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Note from the Editor

Karen E. Smith, London School of Economics, Editor

This issue of *CFSP Forum* contains three articles on EU crisis management and one on CFSP sanctions. All of the authors participated in a workshop at the LSE in February 2006, which was organised by the Research Group on European Conflict Prevention and Crisis Management Policies. This UACES-sponsored research group consists of young researchers, and is led by three PhD students based in France or the UK (Eva Gross, Ana Juncos and Sébastien Loisel).

Ursula Schroeder opens the issue with an analysis of inter-institutional tensions within the EU regarding crisis management. Ana Juncos then looks in depth at the EU's missions in Bosnia-Herzegovina, while Xymena Kurowska examines the EUJUST Themis mission in Georgia. The final article, by Clara Portela, reports several interesting research findings about the use of sanctions under the CFSP.

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Converging Problems – Compartmentalised Solutions: The Security- Development Interface in EU Crisis Management

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The European Union has embarked on an ambitious programme to develop a comprehensive civilian and military crisis management capability. In contrast to early UN peacekeeping operations – which remained limited to separating warring parties and monitoring ceasefires – the new EU capability reflects the changed nature of crisis management through its emphasis on fostering the comprehensive transformation of post-conflict societies towards stable peace.¹ The European Security Strategy acknowledges this and names the different tools necessary for the task: 'Military instruments may be needed to restore order, humanitarian means to tackle the immediate crisis. Regional conflicts need political solutions but military assets and effective policing may be needed in the post conflict phase. Economic instruments serve reconstruction, and civilian crisis management helps restore civil government.'² The EU's aim to provide comprehensive responses to the complex challenges of civil strife and weak statehood thus brings the formerly separate activities of development and humanitarian experts, police, judicial and military personnel into closer proximity. As a result, the coordination of the different civilian and military aspects of crisis management has become a prime necessity. Has the EU been able to move from concept to reality and implement the notion of comprehensive crisis

management in practice?

An organisational approach to the analysis of EU crisis management

Frequently, analyses start from an intergovernmental perspective and show how individual member states' interests shaped the EU's Common Foreign and Security Policy and thereby the EU's overall approach to crisis management. The argument made here shifts the focus from explaining the origins of European security integration towards an analysis of innovation and change in the EU's political system of governance itself.³ Taking its cue from institutionalist theories of organisational change,⁴ the chosen approach highlights the constraining influence of pre-existing organisational solutions and institutional rules on the EU's capacity for innovating and, subsequently, coordinating its crisis management efforts. And unlike functional explanations of EU integration, this perspective assumes that processes of organisational innovation do not normally imply the convergence of an institutional order towards an 'optimum solution'.⁵ Rather, it is argued that organisational innovation takes place through a combination of the 'exploration of new possibilities' and the 'exploitation of old certainties'.⁶ The explorative strategy of 'patching-up'⁷ existing competences searches for solutions to new problems by ameliorating local inefficiencies without centrally changing the overall structure of the organisation. The exploitative strategy of innovation, on the other hand, 'transposes'⁸ existing competences into new fields and reappraises earlier arrangements to see whether and where they could be re-employed successfully: the existence of certain capabilities and fields of expertise is converted into an inclination to discover goals these abilities might serve.⁹ The following argument uses the two strategies of innovation to make sense of the way in which the EU has adapted its security and development policies to calls for comprehensive crisis management.

The convergence of EU security and development policies

The recent emergence of EU crisis management efforts disturbed the divide between security and development mandates in the EU institutions. Traditionally, the worlds of security and development policies had been disconnected: while the latter sought long-term sustainable answers to structural problems of states in crisis, the former operated under a shorter-term paradigm of rapid civilian and military response

to urgent crises. In recent years, these tasks have started to converge. Development donors moved to accept the notion that physical security is a precondition for sustainable development.¹⁰ Peacekeeping and peace-enforcement operations were expanded to incorporate a wide range of civilian, police, judicial and security sector reform tasks. As a result, wider crisis response mandates today form part and parcel not only of many longer-term development projects in states emerging from violent conflict,¹¹ but also of shorter-term security and stabilisation operations.¹² In the case of the EU, the partial convergence of the European Commission's development policies and the Council's security policies illustrates this boundary-traversing nature of complex peacebuilding.

In particular, the Council Secretariat's moves to establish a crisis management facility that supports both civilian and military operations have come a long way since their beginnings in the late 1990s. Despite serious force generation delays and lags in building up the civilian part of its crisis management infrastructure, the Council has deployed fifteen civilian and military ESDP operations with a wide variety of mandates within the past four years.¹³ With mission mandates quickly expanding from traditional military stabilisation and police advisory missions to rule of law, security sector reform and civilian monitoring missions, the Council was able to turn its new policy capacity into a success story. The European Commission's long-standing experience in the fields of crisis prevention and post-conflict reconstruction is often eclipsed by these highly visible second-pillar ESDP missions. While for instance police missions that deployed under an ESDP mandate received wide publicity, the Commission's experience in training and assisting local police forces in, among others, Guatemala, South Africa, Algeria and Macedonia has received less attention.¹⁴ Yet, EC first-pillar assistance to countries at risk of violent conflict still makes up the bulk of stabilisation, relief and rehabilitation assistance programs pursued by the Union. Also, mirroring the Council's move into civilian crisis management, the Commission has steadily and incrementally integrated more and more crisis response and peace-building concerns into its broader external assistance arrangements. In its 2001 conflict prevention strategy, it explicitly expressed the intention that 'within the limits of its competencies, the Commission intends to play an increasingly active role in the security sector area.'¹⁵ The European Commission, for most of its existence profoundly uninterested in security issues, subsequently assumed competences ranging from a variety of security sector reform

initiatives to the funding of security and defence related research.¹⁶ Today, Community actions include civil protection, capacity-building in the field of police and rule of law, fact-finding missions and training for crisis management personnel.¹⁷ ESDP activities, on the other hand, have covered police and military operations, but also rule of law, security sector reform, civil administration and civilian monitoring missions. In theory, Council and Commission activities remain distinguished into first-pillar institution-building in the fields of conflict prevention and post-conflict reconstruction and second-pillar capacity building through crisis management interventions. Yet in practice, the recent expansion of activities in both pillars has led to 'considerable overlap between Commission programmes and the ESDP.'¹⁸

Diverging strategies of innovation lead to conflict

Although the Council and Commission both expanded their competences in the field of crisis management, they have followed different strategies of innovation. The Council faced a difficult transition from being a purely 'political' body to becoming an 'operational' one and had to establish its crisis management facility from scratch. Capacity development particularly for civilian aspects of crisis management consistently lagged behind the organisation of the military ESDP-architecture, although the EU had actually made the fastest progress in the area of civilian operations.¹⁹ Also, the intergovernmental committees involved in overseeing civilian crisis management activities – above all the Committee for Civilian Aspects of Crisis Management and the Political and Security Committee – only incrementally expanded their standing and remit alongside their increasing experience. Despite this slow evolution of its organisational infrastructure, the Council succeeded in exponentially widening its mandate and successfully explored new fields in which its ESDP instruments could be used. Following a first explorative phase in which the Council established its civilian crisis management architecture and deployed the first police missions, it transposed the existing instrument of 'civilian short term missions' to a broader range of use. Sometimes regardless of whether the chosen form of short-term assistance was the most suitable instrument at the EU's disposal for the task at hand, the Council successfully took over more and more activities in the post-conflict reconstruction sphere.

In the European Commission, changes in its

organisational structure aimed at expanding its peacebuilding activities were generally pursued through patching-up established organisational components. Large developmental and trade budget lines were 'securitised' by mainstreaming conflict-prevention indicators into their programming.²⁰ Other projects relevant for crisis management and peacebuilding were established under small-scale cross-cutting budget lines, for instance within the 'European Initiative for Democracy and Human Rights'. In contrast to the Council's construction of a completely new crisis management facility, the Commission adapted its infrastructure through installing new small-scale organisational task-forces in order to reorient existing arrangement towards peacebuilding. For instance, in late 2000 the Commission established a 'Conflict Prevention and Crisis Management Unit' as the main body tasked with coordinating Community activities in this area. Yet, its small staff and extensive mandate has made it a 'focal point more than a facilitator'²¹ and its role is generally seen as not very proactive in terms of policy development.

While the Commission thus locally altered its long-standing development, relief and rehabilitation instruments to include crisis management and security sector reform tasks, the Council first followed a mostly explorative strategy and was then able to transpose its newly established ESDP instruments into the sphere of civilian peacebuilding. As a result of these different strategies of innovation, relations between both organisations are strained. Particularly from the side of the Commission, the Council's expansive moves were interpreted as an intrusion into the Community's sphere of competences and it has assumed a defensive position towards civilian crisis management operations in an ESDP framework. Stressing its role as the guardian of the Treaties, the Commission has withdrawn to a predominantly legalistic perspective on competence divisions between the first and second pillar.²² For instance, in a legal action brought before the EU Court of Justice in 2005, the Commission argued that recent actions taken by the Council to combat the spread of small arms in Africa negatively affected Community powers in the field of development aid.²³

Conclusion: obstacles to comprehensiveness

Strategies to defuse complex crises and build sustainable peace have to be comprehensive in scope. But although the EU acknowledges this notion on a conceptual level, its implementation has so far not been fully successful. Despite the EU's rapid establishment and expansion of a crisis

management capacity, its institutional divorce into Council and Commission tasks has hindered the development of comprehensive strategies. The convergence of security and development policies and the parallel lack of clear political solutions to ensuing inter-pillar conflicts led to the development of a compartmentalised EU crisis management field. During the evolution of the policy area, Council and Commission policy initiatives were prone to focus on their individual policy sub-fields: both organisations innovated by exporting policy solutions to new fields, which led to competence overlaps and unresolved tensions between them. To the detriment of comprehensive solutions, the crisis management field is characterised by colliding policy initiatives that have so far not been integrated into a coherent cross-pillar strategy. ♦

¹ On the transformation of crisis management see Alex J. Bellamy, Paul Williams and Stuart Griffin, *Understanding Peacekeeping* (Cambridge: Polity Press, 2004).

² Council of the European Union, 'European Security Strategy. A Secure Europe in a Better World', Brussels, 12 December 2003, p. 6.

³ See Simon Hix, 'The Study of the European Union II: The "New Governance" Agenda and its Rival', *Journal of European Public Policy*, vol. 5, no. 1, 1998, pp. 38-65.

⁴ See Paul J. DiMaggio and Walter W. Powell (eds), *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991).

⁵ James G. March and Johan P. Olsen, *Elaborating the 'New Institutionalism'*, Working Paper No. 11 (Oslo: ARENA, March 2005), p. 13.

⁶ James G. March, 'Exploration and Exploitation in Organizational Learning', *Organization Science*, vol. 2, no. 1, 1991, p. 71.

⁷ Philipp Genschel, 'The Dynamics of Inertia: Institutional Persistence and Change in Telecommunications and Healthcare', *Governance*, vol. 10, no. 1, 1997, p. 53.

⁸ *Ibid.*, p. 55.

⁹ Barbara Levitt and James G. March, 'Organizational Learning', *Annual Review of Sociology*, 14, 1988, p. 319.

¹⁰ See for instance Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London & New York: Zed Books, 2001).

¹¹ See Michael Brzoska, *Development Donors and the Concept of Security Sector Reform*, Occasional Paper No. 4 (Geneva: Centre for the Democratic Control of the Armed Forces, 2003).

¹² See Ann M Fitz-Gerald, 'Security Sector Reform - Streamlining National Military Forces to Respond to the Wider Security Needs', *Journal of Security Sector Management*, vol. 1, no. 1, 2003, pp. 1 - 21.

¹³ See http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=268&lang=EN&mode=g. (accessed 28.04.2006).

¹⁴ European Commission, 'Communication from the Commission on Financing of Civilian Crisis Management Operations', COM(2001) 647 final, Brussels, 28 November 2001, Annex.

¹⁵ European Commission, 'Communication from the Commission on Conflict Prevention', COM(2001) 211 final, Brussels, 11 April 2001, p. 14.

¹⁶ See Jocelyn Mawdsley, 'The Commission Moves into Defence Research', *European Security Review*, 22, 2004, pp. 6-8.

¹⁷ European Commission, 'Conflict Prevention and Crisis Management Unit: Civilian instruments for EU crisis

management', Brussels, April 2003.

¹⁸ House of Lords, Select Committee on the European Union, *EU - Effective in a Crisis? With Evidence*, London, 11 February 2003, p. 9.

¹⁹ Renata Dwan, 'Civilian Tasks and Capabilities in EU Operations', paper prepared for the Study Group on Europe's Security Capabilities, Berlin, 2004, p. 2.

²⁰ One example of this is the Cotonou Agreement. It contains a new political dimension specifically meant to address issues previously dealt with outside the development agenda, including arms and drugs trafficking, excessive military expenditure, organised crime and religious or ethnic discrimination. International Crisis Group, *EU Crisis Response Capability Revisited*, Europe Report N°160, Brussels, 2005, p. 36.

²¹ *Ibid.*, p. 14.

²² Judging that Community interests generally take priority over second pillar CFSP actions, the Commission's legal service argued that some recent second-pillar CFSP actions infringed on Community competences under Art. 47 (TEU). See European Commission Legal Service, *Critères généraux pour l'exercice soit de la compétence communautaire, soit de celle de l'Union européenne au titre de la PESC*. JUR(99)50931, Brussels, 07 October 1999.

²³ See European Court of Justice, Case C-91/05, 2005.

Bosnia and Herzegovina: A Testing Ground for the ESDP?

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The EU is commonly seen to be in a unique position to make a significant contribution to complex crisis management operations due to the broad range of instruments at its disposal, including: political tools like conflict mediation; economic ones such as humanitarian aid, economic assistance or the membership carrot; and, only more recently, rule of law, police and military operations. However, the fact is that the EU is still far from using all these instruments in a coherent and effective way. The recent development of the European Security and Defence Policy (ESDP) has increased the EU's ability to play a significant role in the world, but it has also made co-ordination within the EU more difficult. The need for a more coherent approach is acknowledged both at the decision-making and at the implementation levels. This requires both the structures for co-ordination and the political will of the actors involved.

In this respect, the EU's recent engagement in Bosnia and Herzegovina (hereafter BiH) best exemplifies the above mentioned challenges of coherence and effectiveness. Two major motivations explain the EU's intervention in the country. First, the EU's engagement is the result of a 'guilty conscience': having failed to stop the bloody conflict that ravaged the country between 1992 and 1995, the EU felt obliged to assume its responsibilities to promote peace and stability and to bring BiH closer to the European perspective. Thus, over the years, the EU's presence in the country has increased, reflecting both its commitment to the membership perspective of BiH, and its development as a crisis management actor.

BiH is also seen by policy-makers in Brussels as a 'laboratory' to test its crisis management capabilities and has become the main testing ground for the ESDP capabilities. It is here that the EU has tried to introduce a comprehensive approach towards conflict management fully in line with the *European Security Strategy*. The EU has deployed in BiH the full spectrum of instruments at its disposal, thus becoming a key security actor. For example, in January 2003, the EU launched its first ever police mission (EUPM). Taking over from the UN mission IPTF,

the EUPM was meant to consolidate the IPTF's reforms and to 'establish sustainable policing arrangements...in accordance with best European and international practice'.¹ It was followed in December 2004 by the deployment of the EU's largest military mission so far (EUFOR Althea), its main task being to maintain a safe and secure environment and to support the implementation of the Dayton Agreement.²

Apart from the inherent challenges of planning and running a mission of 7000 troops, the recent deployment of the EUFOR involved other challenges and opportunities for the ESDP. First, it allowed the EU to test the Berlin Plus agreements in a large scale operation – Operation Concordia in FYROM only had 400 personnel. Although there were some problems regarding intelligence-sharing during the first months of the operation,³ so far co-operation with NATO has worked fairly well both at the decision-making level and on the ground with the remaining NATO Headquarters.⁴ Second, taking over from its predecessor in SFOR, an Integrated Police Unit (IPU) with executive powers was created as part of the EUFOR. This was the first example of an executive police force under the EU flag.⁵ However, the deployment of the IPU was not without problems, since some member states did not agree with the placing of this constabulary force under military command. Those countries (France, Spain and the Nordic countries, among others) strongly opposed the creation of the IPU during the planning phase of the mission.⁶ However, it was finally agreed to allow for an initial deployment of the IPU with a reduced number of countries participating in it, and mostly Italian carabinieri. Because of this initial disagreement, the possible repositioning or composition of the IPU was identified as one of the first issues to be discussed in the following Mission Reviews, but so far, the member states have decided to keep the IPU under the military command.⁷

Third, the deployment of the EUFOR also highlighted the need for enhanced co-ordination between the military and civilian elements of the ESDP. That was the first time that the EU had both a civilian (EUPM) and a military (EUFOR) crisis management mission in the same theatre of operations. It did not take long for the tensions between the two missions to become evident. A case in point was the fight against organised crime. The EUFOR's mandate identified this task as one of its supporting/secondary tasks, but it arguably exceeded this mandate. To date the EUPM provided expert advice and

supported institution-building projects and local ownership as the most effective way to tackle organised crime. The EUFOR's role in the fight against organised crime would be rather different. Throughout its first year of mandate, several operations were launched by EUFOR in order to support local law enforcement agencies to fight illegal activities like weapons' smuggling, drug trafficking, human trafficking and illegal logging. However, this assertive approach generated some criticisms from EUPM officials who stressed that by actively participating in operations against organised crime, EUFOR was actually doing the locals' job. As one EUPM official put it,

we [EUPM] are not here to do police work, we are here to mentor, monitor and inspect, to help build local institutions (...) so instead they [Bosnian police officers] are waiting for us or expecting us to do things, they do it themselves. By sending here EUFOR with 7000 soldiers stopping cars, closing borders, arresting people... it is conflicting with our mandate.⁸

The tensions between the EUPM and EUFOR highlighted Brussels' inability to design a comprehensive civilian and military approach to crisis management. However, in the last months of the EUPM's mandate, an effort was made to improve co-ordination on the ground. According to a EUFOR official, 'one of the successes of the last year is that starting from zero, in terms of practical co-operation, we have arrived to the end of the year with a framework for co-operation'.⁹ Thus, at the end of 2005, the representatives of the EUPM, the EUFOR and the EU Special Representative (EUSR) agreed on *Seven Principles for Co-ordination* and on some *General Guidelines for Increasing Co-operation between EUPM-EUFOR and EUSR*.¹⁰ According to these documents, the EUPM would take the lead in the policing aspects of the ESDP-supporting efforts in tackling organised crime. The EUPM would assist the local authorities by mentoring and monitoring the planning of these operations, while EUFOR would provide the operational capabilities to these operations, all under the political co-ordination of the EUSR. In any case, these activities should aim to support the efforts of the BiH authorities in the fight against organised crime, in an effort to promote local ownership. As summarised by another EUFOR official,

We (EUFOR) have to make available our

expertise, resources, capabilities to the local agencies at their request, but on the advice of EUPM. So, more advice and guidelines from EUPM. But on their part, they will take more interest on the operational side.¹¹

The agreement on the ground also reflected the general mood in Brussels. Apart from dealing with issues of civ-mil co-ordination, it was the first step of the EUFOR's exit strategy. Almost every member state agreed that the involvement of the EUFOR in the fight against organised crime could not determine the size of the mission. With a reduction of troops on the horizon, it was time for the EUFOR to step back and transfer responsibility to the EUPM and the EUSR.¹²

Along the same lines as the *Seven Principles*, the new EUPM mission launched in January 2006 has a stronger, more pro-active role in the fight against organised crime, assisting the local authorities in planning and conducting organised crime investigations.¹³ However, the decision was surrounded by heated debate between the member states about what the role of the new mission should be. It was clear that the new EUPM should take over the task of supporting the implementation of the recently agreed police reform and have also a role in the fight against organised crime. However, there were some divergences about how these tasks should be carried out, with some member states asking for a mission with an executive mandate.¹⁴ However, the majority of the member states agreed that after three years of non-executive mandate, and almost ten years after the end of the war, it did not make sense to launch an executive police mission. That would be a step back in the process of normalisation of BiH and incompatible with the membership perspective of the country.¹⁵

With this new mission the EU has tried to overcome some of the problems of the previous one. For example, it has strengthened its inspecting component. Hence one of the new strategic priorities will be to monitor and inspect the accountability of the local police by looking at the operations carried out by the Bosnian police forces, but also the conduct of individual police officers. On the other hand, this mission also tries to respond to criticisms that pointed to the lack of an integrative approach in the previous EUPM, neglecting the importance of other rule of law components in the fight against criminality in BiH, following developments in the EU's civilian crisis management.¹⁶ Thus, the new EUPM includes some rule of law experts, prosecutors and judges.

Furthermore, the revised Operational Plan (OPLAN) should lead to the merging of the political and press departments of the EUPM and the EUSR to facilitate co-ordination and to reinforce the EUSR's structures.¹⁷

At the decision-making level, the lessons from BiH have also fostered some changes. Aware of the potential problems of co-ordination that can arise between civilian and military instruments, the EU has tried to improve co-ordination at the planning phase with the development of an *EU Concept for Comprehensive Planning* and the creation of the Civ/Mil Cell.¹⁸ The former should offer an excellent opportunity to streamline and optimise the EU's crisis management capabilities, by providing a single comprehensive overview of the EU's activities in a specific country. For its part, one of the main tasks of the Civ/Mil Cell, established in June 2005, is to assume the strategic and conceptual planning of EU's civilian and military operations.¹⁹

However, these two initiatives fall short of expectations. For example, in the case of BiH, the *EU Concept for Comprehensive Planning* cannot solve the problems of co-ordination since all the EU bodies are already on the ground. An overall revision of the EU's activities in the country, as the one expected to accompany its implementation, may provide a strategic vision of what the role of each of the EU bodies in the country should be, as well as how the transition from a crisis management situation to a normalisation phase should take place. However, producing this comprehensive overview has proven to be quite difficult.²⁰ As far as the Civ/Mil Cell is concerned, its creation has been surrounded by criticisms mainly because of its location (within the EU Military Staff), which has been perceived with certain suspicion from other Directorates-General within the Council Secretariat (DG VIII and DG IX).²¹ As an EU official noted, the Civ/Mil Cell could provide a holistic and integrated planning in crisis management, but 'when push comes to shove, there [are] still too [many] directorate turf wars going on in respect to 'who does what'.²²

In sum, the lack of a comprehensive planning strategy and appropriate mechanisms of co-ordination have borne numerous problems and prevented the implementation of a coherent EU's external action in BiH. Moreover, the current situation points at the problems experienced by the EU to streamline its presence in the country, which makes coherence more difficult and it also affects how the EU is perceived by the locals. The EU is still something confusing for the local

population and politicians. Sometimes, it is difficult to convey the message that there is just one EU, but different ways of assisting the country. Regarding these enormous co-ordination challenges, one EU official recalled the saying, 'everybody wants co-ordination, but nobody wants to be co-ordinated'.²³ As far as crisis management policies are concerned, the EU is learning how to move from this idea by developing the necessary concepts and putting in place new coordinating mechanisms both at the decision-making and at the implementation level. It is not clear however whether the necessary political will to achieve this objective is already in place. In this respect, BiH could be, once again, a testing ground for the ESDP.◊

¹ 'Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission', *Official Journal of the European Communities*, L70, 13 March 2002, pp. 1-6

² 'Council Joint Action 2004/569/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina', *Official Journal of the European Union*, L252, 28 July 2004, pp. 10-14.

³ The handover of intelligence assets from SFOR to EUFOR took place months after EUFOR had been launched. Interviews in Brussels, 2006.

⁴ In this case, good co-operation owed more to the excellent personal relations between the NATO and EUFOR Commanders than to the formal structures that were established.

⁵ In executive missions, international police officers with enforcement powers are deployed on the ground and participate in police operations to substitute/support the local police forces. Non-executive police missions such as the EUPM do not have an operational role, but are limited to specific tasks, such as monitoring, advising, training and mentoring, and have limited enforcement powers.

⁶ Whereas for the French and the Spanish this gendarmerie-type police should be only deployed under a civilian command, the Nordic countries have traditionally been suspicious of the role of these 'paramilitary' police forces and hence oppose their deployment. Interviews in Brussels, 2006.

⁷ This issue has also been linked with the planning of the new EUPM, with some member states asking for the disbandment of the IPU and the establishment of an executive police mission to replace the EUPM.

⁸ Interviews in Sarajevo, 2005.

⁹ Ibid.

¹⁰ EUPM, EUFOR, EUSR (2005) *Guidelines for Increasing Co-operation between EUPM-EUFOR and EUSR*, Sarajevo.

¹¹ Interviews in Sarajevo, 2005.

¹² The EUFOR contingent will be maintained at the current levels (7000) at least until the Bosnian elections due in October this year. Interviews in Brussels, Mons and Sarajevo, 2005-2006.

¹³ 'Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH)', *Official Journal of the European Union*, L307, 25 November 2005, pp. 55-58.

¹⁴ This view was also supported by an ICG report. International Crisis Group, 'Bosnia's Stalled Police Reform: No Progress, No EU', *Europe Report* No. 164, 6 September 2005.

¹⁵ Interviews in Brussels, 2006.

¹⁶ While the first EU civilian crisis management operations only covered one of the areas set at the Feira European

Council in 1999 (i.e. police, rule of law, civilian administration and civil protection), in the last months, the EU has launched some missions including both police and rule of law components. An example of this is the EU Integrated Rule of Law Mission for Iraq (EULEX Iraq).

¹⁷ Interviews in Brussels, 2006.

¹⁸ General Affairs and External Relations Council (2005) *GAERC Conclusions*, 2691st Council Meeting, Brussels, 21-22 November.

¹⁹ Another task of the Civ/Mil Cell is to set up an EU autonomous Operational Headquarters.

²⁰ Interviews in Brussels, 2006.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

Beyond the Balkans but Still in Civilian Uniform: EUJUST THEMIS to Georgia¹

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Between July 2004 and July 2005, the EU deployed its first rule of law ESDP mission, EUJUST THEMIS to Georgia. Looking into the circumstances of the deployment and the broader meaning of the mission provides an interesting insight into both the current state of ESDP and the EU's stance towards Georgia. This article presents the mission and looks at the institutional interfaces involved in the decision-making process.

As discussed in depth elsewhere, Georgia together with other countries in the South Caucasus barely constitutes a noticeable feature on the EU's foreign policy agenda; its bumpy road to inclusion into the ENP illustrates the country's struggle in this regard.² The EU Special Representative (EUSR) appointed to the region in summer 2003, although with a recently strengthened mandate,³ has proven to be of low profile and instrumental for smoothing potentially antagonistic relations with Russia rather than making a clear mission statement.⁴ Still, the launch of Themis has been revealed as a significant event. First, the mission was the realisation of an innovative idea in terms of international rule of law assistance. It was further a result of a symptomatic intra-EU process where not only the infamous Council – Commission turf battle is involved, but more profound phenomena also become noticeable. As regards the latter, Themis might be indicative of the rise of specific ESDP culture⁵ with a distinct working philosophy and newly articulated institutional practices. In this regard, the Council Secretariat-General's entrepreneurship is substantiated particularly by the Committee on the Civilian Aspects of Crisis management (CIVCOM), comprising national representatives, and DGE 9, where concrete schemas concerning civilian missions are drafted. Similarly, former and present members of missions have contributed to the ESDP culture. Second, reaching beyond the Balkans and police missions adds a new geographical and functional impetus to ESDP while certain reputational capital has been built on Themis.⁶

The idea of a mission arose after the Rose Revolution in Tbilisi in November 2003. It was first formulated in the Estonian Permanent Representation to the EU in December 2003, initially with the large scope of an integrated civil administration. The toppling of Eduard Shevardnadze was perceived as a long-due democratic moment in the post-Soviet space and it triggered considerable interest for Georgia within the international community. The initiative was finally presented by a Lithuanian representative to the CIVCOM in February 2004. Challenged by some member states, which saw it as unnecessary irritant towards Russia, the idea was keenly supported by DGE 9. As a functionary in the Council Secretariat stated, 'at that time there was a clear moment when *in the house* (DGE 9) they tried to promote rule of law civilian crisis management; it can be said that two aspects coincided: preparing the concept of rule of law missions, the subsequent process of gathering experts for this purpose and the political moment in Georgia'. An important element of the picture was the new Georgian foreign affairs minister, previously an ESDP French diplomat and a former French ambassador to Tbilisi, who brought in significant awareness about the possible EU tools of engagement. New Georgian authorities, conversely, needed a clear signal of recognition while an ESDP operation provided a strong political gesture of support. In this regard, the actual substance of the mission might not have been a direct result of prioritising Georgian needs.

An exploratory mission sent to Georgia from DGE 9 in March 2004 identified the scope for an ESDP mission with respect to the Georgian justice system. It concluded that assistance was needed in order to introduce a more coherent and strategic approach in the administration. It recommended narrowing the operation from the initially-planned civil administration one and incorporating the penitentiary system into the ESDP remit. Built upon these terms of reference, the fact-finding mission dispatched in May 2004 included penitentiary experts which resulted in a subsequent dispute with the European Community (EC) pillar, which was running a penitentiary project in Georgia.

The Commission was wary towards the mission in principle since it saw it as a precedent leading to the expansion of the civilian mission concept. Originally, it envisaged a civilian mission as an accompanying one, complementary to a military or a peacekeeping mission. Themis, conversely, was to be entirely autonomous. Admittedly, it did

open certain doors as consequently ESDP operations 'came out of the police box' and a parade of (integrated) rule of law missions followed. Furthermore, the Commission did not regard the situation in Georgia as a crisis or post-crisis one and it therefore saw no scope for an ESDP operation. Instead, it favoured the development approach by the EC Delegation on the ground. Importantly in this context, the rule of law area has traditionally been a realm occupied by the EC, and the EC had already been engaged in significant rule of law projects in Georgia. More specifically, the EC Delegation was engaged in advisory assistance to the Ministry of Justice focussing on support to the penitentiary (establishment of a probation service, strengthening of the penitentiary administration and rehabilitation of penitentiary infrastructure), the Prosecutor's office (reform and modernisation project) and the Ministry of Interior (policy advice and technical assistance projects recommending its demilitarisation, and its reform into a civilian institution).⁷

Accordingly, the non-duplication of the strategic penitentiary programme through Themis became a priority. This often-brought-up argument implied, however, that as the reform strategy covered the entire criminal code procedure, from investigation to the penitentiary system, it was a disappointment to leave out the latter from the mission mandate. Since this area could not remain completely unmonitored, an informal arrangement was reached with the EC Delegation in that one of the mission experts dealt with this issue in cooperation with the EC Delegation penitentiary experts.

It is of relevance here to mention the Commission position that the fact-finding mission as well as the actual deployment of Themis were performed in a fairly hasty manner. As the situation in Georgia could hardly be classified as a crisis, there was sufficient time to reflect on different issues within the Council – Commission – Georgian authorities triangle but such an in-depth dialogue never took place. The explanation given for such a rushed action was that the Council sought to send a signal of being capable to deliver rapidly (as opposed to the Commission's lengthy procedures) in the area of the rule of law.

The Joint Action on EUJUST THEMIS envisaged a one-year but grandiose mandate. The mission was tasked to '[...]in full coordination with, and in complementarity to, EC programmes, as well as other donors' programmes, assist in the

development of a horizontal governmental strategy guiding the reform process for all relevant stakeholders within the criminal justice sector, including the establishment of a mechanism for coordination and priority setting for the criminal justice reform, carried out in close coordination with the Georgian authorities as well as the Commission and international donors'.⁸ In other words, Themis experts were to assist in developing an overarching criminal justice reform strategy in respect of local ownership. The eight senior experts from EU countries⁹ were located in a number of Georgian institutions¹⁰ in order to provide assistance on a daily basis. They were accompanied by national legal assistants who provided both language assistance, know-how of the Georgian criminal code and understanding of the local context. The on-site location of EU experts was perceived as the concrete application of the national ownership principle and proved to be the most acclaimed aspect of the mission. It allowed for a significant degree of embeddedness into the system and it enabled trusting relations within the institutions. Importantly, it also served as a distinguishing practice in comparison to other donors' projects, which tended to transfer ready-made solutions.

The drafting of the reform strategy was to be coordinated by a high-level working group, which, however, barely met, similar to specific sub-groups formed at a later date. These realities of day-to-day functioning of the mission rendered the principle of national ownership sensitive to compromise when Georgian authorities were not demonstrating any significant progress. In mid-May 2005 and after inviting the Minister for Justice Konstantine Kemularia to the Political and Security Committee to report on the development of the strategy, the mission managed to obtain a modest draft. President Saakashvili adopted the revised draft in July 2005 by decree, while the parliament was excluded from the procedure. Still, the burning question of implementation loomed large. The latter should be seen in the context of initial delays with the establishment of the mission and the successive follow-up. The practical set-up of the mission proved to be a complicated issue due to the lukewarm political support within the Georgian system and the requirements of EU procurement policy, which left the mission members lingering without computers for the first three months of a year-long mission. Consequently, the implementation-planning phase foreseen in the Operational Plan for 2-4 months, did not materialise. Already in May, there was an agreement that the EU should

provide support in the implementation of the strategy after the termination of Themis. The idea was that the follow-up should be a bridge between the mission and the Commission's local projects in the rule of law area. Two proposals for follow-up were circulated: the first focused on strengthening the EUSR office with some experts responsible for monitoring the implementation and ensuring continuity with the knowledge and expertise generated by Themis; the second proposed handing over the task of facilitating implementation to the EC Delegations. It was finally decided to place two former Themis experts in the enhanced team of the EUSR. They worked in Tbilisi until the end of February 2006 in close cooperation with EC Delegation in order to assist in drafting the criminal law reform implementation plan to be included into the Georgian Action Plan (AP) for the ENP. The latter should provide a substantial link between the ESDP and the Community instruments. Crucially, the inclusion into the AP (which was a Georgian initiative) prevents the results of Themis from remaining a paper strategy only.

In this context, it is interesting to bring in the experts' accounts of Themis results. They emphasise the substantially limited possibilities of a one-year mission combined with the initial logistical delays. Accordingly, the measure of success is seen in the fact that, first, a draft reform strategy has been produced, even if of minimalist nature, and that from this there emerges the moral obligation on the government side to implement it. Second, during the process of producing the document, the mission managed to bring together the different parties in the criminal justice system, who had to cooperate in an unprecedented manner. This constituted one of the premises of the mission mandate and seems to have been completed. Third, there is the content of the strategy, which, despite the many unsettled dilemmas, brings Georgian criminal law in line with European practices.

Some tentative conclusions might be drawn. First, as regards the overall stance of the EU towards Georgia, only low profile engagement can be discerned. This becomes vividly illustrated through the decision not to deploy a fully-fledged Border Monitoring Operation on the Georgian-Russian border after an OSCE mission was vetoed by Russia in December 2004. Georgians explicitly asked for an ESDP support on this matter but the member states only agreed to enhance the EUSR team by incorporating a number of border experts within it. The mandate of the EUSR border guards includes reporting and

continued assessment of the border situation, facilitating confidence building between Georgia and Russia and assisting the Georgian government with preparing a comprehensive reform strategy for its border guards. Importantly, however, the mandate still explicitly excludes Abkhazia and South Ossetia.¹¹ It may be argued that the substance of the work of the enhanced team corresponds to the possible mandate of an ESDP operation but is labelled differently so as to remain a low profile enterprise, which does not antagonise Russia.

Second, although neither the piecemeal character of ESDP nor the deplorable state of inter-pillar coherence can be denied, it can nevertheless be claimed that ESDP operations represent an innovative, pragmatic way of responding to certain needs in the broad area of state reconstruction. There are distinctive tendencies to see ESDP as a highly flexible political tool with the potential of bringing considerable political impact within a limited period. This appears to reflect the current picture of EU integration where the fact that member states retain control over the situation is no longer rebuffed as an indicator of failure to communitarise, but a way to ensure effectiveness through a clear-cut 'chain of command' (Head of Mission – EUSR – HR/SG – PSC) within ESDP which guarantees proper supervision. In this context, the Community is perceived at times as a resented financial manager and technical partner. Its main task is accordingly to fill in the gaps identified by the strategic vision contrived within ESDP actions through technical development programmes.◇

¹ This article builds upon ongoing PhD research on the civilian aspect of ESDP. The material was gathered during field missions to Tbilisi in June 2005, to Brussels (to the Council Secretariat, DG Relex of the EC and some member state permanent representations) in November 2005 and in April 2006 as well as during follow-up interviews with former members of Themis.

² For a comprehensive overview see Dov Lynch, 'Why Georgia Matters', Chaillot Paper 86 (Paris: EU Institute for Security Studies, 2006). See also Dov Lynch, 'The South Caucasus: a Challenge for the EU', Chaillot Paper 65, (Paris: EU Institute for Security Studies, 2003).

³ Council Joint Action 2006/121/CFSP of 20 February 2006.

⁴ See the discussion below in the context of failing to deploy a border monitoring operation on the Georgian-Russian border.

⁵ For an argument along similar lines, see Damien Helly 'EUJUST THEMIS in Georgia: an ambitious Bet on Rule of Law' in a forthcoming EUISS Chaillot Paper on civilian crisis management.

⁶ In interviews with Themis members, it cropped up repeatedly that it had been decided at the outset to convert the mission into a success story.

⁷ Damien Helly, op.cit.

⁸ Council Joint Action 2004/523/CFSP of 28 June 2004.

⁹ The seconded experts came from Lithuania, Latvia, Denmark, Sweden, the Netherlands, Poland, Italy, and Germany; the mission was headed by a French judge.

¹⁰ Ministry of Justice, Appeal Court, Ministry of Interior, General Prosecutor's Office, Council of Justice, Public Defender's Office, Supreme Court and Appeal Court.

¹¹ Article 3(g) of Council Joint Action 2006/121/CFSP of 20 February 2006.

CFSP Sanctions and the European Neighbourhood: 'Borders Matter'¹

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The widely-discussed adoption in 2003 of the European Union's first 'security concept', the European Security Strategy (ESS),² overshadowed the almost simultaneous release of several documents outlining EU policies in specific domains of external action. Despite their apparently secondary nature, some of these documents have major implications for the EU's strategic outlook. In early 2003, the European Commission released a strategy paper on its future relations with countries in its immediate neighbourhood, 'Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours'.³ It announced the creation of the European Neighbourhood Policy (ENP), which is meant to upgrade co-operation with adjacent countries in Eastern Europe and the Southern Mediterranean.⁴

A second, hardly-noticed document was approved the following year, the 'Basic Principles on the Use of Restrictive Measures', governing the imposition of sanctions against third countries in the framework of the Common Foreign and Security Policy (CFSP).⁵ This was the first EU document proclaiming the grounds on which the Union might impose sanctions: to fight terrorism and the proliferation of weapons of mass destruction (WMD), and to uphold the respect for human rights, democracy, the rule of law and good governance. Far from constituting a novelty in the Union's foreign policy 'toolbox', the imposition of sanctions in the absence of a previous United Nations Security Council mandate started in the early eighties and has become increasingly frequent over the past decade. By the time the Council adopted the 'Basic Principles', the EU already had a vast record of this practice.

However, little is known about EU sanctions policy. On which grounds and against which targets were sanctions applied prior to the adoption of the 'Basic Principles'? A glance at the practice of the EC/EU from 1987, date of the formalisation of the CFSP's predecessor, the European Political Co-operation (EPC), to 2003 reveals that the EU has always displayed regionally-conscious behaviour. In particular,

the interplay between the nature of the objectives promoted by sanctions and the geographical location of the targets shows that regional differentiation existed in EU sanctions policy prior to the creation of the ENP.⁶

Goals and targets of EU sanctions: statistical evidence

The policy goals recently proclaimed in the 'Basic Principles' do not fully coincide with the past record. Whereas sanctions have often been wielded for the promotion of democracy and human rights, measures against terrorism have been rare: they were imposed against Syria and Libya in the mid-1980s; and later re-imposed against Libya in 1999. Several sanctions regimes targeting individuals connected to terrorism and its financing were put in place by the EU following the September 11th attacks. EU sanctions have never been applied to counter the proliferation of WMD. In turn, some sanctions were imposed for aims not mentioned in the 'Basic Principles' such as supporting peace processes, as in Moldova, or promoting regional peace and stability, as in ex-Yugoslavia.

The EU displays a relative balance regarding the security relevance of the aims it pursues through sanctions. It has wielded sanctions for objectives of direct security relevance, such as the fight against terrorism, the maintenance of peace and stability, and the support of peace processes, as well as for objectives whose security importance is less marked, such as the promotion of democracy and human rights. Sanctions pursuing objectives of both direct and indirect security relevance have been consistently applied with almost identical frequency, with only a slight tendency to favour the latter.

Although EU sanctions policy has a global character, with seven sanction regimes out of seventeen imposed outside its neighbourhood in the period studied, the EU's approach to its geographical vicinity differs substantially from that to other regions. The ESS insinuates that neighbours come first: 'even in an era of globalisation, geography is still important'.⁷ External Relations Commissioner Benita Ferrero-Waldner confirms this idea asserting that 'borders matter'.⁸ This is indeed the case for EU sanctions policy: the EU behaves differently towards Eastern Europe, the Southern Mediterranean, and the rest of the world. Countries in the European vicinity are targeted more often than countries further afield. The European and Southern Mediterranean neighbours are highly represented among the

targets: 23% of the possible targets in Europe and 25% of the Southern Mediterranean countries have been subject to EU sanctions. By contrast, outside these areas, EU sanctions have targeted less than 5% of the total population of third countries.

What is most striking here is the apparent connection between the objectives pursued and the geographic location of the targets, in the sense that the EU seems to promote a specific set of objectives through its sanctions in each geographic area. The divergence between the two neighbouring regions is remarkable. In Eastern Europe, the EU has imposed sanctions in pursuit of all objectives with the exception of terrorism. In the majority of cases, the objectives advanced had a direct relevance to security: sanctions against the former Yugoslavia were justified as measures to enhance regional peace and stability, while in Moldova they were meant to support the OSCE-led peace process. In the Southern Mediterranean, sanctions have only been applied to counter state-sponsored terrorism. By contrast, in more distant areas such as Sub-Saharan Africa and Asia, sanctions were imposed to protect democracy and human rights.

A straightforward explanation for this 'differentiated sanctions policy' would be that the problems that sanctions are intended to address are different in each region. This is true to a limited extent: the kind of situation for which sanctions have been applied partly confirms this. In Eastern Europe the EU has mostly imposed sanctions where a conflict was ongoing or recently finished, as in ex-Yugoslavia and Moldova. The only cases in which support of terrorism provoked sanctions can be found in the Southern Mediterranean: Syria and Libya.⁹ Beyond the neighbourhood, the majority of cases consist of situations where democratic rule was imperilled, or human rights were breached, as seen with human rights violations in China and Indonesia, the obstruction of democracy in Zaire, or a combination of both in Burma, Nigeria and Zimbabwe. However, sanctions have sometimes been wielded in situations of open conflict well beyond the European continent, as in Sudan and Zaire.

Still, there is room for the contention that EU sanctions policy is strongly determined by the target's geographic proximity to the Union's territory. Differentiation in the objectives does not correspond entirely to the security problems specific to each geographic area. Human rights

breaches and poor democratic standards are recurrent in Central Asia and North Africa, regions never targeted by EU sanctions on these grounds before 2003.¹⁰

Eastern Europe and the Mediterranean: sensitivity and restraint

The fact that in its continental neighbourhood the EU responded with sanctions whenever it identified a possible threat to the security of the region indicates a special preoccupation for this adjacent area. While the measures imposed were sometimes weak (such as visa bans), they constituted an attempt to address tense situations before they degenerated into conflict. This sensitivity for Eastern Europe is noticeable in the Balkans, but even more clearly in the cases of Belarus and Moldova. In both instances, the EU imposed sanctions on situations that hardly qualify as crises. The imposition of sanctions in 2003 against the leadership of Transdnistria was justified as a reaction to its obstructionism of the stalled Moldovan peace process. Even the most minor chapter is revealing: sanctions against Belarus were decided first in response to the treatment of EU diplomats and the OSCE mission in 1998. This episode must, however, be seen in the framework of the worrisome changes illegally made in the Belarusian constitution some five years before. A few years later, the EU almost imposed a visa ban against the Belarusian authorities following their obstruction of the OSCE-led Advisory Monitoring Group. A visa ban was finally agreed in 2004 due to the disappearances of individuals, and has been expanded as democracy has been further obstructed.

By contrast, in the Southern Mediterranean, EU sanctions policy looks very different: the grounds on which measures are decided, and the situations in which they are applied differ substantially from those in Eastern Europe. The EU is more cautious when deciding sanctions. Remarkably, sanctions were applied twice for one single, highly security-relevant objective: fighting terrorism (Syria and Libya in 1987). In both cases, they were imposed in the immediate aftermath of terrorist attacks on the territory of (then EC) member states.

Various reasons account for the different approaches towards these two neighbouring regions. Firstly, the option of EU membership, which potentially exists for eastern neighbours but not Southern Mediterranean states, renders the former more amenable to the Union's leverage. This was largely demonstrated during the enlargement processes, and it is still evident in the current ENP. Most East European countries have

been responsive to EU's attempts of influence.¹¹ By contrast, the Southern Mediterranean states neither share Eastern Europeans' western drive, nor are they offered the prospect of membership. In addition, the EU's cautious attitude towards the North African countries might be due to the perception that promoting democracy coercively in these states might worsen mutual relations, or lead to an uncomfortable rise of radical parties.¹² The Union cares most about the security of its member states; hence, its priority consists in preserving the stability of its immediate neighbourhood. However, preserving stability in Eastern Europe might mean quite a different thing from preserving stability in North Africa. Finally, the fact that a number of the Southern Mediterranean countries are energy providers, while Eastern European states are only transit countries for energy, might also affect the EU's security equation in the region.

Conclusion

Despite the global scope of its sanctions activity, the EU's sanctions record shows a pattern of geographic differentiation which reveals that the strategy documents released in the 2003-04 period do not herald dramatic changes. On the contrary, they restate previous foreign policies and regional priorities. Well before they were drafted, the EU was already as a regionally-conscious security actor. Indeed, the different approaches displayed by the EU sanctions policy towards the geographic areas mentioned insinuate that it has different strategic relationships with each of them. The security of the Union comes first; hence, the EU pays increased attention to its neighbourhood. However, when it comes to yielding coercive instruments, it displays a higher propensity to apply them in its Eastern neighbourhood than in North Africa. ♦

¹ This article summarises research results presented in my article, 'When and where does the EU impose sanctions?', *Politique Européenne*, no. 17, Automne 2005.

² Council of the European Union, *A Secure Europe in a Better World. European Security Strategy (ESS)*, Brussels, 12 December 2003, available at <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>.

³ European Commission, *Communication to the Council: Wider Europe: A New Framework for Relations with our Eastern and Southern Neighbours* (COM (2003) 104 final), Brussels, 11 March 2003, available at http://www.europa.eu.int/comm/world/enp/pdf/com03_104_en.pdf.

⁴ The ENP is meant to cover Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

⁵ Council of the European Union, *Basic Principles on the Use of Restrictive Measures (Sanctions)*, Document no. 10198/04,

Brussels, 4 June 2004, p. 2, available at <http://register.consilium.eu.int/pdf/en/04/st10/st10198.en04.pdf>.

⁶ Data were obtained directly from the CFSP documents imposing the twenty-one sanctions episodes. For methodological details, see the full article (footnote 1).

⁷ ESS, p.8.

⁸ EU Commissioner for External Relations and European Neighbourhood Policy Dr. Benita Ferrero-Waldner, 'The European Neighbourhood Policy: Helping Ourselves Through Helping Our Neighbours', speech delivered at the Conference of Foreign Affairs Committees Chairmen of EU member states and candidate states, London 31 October 2005

⁹ The assets freeze imposed on certain alleged members of Al-Qaida following in 2001 were not recorded in the data since they were imposed on individuals rather than on states.

¹⁰ The sanctions regime imposed against Uzbekistan in 2005 has marked a departure from this trend.

¹¹ See Judith Kelley, 'New Wine in Old Wineskins: Promoting Political Reforms through the European Neighborhood Policy', *Journal of Common Market Studies*, vol. 44, no. 1, March 2006.

¹² See Nathalie Tocci, 'Has the EU Promoted Democracy in Palestine...and Does it Still?', *CFSP Forum* vol. 4, no. 2, 2006, pp. 7-9.

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