must go into mission.

Regarding crimes and offences, he pointed out that it should be clear that these are prosecuted, even if not necessarily by the country where they were committed, in cases which are more serious than for instance parking illegally. However, normally crimes committed in an official position are punished more severely than the same crimes committed as a civilian. His question was whether it is not made clear that someone who commits a crime, for example rape, abroad in a mission should also be punished at home

more severely than in case of commission as a civilian. It also surprised him to hear that there are problems with regard to sentencing and charge.

He finally said with regard to reporting that it should be clear that if there is a suspicion, this should be reported back to the Member State, the mission should have the right to immediately take out people from the theatre and Member States should oblige themselves to commence the criminal procedure. Whether then there is a sentence is a different question. However, surely it should be clear, he stressed, that EU officials who travel abroad as nationals or Europeans do not have a free mandate for committing crimes.

Mr Afzal KHAN wanted to know what the consequences of Britain's leaving the EU would be with regard to training and the other subject areas at issue at the workshop.

Ms Sabine LÖSING pointed out that this is a broad field and that the individual strands addressed are also very wide and comprehensive. Her immediate response was that when it comes to violations of human rights and avoiding impunity research into these issues is very important and deserves the support of the SEDE Subcommittee. These issues must be addressed as the aim of the CSDP missions is often precisely to tackle these phenomena in the host State and not to reproduce them within the mission. She made clear that her fraction in the European Parliament is in principle critical towards and often opposes foreign military operations, but that she definitely supports the efficiency of the work that was addressed in the workshop, also regarding the question how this can be financed.

The first question of Ms Lösing concerned the link between civilian and military branches. Viewed from the civilian perspective, some of the financing solutions appear problematic with regard to situations where such a link exists. This includes the external policy financial instruments, but also the framework of the stability instruments. Civilian aspects are very important to be financed appropriately.

Another consideration in relation to the cooperation of civilians and military, she pointed out, is to what extent civilians are accepted in this military context. Considering a hypothetical case that German soldiers in Germany commit a crime and are investigated by German police, no one would want to deal with such a problem. This problem therefore appears unbelievably difficult. How is a trainer received by soldiers when he or she arrives in the mission and want to talk to the mission personnel. She wanted to know about the practical experiences in this respect.

Another question offers itself as regards the prosecution and investigation of crimes which also appears very complicated. This is also related to the question of the motivation of the individual participants and those whom they train. She wanted to know to what extent personnel bring their own motivation and there is an acceptance of that on both sides.

Another practical question she raised was who are the persons who give instructions and who are bound by instructions in these operations from a legal point of view.

Ms Lösing further raised the question of the cooperation with local authorities which was touched upon theoretically. Practically, when a woman becomes the victim of an act of sexual aggression she should possibly go to the police, she probably does not go to the EU. She asked where such a victim should go. She wanted to know if there are lower level access opportunities and in fact which are the possibilities of gaining access for victims to the possibility to report the crime, what are the experiences regarding liaison with local authorities.

Lastly, Ms Lösing inquired about the extent the speakers are involved in the mission in Kosovo and in other European missions. She noted that the mission has become an unbelievable swamp, also on the basis of the questions that were raised in the framework of the Committee of Foreign Relations it appears not to have a bottom, it is an unbelievably complicated terrain. She wanted to know how the fields that are relevant in other contexts are connected to this mission.

Mr Javier COUSO PERMUY wanted to know where information about illegal acts committed in mission can be accessed, whether there is any information available, and if there is any work done on the prevention of illicit acts. In relation to the training before the mission, specifically as regards the police officers and the military, what role does the provision of information specifically on democratic culture and international humanitarian law play. He also inquired about who is in charge of ensuring penal law in mission, the EU or the Member State, and who decides whether actions of the armed forces are legal or not.

Ms Anna Elżbieta FOTYGA remarked that in many places where CSDP missions are deployed an asymmetric conflict is in place or remnants of an asymmetric war are still present. Dangers of sexual abuse, rape or other types of crimes can also be present. She drew attention to the fact that despite this, the troops themselves are also at risk due to the combat posture of terrorist organisations. On the territory of the EU, when terrorists are pursued, the way of pursuing terrorists is never questioned by citizens. In mission it is easier to find personnel in a trap and find accusations of international crimes, crimes against humanity. She asked all the speakers what kind of training is needed and what is already, currently provided. She drew on her experience from NATO operations rather than the EU missions, but she pointed out that this kind of difficulty is more and more present also in the EU context. She concluded by stating that in terms of suicide bombers and using the civilian population as shields and components to asymmetric war there is a really difficult *modus operandi*.

Ms Annalisa CRETA provided answers in relation to training. As regards statistics and the question of Mr Gahler, she highlighted the point indicated in the slides presented, that from the 858 strong seconded personnel in civilian missions major contributors are countries such as Poland, Germany and Sweden, depending on the various missions. The main contributor currently is Poland with 126 personnel while the country that contributes the least is Cyprus with only 1 staff member present in mission. However, statistics are available and accessible and it can be seen which countries second in larger numbers to each of the civilian missions. Also for military operations there are open-source data on the contributing countries and the extent of contributions. She recalled that the question of force generation is heavily linked to the specific missions or operations.

Ms Creta also answered the question of Mr Gahler on the duration of the contracts of experts or civil servants sent to mission, agreeing that it would be advisable to link to the mandate of the mission. She highlighted the tendency that contracts are on average one-year long in the case of seconded personnel, but this is due to the fact that the personnel is released from their own services. Resources needed at home in civil service and contributions to CSDP missions need to be balanced. A system of compensation of the sending agency for having seconded a civil servant to the mission could facilitate the release of several members who are considered mission staff. She raised the example of a judge who will have his or her own case-load to adjudicate at home. In such a case it is difficult to release him or her to an international mission, however, with a compensation system for national resources for a CSDP mission, there could indeed be a more enabling environment and more incentive for force generation.

Pre-deployment training and the resources reserved for pre-deployment training, Ms Creta pointed out, are also linked to the matter of recruitment. She clarified that various documents indicate that pre-deployment is the responsibility of the Member States. It follows as a general rule that relevant expenses of pre-deployment training should be borne by the Member States themselves. However, examples regarding seconded personnel in other sectors are different from CSDP staff where pre-deployment costs are borne directly by the EU. She referred to election observation where the Commission pays the pre-deployment training of the seconded experts before being deployed. Also in the European Civil Protection Mechanism, the pre-deployment training is paid not by the Member States. She stressed that pre-deployment is linked to the duty of care.

Responding to the last question on security training she pointed out that missions and operations face different risks on the terrain and the staff deployed is aware of the trends to a different extent. More and more investment goes into hostile environment awareness training from Member States and the EEAS as part of the duty of care. Member States or sending organisations to at least make staff aware of risks, behaviours and the assessment of threats and to think about the possible consequences of courses of actions. There is a trend in moving forward in several areas.

She pointed out that there was a *fil rouge* between the three presentations of the workshop. Although the speakers highlighted challenges and trends in three different areas, but this was done on purpose. A number of different challenges are on the table when CSDP missions are concerned. The workshop picked up three: force generation, training and national follow-up on crimes which are completely different, although a stronger link between training and recruitment. The purpose of the workshop, Ms Creta clarified, was to highlight the challenges, the trends on the national level, and the issues at stake.

Ms Creta finally stressed that there is a need to harmonise different practices and have a minimum standard to abide by in order to put the personnel who is going to serve in missions and operations on the same bottom-line base. She reminded the session that mission members are working under the same roof, and differences in their preparation, training and the standards of contract can make it impossible to create a common *esprit de corps*.

Mr Petteri TAITTO emphasised the importance of a European identity. He pointed out that many of the questions address training requirements, area such as how training is done, if there is training and what the requirements are when it comes to asymmetric warfare or conflict analysis. He pointed out that the requirements of pre-deployment training for civilians and military personnel are largely identical. The aims of training should be to allow to understand what the EU is, why the EU deploys the mission and what the external action of the CSDP is all about since, after all, the personnel is there to represent the Union. As regards misconduct or misbehaviours, persons who behave badly in missions and operations bring the European Union to disrepute. He concluded that it is of utmost importance to have a proper training before going into mission.

Mr Taitto stressed that training should address the EU itself, the root causes of the conflict where the mission is deployed, the analysis thereof, the code of conduct in the EU missions, the relevant rights and responsibilities of the members of the personnel and what are the EU values which the CSDP missions are promoting. He emphasised that it is impossible to promote values if one does not know what those values are. It must be clear what the guidelines for reporting, mentoring, advising are and how an EU identity, indeed an *esprit de corps* can be created.

He pointed at the fact that in the current draft of the training policy, the responsibility to train CSDP personnel lies with the Member States. The two options he saw for training are that either very good and well-defined standards and requirements are put in place for everyone to follow or the training should be conducted in a centralised place for all personnel deployed in missions. Mr Taitto pointed out that this is one way to ensure that the personnel is equipped with the same set of knowledge and skills. Quantitatively, he added, this is possible because only a few hundred persons are to be trained annually at the current level of contributions.

He referred to the question of Ms Lösing about the connection between the civilian and military missions and operations. Of course, he stressed, the funding mechanism should be clear. Defence expenses, he stated, cannot be funded through the common budget, but it is not always clear what is civilian and what is military. He referred to the example of the operation Sophia (EUNAVFOR MED) in the Mediterranean which is a civilian mission carried out with military equipment and means. The mandate does not include actual fighting, the mission is ensuring the CSDP aims and the only source of equipment available was the military or the navy of the respective Member States.

Reflecting on the issues raised by Ms Fotyga regarding the internal and external security nexus, he stated that it is an aspect to be considered. The future CSDP training needs are not only related to those existing now, but also to counter-terrorism, hybrid warfare, cyber issues and intelligence. Mr Taitto stressed that certain ways have to be adopted for the Union, an approach should not be based on the standards of the 28 Member States.

On the question of Mr Khan in relation to Brexit, he pointed out that the requirements and program in training is a joint effort of all Member States. In principle, he added, the more difficult a cooperation is, the more stakeholders there will be. So, theoretically the less Member States there are, the easier it is. As long as Member States are defining requirements, doing programming and evaluating themselves, as it is now proposed in the setting-up of the working groups, the approach of the EU may be as ineffective as it has been in the last 15 years. Using a centralised, coordinated approach and using the resources of the EEAS, might lead to a better performance in this regard.

The obligation to report and to prevent illicit acts is also a question of training, but I will forward this to Prof. di Martino.

Prof. Alberto DI MARTINO pointed out that both normative and practical problems exist as regards the national follow-up on crimes and offences committed in CSDP missions and operations.

Referring to the question of Mr Couso Permuy, he pointed out that the responsibility to investigate and prosecute crimes lies with the Member States, the EU has no direct criminal law competence. However, the problem is that, although Member States have many rights, there is no obligation to investigate and punish crimes. Some data are, however, unknown and setting up a central observatory in the field would be useful. He noted that for example it would be important to know how many times Article 8 of the Agreement between the European Union and the Central African Republic has been used in the context of the relevant EUFOR mission (EUFOR RCA). Article 8 confers on the competent authorities the power to exercise on the territory of the host State all the criminal jurisdiction and disciplinary powers conferred by the law of the sending State with regard to all EUFOR personnel subject to the relevant law of the sending State.

He also emphasised that despite these available devices, the right to exercise jurisdiction does not mean that Member States exercise jurisdiction in fact, and it also does not entail an obligation to do so. Member States are free to exercise jurisdiction, there is no international obligation or, at the least, it is highly controversial if immunity in front of the host State entails the obligation to proceed as regards the sending States. The lack of such an obligation can be considered a significant gap from a normative point of view.

He continued clarifying that practical problems include the fact that evidence has to be gathered abroad and the standards are not common. Moreover, because of the difficulties in ensuring the independence of the investigating authority. For example from media releases we know that in relation to the mission *Sangaris* in the Central African Republic there have been allegations of rape, maybe of child prostitution, we do not know exactly what happened, because there is this secret of the investigation. But we know that the Paris prosecutor is carrying out at least four investigations. But media statements also noted that 'there was a criminal investigation by the Paris prosecutor, in 2015, but the judge has found no reason to continue the investigation'. This is an instance of the practical problems of opening an investigation as regards acts committed abroad.

Referring to the point received from Mr Taitto, he pointed out that cultural issues rather than the normative level deserve attention in training. Rape is a generally accepted core crime. Besides the obligation to abide by laws, CSDP staff should also be trained as regards the values that need to be respected in front of children and victims.

Finally, he noted that military personnel have their own specialised tribunals in the Member States and are well aware of the mechanisms of holding soldiers accountable. This confirms that there are devices, some

changes and improvements should be made, but it is unknown how many times the different devices were used. Hence, more transparency is needed.

Ms Anna Elżbieta FOTYGA highlighted in a final remark, adjacent to the statement of Mr Taitto, that there is a positive aspect of pride among CSDP personnel that needs to be acknowledged and not undermined, namely that forces deployed by the EU represent their own country in the operational theatre. These contingents have a special national *plaque*.

She recalled her experience with the German soldiers of the CSDP mission in Mali who have been very proud to show the outstanding German field hospital which was established there. Their pride of the hospital was a national, a German one. Also the Polish members of this mission exhibited that their awareness of the code of conduct, but also their knowledge of the danger and readiness to die was for their national *plaque*, not for Brussels.

ANNEX 1: BACKGROUND NOTE

1 Introduction

Under the framework of the CSDP, the EU has launched some 35 missions and operations since 2003 bringing stability, rule of law, and security sector reform to countries as diverse as Afghanistan, the Democratic Republic of Congo, Kosovo, Iraq and Ukraine. About 7000 personnel are currently servicing in the 16 on-going operations, ten civilian and six military².

As per the latest EEAS data available, personnel servicing in civilian CSDP missions amounts to a total of 2467 units of which 1748 male and 719 female. Such total includes both seconded and internationally and locally contracted staff (respectively 858 seconded personnel of which 21 from third States, 405 internationally contracted and 1204 locally hired).³ The latest figures related to military personnel serving in CSDP operations indicate instead a total of about 3409 individuals.⁴

Current Mission/Operation	Total personnel
EUAM Ukraine (since 2014)	234
EUBAM Libya (planning mission) (since 2013)	19
EUBAM Rafah (since 2005)	11
EUCAP Nestor (since 2012)	54
EUCAP Sahel-Mali (since 2014)	125
EUCAP Sahel Niger (since 2012)	105
EULEX Kosovo (since 2008)	1268
EUMM Georgia (since 2008)	318
EUPOL Afghanistan (since 2007)	231
EUPOL COPPS Palestinian Territories (since 2006)	102
Total (Civilian missions)	2467
Althea-BiH (since 2004)	600
EUNAVFOR Atalanta Somalia (since 2008)	761
EUNAVFOR MED Sophia (since 2015)	2266
EUTM RCA (since 2016)	170
EUTM Somalia (since 2010)	150
EUTM Mali (since 2013)	578
Total (military operations)	4525

Civilian missions can be broadly clustered into three categories based on their mandate: *monitoring*, *strengthening* and *executive* missions. Strengthening functions mainly relate to capacity-building activities in the rule of law area. Monitoring functions consist in the observation of the performance of relevant host country institutions (e.g. police services, military forces and civilian authorities) and their personnel or of the implementation of an agreement (e.g. a truce, a ceasefire or a peace treaty). Executive functions relate to the carrying out of certain tasks in substitution to the recipient state. The only one mission currently performing such executive functions is EULEX Kosovo⁵. Military operations contemplate mandates

² As per data available as of 31 October 2016. *Infra*.

³ EEAS, - CPCC, *Personnel Figures of the Civilian CSDP Missions*, as of 31 October 2016. File with the authors.

⁴ ZIF, *World Map Peace Operations 2016*. http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_World_Map_Peace_Operations_2016.pdf. Last accessed on 9 January 2016.

⁵ Almost all civilian missions provide support on security sector reform (SSR) and good governance; some of them are also tasked with the fight against organized crime, counter-terrorism and border management (e.g. EULEX Kosovo, EUPOL Afghanistan, EUCAP Sahel Niger, EUBAM Rafah), anti-piracy and maritime capacity (EUCAP Nestor), or the management of illegal migration (EUCAP Sahel Niger and EUCAP Sahel Mali). This is done through training and in some instances the provision of equipment, monitoring, mentoring and advising (MMA).

spanning from executive functions with potentially coercive tasks to capacity building activities. Only one of the 6 on-going operations (green in the map) was established in 2016, EUTM RCA with a mandate to “support the CAR authorities in the preparation and implementation of the upcoming Security Sector Reform [...]”.

1.1 Objective, methodology and structure of the paper

The purpose of this paper is to provide a brief overview of aspects related to personnel serving in CSDP missions and operations in terms of challenging issues related to force generation, in mission treatment, training, follow up to crimes and offences perpetrated during deployment. To this end, the brief account is articulated into two parts.

The first highlights trends related to main CSDP personnel-related challenges in terms of “capacities” and aspects related to training. Part two puts focuses on member States’ practices in relation to national follow up to crimes and offences committed while in mission. The final section provides an overall conclusion and a number of recommendations targeted at how the challenges identified could be met. Specific recommendations are also given on the possible role of the European Parliament in catalysing improvement in relation to issues pertaining to personnel servicing in CSDP missions and operations.

The underlying research has been carried out through an examination of available literature and secondary sources of information. However, existing data on personnel related issues of CSDP missions and operations, is, when available, fragmented among different sources. No single and centralised source with comprehensive and credible data exists and, due to the sensitive nature of CSDP, most of the available data is often incomplete or not directly accessible.

2 CSDP Personnel-related challenges

The nature of crisis management is increasingly evolving as CSDP missions and operations are tasked to carry out a diversified array of activities. This entails a strengthened investment in *quality* human resources, hence an enhanced need to ensure that staff deployed is *adequately equipped*, possesses the *necessary knowledge, skills, and attitudes* required to perform assigned duties, enjoys an adequate level of “*protection*” by the sending organization/State in the exercise of its duty of care *vis-à-vis* deployed personnel. Also, the involvement of other actors in crisis management⁶, requests coordinated efforts for ensuring *understanding* and *compatibility* of approaches to work between organizations. In this regard, several fundamental aspects related to recruitment, training, contractual status of personnel of CSDP missions and operations are to be considered.

2.1 Force generation

2.1.1 Recruitment procedures vs. deployment needs

The *Annual CSDP Lessons* reports of the last three years (2013 to 2015) identify several critical issues as it relates to civilian missions’ staff selection. In this endeavour, challenges and difficulties have been recorded in particular for filling in positions focusing on *niche* tasks where a specialized expertise is required and for attracting senior experienced staff to join CSDP missions.⁷ While most missions require personnel to be deployed on a relatively short notice, the processing time required often does not match with deployment needs.⁸ Moreover, national procedures for the release of civil servants for international missions, and the

⁶ E.g. the United Nations, the African Union, OSCE or NATO.

⁷ Council of the European Union, *Annual 2014 CSDP Lessons Report*, 6777/15, 3 March 2015, p. 23.

⁸ This, as evidenced by the 2015 European Court of Auditors in its special report on EUPOL Afghanistan, is a direct cause of delays in mission set up and affects the effective mission mandate delivery. Council of the European Union, *Annual 2015 CSDP Lessons Report*, 8213/1, 22 April 2016, ANNEX A, p. 3.

sometime different approaches of Ministries and other State services in this regard, add more complications to the process.⁹

Furthermore, member States ambition to deploy personnel in missions is not always followed by a proportional contribution in terms of “quality” human resources capabilities with the capitalization and mobilization of staff with the right skills¹⁰. While several EU member States have developed pools or rosters of experts who are potentially available for deployment in CSDP missions, these databanks differ widely in terms of range and quality of civilian personnel selected. For example, in some cases the selection of civilian personnel is restricted to civil servants and recruitment practices do not generally reach relevant experts employed in the private, non-governmental or academic sector. In other cases instead, States prefer to work with free-lance experts who are used to work in assignments for limited durations.¹¹ Besides different rostering approaches, lately the same idea of pools and rosters is being questioned and as an analyst commented, “all attempts to establish rosters of experts have failed, to the extent that the idea of pools – that some countries still manage to maintain on a national basis – is often dismissed outright in debates on rapid deployment.^{12”}

*The full implementation of the Goalkeeper system should contribute to an improvement of the quality of recruitment, in particular through its **Registrar** module, designed to provide EU Member States and the EEAS with a web-based technology that allows the standardized management of civilian personnel for potential deployment to CSDP missions and the electronic management - creation and submission - of applications from Member States to the EU for seconded positions in CSDP missions. When in full use, it should represent a step forward in contributing to link up candidates experiences with requirements of job descriptions, thus helping finding the right expertise at the right time. For the time being, since September 2016, States have been provided with the *CPCC Planning Guide for Member States seconding Authorities* that should serve the purpose of enabling ‘early force sensing’ through a compendium of 61 general and specific functional profiles requires by CSDP missions.*

2.1.2 Deployment vs. incentives to serve in civilian crisis missions

Deployment procedures present several flaks that need to be addressed in terms of the legal, administrative and financial conditions for the secondment of personnel to international missions.¹³ Issues connected with “the availability of experts, the benefits of serving in civilian missions for individual career paths and the safety of the various postings have impacted negatively on recruitment.”¹⁴

Contributing States bear all personnel-related costs for seconded personnel¹⁵ other than those paid according to the Council documents 7291/09 (10 March 2009) and 9084/13 (30 April 2013)¹⁶. However, to encourage the secondment of public service employees, regulations providing incentives in terms of career promotion and competitive salaries should be introduced and, where already existing, further promoted.

While there are examples of some member States offering specialised training, career planning and coaching to experts upon return in order to facilitate the reintegration into the domestic labour market (in

⁹ Dijkstra, H., Petrov, P., and Mahr, E., 2016, *passim*.

¹⁰ Council of the European Union, *Annual 2013 CSDP Lessons Report*, 8015/14, 20 March 2014, p. 24 ff.

¹¹ Pirozzi, N., 2012, pp. 189-208.

¹² Tardy, T., 2016, p. 4.

¹³ Pirozzi, N., 2012, p. 204.

¹⁴ Tardy, T., 2016, p. 4.

¹⁵ Council of the European Union, *Multi-annual Civilian Capability Development Plan: Action Lines for 2012-2013*, 12111/12, 6 July 2012, p. 10.

¹⁶ This includes salaries, medical coverage, and travel expenses to and from the Mission area - including home leave. Allowances borne by the CFSP budget instead, consist in per diems, hardship allowance and risk allowance. See in this regard Council of the European Union, *Guidelines for allowances for seconded staff participating in EU civilian crisis management missions*, 7291/09, 10 March 2009.

particular for staff not being in the civil service), this is not a standard practice throughout the 28 member States. In a limited number of EU countries, returning experts (mainly the free-lance) are also entitled to unemployment assistance as a means for reintegration into the national labour market.

In some countries, the terms of contract for seconded personnel vary from one seconding agency to the other and also based on the category of personnel. For military and police personnel serving in an international mission, employment and social security are in most cases regulated by national law. For civilian personnel, legal provisions related to working conditions, terms of contract and social security are sometimes few and limited in scope and are not regulated everywhere by law. In some cases they are stipulated under the form of special agreements regulating foreign service negotiated by the recruiting service and trade unions representing employees. For some member States, the economic in-mission treatment of civil servants is different from one service to the other: for instance, some Ministries do not detract from the economic treatment of their in-mission personnel indemnities already covered by the EU. This creates differences in treatment not only among deployed personnel of the same nationality but also different standards applied depending on the sending country.¹⁷

Another important aspect to be considered is the status of 'international contracted staff', not subject to EU Staff Regulations applicable to all the other EU servants. Each mission bearing legal capacity¹⁸ hires this pool of personnel and the correlative employment contract is signed by the Head of Mission on behalf of the mission itself. The main challenging issue in this regard relates to the employment conditions that would be applicable to this category of CSDP staff and how to address current major shortcomings related to *inter alia* modalities for termination of contracts, competent jurisdiction, social security and pension rights. It is a joint commitment of the EEAS and the Commission that of continuing to work towards establishing a transparent and consolidated set of rules, procedures and standards for CSDP mission staff so as to provide for sound staff management and legal security. To date, there seems not to be a consensus among member States on whether applying the CEOS rules as per EU institutions or opting for an *ad hoc* set of rules for such category of CSDP staff. However, seen the peculiar context within which CSDP missions operate¹⁹, a certain degree of flexibility in the employment conditions is required and this needs necessarily to be reflected in the nature of the contractual obligations between the mission and the internationally contracted staff, whatever is the final option adopted.

2.2 Training

2.2.1 The New Training Policy for CSDP

Major institutional and conceptual changes have taken place since the first EU Training Policy in European Security and Defence Policy was presented in 2003. The new EU Policy on Training for CSDP has recently been drafted and released by EEAS, commented by Member States and it will be presented to the PSC in January 2017 for its ensuing adoption tentatively in early 2017.

¹⁷ In Sweden, for instance, civil servants seconded by their normal employer keep their salaries during their service in a CSDP mission. In addition they also receive a standard daily allowance set for each mission. Personnel seconded by the Folke Bernadotte Academy are contracted for a fixed-period deployment covering the term of appointment with the mission and their salary depends on the level of their position. They also receive a mission allowance. The relatively high compensation given by Sweden is meant to be necessary to retain a pool of ready and available staff with the right qualification and experience. Sweden is one of the countries providing for incentives to serve in international missions. See in this regard FBA, *Sweden's contribution to civilian operations: structures, routines and experiences*, pp. 121-148 in Pirozzi, N. (Ed.), *L'Italia nelle Missioni Civili dell'UE. Criticità e Prospettive*. Quaderni IAI, 2010.

¹⁸ Under the revised arrangements as agreed by COREPER on 22 May and 6 December 2013.

¹⁹ Such peculiarity is clearly stated in Article 42(1) TEU that reads "The performance of these tasks [of CSDP missions] shall be undertaken using capabilities provided by the member States" and article 42(3) TEU that further specifies that "Member States shall make civilian and military capabilities available to the Union for the implementation of the CSDP".

According to the new training policy “Training for CSDP is a shared responsibility between the EU's Member States, its institutions and dedicated bodies. It is clearly understood that each Member State preserves full discretion with regard to the organisation of its own training system.” Furthermore, it is highlighted that “the training of personnel for CSDP missions and operations is primarily the responsibility of Member States.”²⁰

Training for CSDP missions can be provided in various phases, settings and frameworks. Training activities can be classified as basic, advanced, pre-deployment and in-mission training.²¹

Pre-deployment training (PDT) is the most important type of the training and it should be organised immediately before the mission deployment. The PDT aims to harmonise the management culture of CSDP missions and ensure that the persons concerned receive the knowledge and skills they will need to be fully operational from the beginning of their tour of duty.

“Training for CSDP is driven by requirements, not events”, defines the new draft training policy.²² The training needs to be flexible to respond to current needs, taking into account the evolving nature of the CSDP missions. The external security cannot be separated from the internal one, and issues like migration, terrorism, cyber-threats and organised crime will impact to the spectrum of CSDP missions and operations in the future even more.

CSDP Training requirements respond to identified needs for training activities, e.g. courses, seminars, exercises or e-learning suitable to make sure that civilian and military audiences are able to perform their missions as directed at the political level. CSDP Training Requirements may derive from:

- High level political guidance, operational requirements of the EU generic civilian and military tasks and new capabilities;
- CSDP lessons identified;
- Emerging concepts, trends in the security and defence environment;
- Operational shortfalls.²³

For the civilian CSDP missions the general essential and desirable skills and experience required for every job in every mission are presented in the Call for Contributions. Applicants must meet at least the general essential qualifications and experience before they can apply for an individual position within a mission. Training is mentioned as desirable skill, so it is not necessary to undergo any CSDP specific training before recruitment.²⁴

For military operations, the force generation follows different pattern. Member States agree on their respective contributions, and fill in the previously agreed positions with predefined ranks and qualifications based on NATO qualification system.

EU Military Staff (EUMS) examine the CSDP specific training requirements during the drafting process of the new training policy. The harmonisation of military requirements (training requirements are a component) has been identified by the Member States as one of the possible fields for military cooperation. An EUMS study, while recognising the predominance of NATO in training for most of the basic tasks of the

²⁰ *EU Policy on Training for CSDP*, 1 July 2016, paras 27-28. File with the authors

²¹ The training types and terminology are described in the Implementing Guidelines annexed to the training policy. *Draft EEAS Implementing Guidelines for the EU Policy on Training*, 30 June 2016, file with the authors.

²² *EU Policy on Training for CSDP*, para 16.

²³ *Draft EEAS Implementing Guidelines*, para 26.

²⁴ The CPCC Planning Guide for Force Generation for the civilian CSDP Missions states as desirable requirement that “[t]he candidates should have attended a Civilian Crisis Management Course or equivalent”. CPCC, *Force Generation for the civilian CSDP Missions: A planning guide for Member States Seconding Authorities*, 19 September 2016, p. 12.

envisaged military scenarios, identified that the EU has distinct military training requirements but that the CSDP specific military training requirements had not yet been identified.²⁵

The new Training Policy defines, that "appropriate training is a prerequisite of deployment, so all staff recruited for CSDP missions or operations shall receive certificated pre-deployment training prior to deployment".²⁶ So training, following EEAS standards, is required at the time of deployment. From legal point of view, the pre-deployment training is part of the employer's duty of care of its employees.

2.2.2 Training available for CSDP

There are several training networks and numerous governmental and non-governmental training institutions providing training that is relevant to CSDP. The European Security and Defence College (ESDC) is a network college, consisting more than 80 training institutions from all 28 Member States, organises approximately 80 CSDP related training events annually. In 2014-2015 the European Security and Defence College developed a specific pre-deployment training (PDT) for CSDP missions, which has been running on monthly basis in Brussels.

Another network college, working closely with the ESDC, is the European Union Agency for Law Enforcement Training, CEPOL. According to the renewed mandate since 1 July 2016 "CEPOL shall support Union missions developing and providing training to prepare law enforcement officials for participation in Union missions."²⁷

Commission funded projects, like ENTRi and EUPST provide advanced training for experts deploying to crisis management missions. ENTRi has conducted more than 80 training events in 2011-2015 and EUPST has trained during its last cycle (2015-2018) more than 2000 police officers through five exercises and 12 training events.²⁸

There have also been initiatives to develop on-line portals to strengthen the availability of relevant training courses. One of them is the "Schoolmaster" database, a portal that Member States have decided to be a central platform for the training coordination. Schoolmaster contains information on all courses delivered through EU with relevance to CSDP. In January 2017 there were 19 training courses on the list, which does not reflect the real availability of the courses, it rather describes the general awareness of the portal.²⁹

2.2.3 CSDP personnel and Pre-deployment training: the numbers

There are currently 10 civilian CSDP Missions with a total of 2467 staff. Around 858 of these are seconded from Member States, 405 are international contracted staff and roughly 1204 are locally engaged contract staff. According to CPCC approximately 500 to 700 international staff deploys to the CSDP missions annually. In practice every month almost every Member State deploys few persons to CSDP missions.

There is no sustainable system to collect data on the attendance rate of the PDTs since Member States have no obligation to report about their own PDT activities. In 2016, 99 persons attended CSDP specific PDTs of the ESDC network. Among these, 59 were deploying to civilian missions, 17 to military operations and 23 represented other stakeholders such as national points of contact, offices of the EUSR or other EEAS structures.

²⁵ Bodescu, A., 2014, p. 22.

²⁶ EU Policy on Training for CSDP, 2016, para 25.

²⁷ Regulation (EU) 2015/2219 of the European Parliament and of the Council, *on the European Union Agency for Law Enforcement Training (CEPOL)*, 25 November 2015.

²⁸ Information on the two EC-funded projects and on the activities of ESCD can be found at the following websites: <http://eeas.europa.eu/esdc>, www.eupst.eu and www.entriforccm.eu. Accessed 10 January 2017

²⁹ <https://goalkeeper.eeas.europa.eu/>. Accessed 10 January 2017

It was already established in 2011 that a large number of mission personnel do not receive pre-deployment training.³⁰ In August 2015, CPCC launched the first-ever comprehensive survey related to training in civilian CSDP missions. 521 out of 1412 international mission members replied, meaning 37 per cent, which can be questioned in terms of validity.³¹

According to this CPCC survey 295 mission international members (56,6%) had followed a pre-deployment training during the past five years. Out of the 226 mission members having not followed such training, 126 (71,6%) were contracted. When focusing on the 126 contracted staff without pre-deployment training still 46 (26,1%) had neither previous mission experience nor had attended any other CSDP related training.

Concerning civilian CSDP missions, existing set of vague statistics indicate that slightly more than half of the mission staff currently deployed have attended a PDT. For the military missions and operations the situation is slightly better, but since Member States have no obligation to report on their training courses, it is difficult to find proven evidence how many undergo PDT according to EEAS standards.

2.2.4 Modalities for harmonization of training

The EU and its member States are more and more engaged in the support of crisis management activities of non –EU institutions (e.g. dispatch of missions with a strong training and mentoring component). Cooperation in the harmonization of doctrine, training standards and procedures is an element that brings about enhanced effectiveness in terms of cost and capacity. Various have already been the efforts in this regard, with uncountable results but lack of coherent systematization. The European Group on Training (EGT), through the EC project on Training for Civilian Crisis Management and Stabilisation Missions, has pioneered a comprehensive approach to developing a standard for civilian crisis management training that offers a flexible model as reference guidance for training providers. This approach is based on standardised training contents for both core and specialised courses delivered according to adult learning teaching methodologies. The work initiated, developed and consolidated within the EGT was further expanded and carried out through another project, currently on going, the Europe's New Training Initiative for Civilian Crisis Management (ENTRi). One of the objectives of the project is also that of guaranteeing more harmonised approaches to training. A system of training certification has also been developed within the framework of such project that provides certification to training courses in the field of civilian crisis management. A C3MC³²-label is awarded to courses that meet established standards and criteria for training civilian personnel to be deployed in crisis management missions. The typology of courses for which ENTRi certification can be requested are those for which the Consortium has already adopted a Course Concept and Programme and which have already been successfully implemented. The European Security and Defence College (ESDC) and the European Police College (CEPOL) have also carried out extremely relevant and focused training harmonisation activities.

The benefits from the process towards harmonisation of training are numerous, notably the quality assurance this entails. The increasing number of training institutions and training courses within and beyond the European Union aimed at preparing the civilian component of crisis management operations requests a continuous, enhanced and special effort to guarantee a more harmonised approach to training. Moreover, there is the need to make sure these standards integrate new elements the EU considers essential for pre-deployment training.

In such endeavour, the new Policy tasks CIVCOM and EUMC with the responsibility for defining civilian and military training requirements respectively for CSDP training activities through their specialised training

³⁰ Council of the European Union, *Comprehensive Annual Report on CSDP and CSDP-related training*, 17438/11, 25 November 2011.

³¹ Results of the survey were presented in the ESDC Working Group on CSDP Missions and Operations related Training on 30 November 2015.

³² Certified EU Civilian Crisis Management Course.

groups, namely the EU Military Training Group (EUMTG) and EU Civilian Training Group (EUCTG). The working groups are also responsible for defining quality assurance standards and overseeing their implementation in CSDP training and education, in accordance with international educational standards, civ/mil standards developed by ESDC and the EU Qualification Framework.³³ In order to support the training activities provided by Member States, and to facilitate and complement them, the EEAS provides basic guidelines and performance standards, descriptive materials and procedures covering the training cycle.

3 Member States' follow-up on crimes committed in CSDP missions and operations

3.1 Methodological questions

The scope of this section on Member States' follow-up on crimes committed in CSDP missions and operations is determined by two definitions.

Firstly, *offences and crimes* are understood as crimes under the criminal law applicable to the acts of civilian and military personnel (hereinafter: crimes).³⁴ Disciplinary offences are in principle excluded.³⁵ International crimes investigated by and tried solely before international criminal tribunals are not, in this sense, to be subject to Member State follow-up. However, international crimes, which these are investigated by Member State authorities (e.g. in the framework of judicial cooperation) or tried on the domestic level, belong to the discussion of this section. Thus, international criminal law and disciplinary frameworks are referred to herein, where relevant, to contextualise the research on domestic criminal law.

Secondly, the *follow-up of Member States on crimes* is understood as the detection, reporting and investigation of crimes (hereinafter: Member State follow-up). The crimes of CSDP personnel relevant in this endeavour do not form a distinct part of Member States' public criminal statistics.

The obligation of CSDP personnel, either civilian or military, to abide by the relevant domestic law of their sending Member State and of the host State at least to the extent of human rights standards is generally not lifted.³⁶ This domestic law, irrespective of any immunity enjoyed, must be respected by CSDP personnel without any further legal act,³⁷ although privileges may be granted by the host State. According to provisions and principles common to the legislations of the Member States, the two general legal circumstances of Member State follow-up are: (i) the extent of immunity enjoyed in the host State,³⁸ and (ii) the jurisdiction of the sending Member State over personnel committing violations under its criminal law in the host State (extraterritorial jurisdiction based on the so-called *active personality principle*). Further practical aspects that may influence the efficiency of the reaction to crimes committed in CSDP deployments are those of (iii) detecting and reporting acts and the (iv) logistical conditions of an effective investigation.

³³ *Draft EEAS Implementing Guidelines for the EU Policy on Training*, 2016, paras 3 and 20.

³⁴ Some typical offences in CSDP mission environment, including organised crime, corruption, human trafficking and child abuse, are listed by the Annex to the Generic Standards of Behaviour for ESDP Operations as ones which in particular 'merit highlighting'. This document is also referenced as binding on civilian personnel by Article 4(3), point (a) of the EU Civilian Code of Conduct.

³⁵ An elaborate disciplinary system is set out by the EU Civilian Code of Conduct for CSDP civilian missions. As regards military personnel, Point 9.1, subpoint (a) of the Annex to the Generic Standards of Behaviour for ESDP operations states that military personnel seconded by a Member State to an ESDP operation remains subject to the disciplinary regime of the sending Member State.

³⁶ See Article 4(1) and (2) of the EU Civilian Code of Conduct.

³⁷ Voetelink, J., 2015, p. 235.

³⁸ See Palm, M., 2010, p. 11: "The immunity of EULEX staff is another sensitive issue, not least due to an incident in February 2007 when UNMIK officers shot and killed two demonstrators during a protest in Pristina".

3.2 Conditions of Member State follow-up

3.2.1 Immunities

The immunity enjoyed by CSDP personnel protects the civilian and military functions carried out by such personnel from host State interference.³⁹ Functional immunities, apart from generally full immunities of military personnel, only cover official acts⁴⁰ and survive the termination of the position as member of a CSDP mission or operation. While such immunity does appear to exist on the basis of customary international law, its scope is vague and 'its existence should not be taken for granted'.⁴¹ Despite the above, there appears to be a trend that internationally prohibited crimes constitute a general exception from functional immunity,⁴² which position is not without critique.⁴³ Thus, in the earlier practice of the EU, whether immunity exists in a concrete case, which committed acts are of an official or private nature, was locally determined in EULEX-Kosovo by the Head of Mission⁴⁴.

To avoid uncertainty, as a result of the evolving practice of the EU in the field⁴⁵, immunities are specified in Status of Forces Agreements (hereinafter: SOFA) and Status of Mission Agreements (hereinafter: SOMA) concluded with host States. The conclusion of a SOFA or a SOMA is not essential for a CSDP mission or operation, but scholarship argued that due to the immunity clause, it should always be required.⁴⁶ Nevertheless, no agreement was concluded for the CSDP operation *Artemis* even though it was foreseen by the Council, if required⁴⁷. Functional immunities resulting from agreements concluded in accordance with the contents of the EU Model SOFA and EU Model SOMA exclude from the criminal jurisdiction of the host State "under all circumstances".⁴⁸ This immunity clause of the model agreements refers to EUFOR personnel (including explicitly military and civilian staff⁴⁹) in case of the EU Model SOFA and to also all personnel, including civilians,⁵⁰ in case of the EU Model SOMA.

As a result, except in case of the most serious international crimes, where functional immunities are in place, the sending Member State remains the only actor ensuring law enforcement over CSDP personnel.

3.2.2 Extraterritorial jurisdiction

Whether a Member State assumes the responsibility to prosecute crimes committed outside of its territory (extraterritorial jurisdiction), including crimes committed in CSDP missions and operations, is subject to its domestic legislation. Scholarship argued that States have discretion or even a duty to establish this form of jurisdiction.⁵¹ A number of examined Member States all established jurisdiction over acts criminalised

³⁹ For an overview on *functional immunity*, see Prouvéze, R., 2011, p. 355. Palm, M., 2010, p. 15.

⁴⁰ In cases of motoring offences in course of EULEX-Kosovo, concerns were shown of a "growing perception that Mission staff members are using their immunity to avoid prosecution for motoring offences." Palm, M., 2010, p. 15.

⁴¹ Frulli, M., 2016.

⁴² Prouvéze, R., 2011, p. 362.

⁴³ See for a discussion Spinedi, M., 2002.

⁴⁴ As regards EULEX-Kosovo, see Palm, M., 2010, p. 15.

⁴⁵ Borrowing the term used by Sari, A., 2008.

⁴⁶ Sari, A., 2008, p. 74.

⁴⁷ Article 13 of the Council Joint Action 2003/423/CFSP.

⁴⁸ See di Martino, A., Sari, A. 2008, Article 6(3) of the EU Model SOFA; Article 6(4) of the EU Model SOMA.

⁴⁹ Defined in Article 1(3), point (f) of the EU Model SOFA: "[EUFOR personnel]" shall mean civilian and military personnel assigned to EUFOR as well as personnel deployed for the preparation of the operation and personnel on mission for a Sending State or an EU institution in the framework of the operation, present, except as otherwise provided in this Agreement, (...)

⁵⁰ Defined in Article 1(3), point (c) of the EU Model SOMA: "[EU Mission] personnel" shall mean the [Head of Mission/Police Commissioner] personnel seconded by EU Member States and EU institutions and non-EU States invited by the EU to participate in [EU Mission] deployed for the preparation, support and implementation of the mission, and personnel on mission for a Sending State or an EU institution in the framework of the mission.'

⁵¹ Ryngaert, C., 2015, pp. 88-89.

under their criminal law and committed abroad by their nationals,⁵² but some variation exists in the conditions of the exercise of that jurisdiction. In some Member States, the prosecution of lighter offences might be subject to certain conditions⁵³ or bound to the residence of the suspected national in the territory of the Member State⁵⁴. Critiques also highlighted that traditional principles of jurisdiction⁵⁵ are generally too narrow and do not suffice to cover all acts abroad for instance where Member States send civilian personnel on mission who are not their nationals.⁵⁶

To avoid uncertainty over possible conflicts of jurisdiction, the EU Model SOFA and EU Model SOMA reserve for the sending Member State exclusive criminal jurisdiction (and disciplinary powers) over acts committed by CSDP personnel.⁵⁷ However, this rule is only meant to channel jurisdiction to a Member State the laws of which may, as pointed out above, otherwise contain additional conditions for the exercise of jurisdiction. As a result, jurisdictional gaps and other hindrances might exist in national laws⁵⁸, which, in individual cases, might result in the non-prosecution of crimes committed by CSDP personnel during deployment.

3.3 Practical aspects

3.3.1 Detection and reporting

The reporting of suspected crimes committed in CSDP missions and operations to the national criminal investigation authorities is subject to the general criminal legislation of the Member States. Thus, the role of CSDP missions and operations in this context is to provide local and secure reporting opportunities and forward complaints to national authorities.

In the earlier practice of the EU, in EULEX-Kosovo all acts were initially investigated as misconduct by the Internal Investigation Unit, referred to the Head of Mission for decision and finally, where those were of criminal nature, referred to the authorities of the sending Member State.⁵⁹ The recently adopted EU Civilian Code of Conduct codifies a similar approach foreseeing that reporting should be addressed to the line manager or the Deputy Head of Mission.⁶⁰ Reports may be filed in writing or provided orally, where they shall be set out in writing.⁶¹ Members of the staff of CSDP missions and operations have the right and are obliged to report misconduct.⁶²

The EU Civilian Code of Conduct states that “conduct of a mission staff member may also constitute a criminal act” and that in such a case the national authorities “shall be informed without delay with respect to the relevant allegations”.⁶³ However, the document does not define at what stage the report shall be filed and what level of evidence is sufficient to determine that the conduct may also constitute a criminal act. The data content of such reports or to which specific authorities of the Member States they are to be

⁵² *Active personality principle*, see Article 64(2a), point (a) of the Austrian Criminal Code; Article 7 of the Belgian Criminal Procedure Code; Article 7(1) of the German Criminal Code; Article 3(1), point (c) of the Hungarian Criminal Code; Article 7-9 of the Italian Criminal Code; Article 113-6 of the French Criminal Code, for an overview of the theoretical foundations, see Chehtman, A., 2010.

⁵³ See e.g. Article 9(2) of the Italian Criminal Code introducing the request of the Minister of Justice or the complaint of the victim as conditions of the prosecution of lighter offences.

⁵⁴ See e.g. Article 7(1) of the Belgian Criminal Procedure Code.

⁵⁵ For a list and explanation, see Chehtman, A., 2010, pp. 55-86., e.g. active personality principle and the protective principle.

⁵⁶ Sari, A., 2015, pp. 338-341.

⁵⁷ Cf. Article 8 of the EU Model SOFA and Article 8 of the EU Model SOMA.

⁵⁸ Cf. with the relevant UN discussion as described in Odello, M., 2010, p. 365 ff.

⁵⁹ Palm, M., 2010, p. 15.

⁶⁰ Cf. Article 9(1) of the EU Civilian Code of Conduct. Reports of alleged conduct of higher level staff have special reporting procedures, ultimately lying with the Civil Operations Commander in case the conduct of the Head of Mission is concerned.

⁶¹ *Ibid.*

⁶² Point 8 of the Annex to the Generic Standards of Behaviour for ESDP Operations.

⁶³ Article 2(2) of the EU Civilian Code of Conduct.

sent⁶⁴ is not specified. How the allegations can reach the mission personnel who reports them, whether there should be liaison with local authorities, is also not specified.

A general condition of effective reporting is to inform the local authorities, and, to the extent possible, the local population, about the existence and at least the basic content of the applicable disciplinary and criminal investigation regime in the CSDP mission or operation.⁶⁵

3.3.2 Investigation

The investigation of crimes committed during deployment in CSDP missions and operations faces challenges common to foreign missions and operations, including the extensive UN peacekeeping engagement. Gaining access to witnesses and acquiring evidence from them is difficult in the operational theatre; scholarship argued that 'a large proportion of cases the potential charges will be dropped' or result in acquittal in lack of evidence.⁶⁶ Convictions may go through lengthy delays as evidence is gathered and transmitted to the sending Member State.⁶⁷

The EU Civilian Code of Conduct, does not specify in detail, apart from requiring respect for applicable laws, how the criminal investigation could be aided by the CSDP mission's staff.⁶⁸ It does require that the responsible authority refrain from prejudicing eventual on-going criminal investigations by the parallelly led disciplinary investigation.⁶⁹ **Further research is desirable to develop common minimum investigation standards in mission investigations, which, in case of crimes, involve the minimum standard of securing, collecting, documenting and storing, evidence.**

4 Concluding observations

The *Declaration on Strengthening Capabilities*⁷⁰ endorsed by the European Council in December 2008 fixed as a priority objective the development of "national strategies to facilitate the deployment of mission personnel and encourage exchange of good practices between Member States".⁷¹ Such an objective is still to be reached in several EU member States.

National engagement to CSDP requires a "whole-of-the-government approach".⁷² However, the absence or partial existence of dedicated national regulatory frameworks, CSDP dedicated budget lines, national rosters of personnel, specific State institutions (in terms of training and recruitment of staff) can constitute an impediment in terms of smooth contribution to crisis management. A 2009 study entitled *Can the EU rebuild failing states? A review of EU Civilian Capacities*⁷³ audited member States capacities in terms of providing civilian capabilities based on several categories (deployment; training; planning; debriefs; rosters, exercises) and classified States into four categories: the professionals, the strivers, the agnostics and the indifferent.⁷⁴ Surprisingly, the situation described eight years ago, remains, except for some

⁶⁴ However, there is a general, non-mission specific list specified in Article 2(3) of the EU Civilian Code of Conduct.

⁶⁵ In line with this, Article 6(5) of the EU Civilian Code of Conduct states: "The Head of Mission shall make sure that the local authorities and population are made aware of this Code and its reporting procedures."

⁶⁶ Kearney, J. A., Botzios, S. and Hadden, T. B., 2011, p. 10.

⁶⁷ *Ibid.*, p. 14.

⁶⁸ Article 42 of the EU Civilian Code of Conduct.

⁶⁹ Article 19(4) of the EU Civilian Code of Conduct.

⁷⁰ Council of the European Union, *Declaration on Strengthening Capabilities*, 16840/08, 5 December 2008.

⁷¹ *Ibid.*, p. 4.

⁷² Council of the European Union, *Third report on Member States' Progress in facilitating the deployment of civilian personnel to CSDP missions*, 8405/13, 2 May 2013, p. 7.

⁷³ Korski, D., Gowan, R., 2009.

⁷⁴ *Ibid.*, pp. 13-14, 46-51.

exceptions, for various fundamental aspects almost unchanged. Several are the states that still treat the mobilisation of civilian capacities as a *postscript*.

Much is still to be done to transform “disjointed national efforts into a more systematic pan-European endeavour”⁷⁵, in particular in terms of creating the right incentives to attract the best people, to provide quality training in a systematic manner, to find avenues for valuing more international experience at the national level.

Some of the lessons learned in the field of Force Generation, like force sensing, recruitment of the Head of Mission before the selection of the Core Team and deployment of mission support staff in advance to the rest of the mission have been implemented in recent planning. However, force generation still remains a challenge because the processing time requested often does not match with deployment needs. Force generation procedures and the way they are currently agreed with member States involve an up to four months process before any deployment can take place. This is and will remain a delaying factor unless changes are introduced. **One way of possibly improving such timeline could be to change current procedures by allowing CPCC to go for the fast track option (*alias* direct member State support) until the mission reaches the Initial Operational Capacity.**

In terms of incentives and motivation for serving in CSDP missions, **rejections by the EU of candidates selected for secondment by the respective national authorities should be always motivated.** This would contribute to forestall a decline in motivation among the individuals concerned and would enable them to make themselves available again for other posts.

The ongoing *CSDP training policy revision within the EU should represent an avenue to contribute to support the deployment of “qualitatively relevant” personnel and of “high professionalism” and ready to serve in multilateral contexts.* Training indeed increases the effectiveness of CSDP missions, since a trained personnel is equipped with the necessary understanding, knowledge and skills to be operational at a faster rate after deployment, and to thereby contribute more effectively to the implementation of the mission mandate. The discussion on how this should be done, has, however, continued throughout the history of the CSDP. One of the challenges the new policy seeks to address is that of loosely defined training requirements and contents and incoherent harmonisation of standards. The Policy proposes the establishment of a civilian and a military working group, consisting of experts from Member States training institutions and committee representatives, to manage programming, requirements, standards, training recognition and quality assurance.⁷⁶ **In practice Member States, with their own national agendas, risk to make the process slow and ineffective.**

The discussions on enhancing pre-deployment training for CSDP missions date back at least to 2008, when Member States have agreed about the Civilian Headline Goals including an aim to improve training for personnel likely to be deployed on missions.⁷⁷ In 2009, when the issue was discussed at CIVCOM, Member States were encouraged to cooperate on PDT.⁷⁸ Later on, in 2011, Member States decided that both seconded and contracted staff should receive basic information about valid CSDP concepts through pre-deployment training.⁷⁹ Furthermore, the importance of proper PDT was mentioned as one of the five most important findings of the 2013 CSDP Lessons Report, indicating that “Member States and the EEAS should ensure that all contracted and seconded CSDP mission staff receive a common foundation of pre-

⁷⁵ *Ibid.*, p. 8.

⁷⁶ *Draft Implementing Guidelines for the EU Policy on Training*, 2016. paras 3 and 20.

⁷⁷ Council of the European Union, *Declaration on Strengthening Capabilities*, 16840/08, 5 December 2008.

⁷⁸ CIVCOM, *Enhancing civilian crisis management training*, 15567/2/2009.

⁷⁹ PSC, *Civilian crisis management pre-deployment training - report on survey results and elements for way ahead*, 10976/11, 8 June 2011.

deployment training including inter alia human rights and gender issues. Furthermore, they should explore ways to improve pre-deployment training for all CSDP mission staff in a systematic manner”.⁸⁰

There is plenty of CSDP specific training available, and obviously also the offer for pre-deployment training is sufficient to meet quantitative need. Thousands of persons receive CSDP training every year, but it seems that non-trained personnel are those selected to join missions. The quantitative need for PDT is only few hundreds in a year, and from this point of view the training system in EU structures and in the Member States seem to be inefficient.

So the need to make training systems more efficient has been acknowledged for a long time, but only few practical steps have been taken to enhance coordination. For the EU, organising training “in a systematic manner” will remain challenging, due to the large number of stakeholders (28 Member States, 16 missions, EEAS internal task sharing, etc.), that all want to keep their independence in the decision making process. The new Training Policy reiterates that the primary responsibility for training of seconded staff lies with Member States. At the same time EEAS should streamline the requirements and guidelines that Member States are expected to follow. The new policy does not seek new alternatives, like moving the PDT from Member States responsibility to CSDP mission or operation responsibility.

The Shared Services Centre concept should be examined further on and include training activities in it. The recently established Mission Support Platform (MSP) is a part of a longer-term process to realise greater efficiencies, flexibility and rationalise the provision of mission support functions to civilian CSDP missions and improve their early deployment and effective conduct.⁸¹ In terms of human resources the MSP would allow for the funding of a pool of highly qualified experts available for all missions (including new missions to be established). Such a pool would be in charge of horizontal tasks linked to mission support and contribute to mitigate structural recruitment problems related to administrative, logistic, procurement and finance staff in the various missions as well as ensure continuity and consistency in CSDP missions management.

Financing PDT costs from CSDP missions budget and organising EU certified PDT for civilian missions and possibly for military training missions centrally, following the United Nations Civilian Pre-deployment training model, would make the deployment system more coherent and more cost-effective.

Avenues could also be further explored to ensure a stronger link between training and deployment as it relates to military operations. The model adopted by the United Nations⁸² based on a process of operational readiness assurance, that contemplates a compensation for those States deploying personnel based on their level of operational readiness, in accordance with specific expectations and standards, could serve as a basis for establishing a certification system that links up training and equipment with quality deployment.

A 2010 European Parliament resolution on civilian-military cooperation and the development of civilian-military capabilities,⁸³ called upon states to “develop a more structured approach to the task of laying down appropriate conditions for the participation of civilian personnel in CSDP missions, especially as regards career prospects and remuneration”. It also asked to “ensure [...] that participation in CSDP missions is regarded as an important advantage for career development in [...] police and justice systems and that the services that second civilians to these missions are appropriately compensated for the temporary loss of staff”. On training it stressed “the need for appropriate pre-deployment training to be provided” and

⁸⁰ Council of the European Union, *Annual 2013 CSDP Lessons Report*, 8015/14, 20 March 2014.

⁸¹ Council of the European Union, *Council Conclusions on CSDP*, 8971/15, 18 May 2015.

⁸² A specific Standard Operating Procedure has been adopted in this regard. UNDPKO/DFS, *Operational Readiness Assurance and Performance Improvement, Policy*, December 2015.

⁸³ European Parliament, *Resolution on civilian-military cooperation and the development of civilian-military capabilities*, 2010/2071 (INI), 23 November 2010, paras 26-29.

strongly recommended that “Member States maintain rosters of deployable civilians with relevant competences, in particular those trained for missions carried out alongside military forces”. Such recommendations are still valid.

External auditing and research projects, like under the Horizon 2020 (H2020) programme, may provide objective support when examining the extent of national policies for CSDP force generation and evaluating the impact of training for CSDP missions and operations in the future. When formal lessons processes are relying on the often ‘polished’ political reporting, the external research can find real shortfalls, but also good practices that can be further strengthened.

As regards the Member State follow-up of crimes committed in deployment, further study is desirable, but also conditional upon the collection of data (case-law, internal materials, studies or interviews) from the possible widest range of sources (mainly Member States and missions and operations). **The establishment of an observatory in the European Parliament could pave the way to a better understanding of the EU experience on ensuring law enforcement in CSDP missions and operations.**

Despite that fact, problematic aspects of this experience are to a large extent typical of the general, mainly UN-induced, professional discussion on peacekeeping operations. Thus, future research lines may consider addressing lasting problems of accountability in such environments customised to CSDP missions and operations. These may include the analysis of the reach and gaps of immunities and extraterritorial jurisdiction and the practical difficulties of detecting and reporting acts and the development of common standards in investigating crimes committed in deployment.

5 Bibliography

- Azzoni, A., Pirozzi, N., (eds), *Civili in missione: l'esperienza italiana nelle missioni dell'Unione europea*. 2016. http://www.iai.it/sites/default/files/civili_in_missione.pdf. Accessed 28 December 2016.
- Behrendt, J., ‘Civilian Management in the EU: the German Experience’, *L'Italia nelle missioni civili dell'UE. Criticità e Prospettive*, Quaderni IAI, 35/2010. http://www.iai.it/sites/default/files/quaderni_35.pdf. Accessed 17 January 2017.
- Bodescu, A., ‘Military Training & Education in the EU – Critical Capability enablers for CSDP Missions & Operations’. *IMPETUS Magazine*, Issue 18, 2014.
- Chehtman, A., *The Philosophical Foundations of Extraterritorial Punishment*, Oxford University Press, Oxford, 2010.
- CIVCOM, *Enhancing civilian crisis management training*, 15567/2/2009, 2009.
- Council of the European Union, *Annual 2013 CSDP Lessons Report*, 8015/14, 20 March 2014.
- Council of the European Union, *Annual 2014 CSDP Lessons Report*, 6777/15, 3 March 2015.
- Council of the European Union, *Annual 2015 CSDP Lessons Report*, 8213/1, 22 April 2016.
- Council of the European Union, *Civilian Headline Goal 2008*, 15863/04, 7 December 2004.
- Council of the European Union, *Civilian Headline Goal 2010*, 14823/07, 19 November 2007.
- Council of the European Union, Code of Conduct and Discipline for EU Civilian CSDP Missions, 12076/16, 9 September 2016.**
- Council of the European Union, *Council Conclusions on CSDP*, 8971/08, 18 May 2008.
- Council of the European Union, *Council Joint Action 2003/423/CFSP*, 5 June 2003.
- Council of the European Union, *Declaration on Strengthening Capabilities*, 16840/08, 5 December 2008.
- Council of the European Union, *Draft Model Agreement on the status of the European Union-led forces between the European Union and a Host State*, 11894/07, 20 July 2007.

Council of the European Union, *Draft Model Agreement on the status of the European Union Civilian Crisis Management Mission in a Host State (SOMA)*, 17141/08, 15 December 2008.

Council of the European Union, *Generic Standards of Behaviour for ESDP Operations*, 8373/03, 18 May 2005.

Council of the European Union, *Guidelines for allowances for seconded staff participating in EU civilian crisis management missions*, 7291/09, 10 March 2009.

Council of the European Union, *Multi-annual Civilian Capability Development Plan: Action Lines for 2012-2013*, 12111/12, 6 July 2012.

Council of the European Union, *Report on High-level seminar III 'Facilitating the deployment of civilian personnel for CSDP'*, 16109/11, 26 October 2011.

Council of the European Union, *Third report on Member States' Progress in facilitating the deployment of civilian personnel to CSDP missions*, 8405/13, 2 May 2013.

CPCC, *Force Generation for the civilian CSDP Missions: A planning guide for Member States Seconding Authorities*, 19 September 2016.

De Zan, T., Tessari, P., and Venturi, B., 2016, *Procedures, Personnel and Technologies for Conflict Prevention and Peacebuilding: An Assessment of EU Member States' Capabilities*, EU-CIVCAP Report DL2.1. http://www.eu-civcap.net/files/2016/11/Procedures_Personnel_Technologies_Conflict_Prevention_Peacebuilding-Assessment_EU_Member_States_Capabilities.pdf. Accessed 7 January 2017.

di Martino, A., 'Crimes Committed by Peacekeepers: Immunity v. Principles of Criminal Jurisdiction. A Brief Outline', *China's and Italy's Participation in Peacekeeping Operations: Existing Models, Emerging Challenges*, ed. by De Guttry, A., Sommario, E. and Zhu, L., Lexington Books, Lanham, Md, 2014, pp. 333-368.

Di Mauro, D., Krotz, U., and Wright, K., *EU's Global Engagement: A Database of CSDP Military Operations and Civilian Missions Worldwide, Version 1.0, 2003- 2015*, 2016.

Dijkstra, H., Petrov, P., and Mahr, E., *Reacting to Conflict: Civilian Capabilities in the EU, UN and OSCE*, EU-CIVCAP Report, DL4.1, November 2016. http://www.eu-civcap.net/files/2016/11/Reacting_Conflict-Civilian_Capabilities_EU_UN_OSCE.pdf. Accessed 7 January 2017..

Draft EEAS Implementing Guidelines for the EU Policy on Training, 30 June 2016. File with the authors.

EEAS, CPCC, *Personnel Figures of the Civilian CSDP Missions, as of 31 October 2016*. File with the authors.

EU Policy on Training for CSDP, 1 July 2016. File with the authors.

EUISS, *Yearbook of European Security, YES 2016*, April 2016.

European Parliament, *Resolution on civilian-military cooperation and the development of civilian-military capabilities*, 2010/2071(INI), 23 November 2010.

FBA, 'Sweden's contribution to civilian operations: structures, routines and experiences', *L'Italia nelle Missioni Civili dell'UE. Criticità e Prospettive*, ed. by Pirozzi, N., Quaderni IAI, 2010, pp. 121-148.

Frulli, M., 'On the Existence of a Customary Rule Granting Functional Immunity to State Officials and its Exceptions: Back to Square One', *Duke Journal of Comparative and International Law*, vol. 26., no. 3., pp. 479-502.

Greco, E., Pirozzi, N. And Silvestri, S., *EU Crisis Management: Institutions and capabilities in the making*, Istituto Affari Internazionali. Roma, 2010.

- Kearney, J. A., Botzios, S. and Hadden, T. B., 'Addressing the accountability challenges of international policing in peace support operations', *Crime, Law and Social Change*, vol. 55., no. 2-3., 2011, pp. 217-239.
- Korski, D., Gowan, R., 2009. *Can the EU rebuild failing states? A review of EU Civilian Capacities*, European Council on Foreign Relations, 2009.
- Odello, M., 'Tackling Criminal Acts in Peacekeeping Operations: The Accountability of Peacekeepers'. *Journal of Conflict and Security Law*, vol. 15., no. 2., 2010, p. 347–391.
- Palm, M., *Accountability and Effectiveness of CSDP Missions: The Role of Civil Society*, EPLO, 2010.
- Pirozzi, N., 'EU Performance in Civilian Crisis Management', *The European Union as a Global Conflict Manager*, ed. by Whitman R., Wolff, S., London and New York, Routledge, 2012, pp. 189-208.
- Prouvèze, R., 'Immunities', *Routledge Handbook of International Criminal Law*, ed. by Schabas, W. A. and Bernaz, N., Routledge, London, 2011, pp. 355–367.
- PSC, *Civilian crisis management pre-deployment training - report on survey results and elements for way ahead*, 10976/11, 8 June 2011.
- Regulation (EU) 2015/2219 of the European Parliament and of the Council, on *the European Union Agency for Law Enforcement Training (CEPOL)*, 25 November 2015.
- Ryngaert, C., *Jurisdiction in International Law*, 2nd ed., Oxford University Press, Oxford, New York, 2015.
- Sari, A., 'Status of Forces and Status of Mission Agreements under the ESDP: The EU's Evolving Practice', *The European Journal of International Law*, vol. 19., no. 1., 2008, pp. 67–100.
- Sari, A., 'The Status of Armed Forces in Public International Law: Jurisdiction and Immunity', *Research Handbook on Jurisdiction and Immunities in International Law*, ed. by Orakhelashvili, A., Edward Elgar Publishing, Cheltenham, UK, 2015, pp. 319-371.
- Shaw, M. N., *International Law*, 6th ed., Cambridge, New York, 2008.
- Spinedi, M., State Responsibility v. Individual Responsibility for International Crimes: Tertium Non Datur?, *The European Journal of International Law*, vol. 13., no. 4., 2002, pp. 895-899.
- Tardy Thierry, *Civilian CSDP: what next?* Brief Issue 32/2016. http://www.iss.europa.eu/uploads/media/Brief_32_Civilian_CSDP.pdf. Accessed 9 January 2017.
- Voetelink, J., *Status of Forces: Criminal Jurisdiction over Military Personnel Abroad*, Asser Press, The Hague, 2015.
- ZIF, *World Map Peace Operations 2016*. http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/ZIF_World_Map_Peace_Operations_2016.pdf. Accessed 9 January 2017.

6 References to Member State legislation

- (Austrian Criminal Code) Criminal Code of the Federal Republic of Austria (1974, amended 2015)
- (Belgian Criminal Procedure Code) Criminal Procedure Code of the Kingdom of Belgium (1808, amended 2016)**
- (French Criminal Code) Criminal Code of the Republic of France (1994, amended 2016)
- (German Criminal Code) Criminal Code of the Federal Republic of Germany (1998, amended 2015)**
- (Hungarian Criminal Code) Act C of 2012 on the Criminal Code
- (Italian Criminal Code) Criminal Code of the Republic of Italy (1938, amended 2016)

ANNEX 2: PRESENTATION SLIDES



Civilian and Military Personnel in CSDP missions and operations



*Annalisa Creta – Scuola Superiore Sant'Anna
Alberto di Martino – Scuola Superiore Sant'Anna
Petteri Taitto – Laurea University*

26 January 2017 Paul-Henri Spaak, room P4B001, Brussels

Outline

1. State of Play of current CSDP missions and operations;
 2. CSDP capacities: human resources & training: trends, challenges and lessons;
 3. Aspects related to national follow up to crimes;
- Q&A.



1. State of Play of current CSDP missions



1. State of Play of current CSDP operations



2. CSDP capacities: human resources & training *Challenges, trends and lessons*

2.1 Force generation - Challenges

- States' ambition to deploy staff vs. proportional 'quality' contribution;
- Lack of available personnel in *niche* areas and mission support functions;
- Difficulties in attracting senior experienced staff;
- No virtuous link between training and recruitment/deployment;
- Variable terms of contract for seconded personnel depending on the seconding agency (in some States) or on the seconding State.

Civilian and Military Personnel in CSDP Missions & Operations



2.1 Force generation - Trends

Recruitment & Deployment	<ul style="list-style-type: none"> ✓ Pools/Rosters of personnel for overseas deployments? ✓ Civil servants only or also non-government experts? ✓ Mobilization of quality human resources?
Funding of personnel	<ul style="list-style-type: none"> ✓ One Ministry or Agency funds all? ✓ Deployments funded by individual sending ministries?
Incentives	<ul style="list-style-type: none"> ✓ Specific regulatory framework for participation in CSDP missions? ✓ (Economic) incentives, career planning and coaching for CSDP staff? ✓ Benefits for individual career path?
Dedicated State institution for CSDP deployments	<ul style="list-style-type: none"> ✓ Existence of a specific State institution for CSDP/ a standing cross-departmental unit?
Training	<ul style="list-style-type: none"> ✓ Compulsory for all? Military, police officers and civilians? ✓ Systematic? Ad hoc? ✓ Link between training & recruitment/deployment?

Civilian and Military Personnel in CSDP Missions & Operations



2.1 Force generation – lessons & recommendations

- ✓ Full implementation of Goalkeeper should contribute to an improvement of the quality of recruitment (Registrar);
- ✓ A system of incentives and benefits for individual career path can be conducive for mobilising quality human resources;
- ✓ Harmonisation of standard of treatment of in mission personnel (in terms of the legal, administrative and financial conditions for secondment) should be addressed;
- ✓ Aspects related to the financing of missions and personnel participating therein remain a fundamental aspect.

Civilian and Military Personnel in CSDP Missions & Operations



2.2 CSDP capacities: training

Training path for CSDP Missions and Operations



Civilian and Military Personnel in CSDP Missions & Operations



2.2. CSDP capacities: training *Challenges & trends*

- ✓ The quantitative need for PDT is only few hundreds in a year, and from this point of view the training system in EU structures and in the Member States seem to be inefficient.
- ✓ There is plenty of CSDP specific training available. However, it seems that those trained, are not the ones who are selected to the missions.
- ✓ The need to make training systems more efficient has been acknowledged for a long time, but only few practical steps have been taken to enhance coordination.
- ✓ The training of personnel for CSDP missions and operations remains primarily the responsibility of Member States. Due to this, training has become a political issue.
- ✓ Formal EEAS lessons processes are relying on the often times 'sanitized' political reporting.

Civilian and Military Personnel in CSDP Missions & Operations



2.2. Training: *Recommendations*

- ✓ Financing PDT costs from CSDP missions budget and organising EU certified PDT for civilian missions and possibly for military training missions centrally, would make the deployment system more coherent and more cost-effective. The use of existing systems, like European Security and Defence College network, is a possibility to coordinate and plan proactively.
- ✓ The Shared Services Centre concept should be examined further on and include training activities in it. A process of operational readiness assurance system could serve as a basis for establishing a certification system that links up training and equipment with quality deployment.
- ✓ The external research projects, like H2020, can find real shortfalls, but also good practices that can be further strengthened.

Civilian and Military Personnel in CSDP Missions & Operations



3. Aspects related to national follow up to crimes & offences committed during deployment in mission

Scope

- International Crimes/Ordinary Crimes;
- Immunity related issues;
- Follow-up.



3.1. Type of crimes (speculative)

- **International** crimes:
 - Prosecution at the international level
 - Prosecution at the national level
- **Ordinary** crimes (e.g. homicide, sexual harassment/abuse, corruption, misappropriation of mission assets)



3.2.1. Immunities and extraterritorial jurisdiction

- Immunities with *varying* scope
 - Immunities based on customary international law
 - Immunities based on SOFAs and SOMAs
- Grounds for extraterritorial jurisdiction
 - Active personality principle
- Jurisdictional issues (gaps and/or conflicts)

Civilian and Military Personnel in CSDP Missions & Operations



3.2.2. Immunities and extraterritorial jurisdiction (Recommendations)

Further study is desirable in the following areas:

✓ Acts considered as committed in private and official functions; Member States' interpretation of the scope of immunity;

✓ Extent to which jurisdictional principles applied by Member States fully cover the possible practical complexities of CSDP missions and operations.

Civilian and Military Personnel in CSDP Missions & Operations



3.3.1. Detection, reporting and investigation

- Reporting in written or oral form
- Crimes are detected and reported first in the CSDP mission or operation – the first 'decision' on follow up is made at the mission or operation's level: no specific, detailed guidelines for reporting
- Evidence difficult to collect (hard to acquire and/or easily destructed)
- Possible lengthy delays in collecting evidence

Civilian and Military Personnel in CSDP Missions & Operations



3.3.2. Detection, reporting and investigation (Recommendations)

Further study is desirable in the following areas:

- ✓ What common format of written reporting would be acceptable to the authorities of all Member States and what specific reporting lines exist;
- ✓ What practical problems hinder investigations by Member State authorities (including difficulties in collecting, documenting and storing evidence) and how could these be resolved, eventually with the support of CSDP mission and operation staff.

Civilian and Military Personnel in CSDP Missions & Operations



QUESTIONS?



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

Foreign Affairs
Human Rights
Security and Defence
Development
International Trade

Documents

Visit the European Parliament website:
<http://www.europarl.europa.eu/supporting-analyses>



PHOTO CREDIT: iStock International, Inc.

ISBN 978-92-846-0642-9 (paper)
ISBN 978-92-846-0643-6 (pdf)
doi:10.2861/2668 (paper)
doi:10.2861/354308 (pdf)

