Converging and conflicting ethical values in the
internal/external security continuum in Europe

European Commission, 7th Framework Programme

Milestone report 4.2:

A comparison of CFSP/ESDP and domestic national police

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SUMMARY

This milestone report highlights the significant findings in the work produced by WP4 and it also gives indications and implications what future work to be expected within WP4. The work by WP4 has throughout its second year been characterized by the delivery and preparations of two deliverables: *D.4.2. Systemic report on the value premises and human ethical consequences of the CFSP/ESDP in the changing environment of border security;* and D. 4.3. *Workshop on ethical issues of CFSP/ESDP in the European borderlands*.

WP4 have identified that CFSP / ESDP policing and domestic national police are faced with different sets of challenges and realities. The EU has a ten year long history in conducting crisis management missions in which police missions has been an important and integral part. A matter a fact most missions carried out under ESDP are civilian and include policing component. On the ground many of these missions suffer from the implementation of incoherent standards. This is the result of different national practices and broad interpretations of mission mandates. This may cause confusion and create the risk of making EU crisis management operations less efficient. This is also a concern regarding cooperation with other international actors on the ground such as the UN, OSCE, NATO and the US. WP4 also acknowledges the current trends in this mission emphasis technical assistance and capacity building which might led to a situation where broader political issues related to EU`s inherent values such as the promotion of human security are sidestepped. One may understand from current observations that the standards and practices carried out not at all times fall in line with the values and interests laid out in EU common foreign policy framework. These trends and observations open up venues for further research and scrutiny. WP4 in particular calls for a greater debate on accountability and broader political and strategic issues related to its engagement in crisis situations. In the preparations of the final deliverable: *Policy recommendation report on managing the changing relationship between CFSP/EDSP and the jurisdiction and activities of FRONTEX* the work pursued by WP4 will continue its aim of providing guidelines for policy makers on the *ethical issues in CFSP/ESDP* .

I. Introduction

The work conducted within Work package 4 *Ethical issues in the link between external and internal security in CFSP/ESDP* (WP4) is centered on the ethical issues resulting from the link between external and internal security in the Common Foreign and Security Policy (CFSP) and the European Security and Defense Policy (ESDP)[1]. This objective falls in under the ultimate aim with the INEX Project which is to: contribute to the existing understandings of European security through an analysis of the value-based premises and ethical consequences of the 'internal/external security continuum'[2]

This Milestone report titled `A comparison of CFSP/ESDP and domestic national police´ is based on the progress and work produced to this end under WP4 of the project. This report sets out the key findings and presents the main issues identified by the work produced from the work in year two, particularly from the preparation of the deliverable *D.4.2. Systemic report on the value premises and human ethical consequences of the CFSP/ESDP in the changing environment of border security.* The report also includes findings from work produced by the other work packages, most notably from WP3: *Value dilemmas of security professionalism.*

The core part of the report (Key findings) is divided into two sections. The first section will make a necessary review of EU police missions in the context of ESDP, and the second part will take a closer look into the challenge raised by these missions which both have practical and ethical implications. In the final chapter the conclusions will be presented together with and outline of the way forward for future research of WP4 in the third and final year of the INEX project.

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[1] With the ratification of the Lisbon Treaty in 2009 the former is now labeled the Common Security and Defense Policy (CSDP).

[2] Annex I: Description of Work, INEX Project: Converging and conflicting ethical values in the internal / external security continuum in Europe, prepared 31st January 2008.

II. Key findings

The work by WP4 has particularly centred on the value assumption behind EU crisis management under CFSP/ESDP. This Milestone will particularly take a closer look at the EU police missions which has become if not the flagship at least one of the most important aspects for EU`s engagement in crisis situations.[3]

An evidence of EU`s emphasis on civilian capabilities can be found in the leading security doctrine the 2003 European security strategy (ESS) *A Secure Europe in a Better World*. The strategy document opens by framing the new 'global challenge' facing Europe as one where 'increasingly open borders in which the internal and external aspects of security are indissolubly linked'. The document maps out the 'key threats' to the EU which are: terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime. The strategy underscores the fact that none of the threats to Europe are exclusively military, nor can be addressed with entirely military means. It further declares that a number of non-military instruments, (political and economic pressures, humanitarian efforts) must be implemented in order to address them. These will hence rely on a mixture of 'intelligence, police, judicial, military, and other means'.[4]

This understanding introduces a new playing field for police officers and agencies involved in police work. At the same time as the ESS implies that the contemporary security situations shall be understood as blurred between internal and external security issues and problems, it introduces new realities and challenges for EU policing. On the one hand the work conducted by the police in crisis management missions and in international setting may be interpreted as a continuation of daily patrolling on the streets of London or Madrid etc, but when taking a closer look domestic national police and police work under CFSP/ESDP are upon comparison quite different in character. WP4 have found and argue that EU police missions are characterized by a number of new challenges that contains both ethical and practical aspects.[5] Before explaining and looking closer into these challenges that WP4 have acknowledged, this

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[3] European Union (2009) European Security and Defence Policy: The Civilian Aspect of Crisis Management
[4] European Commission (2003) A Secure Europe in a Better World, European Security Strategy
[5] Gross, Eva (2010), *Systematic report on the value premises and human, ethical consequences of the CFSP/ESDP in the changing environment of border security*, INEX Deliverable D.4.2., (Institute for European Studies) Vriije Universiteit (VUB).

report will make a brief review of EU police missions in the context of EU crisis management.

EU`s Police missions[6]

The European Union has for a little more than a decade engaged in missions in fragile and failing states outside the borders of its member states. The method applied since the creation of the European Security and Defence Policy (ESDP)[7], launched in 1999, falls within the so called "comprehensive approach– a strategy that emphasizes the importance of combining civilian and military tools when dealing with external security challenges[8]. In other words, EU`s engagement has been characterized by a combination of ""hard" power – coercion by military or other means – and "soft" power – persuasion through trade, diplomacy, aid and the spread of values".[9] In 2000 six categories of civilian capability was created by the EU: 1.) Police; 2.) rule of law; 3.) civilian administration; 4.) civilian protection; 5.) monitoring and; 6.) mission support. To this date the majority of all ESDP mission have focused its assistance on Security Sector Reform (SSR) that in particular includes the rule of law, and focus on reforming the police in states affected by conflict. Therefore most resources have been brought from the two first categories of EU civilian capabilities (Police and Rule of law).[10]

The staff employed in these missions may range from local police constables – who when not deployed in for example Kosovo or DR. Congo might be patrolling in cities across Europe – to senior officers[11]. The work undertaken by the police deployed in EU mission may include assisting in the preparations to draft new laws, introduce training programmes for criminal investigations, reform administrative systems or oversee arrests.[12] The ultimate aim is to be capable of performing any police operation, from advisory, assistance and training tasks to

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[6] For a recent overview of ESDP Mission see Gya, G and Herz, J. (2009) ESDP and EU Missions update, ISIS Europe, European Security Review, No. 43, March.

[7] For a detailed account of ESDP ten year long history see Grevi, G., Helly, D. and Keohane, D. eds. (2009). *ESDP: The first 10 years (1999- 2009)*. Paris, EU Institute for Security Studies.

[8] Korski, Daniel & Richard Gowan. (2009), Can the EU Rebuild Failing States? A Review of Europe`s Civilian Capacities, European Council on Foreign Relations, Brussels, October, p.21.

[9] Ibid

[10] Ibid, p. 23

[11] For example, Britain has twice deployed a chief constable (the highest rank in the British police) to assistant in the construction of the Palestinian police.

[12] Korski, Daniel & Richard Gowan. (2009), Can the EU Rebuild Failing States? A Review of Europe`s Civilian Capacities, European Council on Foreign Relations, Brussels, October, p. 23

substituting to local police forces. [13] Member states have jointly agreed to provide more than 5000 police officer for EU missions, of whom 1400 can be deployed in less than a month.[14] This together with a hugh number of civil servants and diplomats is an critical element of power in a world where "stability in Afghanistan, Yemen or Somalia is seen as key to security on the streets of Hamburg, Marseille and Manchester".[15] The concept of SSR encourages an inclusive approach that focuses on integrating defense, policy and judicial reform. Yet it also includes a strong normative commitment to "the consolidation of democracy, the promotion of human rights, and accountability and transparency as part of the broader principles of good governance". [16] SSR has as earlier pointed out become a key concept of EU`s operations whose 27 member states share the commitment to human rights, democracy, and civilian policing stipulated in the ESS.[17]

Challenges with EU`s Police Missions

In crisis management operations especially two broad categories of challenges occur related to: policing standards; accountability and civil society. These sets of dilemmas are occasionally interlinked, but they shall here be reviewed under separate headings.

EU- Standards

The EU aim to carry out its crisis management activities under a coherent and common approach. Member states do adhere to the common general commitments of respecting and upholding human rights and the rule of law. However this commitment is rarely translating into a uniformed and common approach in practice. Very often one has witnessed mission taking a different character depending on the member state taking the lead position in a certain mission. The EU is composed of 27 member states which imply the practice of 27 different policing methods. An important factor here is the head of missions whose nationality often reflect the conduct and practice of the actual police mission- "if the boss is German, the rules are German; if he's Italian,they're Italian". [18]

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[13] European Union (2009) European Security and Defence Policy: The Civilian Aspect of Crisis Management
[14] European Union (2009) European Security and Defence Policy: The Civilian Aspect of Crisis Management
[15] Korski, Daniel & Richard Gowan. (2009), Can the EU Rebuild Failing States? A Review of Europe`s Civilian Capacities, European Council on Foreign Relations, Brussels, October, p. 21.
[16] Gross, Eva (2010), *Systematic report on the value premises and human, ethical consequences of the CFSP/ESDP in the changing environment of border security*, INEX Deliverable D.4.2., (Institute for European Studies) Vriije Universiteit (VUB), p. 9-10
[17] Ibid
[18] Ibid, p.18

Besides the lack of common standards within the EU there are also substantial differences between standards adopted within the international community at large. The EU and other international actors such as NATO, UN, OSCE and the US often adhere to different standards on the ground. Kosovo is an example where this is evident. Here the difference between the US and the EU over what legal system that would be most beneficial have resulted in two border control systems that are incompatible, one of them promoted by the EU and the other one by the US.[19] A third problem relating to standards may be identified in the wide interpretation of the mission mandate on the part of mission staff and leadership. One can here observe a lack of uniformity, but also a lack of common understanding on what constitute 'European standards'. A related tendency that may be observed is that the standards implemented do not only reflect the particular approach of the staff serving in the missions, they are also to a great extent decided on an ad hoc basis. Hence, standards have sometimes been invented on the part of individual institutional actors.[20]

With a common commitment to the same basic values across the EU implementing these values albeit with different national methods will unlikely cause immediate harm to the country in which the police mission is operating in, other than great confusion (as in the example with Kosovo mentioned above). Nevertheless, the lack of standards represents a shortcoming for the EU when it comes to communicating EU rules to the member states, to the governments hosting the missions, and to other international actors present on the ground.[21] Hence a lack of coherence in standards for EU policing in crisis management operations may be an obstacle for the conduct of more efficient missions.

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[19] International Crisis Group (2010), The rule of law in independent Kosovo. Europe Report, No. 204. Pristina/Istanbul/Brussels, 19 May, p. 18.

[20]Gross, Eva (2010), *Systematic report on the value premises and human, ethical consequences of the CFSP/ESDP in the changing environment of border security*, INEX Deliverable D.4.2., (Institute for European Studies) Vriije Universiteit (VUB), p. 17-18

[21] Ibid, p. 18

Accountability and civil society

The question of values for whom and the nature of accountability are pressing concerns of the EU`s overall common foreign policy, and hence also a concern in the crisis management initiatives. At times the EU way of implementing and carrying out policies towards its neighbours and other states are charged with accusation in line with neo-colonialism. Such charges are evidently opposed to the values and intentions of the EU towards its borderland and other states. However, it underlines the importance "of discussion over accountability – of the reformers but also the host government – and the need to place discussions over accountability in a political and strategic context rather than view EU activities in merely technical, capacity-building terms".[22]

Beyond EU crisis management and police missions the issue with accountability has also been discussed to a great extent with regard to international policing and cooperation with states outside the union operating under different and sometimes questionable standards and practices. Here European police cooperation in terms of counter terrorism is often mentioned. Police agencies and institutions are here put in front of several dilemmas including cooperation between police services and military organizations, and the cooperation between police forces from countries with a different history and different perspective on ethical issues (like investigative powers, human rights concerns, accountability and policing cultures).[23]

Returning back to EU police mission, one aspect relating to accountability on the ground may be traced to the applicability of human rights. The underlying principles and values of the EU on human rights require accountability. Yet it has been acknowledged that the capacities of sending states to undertake disciplinary action and prosecution for personnel may need to be enhanced. At the same time as EU personnel are held responsible and a subject to Civilian Planning and Conduct Capability (CPPC) and the Civilian Operations Commander, who can decide to release them from their position, staff seconded from member states is held

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[22] Gross, Eva (2010), *Systematic report on the value premises and human, ethical consequences of the CFSP/ESDP in the changing environment of border security*, INEX Deliverable D.4.2., (Institute for European Studies) Vriije Universiteit (VUB), p. 22-23

[23] Van Buuren, Jelle and Monica den Boer (2009), *State-of-the-Art Literature Review on the Ethics Research and Knowledge Among Security Professionals*, INEX Deliverable D.3.1., University of Amsterdam (VUA), pp.39-40.

accountable in their respective member states. The question of accountability of personnel in EU missions may hence be interpreted as a grey zone.[24]

Another area interlinked with the one just mentioned where EU`s police missions in their implementation can have ethical consequences, is when civil society actors are not included in mission programming and implementation activities. Observations has here been made saying that "the concerns of civil society – that is, for the police to take up citizens concerns and to enjoy a level of trust on the part of the local populations - has not sufficiently, or only belatedly been taken into account"[25] This might be crucial in post-conflict countries where there is little or non-existing democratic traditions, and where the populations have little trust of the police as a friendly social actor.

 In a similar fashion the concerns over human security, which was prominently including in debates a few years ago, and hence reflected in EU missions, included in the general human rights training, has now shifted towards more emphasis on technical assistance and capacity building especially in the fields of border policing and fighting organized crime. WP4 interprets that these tendencies with greater "emphasis on technical aspects as a means of sidestepping broader political issues can lead to adverse consequences for the attainment of mission objectives but also broader political goals".[26]

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[24] Gross, Eva (2010), *Systematic report on the value premises and human, ethical consequences of the CFSP/ESDP in the changing environment of border security*, INEX Deliverable D.4.2., (Institute for European Studies) Vriije Universiteit (VUB), p. 17.
[25] Ibid, pp. 22-23
[26] Ibid, pp. 22-23

II. Conclusions

The work produced by WP4 indicates that the EU with a vast amount of missions across the globe is a strong and important actor in assisting states recovering from armed conflict. Rule of law and police missions has with little doubt been a cornerstone of ESDP crisis management operations. Police officers and policing agencies engaged in EU crisis management initiatives and on the EU stage as a whole are faced with several challenges different from the once of national domestic police. This report have highlighted some of these acknowledge by WP4. The first relates to unclear and somewhat incoherent practices and standards as a result of different national practices and broad interpretation of mission mandates. The other is the issue of accountability which becomes a major concern in engagement with the EU borderlands as well as with other states and in carrying out crisis management operations. It has also argued that there is a trend towards favoring technical aspects and capacity building assistance in favor of taking local dynamics into account and adhering to broader political issues such as human security. As a consequence the values of the CFSP/ESDP are at times contradictory to the realities on the field. WP4 hence calls for a broader and clearer debate on accountability and ethical consequences of EU practices. This is important in a broader context with regard to establish a comprehensive approach towards a particular country, region or policy area that shall reflect the values and interest of the European Union.

The way forward

The work performed by Work package 4 in the final year of the project will be aimed towards finishing the final deliverable (D.4.4) *Policy recommendation report on managing the changing relationship between CFSP/EDSP and the jurisdiction and activities of FRONTEX*. Analyses of EU police missions and EU crisis management policies in general will here continue to be a solid part of the overall analysis. The future work performed by WP4 will continue to benefit from close cooperation with other work packages of the INEX project. In particular such successful cooperation has so far taken place between WP4 and WP3 with respective themes closely connected.

IV. References

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