

CENTRE FOR THE LAW OF EU EXTERNAL RELATIONS

**HUMAN SECURITY AS A TOOL FOR COMPREHENSIVE
APPROACH FOR HUMAN RIGHTS AND SECURITY
LINKAGES IN EU FOREIGN POLICY**

**AARON MATTA AND TAMARA TAKÁCS
(EDS.)**

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LIST OF TERMS AND ABBREVIATIONS

APF	African Peace Facility
CFSP	Common Foreign and Security Policy
CIMIC	Civil Military Cooperation
CJEU	Court of Justice of the European Union
CSDP	Common Foreign and Defence Policy
EC	European Community
ECHO	European Community Humanitarian Office
ECOWAS	Economic Community of West-African States
EEAS	European External Action Service
EP	European Parliament
EU	European Union
EUBAM	European Union's Border Assistance Mission
EUMM	European Union's Monitoring Mission
EUNAVSEC	European Union's Aviation Security Mission
EUPAT	European Union's Policy Advisory Team
EUPM	European Union's Police Mission
EUSSR	European Union's Security Sector Reform
ESDP	European Security and Defence Policy
ESS	European Security Strategy
FAC	Foreign Affairs Council
FYROM	Former Yugoslav Republic of Macedonia
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICONS	Implementing Crisis Online News System
IcSP	Instrument for Stability and Peace
LRRD	Linking Relief Rehabilitation and Development
NATO	North Atlantic Treaty Organisation
RtoP (R2P)	Responsibility to Protect
SALW	Small Arms and Light Weapons
SFOR	NATO-led Stabilisation Force in Bosnia and Herzegovina
OCHA	Office for Coordinating Humanitarian Affairs
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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INTRODUCTION

Aaron Matta and Tamara Takács

In an increasingly interconnected and globalised world, the impact of security threats – be it economic, terrorism, poverty, regional conflicts or environmental challenges – spread faster and wider than ever before. The international community has acknowledged that these challenges cannot be solved in isolation. The concept of human security arose during the '90s as a response to address these challenges within the UN system (UNDP Human Development Report of 1994 and later the Kofi Annan Report 'In larger Freedom' of 2005). Since then the concept has evolved and gained significant attention as a multidisciplinary approach of the international community in an effort to respond to complex security challenges. Furthermore, there has been a shift in the perception of international security, which went from the classical notion of national security approaches focusing on military threats, into a more holistic all-encompassing notion of human security that focuses on the individuals and the communities they live in as well.

The EU has struggled throughout the evolution of its Common Foreign and Security Policy to place itself as an assertive global and regional player. The new changes brought about by the Lisbon Treaty and the emergence of the EEAS, together with the current regional and international challenges it is faced with give a unique opportunity for a renewed focus on existing approaches on human security and the Union's long term objectives in foreign policy. The human security framework could have the potential of bringing an added value in framing the EU's strategic narrative and enforcing coordination and cooperation between rival EU policy streams on the institutional level but also its external security and development-oriented policies. Many of the general principles of the human security conceptualisation have been already implicitly accepted and implemented in the EU's security and human rights discourse.¹ It can thus be argued that human security already plays a major role in the Union's comprehensive crisis response and operational coordination in conflict prevention, peacebuilding and mediation; crisis management and development programmes; but also humanitarian aid and climate change agendas. Nonetheless, there is an apparent lack of consensus around the use and purpose of human security within the EU's foreign policy toolkit. An explicit reference to the concept in EU's foreign policy could potentially generate greater coherence in EU's external action in the long term, yet it is still being resisted within the EU institutional framework as there are tensions between the supranational

¹ See Aurel Sari and Ramses A. Wessel (eds.), 'Human Rights in EU Crisis Management Operations: A Duty to Respect and to Protect?', 6 *CLEER Working Papers* (2012).

and intergovernmental nature of the Union on the one hand, and the difficulties surrounding international interventions on the other hand. Furthermore, particular issues arise in coordinating civil and military operations. While such operations may function in natural disasters situations, this might not be the same during armed military interventions. Nonetheless, taking into account the post-Lisbon institutional changes, the review of the European Security Strategy and the exceptional position of the EU – by sharing competences in these fields together with its member states – make the use of the human security rather tempting. Including the concept of human security in EU's foreign policy could exponentially shift its status as an international security actor, while at the same time serve as an additional push for a more coherent and consistent EU foreign policy.

This Working Paper issue is the result of the Centre's recent research project *Human Security as a new operational framework for enhancing Human Rights protection in the EU's Security & Migration Policies*, co-financed by the European Union, under its Lifelong Learning Programme. Some of the papers included in this issue were presented during the conference 'Human security as a tool for comprehensive approach for human rights and security linkages in EU foreign policy', organised by CLEER at the T.M.C Asser Institute, in The Hague, on 6 December 2013. The editors are particularly grateful for the guidance and support provided by Professors Ramses Wessel and Steven Blockmans, conference directors and members of the CLEER Governing Board, toward the implementation of the event.

In the first paper, *'The EU's Human Security Agenda within the Context of International Law'*, Anna Wardell and Stephan Keukeleire focus on how the EU should use the concept of human security when keeping with its commitments to international law, protection of human rights and effective multilateralism enshrined in the European Security Strategy 2003. They look into the context of human security in the broader sense so as to depict its interaction with international law. They also take into consideration the 2004 Barcelona Report, where Wardell and Keukeleire compare the proposed principles of human security with the vision of the EU. In *'The EU human security and the insulation of the CFSP: comparing recent policy and judicial tendencies'*, Hans Merket looks into the EU institutions' policy rhetoric on human security and evaluates the legal complexity of its inherent coherence rationale. He examines recent policy patterns and judicial tendencies to find out challenges and the potential of the EU to exceed the insulation of the CFSP in order to enhance a comprehensive security approach. He notes the agreement amongst the relevant EU institutions concerning the interlinking nature between development, security and human rights policies, but points to the fragile credibility that the current modalities of such interlinkages in actual policies draw. In her paper about *'CSDP crisis management operations – between human security and the "comprehensive approach"'* Monica Oproiu illustrates and analyses the EU approach to human security in crisis management operations through cases studies. In doing so, she looks into past CSDP operations in the Western Balkans, in

particular in Bosnia and Herzegovina, as well as the present operations in Africa and Asia. She recognises a changing character of the EU crisis management operations with more interest in short term crisis management and calls for these operations to be integrated in the wider policy framework, coupled with distinct philosophy in its design and better communication. The last paper, contributed by Hannes Peltonen looks into the context-dependent understanding of the concept 'international community' from the human security and RtoP perspective, so as to identify the role of the EU therein and detect the characteristics of the EU's actions in this regard. He sees the EU's most important contribution when acting as a 'coordinator' within the international community in the human security context, given its normative power, networks and capabilities, albeit with a higher risk of accountability.

A special word of thanks goes to Tomasz Prądyński for his thorough editorial assistance.

THE EU'S HUMAN SECURITY AGENDA WITHIN THE CONTEXT OF INTERNATIONAL LAW

Anna Wardell and Stephan Keukeleire¹

1. INTRODUCTION

Since it first appeared in the United Nations Development Programme (UNDP) report² in 1994, the concept of Human Security has over the last 20 years been refined, broadened, narrowed, debated, criticised, all but discarded and then seemingly resurrected for the Post-2015 Development Agenda.³ The exact definition of human security, originally described as 'freedom from fear and freedom from want'⁴, has always been rather unclear and remains the subject of intensive debate.⁵ Human security has been labelled a 'rallying cry' as well as an academic concept and a potential foreign policy tool.⁶ As Paris points out, 'everyone is for [human security, but] only a few people have a clear idea of what it means.'⁷ Nonetheless in the last decade the EU has toyed with the idea of adopting a framework of security as a basis for its foreign policy. The Barcelona Report of 2004⁸ and the 2007 Madrid Report,⁹ Commissioned by then High Representative Solana, both set about outlining how human security could be used as a backdrop for the EU's foreign, security and defence policy.

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² United Nations Development Programme, *Human Development Report* (New York: Oxford University Press 1994).

³ See UNGA 18 June 2014, 'Thematic Debate 'Responding to the opportunities and challenges of the 21st Century: Human Security and the post-2015 development agenda'

⁴ See UNDP, *supra* note 2.

⁵ See for example M. Martin and T. Owen (eds.), *Routledge Handbook of Human Security* (Abingdon: Routledge 2014) and S. Tadjbakhsh and A. Chenoy, *Human Security: Concepts and Implications* (London: Routledge 2007).

⁶ G. Oberleitner, 'Human Security and Human Rights,' 8 *European Training and Research Centre on Human Rights Occasional Paper Series* 2002, at 5.

⁷ R. Paris, 'Human Security: Paradigm Shift or Hot Air?', 2 *International Security* 2001, 87-102.

⁸ U. Albrecht, *et al.*, *A human security doctrine for Europe: the Barcelona Report of the Study Group on Europe's Security Capabilities*, Study Group on Europe's Security Capabilities, Barcelona, Spain, 2004

⁹ U. Albrecht, *et al.*, 'A European way of security: the Madrid Report of the Human Security Study Group', *Human Security Study Group* (Madrid 2007).

One of the principal debates has been centred around the dichotomy between a broad versus narrow definition of human security.¹⁰ Concerns abound that an overly-broad conception of the idea will lead to overlap and confusion between otherwise separate and distinct policy areas and concepts, such as human rights and development. However, few of these discussions take into account the international legal framework in which the EU is entrenched, along with its commitment to obligations under the United Nations Charter, and to the promotion of human rights, which are fundamentally bound up in the international legal order.

Therefore, this paper aims to discuss how human security relates to the fundamental principles of international law, particularly in the light of more recent multilateral commitments to the concept. This discussion can illuminate how the EU could view human security in keeping with its commitment to international law, human rights and effective multilateralism as set out in the European Security Strategy of 2003.¹¹ It posits that a broad and comprehensive view is the way forward for the EU's discourse, in respect of its international legal commitments. This may be also politically the only way of ensuring a concept which is legitimate and accepted globally, but leaves the EU in a dilemma as to how it should reconcile its own CSDP outlook with the reserved approach of the international community and the strong non-interventionist stance of the UNGA.

Firstly therefore, the article will outline the interaction between human security as a usefully broad and encompassing notion, and the strict principles of international law. Secondly, focussing on the work of the 2004 Barcelona Report in particular, it will examine in the light of international law the proposed principles of human security, which offer a rather restrictive version of how the EU could take this as a guiding concept.

2. HUMAN SECURITY AND INTERNATIONAL LAW

Given that human security is so often conceived as a political concept or a foreign policy tool, little has already been written on the subject of its interaction with international law. Nonetheless, it is worth examining the potential relationship between the two, not least because whatever conception of human security is utilised, it must be compatible with the fundamental principles of international law. Advancing further, the idea has been raised that human security could contribute to a new normative international framework.

Despite the scholarly debate surrounding the definition and its embellishment in policy documents, 'international law has been reluctant to respond to the rise of human security.'¹² Gerd Oberleitner raises a number of important ques-

¹⁰ See S. Tadjbaksh, 'In defense of the broad view of human security', in M. Martin and T. Owen, *supra* note 5.

¹¹ European Council, 'A secure Europe in a Better World', *European Security Strategy* (December 2003, available at < <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>.

¹² G. Oberleitner, 'Human Security: A Challenge to International Law?', 11 *Global Governance* 2005, at 186.

tions: whether human security is 'new' to international law, or whether it has already been accounted for; what are the challenges that it could create for international law, and whether in fact international law is potentially an obstacle to human security.¹³ He suggests that human security could potentially be an asset to international law, bringing it 'better in line with the requirements of today's world'¹⁴ in light of the rise of non-state actors and the erosion of the strictest conception of state sovereignty. Examining the United Nations Charter as the fundamental text of international law, he explains that human security could well serve as a concept that would bridge the gap between and reunite the conflicting but seminal principles: sovereign equality (article 2.1), – that goes hand in hand with territorial integrity, political independence (2.4) and non-interference in domestic matters (2.7), and, the promotion of the respect of human rights and fundamental freedoms (article 1.3). The combination of these premises could ultimately be the key to the realisation of the first principle of the UN Charter: maintaining world peace and security (article 1.1). Human security is also billed as a pluri-disciplinary or pan-dimensional concept that could finally eliminate the divisions between human rights, development, security and humanitarian assistance.¹⁵ With this heavy burden of expectations to bear, it is worth examining how human security relates to these two seminal principles: human rights and (usually State) security.

Human rights, when addressed from the perspective of international law, are defined as protecting citizens against interference with these rights by the State. International judicial human rights protection mechanisms allow for individual petitions brought against their government for an action, or possibly a failure to act, which compromised the fundamental freedoms of its citizen. International human rights courts subject the admissibility of claims to a number of criteria, not least the condition of exhaustion of domestic remedies. Even the non-judicable human rights instruments which are purely declaratory (such as the Universal Declaration of Human Rights (UDHR))¹⁶ serve as a reference point for governments and as a basis for national human rights legislation. The judicial protection of human rights internationally requires a state in which the rule of law is established and where the state is a signatory to an international human rights instrument. Human rights are also restricted to violations purveyed by the state, or areas where the state can be judged to have been negligent in failing to prevent a violation by a private actor.

However, as Ruti Teitel points out, we must not ignore that with the 'war on terror' and the rise in importance of non-state entities such as Al-Qaida, the protection of human rights by the state itself is no longer the only goal.¹⁷ In relation to human security, human rights are indubitably at the core of human security in that the principal international human rights instruments, such as

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ogata and Cels, cited in G. Oberleitner, *supra* note 12, at 188.

¹⁶ Universal Declaration of Human Rights (UDHR) 1948.

¹⁷ R. Teitel, 'Humanity's Law', Lecture at Hannah Arendt Center (November 2011), available at <<http://vimeo.com/33739366>>.

the UDHR promote primarily the 'right to life, liberty and security of person',¹⁸ from which the 'freedom from fear and freedom from want' may be construed. However, human security could have the vocation to be applied by and towards non-state actors, and to be promoted as an international standard in states that are unable or unwilling to provide human rights protection for their own citizens. In this way human security should be viewed as a broader, more practical notion and one that encompasses a wider spectrum of issues.

Regarding security, it should be noted that international peace and security as conceived in the UN Charter (article 1.1) concerns collective security among states. Its corollaries are state sovereignty, territorial integrity and non-intervention, principles which govern the relations between states on the international scene. The fundamental nature of state sovereignty, as a safeguard against aggression and the right of a government to pursue its internal affairs without external interference, has been the pillar of international law and the basis of state-to-state relations since the Charter.

However, it is noteworthy that a perceptible erosion of this conception has already been contemplated and invoked in the form of the Responsibility to Protect (R2P) doctrine, developed in 2001 by the International Commission on Intervention and State Sovereignty (ICISS) and enshrined by the UN General Assembly in the Outcome Document of the 2005 United Nations World Summit.^{19,20} This concept consisting of three pillars has been formulated in understandably circumspect terms. It is first confirmed that the primary responsibility for the protection of its people from genocide, war crimes, crimes against humanity and ethnic cleansing falls with the state, followed by the affirmation of the international community to 'encourage and assist' states in fulfilling this responsibility. Finally, only if the national authorities are 'manifestly failing'²¹ to protect the population from the four threats may the international community assist, firstly by 'appropriate diplomatic, humanitarian and other peaceful means' and then possibly by 'collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations'.²² The numerous safeguards and provisos for 'collective action' are conspicuous, and it should be noted that great care has been taken in all of these multilateral enunciations of R2P never to suggest a right to intervene in the internal affairs of the state.²³

It is interesting to evoke the R2P doctrine when discussing human security, firstly because the two ideas have been likened in academic discourse as conceptual bases for 'softening' the interpretation of state sovereignty in international law. The same outcome document of the 2005 World Summit that outlined R2P contains the first multilateral acknowledgement of human secu-

¹⁸ See Art., 3, *supra* note 16.

¹⁹ M. Negrón-Gonzales and M. Contarino, 'Local Norms Matter: Understanding National Responses to the Responsibility to Protect', 2 *Global Governance* 2014, at 257.

²⁰ UNGA Resolution 60/1 of 24 October 2005, paras. 138-140.

²¹ *Ibid.*, para. 139.

²² *Ibid.*

²³ See M. Negrón-Gonzales and M. Contarino, *supra* note 19, at 257.

rity by the UNGA, pledging to '[discuss] and [define] the notion of human security in the General Assembly.'²⁴ It would appear that the 2005 summit witnessed a new momentum in the international community towards recognising the individual as the ultimate beneficiary of international peace and security rather than the state, which is exactly what human security, however it is defined, purports to achieve. The overall positive reception of this document²⁵ is a testament to the general shift in consciousness, but also a reflection of the inevitably cautious framing of the scope of application of R2P.

This link is also important due to the connection of the two concepts, but it contains the risk of negative reception due to abounding fears that human security may just be R2P bearing a disguise. Countries who manifest a reticence towards R2P as a western Trojan horse designed to validate the perpetration of western ideals and circumvent the prohibition of interference, may quickly feel the same way about human security. The manner in which this notion has since been framed is a patent manifestation of these fears.

Does human security already have a basis in international law? Ruti Teitel argues that the human security approach has been present in the international arena for a number of years, apparent through the 'normativisation' of conflict, notably the birth of international criminal tribunals after the Second World War with the Nuremberg Trials. This phenomenon developed, bringing about the ICTR, ICTY, SCSL and ultimately the International Criminal Court (ICC) whose mandate is to bring to justice individuals for crimes against humanity, war crimes, genocide and ethnic cleansing.²⁶ Considering the individual as the focus of security concerns, according to Teitel, has been transforming the way in which we approach international law, as well as the way in which international organisations and bodies such as the UN Security Council function.²⁷ Essentially, we are moving away from the understanding of security that was originally framed in the UN Charter, based around protecting state borders. Human security has been proposed as a new way of thinking that should take precedence over state security, nevertheless without substituting it. As Oberleitner posits, there can be 'no secure state with insecure people living in it.'²⁸ Therefore, just behind R2P, human security is creeping into the multilateral arena of 'soft'-international law-making, this time bearing its own name.

The most recent illustration of human security making an explicit appearance in international law-making is the UNGA Resolution 66/290 entitled 'Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome', adopted by consensus on 10 September 2012. According to UNOCHA, who now hosts the United Nations Trust Fund for Human Security, 'This seminal achievement marks the first time that the Assembly has agreed on a common

²⁴ See UNGA R.60/1, *supra* note 20, para. 143.

²⁵ Only 4 countries Cuba, Nicaragua, Sudan and Venezuela, wanted to re-negotiate the wording, see M. Negrón-Gonzales and M. Contarino, *supra* note 19, at 258.

²⁶ See R. Teitel, *supra* note 17.

²⁷ *Ibid.*

²⁸ See G. Oberleitner, *supra* note 12, at 190.

understanding on human security after seven years of discussion. The consensus agreement paves the way to formally apply[ing] human security within the work of the United Nations.²⁹ Conspicuously cautious, the implication of this resolution having been adopted by consensus in the universally representative body of the UN is nonetheless important: whatever the scholarly discussion may have argued regarding the definition or framing of human security, this conception has been the product of political agreement and therefore has the 'green light' for the creation of a legal and political framework. However, after this consensual enunciation the international community can discard all leanings towards a human security agenda which could, as Teitel posits, offer a basis for military or legal intervention.³⁰ This 'common understanding'³¹ outlines its divergence from R2P, reaffirms state sovereignty in strong terms and proposes a basis for international cooperation and support to the end of achieving human security. Set out in Article 3 of Resolution 66/290, human security is first defined as 'The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want [...]'.³² This is therefore not an exhaustive definition but it is notably broad, and as many will be pleased to note, endorses the original 'freedom from fear and freedom from want' definition of the 1994 UNDP report. However it does not allay the fears of those critics of human security that deem the concept too broad and idealistic to be operable.³³

Secondly, and importantly for the 'operability' of human security, the Resolution is adamant about the protection of state independence and sovereignty, and very strongly distinguishes it from R2P, avoiding the criticism of the countries that were reticent to this concept.³⁴ Going further, it is stressed that 'Human security does not entail the threat or the use of force or coercive measures. Human security does not replace State security [...] Human security is based on national ownership.'³⁵ The agreed text continues:

'Governments retain the primary role and responsibility for ensuring the survival, livelihood and dignity of their citizens. The role of the international community is to complement and provide the necessary support to Governments, *upon their request*, so as to strengthen their capacity to respond to current and emerging threats.'³⁶ [emphasis added].

Thus this cautious text sets up human security as an international humanitarian ideal, rather than an obligation. Those who may have hoped for a 'harder' recognition of the concept – or a sign of the discussed 'waning' of

²⁹ UNOCA, 'Human Security at the UN', available at <<http://www.unocha.org/humansecurity/about-human-security/human-security-un>>.

³⁰ See R. Teitel, *supra* note 17.

³¹ UNGA Resolution 66/290 of 10 September 2012, para. 3.

³² *Ibid.*, para. 3(a).

³³ M. Martin, 'With Friends Like These, Who Needs Enemies? Human Security and the Challenge of Effective Multilateralism', Friedrich Ebert Stiftung (2009), at 3.

³⁴ UNGA Resolution 66/290, para. 3(d).

³⁵ *Ibid.*, para. 3(e) (f).

³⁶ *Ibid.*, para. 3(g).

sovereignty in favour of individual security and solidarity to achieve this – will be disappointed. This declaration seems to do all it can to 'kill off' human security as a long-term enforceable international standard.

As part of the international community, the EU is therefore invited to support governments 'upon their request' to achieve human security. How does the EU's perception of human security fit with this rather tame invitation?

3. HUMAN SECURITY AND THE EU

Having analysed the international legal debate on human security and its most recent developments it is useful to analyse the most important policy document of the EU on the concept.

In 2004 the Barcelona Report attempted to place human security in the context of the European Security Strategy (ESS). Still the main point of reference for the EU's approach, the report outlines the possibility of using human security as a basis for the EU's foreign policy with seven principles for its operationalisation: 'effective multilateralism,' a 'clear political authority,' a 'bottom-up approach,' the 'primacy of human rights,' a 'regional focus,' 'use of legal instruments' and an 'appropriate use of force.'³⁷ It proposes that the EU should endorse and adopt a human security strategy, with the creation of a 'human security response force' consisting of personnel who would intervene in 'human security missions' in partner countries.³⁸ While proposing a sound basis for the EU's human security doctrine, the report takes a restrictive view of how it might be operationalised by the EU, essentially reflecting the context of the existing CSDP missions. The seven principles of human security according to the Barcelona report are ostensibly a reflection of the EU's long-standing internal logic, and in this sense do not leave the 'comfort zone' of the EU's existing narrative. The question should be asked, as to what extent this agenda fits with the EU's commitment to international law and particularly with human security as defined by the UNGA. Furthermore, can the EU's human security stance in the context of CSDP be reconciled with the restrictions of Resolution 66/290? This raises the question as to why the EU is not taking a much wider approach to human security, which would also be relevant in CFSP and in the EU's foreign policy in general?

First of all, the principle of 'effective multilateralism' enshrined in the ESS, along with the call for the 'use of legal instruments' relate directly to the respect of international law to which the EU is committed in its external action according to article 21 TEU. Therefore, if the EU is to respect its commitment to legality, international law, and particularly effective multilateralism, it is arguably to the definition laid out in UNGA Resolution 66/290 that the EU's focus should shift. The national ownership of human security goals and the responsibility of the state are carefully laid out in Resolution 66/290 which deliberately excludes the possibility of military or civilian intervention without the invitation of the

³⁷ See U. Albrecht, *supra* note 8.

³⁸ See U. Albrecht, *supra* note 8, at 17.

government.³⁹ The Resolution instead advocates the notions of development of human potential and the individual's enjoyment of 'all their rights', acknowledging an extensive and encompassing human security definition which extends to the first, second and third generation of human rights.

The 'primacy of human rights' takes first place on the Barcelona Report's enumeration of human security guidelines. *Prima facie* an obvious inclusion, one might nonetheless question the need to mention that the EU's personnel must endeavour themselves not to breach the human rights of those whose human security they are seeking to establish. We trespass into the realms of international humanitarian law when discussing collateral damage that may result from any kind of intervention, or as the Barcelona Report explains, the fact that the 'personnel deployed on human security missions must avoid killing, injury and material destruction.'⁴⁰

On the one hand the centrality of human rights to human security is reiterated. However, on closer inspection, pointing out that EU personnel should not be breaching human rights highlights the report's military approach to human security. Certainly, in the case of a counter-insurgency operation the preservation of life, as far as possible, is essential. This stems from and reconfirms, the precepts outlined in the Geneva Conventions and protocols, which demand humane treatment and protection of civilians in armed conflict, even internal conflict.⁴¹

On the other hand, however, it highlights the perception of a division, or dichotomy between human security and human rights that is potentially inaccurate and even unhelpful to the concept of human security. The suggestion that the two principles could be incompatible in a practical situation suggests that the EU would really be going the wrong way about human security. It is the mission-based, interventionist scenario, using a 'human security force' to promote or re-establish human security when it is lacking. The Barcelona report echoes the ESS in acknowledging that 'the EU is particularly well-equipped for [...] multifaceted situations'⁴² and suggests a holistic approach involving 'post-conflict reconstruction' and 'nation building.'⁴³ However, the reasoning remains entrenched in intervention or 'mission' scenarios, whereby the EU's capacity for operational missions must be weighed up against the severity of a security threat, and ultimately, the EU must 'prioritise certain situations over others.'⁴⁴ This denies the idea that human security is a much broader goal of a state encompassing human rights and, in which daily life free from fear and want is possible. It is this 'state' of human security that the EU could be looking to achieve across all policy areas and by all its relations with third countries, not simply by the means of missions.

³⁹ UNGA Resolution 290/66, para. 3(g).

⁴⁰ See U. Albrecht, *supra* note 8, at 10.

⁴¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.

⁴² See U. Albrecht, *supra* note 8, at 6.

⁴³ *Ibid.*

⁴⁴ See U. Albrecht, *supra* note 8, at 7.

In order to promote human security more comprehensively in terms of human development and human rights, the EU could ideally envisage a broader framework that would therefore complement more effectively the European Security Strategy, both in its commitment to effective multilateralism and more broadly the respect of international law.

This leads to question of a 'clear political authority' in a human security mission, and the creation of a 'Human Security Response force.' The report proposes that in crisis situations the EU must commit to building and sustaining a legitimate political authority. This demonstrates that the EU's definition of a human insecurity situation is necessarily a crisis scenario. The Barcelona Report does not seem to envisage a need for human security which goes beyond that of a crisis situation. However, as is emphasized in the UNDP's conceptualization of this concept, human security is also relevant and must be applied in cases where there is no violent threat to livelihood or sudden deterioration in the level of security, but where the level of insecurity is *constantly* low, and where the general living conditions are a threat in themselves. This can be characterised as the constant presence of insecurity, whereby the numerous struggles or fears faced with on an everyday basis amount to a life-threatening absence of human security and need to be addressed.

The 'Bottom-up approach' laid out in the Barcelona Report supporting the notion of local ownership and a thorough context-based approach is completely keeping with the UNGA conception of human security. The report commits to 'talking to experts, exiles, civil society groups to discover as accurately as possible what people need,'⁴⁵ which corresponds to the resolution's assertion that 'Human security requires greater collaboration and partnership among governments, international and regional organizations and civil society.'⁴⁶

Therefore, in terms of *rationale*, the EU's agenda as set out in the Barcelona Report seems to fit with the concept of human security seen through the prism of international law and particularly the UNGA Resolution. Arguably however, the Barcelona Report did little more than outline principles for the EU Security Strategy, justifying, with the premise of a new human security paradigm, the deployment of EU missions. This is not the vision that was originally proposed in the 1994 UNDP report, nor the one endorsed by the UNGA in 2012. In terms of practical application, the international law framework for human security requires a far broader conception than military missions, something that the EU is not taking into account.

4. CONCLUSION

Human security as a concept is becoming gradually integrated into international law through the UN framework and using 'soft' instruments. However, contrary to and inevitably as a reaction to the notion of Responsibility to Protect, it has deliberately been framed to exclude the possibility of intervention. As a

⁴⁵ See U. Albrecht, *supra* note 8, at 13.

⁴⁶ UNGA Resolution 66/290, para. 3(g).

whole the international community remains firmly attached to state sovereignty and is not ready to accept that an individual/person-based paradigm could override the prerogatives and responsibility of the state in providing human security for its own population.

Resolution 66/290 provided a consensus in 2012 on a broad definition of human security which instates the concept as a goal for the international community to achieve by cooperation and solidarity. Currently the EU's stance reflects the existing context of CSDP in a restrictive understanding of human security as a response to crisis via missions. It is therefore important for the EU to acknowledge this definition and the consensual stance of the international community, emanating from the debate in which it participated. Adopting a broad vision of human security which can permeate all areas of foreign policy rather than a purely mission-based approach will provide for a legitimate and coherent discourse that can be accepted by the international community, as well as reflecting the EU's own commitment to the respect of the principles of international law.

THE EU, HUMAN SECURITY AND THE INSULATION OF THE CFSP: COMPARING RECENT POLICY AND JUDICIAL TENDENCIES

Hans Merket

1. INTRODUCTION

'Human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfil his or her potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict'.¹ This is how former United Nations Secretary-General Kofi Annan, one of the most famous advocates of the concept, described human security. While the level of conceptualisation and operationalisation is as yet significantly lower in the discourse of EU external action, the term nonetheless pops up regularly in statements and declarations that try to grasp the complex reality of interconnected human rights, security and development challenges.

The inherent aim of the concept of human security in EU external policy-making is to cohere its various strands. The question consequently rises as to how it corresponds with and impacts on the EU's fragmented constitutional and institutional framework. This is particularly challenging with regard to the CFSP that has so far been deliberately insulated as a distinct, more intergovernmental, area of action. This is aimed at preventing mutual contamination with the 'ever closer' integration that dominates the EU legal order as a whole.² Yet, this delimitation erects quite a number of obstacles that complicate the Union's efforts towards coherence and comprehensiveness. Given that the widely portrayed objective of the Lisbon Treaty reforms is to streamline the EU's external action framework, the expectation of an enhanced human security outcome of its diverse external toolbox rises.

In this light, the present contribution will explore the EU institutions' policy rhetoric on human security and subsequently analyse the legal complexity of its inherent coherence rationale. By studying and contrasting some recent policy and judicial tendencies we will subsequently unravel the progress, challenges and potential of the EU to transcend the insulation of the CFSP for the benefit of a comprehensive security approach.

¹ K. Annan Secretary-General Salutes International Workshop on Human Security in Mongolia, Two-Day

Session in Ulaanbaatar, Press Release SG/SM/7382, 8-10.05.2000.

² Art., 1 Treaty on the European Union 2009 (TEU).

2. THE EU'S HUMAN SECURITY LEXICON

Understanding the scope, meaning and implications of the human security concept in the context of EU external action is not a straightforward exercise. The central document is the Barcelona Report of 2004 establishing 'A Human Security Doctrine for Europe'. This report was commissioned by High Representative Solana and drawn up by a group of distinguished practitioners and academics. It aims at better understanding how effect could be given to the European Security Strategy – notably a document that in itself does not refer to the concept of human security.³ The Barcelona report conceptualises human security in broad terms as 'the freedom for individuals from basic insecurities caused by gross human rights violations'.⁴ It contains some notable ideas such as a set of principles to guide EU actions in situations of severe insecurity, a 15,000-men strong 'Human Security Response Force' and a new legal framework for interventions. Yet, the report remains largely theoretical and leaves readers in the dark as to the practical implication of this so-called 'doctrine'.

The 2007 follow-up Madrid report, entitled 'A European Way of Security', aims to tackle this operational void with a number of concrete instructions. These are based on six human security principles: the primacy of human rights, legitimate political authority, a bottom-up approach, effective multilateralism, an integrated regional approach and a clear and transparent strategic direction.⁵ However, it can still hardly be seen as a satisfactory policy guide. The report describes human security as the term 'that best fits what Europe already does, what its ambitions are and the unique mix of its abilities to deliver this vision'.⁶ This is stated to be 'about helping people to feel safe in their homes and on the streets as well as ensuring they have what they need to live on'.⁷ From this it draws that distinctions between security, development and human rights are misleading, but paradoxically limits instructions solely to the CFSP and the CSDP.⁸ It therefore seems that, rather than a uniting policy vision, '[i]nternal pressure on the EU to articulate and justify its foreign policy ambitions, and to supply a narrative for the ESDP, became the strongest driver of a human security agenda'.⁹

One should furthermore not forget that these reports are only research endeavours and their impact can only be measured by the extent that their

³ Council of the European Union, 'A Secure Europe in a Better World – European Security Strategy', *European Security Strategy* (December 2003) available at <<https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>.

⁴ Study Group on Europe's Security Capabilities, 'The Barcelona Report: A Human Security Doctrine for Europe', Presented to EU High Representative for CFSP Javier Solana (Barcelona, September 2004), at 5.

⁵ Human Security Study Group, 'The Madrid Report: A European Way of Security' (Madrid, November.2007), 15-19.

⁶ *Ibid.*, at 8.

⁷ *Ibid.*

⁸ Before the entry into force of the Lisbon Treaty the CSDP was named the European Security and Defence Policy (ESDP).

⁹ M. Martin and T. Owen, 'The Second Generation of Human Security: Lessons from the UN and EU Experience' 86 *International Affairs* 2010, at 219.

conclusions are rhetorically used and practically applied by EU institutions and Member States. In this sense it is telling that the call in the Madrid Report on Member States to 'agree a public declaration of their commitment to principles which put Human Security at the heart of the European Union's external operations' was never realised.¹⁰ Nonetheless, the terminology stayed and regularly appears in EU policy statements. Yet, at no point is a definition of human security provided, so we can only deduct its meaning from the manner and context in which it is used.

The Commission has been the main champion of the term as a manner to rivet EU development cooperation to the broader framework of EU foreign policy.¹¹ The pivot in this undertaking was External Relations Commissioner Ferrero-Waldner who regularly proposed a holistic concept of human security. In line with the EU's oft-recurring philosophy that neither security or development are 'possible without an adequate level of the other', she called 'to put people, their human rights and the threats that they face at the centre of our policies'.¹² Yet, this remained very much a personal pet project that ended with her mandate. Further policy references to human security are all but systematic. It is briefly mentioned, as if it were a clear and well-defined policy concept, in the 2010 revision of the Cotonou agreement and the 2006 European Consensus on Development, respectively as an element of peace-building and conflict prevention, and of eradicating poverty.¹³ Slightly more extensive, the 2008 Report on the Implementation of the European Security Strategy concretises that efforts to build human security have been taken 'by reducing poverty and inequality, promoting good governance and human rights, assisting development, and addressing the root causes of conflict and insecurity'.¹⁴

While human security thus never formed the subject of an overarching and explanatory policy document, it has nonetheless become part of the EU's jargon. Rather than immediate operational use, its main contribution appears to consist of giving a name to a security paradigm based on the individual and his human rights, rather than the state's security perspective.¹⁵ As Martin and Owen put it '[a]s a concept, it informs everything but, at the same time, has no regula-

¹⁰ See Madrid Report (2007), *supra* note 5, at 7.

¹¹ For instance: Commission Communication (COM(2003)615) on *Governance and Development*, 20.10.2003, 8; Commission Communication (COM(2006)601) on *Strategy for Africa: An EU regional political partnership for peace, security and development in the Horn of Africa*, 20.10.2006, at 11.

¹² B. Ferrero-Waldner, 'The EU's role in protecting Europe's security', Address to conference on 'Protecting Europe: Policies for enhancing security in the European Union' (Brussels May 2006), at 3.

¹³ Art. 11 consolidated version of the ACP-EC Partnership Agreement 2000, revised in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010, O.J. [2010] L 287, 04.11.2010; Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy, 'The European Consensus on Development', OJ [2006] C46/1, 24.02.2006, para. 11.

¹⁴ Report on the Implementation of the European Security Strategy – Providing Security in a Changing World (Brussels, S407/08) (December 2008), at 2.

¹⁵ J.H. Matlary, 'Much Ado About Little: the EU and Human Security', 84 *International Affairs* 2008, at 142.

tory power or operational traction, merely serving to pad out a pantheon of worthy aims'.¹⁶ Nevertheless, some common elements are implicit in EU policy references to human security. Aimed at better mainstreaming human rights in EU external action, it is part of an approach that seeks to bundle the variety of EU policies and instruments across long-term cooperation and short-term interventions, in order to arrive at a coherent policy design that better exploits the potential of this diversity.

In this manner the adherence to human security fits into the EU's long-standing efforts to break 'the vicious cycle of poverty, war, environmental degradation and failing economic, social and political structures'.¹⁷ Even though these mutually destructive forces of socio-economic deterioration and violence are well-known, the EU continues to struggle with turning them in a constructive policy guide. Since the late 1990s we have witnessed a go-and-fro of new concepts having their go at trying to catch this complex reality: from structural stability over root causes of conflict,¹⁸ conflict prevention,¹⁹ linking relief rehabilitation and development (LRRD),²⁰ human security, a security-development nexus,²¹ failed states²² to fragility.²³ The EU's struggle to turn words into deeds is most clearly evidenced by the continued failure of institutions to adopt the Action Plans on Security and Development and on Situations of Fragility that were already announced in 2007 in order to give practical effect to its policy rhetoric.²⁴ Despite repeated reminders from the OECD, the European Parliament and the Commission,²⁵ and even a recent reiteration of this endeavour by the Council,²⁶ these plans appear to be shelved at present in the absence of political sponsorship.

¹⁶ Martin and Owen (2010) op.cit. note 9, at 223.

¹⁷ European Consensus on Development (2006), available at <http://ec.europa.eu/development/icenter/repository/european_consensus_2005_en.pdf>, para. 37.

¹⁸ Commission Communication (COM(1996)332) on the *European Union and the Issue of Conflicts in Africa: Peace-building, Conflict Prevention and Beyond*, 06.03.1996, at 2.

¹⁹ Presidency Conclusions, 'EU Programme for the Prevention of Violent Conflicts' (Göteborg European Council) (June 2001), at 3.

²⁰ Commission Communication (COM(2001)153) on *Linking Relief, Rehabilitation and Development – An assessment*, 23.04.2001, at 23.

²¹ Council Conclusions on Security and Development (2831st External Relations Council Meeting, Brussels), 19-20.11.2007.

²² See Council (2003), *supra* note 3, at 6.

²³ Council Conclusions on an EU Response to Situations of Fragility (2831st External Relations Council Meeting, Brussels), 19-20.11.2007.

²⁴ Council Conclusions on Security and Development (2007) op.cit. note 21, para. 15; Council Conclusions on an EU Response to Situations of Fragility (2007) op.cit. note 23, para. 16.

²⁵ Respectively, DAC, Peer Review: European Union (Development Assistance Committee, Organisation for Economic Cooperation and Development (OECD), Paris, 2012) 33-34; European Parliament, 'EU Development Cooperation in Fragile States: Challenges and Opportunities', *DG for External Policies of the Union* (June 2013), at 7; Commission Staff Working Document (SEC(2010)421) Policy Coherence for Development Work Programme 2010-2013 (April 2010), at 34.

²⁶ Council Conclusions on C (Education, Youth, Culture and Sport Council Meeting, Brussels, 25-26.11.2013, para. 8.

3. THE LEGAL COMPLEXITY OF COHERENCE

Further compounding the general complexity of overcoming the departmentalisation and compartmentalisation of foreign policy for the EU is the treaty-based distinction that separates the CFSP from all other external policies. The latter are set out in the Treaty on the Functioning of the EU (TFEU) and by default apply the ordinary legislative procedure, implying a formal proposal of the Commission and co-decision by the European Parliament (EP) and the Council (voting by qualified majority), with full judicial competence of the EU Court of Justice (CJEU). The CFSP on the other hand, is the only policy area excluded from the TFEU and governed by specific rules and procedures set out in Article 24(1) of the Treaty on European Union (TEU). These are dominated by the Council, that decides by unanimity, and accord only very limited roles to the Commission, the Parliament and the CJEU. This makes efforts to align and integrate EU external policies legally complex as it requires difficult choices of legal basis between divided policy toolboxes. At the same time, it raises administrative challenges as these choices have to be made across very distinct policy-making communities. These are moreover politically sensitive as they affect the division of competences and balance of power between the EU institutions and with the Member States.

This complexity has certainly not stopped policy activity in the grey areas between the competences of development cooperation, CFSP, humanitarian aid, etc. EU institutions have developed an impressive institutional machinery and range of instruments, including innovative financial tools such as the Instrument contributing to Stability and Peace (IcSP – the previous Instrument for Stability) and the African Peace Facility (APF).²⁷ The variety of instruments has been a blessing as well as a curse. On the one hand, the EU has the great advantage of a comprehensive reach, meaning that there are few areas related to human security that it cannot address. On the other hand, coordinating this diversity of actions is all but a self-evident undertaking, not the least because this constantly runs up against the legal, institutional and policy divide between the CFSP and the other (TFEU) external policies.

Whereas challenges such as insecurity, poverty and human rights violations are ruthlessly cross-cutting, the Union's means to cut across the legal divide between the policy areas that address them are thus limited. This has resulted in considerable fragmentation (with all the EU's external financing instruments²⁸ and increasingly CSDP missions accorded a role in the elastic field of security

²⁷ Regulation (230/2014) of 11 March 2014 *establishing an instrument contributing to stability and peace*, OJ [2014] L77/1, 15.03.2014; Art. 12, Council Regulation (617/2007/EC) of 14 May 2007 *on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement*, O.J.[2007] L152/1, 16.06.2007 (currently transitory arrangements are in place before the Internal Agreement on the 11th EDF enters into force).

²⁸ For 2014-2020 these are the European Development Fund, the Instrument for Pre-accession Assistance (IPA), the European Neighbourhood Instrument (ENI), the Development Cooperation Instrument (DCI), the Partnership Instrument (PI), the Instrument contributing to Stability and Peace (IcSP) and the European Instrument for Democracy & Human Rights (EIDHR).

sector reform),²⁹ duplication (with the EU Court of Auditors recently denouncing the existence of three separate situation monitoring entities within the External Action Service (EEAS), the Commission and the Council General Secretariat)³⁰ and occasional inter-institutional tensions. The most infamous example of the latter was a competence battle between the Council and the Commission, which ended up before the EU Court of Justice, on the appropriateness of Council Decision 2004/833/CFSP providing support to the Economic Community of West-African States (ECOWAS) to deal with the calamitous spread of small arms and light weapons (SALW).³¹ The Commission contested the legality of this Decision and held that such activity had to be adopted within the framework of the Community's development cooperation policy.³²

The Court's standard refrain is that the choice of legal basis must be founded on objective factors amenable to judicial review, which it finds in the measure's predominant aim and content.³³ In pre-Lisbon cross-pillar cases the Court added *ex Article 47 TEU* (current Article 40 TEU) to this centre-of-gravity test, which stated that nothing in TEU 'shall affect the Treaties establishing the European Communities'. It interpreted this as 'hierarchical delimitation rule', meaning that second (and third) pillar measures could not 'encroach' on European Community (EC) competences.³⁴ This was considered the case if these measures could have been adopted on an EC legal basis. In the ECOWAS case the Court's aim and content analysis led to the conclusion that the Decision contained intricately linked development and CFSP components, without one being incidental to the other. Because it considered that *ex Article 47 TEU*, allegedly as a principle, prevented a combined legal basis, preference had to be given to the Community and the CFSP decision was to be annulled.³⁵

The details of this controversial case have been discussed elsewhere and well.³⁶ For the purposes of this paper it is important to note that the price for this gained clarity regarding competence distribution appeared to be paid in terms of policy coherence. In explaining why it found that tackling the spread

²⁹ H. Merket, 'The EU and the Security-Development Nexus: Bridging the Legal Divide', 18 (Special Issue) *European Foreign Affairs Review* 2013, 88-89.

³⁰ European Court of Auditors, 'The Establishment of the European External Action Service', *Special Report No. 11* (November 2014), para. 56 and box 2.

³¹ Council Decision (2004/833/CFSP) of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons, O.J.[2004] L359/65, 04.12.2004.

³² ECJ, Case C-91/05 *European Commission v. Council of the European Union* (ECOWAS or Small Arms and Light Weapons) [2008] ECR I-3651.

³³ ECJ, Case C-45/86 *European Commission v. Council of the European Union* [1987] ECR I-1517, para. 11.

³⁴ P. Van Elsuwege, 'EU External Action after the Collapse of the Pillar Structure: in Search of a New Balance between Delimitation and Consistency', 47 *Common Market Law Review* 2010, at 1002.

³⁵ See Case C-91/05, *supra* note 32, paras. 75-76 and 109-110.

³⁶ C. Hillion and R.A. Wessel, 'Competence Distribution in EU External Relations after ECOWAS: Clarification or Continued Fuzziness?', 46 *Common Market Law Review* 2009, 551-586; P. Van Elsuwege, 'On the Boundaries between the European Union's First Pillar and Second Pillar: a Comment on the ECOWAS Judgment of the European Court of Justice', 15 *Columbia Journal of European Law* 2009, 531-548.

of SALW also constituted an objective of EU development cooperation, the Court referred to the European Consensus on Development and the preamble of the contested CFSP decision, as both documents note that insecurity reduces the prospects for sustainable development.³⁷ Diametrically opposed to the grand rhetoric of policy coherence, this ruling thus discouraged the Council from including cross-references to development issues in future CFSP legislation.

Such tensions, as well as the fragmentation and duplication of policy structures and initiatives, illustrate the need for guidelines, instructions and a consensual division of labour on how to connect the whole range of EU external actions that impact on human security. Only in this manner can the Union maximise positive connections and avoid counterproductive action. In essence this touches upon the sensitive issue of competence boundaries, which explains why – yet does not make it any more acceptable – EU institutions and Member States only seem to be able to find consensus in a rather generic call for more coherence and coordination.

4. BETTER PROSPECTS AHEAD? NEW POLICY TENDENCIES IN THE POST-LISBON TREATY FRAMEWORK

The Lisbon Treaty has streamlined the Union's external action architecture in a way that ostensibly brings it more in line with the commitment to cohere and align its various external policies. This is most visible in the formal abolition of the pillar structure and the dissolution of the European Community into the EU.³⁸ Moreover, all the external action objectives are now grouped together in a single Article 21 TEU. This expresses an explicit commitment to pursue these objectives in all 'the different areas of the Union's external action', 'work for a high degree of cooperation' and ensure consistency between them.³⁹ At the same time the distinct status of the CFSP has survived the Treaty changes. This is most clearly embodied in Article 40 TEU. The latter accords its predecessor (*ex* Article 47 TEU) a Janus-face by setting up mutual lines of defence and preventing the implementation of both CFSP and TFEU competences from affecting each others' procedures and institutional balance. The inherent paradox of the Lisbon Treaty is thus that its stronger plea for coherence simultaneously complicates efforts to respect the strictly-guarded delimitation of competences.

Yet, importantly, the Lisbon Treaty provides new means to deal with this complexity in the form of three well-known institutional adaptations and innovations. First, there is the triple-hatted High Representative (HR) who combines the functions of conducting the CFSP, presiding over the Foreign Affairs Coun-

³⁷ See Case C-91/05, *supra* note 32, paras. 66 and 93.

³⁸ Art., 1 TEU.

³⁹ See further: P. Van Elswege and H. Merket, 'The Role of the Court of Justice in Ensuring the Unity of the EU's External Representation' in S. Blockmans and R.A. Wessel (eds), 'Principles and Practices of EU External Representation', 5 *CLEER Working Papers* 2012, 40-43, available at <http://www.asser.nl/upload/documents/20120911T102448-cleer2012-5book_web.pdf>.

cil (FAC) and ensuring consistency of the Union's external action as Vice-President of the Commission.⁴⁰ The *leitmotiv* under each of these three functions is to better interlink the various dimensions of EU foreign policy.⁴¹ This provides her/him the legal mandate that, combined with the necessary political clout, could ensure much-needed leadership over EU external action as a whole, and its human security aspects more specifically. This integrative function trickles down further to the EEAS, that is assigned to assist the HR under each of her three hats. This is mirrored in the fact that it is composed of staff transferred from the Commission, the General Secretariat of the Council and the Member States' diplomatic services.⁴² This bundling of competences is in turn translated to the field by transforming the old Commission Delegations into EU Delegations that represent the entire range of EU competences.

Following a period of teething troubles,⁴³ these new institutions appear to have started signing up to their integrative mandates. Three recent policy tendencies illustrate this gradual shift. First, there is the increasingly strategic and regionally-oriented policy approach that is mainly put forth by the EEAS. This is substantiated in strategic frameworks for the Sahel, the Horn of Africa, the African Great Lakes and the Gulf of Guinea, as well as thematic strategies such as the one for maritime security.⁴⁴ In the light of the EU's difficulties with setting up a comprehensive policy guide – be it for human security, the security-development nexus or fragility – these strategies provide more practically-oriented alternatives, that moreover allow better responsiveness and alignment with the local context.

Second, with ups and downs,⁴⁵ these changes to the Union's institutional structure appear to be gradually contributing to better inter-institutional relations. A good example of the latter are two interesting guidance notes from November 2013 that were drawn up jointly by the Commission and the EEAS: one on 'Addressing conflict prevention, peace-building and security issues under external cooperation instruments' and another on 'the use of Conflict analysis in support of EU external action'. Notably, these documents stimulate a bottom-up approach to better inform EEAS and Commission staff, so as to enable them to establish the right mix of instruments, adapted to the specific challenges of

⁴⁰ Art., 18 TEU.

⁴¹ See particularly Arts. 18(4), 21(3), 26(2), 16(6) and 32 TEU.

⁴² Art., 27(3) TEU and Art., 6(9) Council Decision (2010/427/EU) *Establishing the Organisation and Functioning of the European External Action Service* [2010] O.J.[2010] L201/30, 3.8.2010 (further: 'EEAS Decision'). For a more elaborate analysis: H. Merket, 'The European External Action Service and the Nexus between CFSP/CSDP and Development Cooperation', 17 *European Foreign Affairs Review* 2012, 625-652.

⁴³ Some examples: A. Willis, 'Ashton to face tough questions from EU ministers', *EUObserver.com*, 20 May 2011; T. Vogel, 'A year on, and still failing', *European Voice*, 5 January 2012.

⁴⁴ EEAS, 'Strategy for Security and Development in the Sahel' (September 2011); Council of the European Union, 'A Strategic Framework for the Horn of Africa', 3124th *Foreign Affairs Council meeting* (November 2011); Commission and High Representative Joint Communication (JOIN(2013)23) A Strategic Framework for the Great Lakes Region, 19.06.2013; Council, 'EU Strategy on the Gulf of Guinea', 3324th *Foreign Affairs Council Meeting* (March 2014); Council (11205/14) European Union Maritime Security Strategy, 24.06.2014.

⁴⁵ See for instance: A. Rettman, 'Staff leaving EU diplomatic service amid bad working conditions', *EUObserver.com*, 30 September 2011.

each situations.⁴⁶ In a symbolic sign of burying the hatchet of inter-institutional tensions, the Commission and the EEAS agreed on a division of labour regarding SALW control. '[I]ssues having a primarily military/security dimension need to be addressed under the CFSP budget', while 'all other dimensions of SALW at country level such as the legal and regulatory frameworks, institutional capacity-building, including some trade-related aspects ... , awareness raising, survey activities, etc.' can be addressed by external cooperation instruments.⁴⁷

A third recent policy fad is the EU's comprehensive approach to external conflicts and crises. This was first concretised in a long-awaited Joint Communication from the High Representative and the Commission in December 2013 and endorsed by the Council in May 2014.⁴⁸ Adapted to the refurbished external action system of the Lisbon Treaty, the specificity of this new approach is that it aims to be 'both a general working method and a set of concrete measures and processes to improve how the EU, based on a common strategic vision and drawing on its wide array of existing tools and instruments, collectively can develop, embed and deliver more coherent and more effective policies, working practices, actions and results'.⁴⁹ In what might incite feelings of *déjà-vu*, the Council again commits to give effect to this new agenda by adopting an Action Plan before April 2015. It would be very damaging to the Union's credibility if this became another ghost plan haunting the EU corridors.⁵⁰

5. IS THE COURT ON BOARD?

The Lisbon Treaty significantly shakes up the legal foundations that lay at the basis of the ECOWAS-ruling. While Article 40 TEU makes the hierarchical delimitation approach difficult to uphold, Article 21 TEU obscures the future of the traditional aim-and-content test. Not only does the latter group together all external objectives, it also deprives the CFSP, as the only EU policy field, of its own specific aims. In the absence of a worthy follower for the ECOWAS-case in a post-Lisbon setting, analysts grasp in the dark regarding the Court's approach towards these Treaty changes. Three recent cases, that are chosen in the present contribution because of their relevance for human and comprehensive security, give some preliminary indications of how the new CFSP-TFEU balance might be struck. Without going into details, this section will extract

⁴⁶ EEAS and Commission, 'Guidance note the use of Conflict analysis in support of EU external action, n.d., available at <<http://capacity4dev.ec.europa.eu/public-fragility/document/guidance-note-conflict-analysis-support-eu-external-action>>.

⁴⁷ EEAS and Commission, 'Addressing conflict prevention, peace-building and security issues under external cooperation instruments' n.d., at 7, available at <<http://capacity4dev.ec.europa.eu/public-fragility/document/addressing-conflict-prevention-peace-building-and-security-issues-under-external-cooperation>>.

⁴⁸ Commission and High Representative Joint Communication (JOIN(2013)30) The EU's comprehensive approach to external conflicts and crises, 11.12.2013.

⁴⁹ Council Conclusions on the EU's comprehensive approach (3312th Foreign Affairs Council meeting) 12.05.2014, para. 2.

⁵⁰ A. Sherriff and V. Hauck, 'Will the Action Plan to Implement the EU's Comprehensive Approach Have Any Bite?', *ECDPM Talking Points Blog*, 23.05.2014.

some general tendencies that are relevant for understanding the role and position of the CFSP in the current legal order.

First, case C-130/10 *Parliament v. Council* concerned the appropriate legal basis for restrictive measures directed against natural or legal persons.⁵¹ Of particular relevance here is that this concerned the first post-Lisbon ruling wherein the Court was called to shed light on the scope of the CFSP. Given that the Treaty no longer assigns the latter specific objectives, Advocate-General Bot proposed to detract Article 21(2)(a) to (c) from the common listing as these 'are in essence the same as those assigned to the CFSP under [ex] Article 11(1) TEU'.⁵² Not only is such an interpretation contrary to the letter and spirit of Article 21 TEU, it also represents a distorted reality. In fact, under the previous Treaty framework the CFSP already shared the aim of Article 21(2) (b) to consolidate and support democracy, the rule of law and human rights with EU development cooperation as well as economic, financial and technical cooperation with third countries.⁵³

Whereas the Court circumvents this delicate question, it provides certain indications that the Lisbon Treaty indeed tore down the narrow CFSP walls that lay at the basis of the ECOWAS case. First, it makes clear that the new scope of the CFSP is a broad one that, in line with Article 24(1) TEU, covers 'all areas of foreign policy and all questions relating to the Union's security' and aims to counter threats to peace and international security.⁵⁴ Second, as in the ECOWAS case, the Court ruled out the possibility of a combined CFSP-TFEU legal basis, yet, no longer as a principle but in so far as the respective procedures are incompatible.⁵⁵ This suggests that the CJEU no longer submits the CFSP to separate rules of delimitation, but applies its general methodology regarding the choice of legal basis. Third, while the Court does not accept the invitation put forth by both the Council and the Advocate General to draw in Article 40 TEU, its ruling nonetheless appears to convey its rationale. As accurately put by Hillion, the Court's 'interest in various CFSP provisions ... materializes the protective and implicit interpretative jurisdiction over the CFSP which it is endowed with on the basis of Article 40(2) TEU'.⁵⁶

A second case of interest is C-377/12 *Commission v. Council* on the appropriate legal basis of a Framework Agreement on Partnership and Coopera-

⁵¹ ECJ, Case C-130/10 *European Parliament v. Council of the European Union* [2012] ECR I-00000 nyr. For an extensive analysis: A. Ott, 'Case Note on Case C-130/10 *European Parliament v. Council of the European Union*', 19 *Maastricht Journal in European and Comparative Law* 2012, 589-594; G. De Baere, 'From 'Don't Mention the Titanium Dioxide Judgment' to 'I Mentioned it Once, But I Think I Got Away with it All Right': Reflections on the Choice of Legal Basis in EU External Relations after the Legal Basis for Restrictive Measures Judgment', 15 *Cambridge Yearbook of European Legal Studies* 2013, 537-562.

⁵² See Case C-130/10, *supra* note 51, Opinion of AG Bot, 31.01.2012, para. 63.

⁵³ *Ex Arts.* 177(2) and 181a(1) TEC.

⁵⁴ See Case C-130/10, *supra* note 51, paras. 62-63.

⁵⁵ *Ibid.*, paras. 47-49. In para. 73 the CJEU moreover indicates that such incompatibility does not arise in all combinations with a CFSP legal bases.

⁵⁶ C. Hillion, 'Fighting Terrorism Through the Common Foreign and Security Policy' in I. Govaere and S. Poli (eds), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises* (Leiden: Brill Nijhoff 2014), at 86.

tion between the EU and the Republic of the Philippines. Here it was the Commission that sought the annulment of the Council Decision on the signing of the agreement.⁵⁷ It considered that the legal bases of development cooperation and the common commercial policy covered the whole agreement, and therefore the addition by the Council of legal bases relating to readmission, transport and the environment was illegal. Building further on case C-268/94 *Portugal v Council*⁵⁸ the Court embraced a particularly wide view of development cooperation that is ‘conducted in the framework of a wide range of policy objectives which pursue the development of the third country concerned, so that development cooperation agreements necessarily encompass a wide range of specific areas of cooperation’.⁵⁹ Key is that the CJEU bases this broad view on the unified list of external action aims in the TEU, meaning that ‘the field of development cooperation is not limited to measures directly aimed at the eradication of poverty, but also pursues the objectives referred to in Article 21(2) TEU’.⁶⁰

A similar approach was taken by Advocate-General Bot in Case C-658/11 *Parliament v. Council*.⁶¹ In this case the European Parliament contested the exclusive CFSP nature of Council Decision 2011/640/CFSP on the signing and conclusion of the agreement between the EU and the Republic of Mauritius regarding the conditions of transfer of suspected pirates captured by the CSDP naval operation ATALANTA.⁶² The Parliament argued that the agreement, in view of its aim and content, also relates to judicial cooperation in criminal matters, police cooperation and development cooperation. The Advocate-General starts his detailed analysis with the observation that this case once again demonstrates ‘that despite the formal disappearance of the pillars the entry into force of the Treaty of Lisbon has not obviated the need to delimit the respective scopes of the Union’s different policies’.⁶³ He notes that this is a delicate task when the objective of security is at stake because the well-recognised inter-relationship with development and human rights ‘means that it would very often be possible to argue that measures taken in one of these three areas will also have some effect on the other two areas’.⁶⁴ Again basing himself on Article 21 TEU the Advocate-General argues that ‘[t]he requirement of consistency en-

⁵⁷ Council Decision (2012/272/EU) on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, OJ [2012] L134/3, 24.05.2012.

⁵⁸ ECJ, Case C-268/94 *Portugal v. Council of the European Union* [1996] ECR I – 6208.

⁵⁹ ECJ, Case C-377/12 *European Commission v. Council of the European Union* [2014] nyr, para. 18.

⁶⁰ *Ibid.*, paras. 36-37.

⁶¹ ECJ, Case C-658/11 *European Parliament v. Council of the European Union* [2014] nyr.

⁶² Council Decision (2011/640/CFSP) on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer, OJ [2011] L 254/1, 30.09.2011.

⁶³ See Case C-658/11, *supra* note 61, Opinion of Advocate-General Bot, 30.01.2014, para. 2.

⁶⁴ *Ibid.*, para. 3 and 23.

courages the Council to integrate aspects relating to other Union policies into the CFSP measures which it adopts'. Yet, this does not 'nullify the particularities of each of the Union's policies, just as their complementarity does not nullify the specific nature of each policy'.⁶⁵

These cases therefore provide some preliminary evidence for Van Vooren's suggestion that Article 21 TEU 'raises the threshold' of when the Court's centre-of-gravity reasoning will conclude that additional objectives of a certain measure are central rather than incidental.⁶⁶ This could point to an inclination of the judiciary to allow more discretion to the decision-making level when choosing an appropriate legal basis. Unfortunately, the Court shied away from this question and limited its ruling in case C-658/11 to a rather technical – but also very welcome – clarification of Article 218 TFEU. The latter is a major novelty of the new external action framework as it introduces a single procedure for all international agreements concluded by the Union, including the CFSP – albeit with differentiated rules. Noteworthy is that the Court again does not submit the CFSP to a specific legal regime, but explains that the differentiation within this unified procedure is on a general level 'designed to reflect externally the division of powers between institutions that applies internally'.⁶⁷ In line with this more normalised position for the CFSP within the EU's current legal order, the CJEU moreover makes the case that exclusive CFSP agreements cannot be entirely exempt from judicial and democratic scrutiny. Indeed, the Court's considered its exclusion from the CFSP as a derogation that should be interpreted narrowly.⁶⁸ The obligation under Article 218(10) TFEU, on the other hand, that the Parliament 'shall be immediately and fully informed at all stages of the procedure' was to be interpreted broadly.⁶⁹

6. CONCLUSION

Even though never extensively conceptualised, the EU's policy references to human security fit into the long-standing efforts to cohere its various external policy strands, including CFSP, CSDP, development cooperation, humanitarian aid, etc. These often founder at the rock of institutional and constitutional fragmentation, which is most outspoken in the delimitation of the CFSP. A number of recent policy trends indicates that the Lisbon Treaty's efforts to soften this

⁶⁵ Ibid., para. 24.

⁶⁶ B. Van Vooren, 'The Small Arms Judgment in an Age of Constitutional Turmoil', 14 *European Foreign Affairs Review* 2009, at 246.

⁶⁷ See Case C-658/11, *supra* note 61, para. 55.

⁶⁸ Ibid., 73.

⁶⁹ Ibid., 75-87. Whereas the CJEU did in this case not agree with the Parliament on the subject that the Decision at issue could not be adopted exclusively under the CFSP, it appears that the latter is trying its luck again in case C-263/12 (*Parliament v. Council*). In a remarkably similar manner the Parliament argues here that Decision 2014/198/CFSP on the signing and conclusion of the Agreement between the EU and Tanzania on the conditions of transfer of suspected pirates and associated seized property from ATALANTA is invalid because it does not relate exclusively to the CFSP, but also contains elements of judicial cooperation in criminal matters and police cooperation.

fragmentation gradually start to bear fruit for a more streamlined foreign policy approach. These consist of the EEAS policy guidance in adopting regionally-oriented strategic frameworks, inter-institutional efforts to improve the mix of available instruments and the new commitment to a comprehensive security approach.

There is however still a long way to go, as made clear by three recent inter-institutional disputes on division of competences in external relations that were brought before the Court. All three cases relate to human or comprehensive security: case C-130/10 about terrorism and threats to international security; case 377/12 about a cooperation agreement with the Philippines that contains elements of development, environmental protection, migration and readmission; and case C-658/11 about the fight against piracy, the rule of law and the human rights of suspected pirates. Notably, in none of these cases EU institutions disagreed on the substance of the measure at issue, but only disputed the choice of legal basis. This painfully illustrates how EU decision-makers agree about the general idea of interlinking development, security and human rights policies, but not on the modalities or outcome of this interlinkage. This not only risks to undermine inter-institutional trust but also the EU's external credibility. As long as there is no internal EU agreement on how to give practical effect to its widely portrayed coherence rationale, the optimal use of its scarce resources can hardly be ensured.

CSDP CRISIS MANAGEMENT OPERATIONS – BETWEEN HUMAN SECURITY AND THE ‘COMPREHENSIVE APPROACH’

Monica Oproiu¹

INTRODUCTION

The violent disintegration of the Federal Republic of Yugoslavia in the 1990s is generally regarded as being linked to the failure of the European Union's (EU) prevention efforts undertaken in the framework of the Common Foreign and Security Policy (CFSP). The wars in Croatia, Bosnia and Herzegovina and later Kosovo thus represented the main driver behind the Member States' decision to develop an EU 'autonomous capacity for action' on the international stage. The creation of the European Security and Defence Policy (ESDP) illustrated the EU's ambitions in the security realm. The prospect of a spill-over from violent ethno-political conflict has been a strong incentive for the European Union to engage in the stabilisation of the Western Balkans. The lessons learned there shaped the EU's crisis management operations and helped establish links between its security concerns and various policy frameworks for engaging third countries.

The EU inaugurated the ESDP in 2003 by deploying military and civilian operations in the Former Yugoslav Republic of Macedonia (FYROM) and Bosnia and Herzegovina. In both cases the EU took over from NATO the task of stabilising the country affected by ethnic strife through a military presence on the ground, doubled by police reform. In 2006-2008 the number of EU crisis management operations peaked, the majority of them being civilian. The economic and financial crisis which started in 2008 caused a slowdown in deployments and after the Lisbon Treaty entered into force in 2009 there were no new missions for two years. In 2011 the EU began deploying again, this time focusing on Africa, especially in the Sahel and the Horn of Africa.

The sometimes parallel evolution of the operational and strategic levels of the security and defence policy² made EU deployments dependent on the

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² The ESDP was renamed Common Security and Defence Policy (CSDP) after the entry into force of the Lisbon Treaty in 2009. I will hereinafter use the term CSDP.

Member States' interests and political will. Although the EU gradually adopted policy documents outlining security concerns, its approach to (external) security and crisis management remained elusive. A clarification of strategic goals, means and philosophy of intervention was attempted through various initiatives spearheaded by the High Representative for CFSP: the European Security Strategy of 2003, the Report on its Implementation in 2008 and the two Reports on human security and the EU, commissioned in 2004 and 2007. The latter two recommended that the EU should adopt the doctrine of human security for its foreign, security and defence policy, as an innovative approach to managing crises and conflicts around the world. While the concept of human security was unclear (and somewhat contested) at the international level, the fragmentation of EU external policy across three pillars prevented the emergence of a holistic approach to security and dealing with violent conflicts. By eliminating the pillar structure and restructuring the foreign, security and defence policy machinery of the EU, the Lisbon Treaty aimed to streamline the functioning of the Union and improve the coherence of its external action. At the same time, these transformations were meant to facilitate the emergence of a so-called 'comprehensive approach', which combined development, CFSP, CSDP civilian and military elements in order to create a comparative advantage for the EU as a foreign policy and security actor. Nevertheless, the link between the comprehensive approach and human security remains unclear.

This paper explores some of the difficulties of adopting human security as the framework for CSDP operations. In addition to the contested nature of the concept itself, some of the EU-specific difficulties reside in the legacy of the former pillar structure of EU external action and the challenge of reconciling the idea of "humanitarian power Europe" with the EU's (and Member States') security concerns. The paper briefly looks at the emergence of the human security concept at international level and the attempts to introduce it in the EU doctrine for external assistance. Co-existing in the EU framework with the alternative concept of 'root-causes approach to conflict', human security was acknowledged as a strategic goal underpinning a "distinctive European approach to foreign and security policy".

The analysis of CSDP missions and operations in the Western Balkans – especially in Bosnia and Herzegovina – and of some of the current operations beyond Europe shows that the EU prioritised its own security concerns through crisis management, while elements of human security served both the official rhetoric and practice as the EU was trying to distinguish itself from other international actors pursuing the same stabilisation goals. However, some of the results achieved in Bosnia and Herzegovina prove that post-conflict stabilisation and security sector reform, while serving the outsiders' purpose of avoiding state failure and the spill-over of instability, might contribute to human security on the ground. Later on, the EU gave up attempts to promote human security as an official doctrine, while in parallel it began conceptualizing the comprehensive approach.

Recent EU crisis management operations mostly target regions further and further from Europe – the neighbours of neighbours.³ As these missions and operations tend to have limited mandates, scope and resources, adopting a human security framework for CSDP would be both unsuitable and unsustainable. Although the rhetoric claims that comprehensive strategies trigger comprehensive action, the EU's ambitions as a security actor remain modest and its record of promoting human security, mixed. Without conceptual clarifications, operational improvements and capabilities development, the CSDP will slowly become emptied of any normative content and strategically irrelevant. After all, short-term missions focused on monitoring, mentoring, training and capacity-building cannot contribute much to the EU's credentials as a security provider nor help ensuring human security for vulnerable populations in volatile contexts.

1. A NEW FRAMEWORK FOR STRENGTHENING INTERNATIONAL SECURITY: HUMAN SECURITY

The concept of human security was officially introduced in 1994 by the United Nations Development Programme (UNDP), which stated that human security was 'not a concern with weapons', but 'a concern with human life and dignity'⁴, understood as freedom from want (from poverty) and freedom from fear (from violence). UNDP defined human security as safety from chronic threats such as hunger, disease and repression and as the protection from sudden and hurtful disruptions in the patterns of daily life – whether in jobs, in homes or in communities – highlighting its seven dimensions: personal, environmental, economic, political, community, health and food security.⁵ The new concept was soon taken up by the UN agencies in the fields of development, security and health, also becoming part of the basis for the Millennium Development Goals aiming to eradicate poverty. A third dimension was added to the two existing ones in 2000 through a Report endorsed by the Secretary-General Kofi Annan. The document stated that 'human security in the widest sense means much more than the absence of violent conflict. It also entails human rights, good governance, access to education and medical assistance and the certainty that each individual has opportunities and options for capitalizing on

³ The term 'neighbours of neighbours' was introduced by the European Commission in 2006 in a Communication on Strengthening the European Neighbourhood Policy. It usually refers to three regions: *Africa* – Mauritania, Mali, Niger, Chad, Sudan and South Sudan, but also the Horn of Africa and in particular Somalia; the *Middle East* – Iran, Iraq, Saudi Arabia and more broadly the Arabian Peninsula (Gulf Co-operation Council and Yemen) and *Central Asia* – mainly Kazakhstan and Turkmenistan, but also the Caspian Sea region as such. Commission of the European Communities, 'Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbouring Policy', COM(2006)726 (4 December 2006), available at <[http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2006/0726/COM_COM\(2006\)0726_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2006/0726/COM_COM(2006)0726_EN.pdf)>.

⁴ United Nations Development Programme, 'Human Development Report 1994' (1994), at 22, available at <http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nos-tats.pdf>.

⁵ *Ibid.*, pp. 23-25.

his or her potential. Any step in this direction means a step forward for reducing poverty, economic growth and conflict prevention. Freedom from want, freedom from fear and the freedom of future generations to inherit a healthy environment are all interdependent elements of human security and implicitly of national security'.⁶

The Commission on Human Security convened by the UN Secretary General presented its Report *Human Security Now* in May 2003, defining human security as protecting 'the vital core of all human in ways that enhance human freedoms and human fulfilment'.⁷ Human security was meant to become part of the international community's agenda of priorities together with peace, security and development, but it soon became evident that politicians, academics and practitioners were overall more receptive to narrowing the concept to freedom from fear. Consequently, the quasi-general understanding of the concept outside the UN system refers to the need to protect the people against political violence and the effects of conflicts. Individual countries like Canada, Japan, Norway or Switzerland adopted the concept in their foreign and development policy, while concrete initiatives of putting human security into practice at the international level resulted in banning the use of anti-personnel mine through the Ottawa Treaty (1997) or the adoption of the Rome Statute (1998), the legal basis for establishing the International Criminal Court.

As far as the European Union is concerned, human security is considered to have influenced 'some of the analytical parts of the European Security Strategy of December 2003',⁸ without being explicitly mentioned though. Later on, it became the topic of a report presented by the Study Group on Europe's Security Capabilities to the High Representative for CFSP Javier Solana in September 2004. Solana commissioned the Group under the leadership of Professor Mary Kaldor from the London School of Economics in order to explore the possibility of the European Union adopting human security as a core concept.

The Report called 'A Human Security Doctrine for Europe?' had three main components: a set of principles for human security (the primacy of human rights, clear political authority, multilateralism, the bottom-up approach, regional focus, use of legal instruments and the appropriate use of force), the Human Security Response Force consisting of 15 000 people, of whom at least a third had to be civilians, and a new legal framework designed to govern decisions to intervene and to direct operations on the ground.⁹ The document concluded that 'the most appropriate role for Europe in the twenty-first century would be

⁶ United Nations Commission on Human Security, 'Final Report of the Commission on Human Security' (2003), at 4, available at <<http://www.unocha.org/humansecurity/chs/finalreport/English/FinalReport.pdf>>.

⁷ Ibid.

⁸ A. Missiroli, 'Foreword' to J. Kotsopoulos, 'A Human Security Agenda for the EU?', *European Policy Centre Issue Paper* No. 48 (June 2006), available at <<http://www.freewebs.com/humansecurityconference/EPC-Human%20Security.pdf>>.

⁹ M. Kaldor *et al.*, 'A human security doctrine for Europe: the Barcelona Report of the Study Group on Europe's Security Capabilities' (2004), available at <http://eprints.lse.ac.uk/40209/1/A_human_security_doctrine_for_Europe%28author%29.pdf>.

to promote human security'.¹⁰ Moreover, it recommended that the EU adopt the human security approach in order to realize its ambitions of playing a global role in the realm of security and at the same time to reflect its distinctive character and agenda dominated by the ideas of peace, democracy and human rights instead of the classic nation-state focus on defence of territory.¹¹ The Human Security Response Force would have been designed to play a role 'somewhere between classic peace-keeping and classic military intervention but different from both',¹² with the goal of supporting respect for human rights, law and order.

This interventionist approach distanced the proposed EU doctrine from the softer ones that Canada, Switzerland or Japan employed and can be considered its 'biggest weakness' since the doctrine has not been implemented so far.¹³ But even in the absence of such an innovative doctrine, the EU remained concerned with the security of individuals and designed various instruments for addressing it. The lack of an explicit reference to human security in the 2003 Security Strategy did not overshadow the EU's continuous efforts for preventing conflicts and managing crises through civilian and military means, thus adding to its already established status of the world's leading donor. Mary Kaldor showed that there is a discrepancy between the EU lexicon and practice in this field, highlighting that what the EU actually does by means of CSDP missions – conflict prevention, crisis management and civil-military coordination – corresponds to the wider understanding of human security, without the concept being named as such; or, as she was replied during an interview with EU officials in London 'we already do human security, we just don't call it that'.¹⁴

The Study Group led by Mary Kaldor was reconvened in 2006 by the Finnish Presidency of the European Council in the context of reviewing the Security Strategy and it produced a new report called *A European Way of Security*. This Report took the previous recommendations a step forward and suggested that human security should become the basis of a European strategic narrative and of its activity as a security actor. Hence, human security would represent more than a label for the EU's endeavours; it would be the actual framework within which these actions are undertaken: 'For the European Union, Human Security is more than just another security concept or label. It can be seen as a narrative that encapsulates the goals and methods of a highly diverse foreign and security policy system, and which represents them in discussions of security to different audiences, both the public and professional sector. In other words, it is about how Europeans describe their approach to external security.

¹⁰ Ibid., at 29.

¹¹ M. Martin, 'Human Security and the Search for a Normative Narrative', in R. Whitman (ed.), *Normative Power Europe. Empirical and Theoretical Perspectives* (Basingstoke: Palgrave MacMillan 2011), 187-209, at 199.

¹² M. Kaldor *et al.*, *supra* note 9, at 11.

¹³ J. Kotsopoulos, *supra* note 8, at 12.

¹⁴ M. Kaldor *et al.*, 'Human security: a new strategic narrative for Europe', 83 *International Affairs* 2007, 273-288, at 274.

At the same time, Human Security is an organising frame that specifies how external intervention and engagement should be implemented.¹⁵

This kind of clarification as to when, how and why the EU would engage externally was expected from the 2003 Security Strategy, but the document did not provide such specific guidance. The authors of the two Reports on Human Security identified the need for an EU strategic narrative that would not only form the core of a common European strategic culture, but also replace the *ad-hoc*-ism which marked EU external action. They suggested Human Security as a comprehensive framework providing meaning, distinctiveness and predictability to the EU's philosophy of conflict management and intervention, including the use of force. The Result was that the 2008 Report on the Implementation of the European Security Strategy explicitly referred to human security as central among the EU's strategic goals, underpinning a 'distinctive European approach to foreign and security policy'.¹⁶ The Report showed that: 'We have worked to build human security, by reducing poverty and inequality, promoting good governance and human rights, assisting development and addressing the root causes of conflict and insecurity. The EU remains the biggest donor to countries in need'.¹⁷ This highlights once again the security-development nexus, previously acknowledged by the 2003 Security Strategy and the 2005 Consensus on Development. Together with good governance and effective multilateralism, human security could thus guide EU action on the world stage, but 'unlike the UN's Responsibility to Protect, a human security agenda commits member states to no specific obligations, so rather than a narrative it features more as a wish that is more normative than positivist, more ideal than pragmatic'.¹⁸

Although the philosophy behind human security underpins sustainable peace, international organisations, including the EU, developed other concepts in parallel with, or in order to replace, the all-encompassing one of 'human security'. Among them, the 'responsibility to protect'¹⁹ emerged in 2005 in the UN

¹⁵ M. Kaldor *et al.*, 'A European Way of Security, The Madrid Report of the Human Security Study Group comprising a Proposal and Background Report' (2007), 8-9, available at <[http://eprints.lse.ac.uk/40207/1/A_European_Way_of_Security\(author\).pdf](http://eprints.lse.ac.uk/40207/1/A_European_Way_of_Security(author).pdf)>.

¹⁶ 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World' (11 December 2008), at 3, available at <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/104630.pdf>.

¹⁷ *Ibid.*

¹⁸ M. Martin, *supra* note 11, at 203.

¹⁹ The 2005 World Summit Outcome Document stated that "Each Individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. (...) The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity". United Nations, 'World Summit Outcome', Resolution adopted by the

system. Its application in Libya in 2011 though sparked renewed controversies regarding external intervention, thus losing support for future similar endeavours.

2. THE 'ROOT CAUSES' APPROACH TO CONFLICT PREVENTION: THE COMMISSION'S WAY OF DOING HUMAN SECURITY

Even before the High Representative for CFSP and his team started envisaging human security as a potential framework for EU external action, the European Commission acknowledged the importance of conflict prevention and management of the instability and human suffering that violent conflicts entailed. In April 2001 the Communication from the Commission on Conflict Prevention stated that the EU had 'a *duty* [emphasis added] to try to address the issues that generate or contribute to conflict' and distinguished between long-term prevention ('Projecting stability') and short-term prevention ('Reacting quickly to nascent conflicts').²⁰

Violent conflict became an omnipresent phenomenon in the aftermath of the Cold War, especially as intra-state conflict, most often of ethno-political nature. An ethno-political conflict is 'a particular form of conflict in which the goals of at least one conflict party are defined in (exclusively) ethnic terms and in which the primary fault line of confrontation is one of ethnic distinctions'.²¹ When turning violent, it produces victims and destruction, but also leads to the collapse of state institutions, human rights abuses, *de facto* secession, waves of refugees and internally displaced people, etc. Terrorist groups can take advantage in this context and infiltrate failing states, set up training camps or 'operational' bases, etc. Organised crime flourishes and helps support the war effort (leading to the 'criminalization of war'), thus criminal groups have a direct interest in the perpetuation of conflict. The proliferation of violent conflicts in the Western Balkans and the Horn of Africa – the management of which turned into costly failures for the international community in the aftermath of the Cold War – confirmed the importance of preventive action, as was highlighted in the United Nations document 'An Agenda for Peace' in 1992.

The European Union tried to rise to this challenge by creating the CFSP aiming to coordinate the member states' foreign and security policies, including their responses to international crises. However, the Treaty on the European Union (1992) did not offer any precise legal basis for an EU conflict prevention policy.²² In the absence of clear legal guidelines, the EU policy for preventing

General Assembly on 24 October 2005, available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>>.

²⁰ European Commission, 'Communication from the Commission on Conflict Prevention' (11 April 2001), at 5, <available at http://eeas.europa.eu/cfsp/crisis_management/docs/com2001_211_en.pdf>.

²¹ K. Cordell and S. Wolff, 'The study of ethnic conflict: an introduction', in K. Cordell and S. Wolff (eds.), *Routledge Handbook of Ethnic Conflict* (London and New York: Routledge 2013), 1-14, at 4.

²² V. Kronnenberger and J. Wouters, 'Introduction' to V. Kronnenberger and J. Wouters (eds.), *The European Union and Conflict Prevention. Policy and Legal Aspects* (The Hague: T.M.C – Asser Press 2004), 17-29, at 21.

violent conflict emerged and developed on the foundation of existing instruments provided for in the Treaty, which it then gradually extended so as to fit this purpose as well.²³ Several years later, when the Treaty of Amsterdam established the Petersberg tasks²⁴ among CFSP instruments, conflict prevention was again not mentioned. But in June 2001 the EU adopted the *Programme for the Prevention of Violent Conflict*, with the specific aim of mainstreaming conflict prevention into all EU institutions,²⁵ enhancing its early warning capabilities and developing a common inter-institutional approach to conflict prevention.²⁶ Since 2002, the General Secretariat of the Council has been drafting Annual Reports on the implementation of the Göteborg Programme to be presented to the June European Council every year. These reports gradually developed and summarised the so-called 'root causes approach' to conflict prevention, referring to activities on both the short- and long-term, designed to address the underlying causes of emerging or manifest conflicts and eliminate them.

The plethora of instruments that the EU developed in this field initially illustrated the pillar structure of the EU: various financing schemes and humanitarian aid were complemented by electoral monitoring missions, Action Plans for the European Neighbourhood Policy, the Stabilisation and Association Process for the Western Balkans countries, EU Special Representatives sent to countries or regions prone to conflict and later CSDP missions undertaking security sector reform, police training, consolidation of the rule of law, etc. The European Commission, through its External Relations Directorate, prepared in 2001 a so-called 'check list' for root causes of conflicts used for guiding the early warning and conflict assessment activities undertaken jointly by the Commission and the Secretary-General/High Representative. A confidential 'watch list' was regularly updated and worrying developments were brought to the attention of the General Affairs and External Relations Council.²⁷ The check list comprised eight criteria, each with its own set of questions, the answers to which helped providing early warning signs regarding the potential outbreak of

²³ *ibid.*

²⁴ The original Petersberg tasks assumed by the Western European Union in 1992 comprised humanitarian and rescue tasks, peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking. After the entry into force of the Lisbon Treaty in 2009 their range was expanded in order to include humanitarian and rescue tasks, conflict prevention and peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking, joint disarmament operations, military advice and assistance tasks, and post-conflict stabilisation tasks (Article 43(1) Treaty of the European Union 2010, hereafter TEU).

²⁵ Understood as "the process of establishing an in-house culture of prevention", according to Fraser Cameron, *An Introduction to EU Foreign Policy* (London: Routledge 2007), at 188.

²⁶ Council of the European Union, 'Draft European Programme for the Prevention of Violent Conflicts' (2001), available at

<http://www.eplo.org/assets/files/3.%20Resources/EU%20Documents/EU_EU_Programme_for_the_Prevention_of_Violent_Conflicts.pdf>.

²⁷ With the entry into force of the Lisbon Treaty this Council format was split in two – the General Affairs Council presided by the representative of the six-month presidency of the Council and the External Relations Council permanently chaired by the High Representative for Foreign Affairs and Security Policy of the EU.

conflict.²⁸ The Commission used other tools too, such as regular reporting from the Commission delegations all over the world,²⁹ open source information monitoring via the Commission's Crisis Room, ECHO's³⁰ monitoring system ICONS (Impending Crises Online News System) and annual surveys done on Africa since 2004.³¹ The check-list was shared with 'counterparts in the UN system', but also with other donors and agencies working in the field of conflict prevention and peace-building.³² In 2001 also the Council established a Rapid Reaction Mechanism 'designed to allow the Community to respond in a rapid, efficient and flexible manner, to situations of urgency or crisis or to the emergence of crisis.'³³

The EU's philosophy on conflict prevention and management is that the root causes of conflicts are generally poverty, lack of good governance, violations of human rights, and competition for scarce natural resources. The EU thus aimed to develop an 'integrated and comprehensive approach in the field of external relations bringing together all main conflict prevention instruments at its disposal – ESDP/CFSP, development, trade, economic, diplomatic, civilian and political-military'³⁴ in order to address the various facets of these phenomena. In 2007 the EU created the Instrument for Stability in order to provide more flexibility to its involvement in conflict prevention and resolution, to be used complementary with CSDP operations, as part of the EU global (in the sense of comprehensive) approach to preventing and managing conflicts.³⁵ In 2009 the Lisbon Treaty re-organised substantially the EU's institutions and mechanisms dealing with external relations with the precise goal of providing more coherence and effectiveness to its actions. In addition to this, it established conflict prevention as one of the main goals of EU foreign policy for the first time in an EU treaty.

To sum up, the European Union did not develop a definition of conflict prevention *per se*, but acknowledged the need to tackle the root causes of conflicts. By adopting a dual approach regarding the instruments to be used on the

²⁸ European Commission, 'Check-list for Root-Causes of Conflict' (2008), at 1, available at <http://www.ceipaz.org/images/contenido/European%20Commission%20Check-list%20for%20Root%20Causes%20of%20Conflict_ENG.pdf>.

²⁹ They were transformed into EU delegations by the Lisbon Treaty and transferred to the European External Action Service.

³⁰ European Community Humanitarian Office, created in 1992, which became the Directorate-General for Humanitarian Aid and later integrated Civil Protection in 2010.

³¹ European Commission, *supra* note 28.

³² *Ibid.*

³³ Art. 1, 'Council Regulation 381/2001 of 26 February 2001 creating a rapid reaction mechanism', OJ (2001), L57-5, 27.02.2001, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:057:0005:0009:EN:PDF>>.

³⁴ Council of the European Union, 'Presidency Report to the European Council on EU activities in the framework of prevention, including implementation of the EU Programme for the Prevention of Violent Conflicts' (13 June 2006), at 8, available at <<http://register.consilium.europa.eu/pdf/en/06/st10/st10158.en06.pdf>>.

³⁵ C. Lavallée, 'L'Instrument de Stabilité. Au service de l'approche globale de l'UE', 15 *EU Institute for Security Studies Brief* 2012, at 2, available at <<http://www.iss.europa.eu/publications/detail/article/instrument-de-stabilite-au-service-de-l-approche-globale-de-lue/>>.

short- and long-term respectively, it highlighted a narrow and a wide understanding of the concept. Hence, the former refers to 'the activities undertaken over the short-term to reduce manifest tensions and/or to prevent the outbreak or recurrence of violent conflict', while the latter covers activities 'undertaken over the medium- and long-term to address root-causes of conflict in a targeted manner'.³⁶ While the record of promoting conflict prevention outside its borders is mixed, the European Union has come a long way since its foundation on the premise that 'world peace can be safeguarded only by creative efforts commensurate with the dangers that threaten it'.³⁷ The EU was even awarded the Nobel Peace Prize in December 2012 for having 'for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe' (Nobel Peace Prize 2012).³⁸ As contested as this decision might have been, it represented an acknowledgement of the EU's efforts – and success – in pacifying and democratising most part of Europe through enlargement. By developing operational capabilities too, the EU engaged in peace-building beyond its borders, which generated new opportunities for conducting its external action along human security lines.

3. HUMAN SECURITY THROUGH CSDP – LESSONS FROM THE WESTERN BALKANS

Crisis management operations within the CSDP framework have become the hallmark of EU action in the field of security. Designed as either military operations or civilian missions or a combination thereof, to be employed outside the EU, they contribute to fulfilling the objectives of the EU's security policy. The military operations seek to stabilise countries, reform their armed forces, ensure security during critical times (negotiation of peace accords, elections in post-conflict environments, etc.) or to provide entry/exit strategies for more complex missions deployed by the UN. Civilian missions of training, monitoring, reforming and assisting local police forces or rule of law enforcement agencies are meant both to ensure democratic standards in the targeted countries and to make them more efficient in fighting organised crime and terrorism, for example. According to the European External Action Service website (EEAS 2013), the EU has launched twenty-eight civilian missions and military operations so far, sixteen of which are ongoing.³⁹

The literature on the European Union is almost unanimous in highlighting the role that the crises and wars in the Western Balkans had for the develop-

³⁶ Ibid.

³⁷ European Coal and Steel Community 1951, *Treaty establishing the European Coal and Steel Community* and Annexes I-III (1951), available at <<http://www.nrsr.sk/web/Static/sk-SK/EU/Doc/zmluva-o-esuo.pdf>>.

³⁸ The Nobel Peace Prize for 2012 – Press Release, available at <http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/press.html>.

³⁹ European External Action Service, 'Overview of the missions and operations of the European Union' (June 2013), available at <<http://consilium.europa.eu/eeas/security-defence/eu-operations?lang=en>>.

ment of its security structures and especially CSDP.⁴⁰ The war in Bosnia and Herzegovina (April 1992 – October 1995), for example, illustrated what the literature labelled as ‘new wars’.⁴¹ At the same time, ‘despite numerous idiosyncrasies’, Bosnia was ‘a typical case of a war with a criminal dimension’⁴² – because criminal actors and smuggling networks of goods and weapons supported the war effort.⁴³ In the aftermath of the war organised crime structures became intertwined with former combatants and local political elites, contributing to ‘the criminalization of the state and economy’,⁴⁴ thus undermining the internationally-led post-war reconstruction and peace-building process. NATO, the OSCE and the Western European Union became involved in peace-keeping and peace-building in Bosnia and Herzegovina, working in parallel with the United Nations, World Bank and a myriad of international NGOs. The EU joined this effort by using a variety of instruments, including two CSDP missions – one military (EUFOR Althea, which took over from NATO-led SFOR in December 2004) and one civilian (EUPM Police Mission, launched in January 2003). Law enforcement – together with peace enforcement⁴⁵ under Chapter VII of the UN Charter – played a prominent role in post-war Bosnia. Here, the rule of law was considered a precondition for peace-building, with the international effort concentrating on reform and capacity-building of the police and law enforcement sectors.

Fighting organised crime thus became a priority for the EU in Bosnia. EUPM focused on capacity-building and institution-building within the Bosnian security sector, based on the principle of local ownership. The assertiveness of EUFOR Althea in fighting organised crime undermined the latter’s efforts and authority. A readjustment of mandates solved the problem and put EUPM in charge of enabling local police to fight organised crime, with EUFOR playing a supportive role. Essentially, the clash between the two EU missions highlighted once again the difficulties of civil-military relations in post-conflict reconstruction.

Civil-military relations in peace operations can have multiple dimensions: relations between external military forces and internal civilian authorities or society; between internal regular or irregular forces and external civilian agencies; and between the external military and civilian actors in conflict environ-

⁴⁰ C. Bretherton and J. Vogler, *The European Union as a Global Actor* (London: Routledge 2nd edition 2006), at 196.

⁴¹ M. Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Oxford: Polity Press 1999).

⁴² C. Friesendorf and S. E. Penksa, ‘Militarized Law Enforcement in Peace Operations: EUFOR in Bosnia and Herzegovina’, 15 *International Peacekeeping* 2008, 677-694, at 678.

⁴³ For a detailed account of the role of criminal activities during the war in Bosnia and its aftermath see P. Andreas, ‘The clandestine political economy of war and peace in Bosnia’, in M. A. Innes (ed.), *Bosnian Security after Dayton. New Perspectives* (London and New York: Routledge 2006), 71-95.

⁴⁴ *Ibid.*, at 84.

⁴⁵ IFOR, SFOR and EUFOR were essentially peacekeeping operations, but with a mandate to enforce peace (the military provisions of the Dayton Peace Agreement) under Chapter VII of the UN Charter if necessary.

ments.⁴⁶ Civil-military cooperation (CIMIC) in peace operations after the Cold War has evolved from initial suspicion and distrust towards becoming an institutionalised 'partnership'.⁴⁷ As more and more diverse actors engage in post-conflict environments, civil-military relations are among the main contributing factors to the success of international peace-building efforts.

The CIMIC doctrine was expanded by NATO which developed its own comprehensive approach based on the lessons learned in the Balkans and Afghanistan. Essentially, NATO's approach refers to the cooperation of different actors (political, civilian and military) in theatre.⁴⁸ The EU too began developing a 'comprehensive approach' which entailed a combination of 'instruments across the pillar divide in a coherent manner, aligning EU policy with those of the Member States and improving cooperation with other actors in the field'.⁴⁹ More specifically, this translated into civil-military coordination (CMCO) within CSDP, as the core of an approach advocating a combination of crisis management with diplomatic, economic, developmental and humanitarian tools.⁵⁰ In other words, the comprehensive approach of the EU could be summarised as the 3Ds: diplomacy, development and defence.⁵¹

The lessons learned in Bosnia emphasised, among other things, the importance of civil-military coordination in peace-building, which had the potential to become the EU's landmark in crisis management through CSDP missions. In fact, as early as 2006 the European Parliament showed in a *Resolution on the European Security Strategy* that 'the defining characteristic and the additional value of CSDP lie in the combination of civilian and military components' and that 'the EU will in the future be increasingly faced with the challenge of striking a good and proper balance between military and civilian components in order to fulfil the objectives and the spirit of the EES'.⁵² The European Parliament's view might have seemed too optimistic since the initial cooperation on the ground between EUPM and EUFOR Althea was far from illustrating an easily reachable balance between the civilian and military assets deployed in Bosnia and Herzegovina and even less a facile coordination of the two. At the same time, the European Parliament's resolution contained a vision for the subsequent development of CSDP as one among several tools underpinning the EU's comprehensive approach, which proved to be correct in the long run. CSDP

⁴⁶ M. Pugh, 'Civil-Military Relations in International Peace Operations', in K. L. Spillman, T. Bernauer, J. M. Gabriel and A. Wenger (eds.), *Peace Support Operations. Lessons Learned and Future Perspectives* (Bern: Peter Lang 2001), 109-133, at 109.

⁴⁷ *Ibid.*

⁴⁸ A. N. Pirozzi, 'The EU's Comprehensive Approach to Conflict Management', *DCAF EU Crisis Management Paper Series* (June 2013), at 6, available at <http://www.dcaf.ch/content/download/133240/2067752/file/Pirozzi_EU-CM.PDF>.

⁴⁹ E. Gross, 'EU and the Comprehensive Approach', *Danish Institute for International Studies (DIIS) Report no. 13* (2008), at 7, available at <http://subweb.diis.dk/graphics/Publications/Reports%202008/R2008-13_EU_and_the_Comprehensive_Approach.pdf>.

⁵⁰ N. Pirozzi, *supra* note 48, at 7.

⁵¹ European defence encompasses crisis management and the security policy too.

⁵² 'European Parliament resolution on the European Security Strategy', *OJ* (2006), C33/E, 9.02.2006, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:033:E:0580:0590:EN:PDF>>.

has become fundamental for crisis management by the EU in the last ten years – especially due to its civil-military potential⁵³ – which, coupled with other CFSP instruments, has enabled the EU to position itself as a comprehensive security actor.

Through EUPM in Bosnia and Herzegovina, the goal of helping transform the Bosnian security forces into a democratic multi-ethnic (and gender sensitive) police – on which the EU mission focused during the first two phases of its mandate (2003-2007) – matched the general framework of security sector reform in post-conflict environments. Moreover, by transforming what was once an instrument of repression into a professional service meant to protect the Bosnian citizens, to cater to their security needs and respect human rights when enforcing the law, the EU's police reform initiative fitted the human security agenda in its 'freedom from fear' component. As a result, the Bosnian police became one of the most trusted institutions in the country⁵⁴ and peace-building registered a success. But the readjustment of the EUPM mandate to prioritise the efficiency of Bosnian police in fighting organised crime (as well as corruption and terrorism) signalled a shift of priorities, with the EU being determined to block threats originating in its geographic proximity. Despite the fact that police reform was not completed,⁵⁵ the EU changed the focus of the mission to something more attuned to its interests and further from the human security agenda.

At the same time, as another concrete contribution to human security understood as 'freedom from fear', EUFOR Althea supported the demining operations and the harvesting of small arms and light weapons in Bosnia and Herzegovina, thus eliminating an important legacy of the former violent conflict.

The EU acknowledged early on in the evolution of CSDP the importance of maintaining human rights standards in the conduct of all its missions, by adopting documents such as: the Generic Standard of Behaviour for ESDP Operations (in 2005), the Guidelines on Mainstreaming Human Rights in ESDP Missions (in 2006) and the Conclusions on Promoting Gender Equality and Gender Mainstreaming in Crisis Management (also in 2006).⁵⁶ In 2010 the Council acknowledged the Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions, which showed that, [...] 'violations of human rights, including ethnic and/or gender-based discrimination, are frequently among root causes of conflict. Considering that the primary purpose of CSDP operations and missions is to promote stabilisation and security, human rights and gender related action are

⁵³ R. G. and S. Wolff, 'The European Union as a global conflict manager: capabilities and context in an interdependent world', in R. G. Whitman and S. Wolff (eds.), *The European Union as a Global Conflict Manager* (London and New York: Routledge 2012), 3-20, at 8.

⁵⁴ I. Ioannides and G. Collantes Celador, 'The internal-external security nexus and EU police/rule of law missions in the Western Balkans', 11 *Conflict, Security & Development* 2011, 415-445, at 430.

⁵⁵ Ibid.

⁵⁶ T. Hadden, *A Responsibility to Assist. EU Policy and Practice in Crisis-management Operations under European Security and Defence Policy* (Oxford and Portland, Oregon: Hart Publishing 2009), at 23.

thus a natural part of the operations and missions' tasks in addition to being an underlying, general principle of their work'.⁵⁷ Moreover, the document stated that 'based on concepts, and on actual experience in the field, a CSDP operation or mission can have either a direct role in the protection of human rights and/or a supporting role in relation to the host state'.⁵⁸

Generally, CSDP missions now have a strong human rights component: the deployed personnel have to undergo training in this field and uphold human rights and there is usually a Human Rights/Gender Officer monitoring these specific issues. While the human rights agenda and the concept of human security overlap to a certain extent, some authors claim that 'a focus on maintaining or restoring human security on the ground may be a more realistic objective in situations of crisis-management than seeking to guarantee the full range of rights covered in human rights instruments'.⁵⁹ This argument is more convincing especially if human security is understood as 'creating or restoring conditions under which the essentials of human and family life and civil society are guaranteed', while promoting the human rights agenda would refer to delivering 'a range of essential individual and collective rights'.⁶⁰

Beyond conceptual refinement though, the more practical aspects of the human rights and human security agenda which could be promoted through CSDP military, police and civilian missions refer to the following 'broad categories of intervention': conflict prevention (early warning and preventive deployment), humanitarian aid, protection of civilians and their homes from attack, the maintenance of public order, prevention of general and organised criminality (re)building national security and democratic institutions and the inclusion of economic and social development as an integral element of all crisis management missions.⁶¹ Also related to the human rights agenda, the international missions have an obligation to respect the human rights of the local populations and to control potential abuses; the main concerns at this level could include: effective control of the use of lethal force, prevention of torture or inhuman/degrading treatment, prevention of sexual abuses, prevention of corruption, establishing effective accountability and minimising the economic impact of the internationals.⁶²

By engaging in the Western Balkans, the EU tried to build the credentials of CSDP. After a modest military endeavour doubled by two police reform missions in FYROM, the EU ventured outside Europe with a military operation in DR Congo, limited in scope. Hence, the real test for CSDP was undergone in Bosnia, where the EU deployed a civilian mission and a military operation, combined with extended financial assistance and a complex democratisation

⁵⁷ Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' (30 November 2010), at 8, available at <http://www.civcap.info/fileadmin/user_upload/Working_Group/CIVCOM_Lessons_Learned.pdf>.

⁵⁸ *Ibid.*

⁵⁹ See T. Hadden, *supra* note 56, at 24.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, at 25.

⁶² *Ibid.*, at 30.

process. EUFOR Althea had to maintain a safe and secure environment allowing international organisations on the ground, together with local political actors, to pursue conflict resolution and reconciliation goals on the long-term. EUPM's mission only had the purpose and means to support peace building in a very specific area – police reform – in the wider framework of security sector reform. From this perspective, both contributed to human security by helping restore or create the conditions for the resumption of normal patterns of life in Bosnia. The commitment for the stabilisation of the Western Balkans has not been equated in other regions, but the proliferation of CSDP missions outside Europe offered one more opportunity for clarifying the relation between CSDP and human security.

4. CRISIS MANAGEMENT IN AFRICA: BETWEEN THE 'COMPREHENSIVE APPROACH' IN ACTION AND HUMAN SECURITY RELOADED?

After testing the ESDP in 2003 through civilian and military operations in the Western Balkans, the EU deployed a military operation in the DR Congo and positioned itself as a regional partner of the UN. Despite attaining the general objectives of the mission, the EU was unable – because of a lack of consensus among member states – to undertake a similar operation in Darfur, Sudan in 2006 at the request of the UN Secretary General. In the meantime, small civilian missions mushroomed within the CSDP framework, among which EUJUST Themis in Georgia broke new ground as the EU's first rule of law mission. It was designed to assist local authorities in developing an overarching criminal justice reform strategy based on the principle of local ownership.⁶³ While Georgia was not necessarily in crisis – despite the post-revolutionary tension – the mission was sent in the CSDP crisis management framework in order to raise the political profile of the EU, ensure effective control over it and implement quick-impact measures, as its mandate was only for a year.⁶⁴ A reform strategy was adopted by the Georgian authorities in July 2005, thus indicating that the mission fulfilled its objective, but it did not lead to a more assertive EU policy in this area.⁶⁵

Other civilian CSDP deployments entailed two border assistance missions in the Palestinian territories, three police and security sector reform missions in DR Congo, supporting missions for UN-led missions AMIS and AMISOM in Sudan and Somalia respectively and a monitoring mission in Aceh, Indonesia. In addition to this, the EU undertook two military operations in the DR Congo and Tchad/RCA respectively. In 2008 the EU launched two innovative operations: EULEX Kosovo, the biggest EU civilian mission to date (an integrated rule of law mission, with an executive mandate) and EUNAVFOR Atalanta, the

⁶³ X. Kurowska, "EUJUST Themis (Georgia)", in G. Grevi *et al.* (eds.), *European Security and Defence Policy. The First 10 Years (1999-2009)* (Paris: EU Institute for Security Studies 2009), 201-210, at 205.

⁶⁴ *Ibid.*, at 204.

⁶⁵ *Ibid.*, at 207.

first naval operation of the EU. Aiming to combat piracy off the coast of Somalia and in the Gulf of Aden, but also to protect the World Food Programme vessels delivering aid to displaced persons in Somalia and AMISOM shipping, EUNAVFOR Atalanta was the last large scale military operation deployed by the EU. Also in 2008, the EU sent an unarmed monitoring mission in Georgia in the aftermath of the Russia-Georgia War in August. The other missions that the EU deployed before 2008 were not necessarily linked to crisis management, but had a post-conflict reconstruction component focused on rule of law and security sector reform (EUJUST LEX Iraq, EUPOL Afghanistan, EU SSR Guinea-Bissau, etc).

The hiatus in operations between 2008 and 2011 was mostly due to the economic crisis, but also to a certain 'intervention fatigue', together with the restructuring of the EU foreign and security policy machinery triggered by the Lisbon Treaty. The creation from scratch of an institution as complex as the European External Action Service was prioritised during the first three years of the new High Representative's mandate to the detriment of operational development of CSDP. The Arab Spring did not break this stalemate: the member states agreed in April 2011 on a military operation to support humanitarian assistance to the people of Libya in the midst of the crisis, but it was never launched. EUTM Somalia – a small-scale military mission based in neighbouring Uganda, which contributes to the training of the Somali security forces loyal to the transitional government, was the only 'proof of life' from CSDP after the launch of EUNAVFOR Atalanta in December 2008.

Since 2012 though, three new missions have been deployed to Africa (all civilian), as part of a comprehensive strategy targeting the Horn of Africa⁶⁶ – the most unstable region on the continent, home to failing or weak states such as Somalia, Sudan and South Sudan. EUCAP NESTOR, EUNAVSEC South Sudan and EUSEC Niger signalled the EU's re-engagement in crisis management.⁶⁷ The latter two are part of the Comprehensive Strategy for Security and Development in the Sahel recently adopted by the European External Action Service.⁶⁸ In parallel, the extension of EUNAVFOR Atalanta's mandate and area of operation (to include internal waters together with coastal territory, thus allowing for strikes against pirates onshore too)⁶⁹ illustrated the EU's commitment to continue fighting piracy in the West Indian Ocean/Gulf of Aden. The complementarities and linkages between EUNAVFOR Atalanta, EUTM Somalia and EUCAP Nestor are meant to embody the EU's integrated approach to

⁶⁶ The Horn of Africa is defined as the countries belonging to the Inter-Governmental Authority for Development (IGAD) – Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan and Uganda. Council of the European Union, 'Horn of Africa – Council Conclusions', 3124th Foreign Affairs Council meeting (14 November 2011), available at <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/126052.pdf>.

⁶⁷ G. Faleg and S. Blockmans, 'The EU's re-engagement as a security actor: Fresh start or still sleepwalking?', *CEPS Commentaries* (12 July 2012), at 2, available at <<http://www.ceps.eu/book/eu%E2%80%99s-re-engagement-security-actor-fresh-start-or-still-sleepwalking>>.

⁶⁸ European External Action Service, 'Strategy for Security and Development in the Sahel' (2011), available at <http://www.eeas.europa.eu/africa/docs/sahel_strategy_en.pdf>.

⁶⁹ See G. Faleg and S. Blockmans, *supra* note 67, at 2.

crisis management, based on civil-military coordination,⁷⁰ supposedly enhanced by the Lisbon Treaty.

This revival of CSDP on African soil helped the EU in forging its 'comprehensive approach' to external conflicts and crises, as highlighted by a Joint Communication from the Commission and the High Representative for Foreign Affairs and Security Policy adopted in December 2013. The document acknowledged that: 'the concept of such a comprehensive approach is not new as such. It has already been successfully applied as the organizing principle for EU action in many cases in recent years, for example, in the Horn of Africa, the Sahel and the Great Lakes. However, the ideas and principles governing the comprehensive approach have yet to become, systematically, the guiding principles for EU external action across all areas, in particular in relation to conflict prevention and crisis resolution'.⁷¹ The Joint Communication then set out a number of concrete steps to be taken towards 'an increasingly comprehensive approach' in EU external policies and action and clarified that it refers 'not only to the joined-up deployment of EU instruments and resources, but also to the shared responsibility of EU-level actors and Member States'.⁷² In May 2014 the Foreign Affairs Council issued Conclusions on the Comprehensive Approach, after examining the developments triggered by the Joint Communication and the regional strategies for the Horn of Africa and Sahel, as useful models for engagement in other policy areas or regions (such as the Gulf of Guinea).⁷³ Human security was not mentioned at all. The comprehensive approach was thus established within the EU as the main conceptual and methodological tool for conflict prevention, crisis management and tackling the issue of fragile states around the world.

Consequently, it seems that human security (as the essence of sustainable peace) is at present far from becoming the core of CSDP operations or EU rhetoric on its deployments. It is important though to highlight all opportunities for the EU to conduct its crisis management operations based on more than just security motivations. The European Parliament undertook a review of CSDP missions in 2010 and suggested, among other things, avenues for not only improving their effectiveness and efficiency, but also for moving a step further in some cases.

In the 'Report on the development of CSDP following the entry into force of the Lisbon Treaty', the European Parliament showed that in the DR Congo⁷⁴

⁷⁰ *Ibid.*, at 3.

⁷¹ European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament and the Council – The EU's comprehensive approach to external conflict and crises' (11 December 2013), at 2, available at <http://www.eeas.europa.eu/statements/docs/2013/131211_03_en.pdf>.

⁷² *Ibid.*, at 3.

⁷³ Council of the European Union, 'Main results of the Council – Press Release 3312th Council meeting Foreign Affairs', 9542/14 (12 May 2014), at 18, available at <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142563.pdf>.

⁷⁴ In an article called 'A force for good? The European Union and human security in the Democratic Republic of Congo' Mary Martin analysed the EU's military mission EUFOR RDC deployed in 2006 and showed that 'it has been the most striking example so far of the EU using human security as a methodology for its external engagement, and this experience is expected

for example, where several EU missions have been sent and had 'limited positive effects on target groups if any', it might be the case to revamp them so as to start playing an enhanced role against sexual violence and increase their efficiency.⁷⁵ As a police mission aimed at reforming the Congolese police and improving its interaction with the justice sector, EUPOL DR Congo had a component of providing technical expertise on cross-cutting issues such as human rights, gender, protecting children in armed conflict and combating impunity for sexual violence.⁷⁶ Sexual violence is usually one of the main features of conflict and even post-conflict environments, the containment and elimination of which would really make a difference for the people living there. DR Congo is a case in point, as this phenomenon has proved pervasive and of an unprecedented scale for the last fifteen years.⁷⁷ In fact, it has become a weapon of war.⁷⁸ Tasking the EU mission with more than assisting the local authorities in fighting sexual violence in DR Congo would thus have been a significant addition, yet the mission ended in September 2014 without such a development of its mandate.

In the quest for efficiency, the achievements of CSDP missions should not be evaluated only according to the criterion of having fulfilled their mandate. As the latter are usually quite limited in scope, even for civilian missions, not to mention those for military operations – achieving the stated goals is most often possible. But another way to look at EU missions and operations – especially from the perspective of human security – is to try to assess their impact in the daily lives of the people in the countries where the EU decided to intervene. In this particular case, an enhanced role of the EU mission against sexual violence in DR Congo – if done right – might have been a way to put into practice the human security concept and to show that EU engagement on the ground can actually make a difference in that respect.

The UN Secretary General's Report regarding sexual violence in conflict painted a grim picture of DR Congo, where not only members of various armed groups use sexual violence against women as retaliation or a modality to instil fear in the local communities, but former elements of these armed groups that have been included in the Congolese Police and the Congolese Army respec-

to establish a framework for future military and civilian assistance to Africa'. M. Martin, 'A force for good? The European Union and human security in the Democratic Republic of Congo', in 16 *African Security Review* 2007, 89-99, at 64.

⁷⁵ European Parliament, 'Report on the development of the common security and defence policy following the entry into force of the Lisbon Treaty' (29 April 2011), at 18, available at <<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0166&language=EN>>.

⁷⁶ Council of the European Union, 'EU Police Mission for the DRC (EUPOL RD Congo)', *Common Security and Defence Factsheet* (February 2014), available at <http://www.eeas.europa.eu/csdp/missions-and-operations/eupol-rd-congo/pdf/factsheet_eupol_rd_congo_en.pdf>.

⁷⁷ CNN, 'UNICEF reports sexual violence in the Congo region' (6 November 2010), available at <<http://edition.cnn.com/2010/WORLD/africa/11/06/angola.congo.sexual.violence/index.html?iref=allsearch>>. According to CNN, UN representatives have named the Democratic Republic of Congo "the rape capital of the world" in 2009.

⁷⁸ *Ibid.*

tively also get involved in such episodes.⁷⁹ This requires careful vetting of army and police in order to make sure that such radical elements do not get to serve under the government's authority. The role of the EU mission hence became even more important, as police mentoring and training will be essential in trying to uproot these practices. At the same time, the UN Report highlighted that 'as long as the soldiers are irregularly or inadequately paid, they will be more prone to committing exactions against communities'.⁸⁰ And that is something any EU mission cannot tackle on its own, it having to do more with a long term strategy to stabilise the country so that adequate funding of public services and state institutions is ensured. Here is where the comprehensive approach would prove its worth as a methodology, by ensuring that EU financial assistance helps the long-term functioning of the institutions targeted by security sector reform undertaken through the CSDP missions.

This is only an example of how the EU could have tried to boost CSDP's human security agenda. The deployment record of the CSDP in the last few years illustrates a preference for Africa, as the former trouble spot represented by the Western Balkans shifted towards stabilisation. At the same time, the EU did not shy away from deploying to places as exotic as Indonesia, while its participation in Afghanistan or the Middle East came as an effort to share the burden with the United States. A singular presence in the former Soviet space – in Georgia and at the border between Ukraine and the Republic of Moldova – the EU was tolerated by Russia to send civilian missions in its main area of interest, but the competition for the Eastern neighbourhood has recently become more intense.⁸¹

The predominance of civilian missions is a pattern which did not change in time. At present, the combination of civilian and military elements in an integrated approach represents the EU's comparative advantage among security providers and it should eventually become the defining element of CSDP. From now on, it is the complexity of the missions that will determine whether the Union can make a difference through crisis management and if human security could serve as a refreshing narrative for the EU's endeavours in the security realm. As Mary Martin previously argued, 'in the EU, a proliferation of different, and sometimes competing policy descriptors such as crisis management, conflict prevention, civil-military cooperation and rapid response underline the incoherence and fragmentation of its external action'.⁸² Now that the post-Lisbon developments favour an increase in coherence after the removal of pillar structure, the case could be made again for 'an explicit commitment to

⁷⁹ United Nations, 'Sexual Violence in Conflict', *Report by the Secretary General* (14 March 2013), available at <http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/149>.

⁸⁰ *Ibid.*

⁸¹ In the Republic of Moldova progress towards aligning to EU political standards is punished by Russia with economic measures, while in Ukraine the situation became dramatic after former President Yanukovic refused to forge closer ties with the EU, he was deposed and then Russia annexed Crimea and started supporting the separatist movements in the Eastern part of the country.

⁸² See M. Martin, *supra* note 74, at 70.

a human security approach [which] could serve as an effective organising frame and mindmap⁸³ of EU external assistance.

CONCLUSION

Crisis management and conflict resolution have never been easy, less so in the aftermath of the Cold War, when the increasing number and complexity of conflicts and crises around the world required the international community to act with determination and a renewed set of tools. The European Union was a latecomer in this field, but its political ambitions and security concerns, together with the geographic proximity to conflict areas, prompted it to try to manage them. Endowed with a unique set of instruments, the EU seemed well placed to undertake such a difficult task. The operational development of its security and defence policy enabled the EU to deploy crisis management missions on three different continents, though the majority of them were limited in size and scope. In parallel, the Commission expanded its set of instruments for dealing with instability, from development cooperation to support for security sector reform, based on the belief that external assistance needs to address the root causes of conflicts.

Gradually, the real issue became that of using all available instruments and, what is more important, to use them in a coordinated and timely manner. Using them all when tackling a conflict or a crisis would indicate a special interest of the EU in the respective country or region, but also the existence of a coherent policy, which the EU has recently begun to conceptualise as the 'comprehensive approach'.⁸⁴ This enables the EU to 'enhance its added value'⁸⁵ on the international stage, as it translates into a holistic view of potential crises and threats, accompanied by a wide range of instruments at its disposal for addressing them. However, the comprehensive approach seems to be more of a methodology than a philosophy underpinning EU external action in general. As far as CSDP crisis management operations are concerned, they need to be integrated in a wider policy framework in order to be successful. In addition to this, they should be underpinned by a distinct philosophy helping the EU to set and communicate its goals more clearly.⁸⁶ As the quest for a unifying narrative for

⁸³ Ibid.

⁸⁴ It involves 'the mobilisation of the entire range of instruments available to the Union to address the full cycle of crisis prevention, response and recovery', according to L. Barry, 'European Security in the 21st Century: The EU's Comprehensive Approach', the Institute of International and European Affairs (12 July 2012), at 1, available at <<http://www.iea.com/publications/european-security-in-the-21st-century-the-eus-comprehensive-approach>>.

⁸⁵ Ibid.

⁸⁶ 'Maintaining public support for our global engagement is fundamental. In modern democracies, where media and public opinion are crucial to shaping policy, popular commitment is essential to sustaining our commitments abroad. We deploy police, judicial experts and soldiers in unstable zones around the world. There is an onus on government, parliaments and EU institutions to communicate how this contributes to security at home'. See the 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', *supra* note 16, at 18.

the EU security policy and crisis management operations was overshadowed by the need to develop capabilities and invest more in defence at the European Council in December 2013, the Member States seemed to have moved on to more pragmatic priorities. For now, the comprehensive approach remains the name of the game and any subsequent attempts of conceptual clarification as to whether or how the EU 'does' human security will be left to the new High Representative and maybe the European Commission, if undertaken at all.

THE EUROPEAN UNION AND THE INTERNATIONAL COMMUNITY

Hannes Peltonen

1. INTRODUCTION¹

To give three examples, the international community is called upon to ensure human security, to act regarding climate change, and to re-think global economy and finance. But what is the international community? Which actors compose it? How does it differ from such other central International Relations concepts as ‘international system’ and ‘international society’? Why is this of importance to the European Union (EU)?

Before proceeding it is useful to first recall that concepts and conceptual distinctions are of great importance in their own right as, for instance, any good lawyer knows. It does make a difference whether at stake is ‘murder’ or ‘manslaughter’, even though the most important fact is the same in both: a dead body. This small example shows, how concepts ‘mediate and structure our experience of the world (apprehension) and our reflections on that experience (comprehension)’.² The example should also drive home the point that our languages do not simply mirror pre-existing structures and relations. Instead, they structure reality.³ Searle has gone even as far as to argue that all of social reality is constructed with the help of concepts and conceptual distinctions.⁴

Second, the distinctions between ‘international system’, ‘international society’, and ‘international community’ have been of interest at least in the field of International Relations (IR). The international system is usually understood in Waltzian terms: it is ‘composed of a structure and of interacting units’ – namely states – where ‘structure is defined by the arrangement of its parts’.⁵ In the contemporary world, *the* international system is understood as a reference to the historical European international system writ global due to European ex-

¹ The author would like to thank Aaron Matta, the anonymous reviewers, and the editorial team for their comments and suggestions. The author would also like to thank Juha Perttula and the University of Lapland, Finland, as this work makes use of some of the research the author conducted during his earlier employment there.

² J. W. Davis, *Terms of inquiry: On the theory and practice of political science* (Baltimore: Johns Hopkins University Press 2005), at 11.

³ This does not imply a denial of materiality and its relevance, also evident in the example.

⁴ J. R. Searle, *Making the Social World: The Structure of Human Civilization* (Oxford: Oxford University Press 2011). In a nutshell, his argument is that all of social reality is constructed through status function declarations, which in their simplest form are of the following kind: X counts as Y in context C.

⁵ K. Neal Waltz (ed.), *Theory of international politics* (Reading, MA: Addison-Wesley 2010), 79-80. For another ‘mechanistic’ understanding, see also A. Wolfers, *Discord and collaboration: Essays on international politics* (Baltimore: Johns Hopkins University Press 1962).

pansion.⁶ In contrast, the international society, a central English School concept, differs from the international system. Hedley Bull has argued that an international system is transformed into an international society in the presence of three elementary goals: some protection from violence, some guarantee that promises and agreements are kept, and an arrangement of property rights.⁷ Here, of importance is for instance a shared identity, 'we, the sovereigns' among members of the international society as opposed to, say, the 'barbarians' or the Other.⁸ A further distinction has been made between 'society' and 'community'. Famously in sociology, Tönnies distinguished between *Gesellschaft* (society) and *Gemeinschaft* (community).⁹ This distinction between a 'contractual' society and a 'familial' community, which is usually exemplified with a reference to clans and tribes, has influenced also a number of older and more recent (IR) discussions.¹⁰ For instance, the EU and the North Atlantic are considered examples of international communities due to the strong shared identities or a common ethos prevalent among their members.

Here, though, one perceives a discord between the notion that concepts structure and construct social reality and the common distinctions prevalent in these discussions. It seems that the IR distinctions rely on an understanding of concepts that treat concepts as a kind of reference to something 'out there', instead of considering that our concepts do not mirror reality, but that they are part of constructing it. For example calling the EU a subglobal international community is not (just) a statement of fact, but part of constructing that statement as a fact.¹¹

With these thoughts in mind, this paper proposes an alternative understanding of the concept 'international community' and explores its relevance for the EU.¹² My suggestion is that the term 'international community' need not refer to some pre-existing collectivity 'out there', but (at least at times) its use aims to establish the very collectivity to which it is supposed to refer. One benefit of

⁶ R. Koslowski, *Migrants and citizens: Demographic change in the European state system* (Ithaca: Cornell University Press 2000), at 49ff.

⁷ H. Bull and A. Hurrell (eds.), *The Anarchical Society: A study of order in world politics* (New York: Columbia University Press 2002), at 4ff.

⁸ B. Buzan, 'From International System to International Society: Structural Realism and Regime Theory Meet the English School', 47 *International Organization* 1993, 345-48. Consider the different rule sets that applied among European states in their dealings among themselves and between European states and such 'Others' as the indigenous peoples in the New World and Asia. See e.g. W. Grewe, *The Epochs of International Law*, trans. Michael Byers (New York: de Gruyter 2000).

⁹ F. Tönnies, *Community and Civil Society* (Cambridge: Cambridge University Press 2001).

¹⁰ See e.g. K. W. Deutsch *et al.*, 'Political Community and the North Atlantic Area: International Organization in Light of Historical Experience' (Princeton: Princeton University Press 1957); F. Schimmelfennig, 'Goffman Meets IR: Dramaturgical Action in International Community', 12 *International Review of Sociology* 2002; B. Buzan and A. Gonzalez-Pelaez, 'International Community after Iraq', 81 *International Affairs* 2005.

¹¹ Incidentally, 'fact' has its etymological roots in the word '*factum*', literally 'thing done', and '*facere*', 'to do'.

¹² I articulated a general, first version of this proposal in H. Peltonen, 'In or out? International community membership: beliefs, behaviour, contextuality and principles', *Cambridge Review of International Affairs* 2012.

my suggestion is that it bypasses, for instance, such problems as determining which actors share a sufficiently strong identity in order to be counted as a member, because the alternative approach begins by assuming that the membership of the configuration depends more on which actors are relevant in a given context. Thus, while approaches emphasising a common ethos or a shared identity imply relatively static international community membership, my alternative offers an explanation of why the international community's membership may be even radically different, for instance, in a human security context than in a climate change context, even though in both the reference is to *the* international community. In other words, at stake is not the presence of two pre-existing international communities, but the construction of two collectivities within two different contexts.

My argument proceeds in the following order. First, given the focus of this volume, of which this paper is part, I draw from human security and use the responsibility to protect (RtoP) framework as an illustrative example of the role that the international community is supposed to play globally.¹³ Within the RtoP framework, the international community is understood to be vicariously and collectively responsible for atrocities it has not committed. I also refer to the UN Secretary-General's suggestions regarding relevant RtoP actors in order to introduce the idea that 'international community' is not synonymous with 'international society', namely the society of states.

The second section begins by outlining two orthodox approaches to understanding the international community. Such proposals often draw from sociological distinctions, and the resulting understandings of the international community emphasise what is shared by particular actors in a relatively durable fashion, namely identity or ethos. In contrast to these, I introduce and explain my alternative proposal for understanding what the concept 'international community' is and does.

The third section concerns a challenge and opportunities arising from my proposal. The challenge is to know which actors are relevant and therefore members of a given configuration known as the international community within a particular context. This challenge is heightened by time being also a factor, since for instance particular actors may be relevant during the first stages of a humanitarian operation but not during later stages, while some might be highly relevant throughout. The opportunities arise from this challenge for some respectable and legitimate actor or organisation to operate as a coordinator, which in practice would entail also some degree of leadership.

The conclusion summarises my argument that the EU is in a rather unique position in many respects to shape the international community and its responses to the calls for collective global action.

¹³ Note, I refer to RtoP as a framework, but others consider it for example a (nascent) norm or a principle. See e.g. C. G. Badescu and T. G. Weiss, 'Misrepresenting R2P and Advancing Norms: An Alternative Spiral?', 11 *International Studies Perspectives* 2010; H. Peltonen, *International Responsibility and Grave Humanitarian Crises: Collective Provision for Human Security* (New York: Routledge 2013); H. Peltonen, 'Theory and Practice: RtoP According to Alex Bellamy and Martti Antola', 43 *Kosmopolis* 2013.

2. COLLECTIVE RESPONSIBILITY TO PROTECT

In 2005 heads of state and government agreed unanimously to the World Summit Outcome.¹⁴ Part of it is the individual responsibility of each state to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, here known as the four RtoP crimes.¹⁵ Since such responsibilities are included more or less in other treaties and conventions, the responsibility to protect (RtoP) 'does not alter, indeed it reinforces, the legal obligations of Member States.'¹⁶ Yet, some have expressed that RtoP amounts to redefining sovereignty as responsibility, which in turn allegedly challenges traditional 'Westphalian' notions of sovereignty.¹⁷ This, according to the UN Secretary-General, is not the case: RtoP is 'an ally of sovereignty, not an adversary.'¹⁸ He argues that RtoP is about helping states succeed rather than about weakening sovereignty and reacting to state failure.¹⁹ While these matters concerning individual responsibilities of states are significant in many respects, in this paper, though, I focus on RtoP's collective level.

In addition to the individual responsibilities, RtoP entails also collective responsibilities. The international community 'should, as appropriate, encourage and help States to exercise this [individual] responsibility.'²⁰ Moreover, if states fail manifestly in protecting their populations from the four RtoP crimes, the international community has, 'through the United Nations, also [...] the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations.' Note, the reference to both peaceful and forceful humanitarian measures, which is confirmed by another statement in the Document: 'we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis.'²¹

¹⁴ United Nations General Assembly, 'World Summit Outcome' (2005).

¹⁵ *Ibid.*, para. 138.

¹⁶ United Nations General Assembly, 'Implementing the responsibility to protect: Report of the Secretary General' (2009), para. 3.

¹⁷ On the Westphalian myth, see A. Osiander, 'Sovereignty, International Relations, and the Westphalian Myth', 55 *International Organization* 2001. On the alleged challenge, see e.g. E. Newman, 'Intervention – Why, When and How? Written evidence', House of Commons Defence Committee Inquiry (2013). Note also E. C. Luck, 'Sovereignty, Choice, and the Responsibility to Protect', 1 *Global Responsibility to Protect* 2009. Luck argues that reservations to RtoP are not limited to the global South, albeit the reservations regarding sovereignty and the practical implementation of RtoP may differ between states in the North and in the South. According Luck (at 11), 'sources of sovereignty-induced ambivalence – that affecting the North and that affecting the South – were largely addressed in the formulation of RtoP contained in the Outcome Document.'

¹⁸ See United Nations General Assembly, *supra* note 14, para. 10(a).

¹⁹ *Ibid.*, para. 10(a). Note that the Secretary-General affirms RtoP's narrow scope (genocide, war crimes, ethnic cleansing and crimes against humanity), and that attempts to extend it to other calamities would undermine the 2005 consensus

²⁰ The international community should also 'support the United Nations in establishing an early warning capability.'

²¹ United Nations General Assembly, 'World Summit Outcome.' Par. 139. This should not be taken as an indication that RtoP is only about forceful humanitarian intervention, since prevention is central to the RtoP framework.

Note that within the RtoP framework, the international community's collective responsibility to act in cases of manifest individual state failure to protect populations is not due to a transfer of responsibility from that individual state. Rather, the Outcome Document's intent is that the international community has 'an *ongoing*, generic responsibility.'²² One can express this as the international community having an ultimate, albeit vicarious, responsibility to protect populations around the globe from the four RtoP crimes. In other words, the international community is not responsible due to it having committed a wrong, it being indirectly responsible for a wrong committed, or from it having failed to protect particular populations.²³ Such responsibility remains with individual states, within whose borders those populations reside. Rather, the international community is to operate as a 'safety net' exactly because the state primarily responsible is unable or unwilling to protect vulnerable populations, or it is itself the perpetrator of RtoP crimes. This vicarious, collective responsibility of the international community is 'activated' when a given state fails manifestly, because the RtoP framework assigns the international community a responsibility to prevent, stop, or alleviate particular crimes committed by others, not as the primary (initial) actor, but when individual states fail in such endeavours or commit such crimes themselves.

The international community's collective responsibility is highlighted in the UN Secretary-General's proposal to understand RtoP via three pillars.²⁴ Particularly the third pillar concerns collective reactions to manifest failures of individual states.²⁵ The international community's collective responsibility is activated in cases where states refuse international prevention and protection assistance, commit egregious crimes and violations relating to RtoP, and fail to respond to less coercive measures. Through such actions, states challenge the international community to live up to its own responsibilities.²⁶ Especially condemning in such cases is that the state in question has not only failed in its responsibilities, but it also prevents external help, or commits crimes and violations against its population. Central to the international community's range of actions are collective enforcement measures.²⁷ To be legal (and effective), some enforcement measures would require authorisation from the Security Council but not all. Illustrative examples are investigations and fact-finding missions conducted by intergovernmental bodies,²⁸ which might make use of the Secretary-General's office or regional and subregional arrangements.²⁹ Clearly, the EU is one important actor in these senses due to its material and

²² See United Nations General Assembly, *supra* note 14, para. 49 (Emphasis added).

²³ On vicarious responsibility, see e.g. P. Cane, *Responsibility in law and morality* (Oxford: Hart 2002), at 175ff.

²⁴ The Secretary-General has proposed that the RtoP framework should be understood to be composed of three main pillars. The first concerns the protection responsibilities of individual states. The second pillar focuses on international assistance and capacity-building. The third pillar concentrates on timely and decisive responses.

²⁵ See United Nations General Assembly, *supra* note 14.

²⁶ *Ibid.*, para. 56.

²⁷ *Ibid.*, para. 56-7.

²⁸ *Ibid.*, para. 52.

²⁹ *Ibid.*, para. 51.

diplomatic capabilities and existing structures and networks outside the Union. Moreover, the EU (as an autonomous actor) is not a member of the UN Security Council, which could be an important detail in some contexts.

The EU's potential role as part of the international community comes out also in relation to the second pillar suggested by the UN Secretary-General. Mostly, the second pillar relates to 'persuading States to do what they ought to do ... [and to] mutual commitment and an active partnership between the international community and the State.'³⁰ By this is meant 'international assistance and capacity-building' in its various forms, including region-to-region cooperation (possibly facilitated by the UN),³¹ assistance by regional and subregional organisations,³² consent-based preventative military deployment,³³ and development aid.³⁴ The EU has competence in all of these examples, albeit perhaps the EU's (as distinguished from those of some of its members') military deployment capabilities are more limited than the others. The EU is better at such aspects of the second pillar as 'confidential or public suasion, education, training and/or assistance.'³⁵ The continued understanding of the EU as a 'civilian power' already from the 1970s onward and the related 'EU as a normative power', testify to this.³⁶ Furthermore, as hinted at earlier, the EU is not a member of the Security Council (even though some of its members are), which may at times be of important diplomatic significance, for example in peace mediation efforts. Note, however, that while such diverse actors as the transnational civil society and various advocacy groups can and do play significant roles, particularly regarding RtoP preventative efforts, the EU and its actions carry a different kind of weight than for example the previously mentioned non-state actors. As an example, consider the impact the EU may have by linking its trade with pressuring particular actors to reconsider the course of their actions.³⁷

By linking the EU with the international community and the second pillar I have followed the Secretary-General's general interpretation of the international community. The international community is not simply a collection of states – conceptually the latter would be the society of states or the interna-

³⁰ Ibid., para. 28.

³¹ Ibid., para. 37.

³² Ibid., para. 38.

³³ Ibid., para. 42.

³⁴ Ibid., para. 43-4.

³⁵ Ibid., para. 30.

³⁶ For the origins of 'EU as a civilian power', see F. Duchêne, 'Europe's Role in World Peace', in R. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead* (London: Fontana 1972). For a review of 'EU as civilian power', see e.g. J. Orbie, 'Civilian Power Europe: Review of the Original and Current Debates', 41 *Cooperation and Conflict* 2006. For a recent contribution on 'EU as a normative power', see e.g. I. Manners, 'Assessing the decennial, reassessing the global: Understanding European Union normative power in global politics', 48 *Cooperation and Conflict* 2013.

³⁷ At the time of writing it is unclear what concrete impact for instance the EU sanctions have on Russia, but they are undoubtedly more effective than calls by advocacy groups who do not possess similar leverage. For a summary of EU sanctions against Russia, see e.g. European Union, 'EU sanctions against Russia over Ukraine crisis', *European Union Newsroom*, available at <http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm>.

tional society. In terms of the international community, states are not the only relevant actors. The domestic and transnational civil society, individuals, advocacy groups, women's groups, and the private sector play important roles in shaping international responses to crimes and violations relating to RtoP.³⁸ The work done by such non-state actors and by such unique actors as the EU, might be more efficient, if these various actors coordinated their efforts at least to some extent. Such coordination is something in which the EU could use its unique position better.³⁹

3. THE INTERNATIONAL COMMUNITY AS A CONFIGURATION

For some, the international community is synonymous with the international society, or the society of sovereign states.⁴⁰ Accordingly, differences in use are allegedly more due to the users of this concept rather than due to substance. Supposedly journalists and practitioners prefer 'international community', while apparently theorists and scholars use 'international society'.⁴¹ Yet, this is hardly the only appropriate interpretation. As seen above, for example the UN Secretary-General clearly distinguishes between the two concepts in significant ways.

To explain, the concept 'international society' is habitually distinguished from the concept 'international system'. The latter is understood in a minimal sense, as existing between states when there is sufficient interaction, so that the actions of one affect the calculations of others. The international system 'implies no more than a sustained and structured pattern of interaction'.⁴² In contrast, the international society is distinguished from such a minimal condition by being marked 'by dialogue and [...] common rules and institutions for the conduct of their relations, and [the actors, states] recognise their common interest in maintaining these arrangements'.⁴³ The notion of an international society emphasises the presence of common international rules and institutions.⁴⁴ Yet, like with the international system, the usual main actors of the international society are states. The Secretary-General does not deny the importance of states in his reference to the international community, but he does emphasise how other, non-state actors (domestic and transnational civil society, individuals, advocacy groups, women's groups, and the private sector) play important roles in shaping international responses to crimes and violations relating to

³⁸ See United Nations General Assembly, *supra* note 21, para. 59.

³⁹ I forego discussing whether such coordination is a necessary aspect of the international community.

⁴⁰ See e.g. N. J. Wheeler and T. Dunne, 'Good International Citizenship: A Third Way for British Foreign Policy', 74 *International Affairs* 1998, fn. 28.

⁴¹ T. Dunne, 'Sociological Investigations: Instrumental, Legitimist and Coercive Interpretations of International Society', 30 *Millennium* 2001, fn. 21.

⁴² B. Buzan and A. Gonzalez-Pelaez, 'International Community' after Iraq', 81 *International Affairs* 2005, at 33.

⁴³ Hedley Bull and Adam Watson, eds., *The Expansion of International Society* (Oxford: Oxford University Press, 1984), 1.

⁴⁴ Bull, *The Anarchical Society: A study of order in world politics*.

RtoP.⁴⁵ This is sufficient evidence to at least consider that, for the Secretary-General, the international community is not simply synonymous with the international society, and that therefore, the international community referred to in the RtoP framework is not simply the society of sovereign states.

The Secretary-General is not alone in distinguishing between the concepts 'international community' and 'international society'. Generally speaking, among those who make this distinction, one can identify 'those who see the international community as some form of moral collectivity of humankind, which exists as an ethical referent even if not organized in any way, and those who see it as some of agent possessing the capacity for action.'⁴⁶ In the first category fall such understandings as 'the community of international opinion generated by modern communications'⁴⁷ and a Kantian, 'cosmopolitan community of humankind';⁴⁸ a 'moral concept that in turn can shape institutions and inform policy choices.'⁴⁹ Possibly it refers to a 'shared vision of a better world for all people.'⁵⁰ To the extent that this is true, it may refer to something 'virtual,' to a 'potential source of power, to promote common cause or legitimize common action.'⁵¹

Less abstract understandings of the international community consider it to refer to some collectivity with agency. Here, though, there are multiple possibilities. For some, it refers to a particular international organisation, the UN.⁵² For others it concerns a community of national citizenries,⁵³ or the wealthy and developed states, 'notably those in North America and Europe,'⁵⁴ 'essentially the United States and Europe.'⁵⁵ The latter, some argue, is the concept's technical sense, a shorthand reference to 'the United States joined by some allies and clients.'⁵⁶ 'Coalitions of the willing,' some would say.⁵⁷

Before proceeding, three things are worth noting. First, highly abstract uses of the concept 'international community' are not as relevant as more concrete understandings in the present discussion. This is because the role expected from the international community regarding global human security, as illustrated by the responsibilities assigned to it by the World Summit Outcome, are quite concrete. At stake is not simply a vision for a better world for all peoples, although that is part of it, but also an attempt to assign responsibilities and hold accountable particular actors regarding preventative and reactive measures,

⁴⁵ See United Nations General Assembly, *supra* note 14, para. 59.

⁴⁶ See B. Buzan and A. Gonzalez-Pelaez, *supra* note 42, at 32.

⁴⁷ A. Gowers, 'The Power of Two', 132 *Foreign Policy* 2002, at 32.

⁴⁸ R. Jackson, *The Global Covenant: Human Conduct in a World of States* (New York: Oxford University Press 2000), at 341.

⁴⁹ J. Bryan Hehir, 'The limits of loyalty', 132 *Foreign Policy* 2002, at 38.

⁵⁰ K. A. Annan, 'Problems without passports', 132 *Foreign Policy* 2002, at 30.

⁵¹ S. Ogata, 'Guilty parties', 132 *Foreign Policy* 2002, at 40.

⁵² See K. A. Annan, *supra* note 50.

⁵³ See E. G. Jackson, *supra* note 48, at 341.

⁵⁴ A. Appadurai, 'Broken promises', 132 *Foreign Policy* 2002, at 43.

⁵⁵ See A. Gowers, *supra* note 47.

⁵⁶ N. Chomsky, 'The crimes of 'Intcom'', 132 *Foreign Policy* 2002, at 34.

⁵⁷ D. C. Ellis, 'On the Possibility of 'International Community'', 11 *International Studies Review* 2009, at 10.

with respect to the four RtoP crimes. Second, as is evident already in the above examples, the international community is not a formal organisation but both an elusive concept and an indeterminate collectivity. There does not seem to be clear consensus as to which particular actors the concept 'the international community' refers. Third, it seems from the more concrete examples above that behind the use of the concept 'international community', is a reference to some group 'out there', and the question seems to be what makes this group a community, rather than a society or something else. I continue this last thought next.

3.1 Orthodox approaches to the international community

The international community (as conceptually distinct from the international society) has been examined mainly via two foci: we-feeling and common ethos. For instance, the North Atlantic area has been referred to as an example of an international community already by Deutsch and his associates in the 1950s, due to the perceived we-feeling among the relevant states.⁵⁸ This trend has continued more recently in relation to security communities.⁵⁹ In such works, communities are approached via shared identities, which blur a distinction between Self and Other: 'the boundaries of Self and Other [are redefined] so as to constitute a "common in-group identity" or "we-feeling"'.⁶⁰ Such shared identities may evolve through various historical, shared processes ranging from religion and economy to science and law.⁶¹ Here, as an example, one can consider 'the West'. If one compares the West with 'the Rest', one notices shared historical processes and at least a weak we-feeling or a form of identity, which differs for instance from those in Africa, due to colonisation processes among others, even though there are of course differences in 'the West', too.⁶² Note that within the West there are areas which share a deeper we-feeling than the West in general. Equally, it may be that some parts of 'the Rest' are closer to, say, the European group identity than other parts of 'the Rest'.

To an extent, these two main orthodox approaches are quite similar. A focus on common ethos does not seem to differ much from a focus on we-feeling. Yet, some distinctions are evident. Rather than emphasising a shared identity, a common ethos approach draws attention more broadly to shared 'norms, rules, identities, and views of moral conduct'.⁶³ Alternatively, one might say

⁵⁸ Deutsch et al., *Political Community and the North Atlantic Area: International Organization in Light of Historical Experience* (Salt Lake City: Aadvark Global 1954/2006). See also F. Tönnies, *Community and Civil Society* (Cambridge: Cambridge University Press 2001).

⁵⁹ See e.g. E. Adler and M. Barnett, 'Governing Anarchy: A Research Agenda for the Study of Security Communities', 10 *Ethics and International Affairs* 1996; E. Adler and M. Barnett (eds.), *Security Communities* (Cambridge: Cambridge University Press 1998).

⁶⁰ A. Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press 1999), at 338.

⁶¹ See B. Buzan and A. Gonzalez-Pelaez, *supra* note 42, at 37.

⁶² *Ibid.* Also, of course there are differences among 'the Rest'.

⁶³ See D. C. Ellis, *supra* note 56. See also F. Schimmelfennig, 'Goffman Meets IR: Dramaturgical Action in International Community', 12 *International Review of Sociology* 2002.

that the international community has a 'raison d'être, all its own.'⁶⁴ Whether such distinctions are significant is perhaps an empirical question. More certain seems the similar weight given in both approaches to historical processes and interaction in the emergence of international communities. Furthermore, both approaches imply that once evolved, international communities are relatively stable. In turn, this implies that – while there may be more than one international community in the world – a given international community is something 'out there,' or at least a fitting description of a collection of actors and their relations.

The EU would be a candidate for an international community on both accounts. The answer might be clearer if one adopted a common ethos approach, since undoubtedly the EU embodies and promotes shared norms, rules, identities and views of moral conduct among its members. If one were to adopt an approach emphasising a we-feeling or a shared identity, the question would turn to the relative strength of a European identity, as compared with national or other identities, as well as, how such a shared identity could be measured.⁶⁵ Yet, at least two considerations imply that 'the EU as an international community' is not of central importance to the present discussion. First, asking whether the EU is an international community hides more suitable candidate concepts for understanding the EU, such as 'compound republic.'⁶⁶ Second, the EU would at best be a regional international community, and the present discussion is focused on *the* international community as understood with regard to RtoP and global human security.

3.2 An alternative understanding of 'international community'

The approaches outlined above pose challenges to understanding which actual international actors are understood to compose the international community, which is referred to in the World Summit Outcome and in the UN Secretary-General's report. It is difficult to see that there would be anything but an extremely thin shared identity or ethos among all General Assembly members, which most likely would not amount to much beyond the notion of 'we, the sovereigns'.⁶⁷ Moreover, if one adopts the Secretary-General's understanding of the international community membership, it is even more difficult to see a shared identity and ethos among such diverse actors. It might be possible, if one were to restrict for example one's understanding of a common ethos to

⁶⁴ See D. C. Ellis, *supra* note 57, at 15.

⁶⁵ One proxy could be voting turnout. If one examines EU Parliament elections, the voting turnout has been below 50% since the 1999 elections, thus questioning the strength of a European *political* identity. Yet, other aspects of a shared European identity are not revealed by such a crude measure.

⁶⁶ See e.g. A. Glencross, 'Federalism, Confederalism and Sovereignty Claims: Understanding the Democracy Game in the EU', *SGIR Conference* (September 2007); A. Glencross, 'A Post-National EU? The Problem of Legitimising the EU without the Nation and National Representation', 59 *Political Studies* 2011.

⁶⁷ A shared 'we, the sovereigns' identity is an indication of an international society, and it is not necessarily sufficient indication of an international community.

some notion of doing good for humankind. Yet, such abstractness would be counterproductive, since the RtoP framework aims to be concrete in assigning responsibilities rather than to be an abstract declaration. Furthermore, if one emphasises the strength of shared identities or ethos as indicators of an international community, Europe and the North Atlantic and especially the EU are strong candidates for *regional* international communities, possibly the strongest candidates in the world. Yet, as already mentioned, at stake is the *global* international community, since RtoP applies worldwide, not to mention other contexts with references to the international community, where it is clearly used with reference to a global concern.

Rather than attempting to answer such questions, which seem *prima facie* rather difficult to answer satisfactorily, I take a step back and consider an alternative understanding of the international community. Much of the discussion above follows from the sociological distinction made at the beginning between a society and a community, with reference to some existing collection of actors. The question was, after all, whether two groups of people merit the use of the same concept, or whether the differences in their organisations justify the use of two different concepts. But one need not begin from such a sociological distinction or from an examination of existing groups. It is possible to begin with the political and to consider that the concept 'international community' need not refer to any group in relatively stable existence. Instead, we can consider that the use of this concept is a form of speech act, meant to bind various actors together for particular purposes within a given context. In other words, rather than referring to some existing group that share an ethos or a common identity, my alternative approach to understanding the concept of 'international community' considers not an existing group of actors, which already share something, but a *potential* configuration of actors that *should* exist. To put it differently, the use of this concept is not simply a reference to something 'out there'. Its use aims to constitute the very thing to which it refers.⁶⁸

In this alternative view, the World Summit Outcome does not refer to some existing international community 'out there', but it aims to establish both the collective vicarious responsibility to ensure at least minimal global human security *and* the collectivity holding it. Yet, we need not think that once brought to existence, this collectivity remains relatively stable. In contrast, we could consider that the international community is brought into existence anew in each relevant context, on a case-by-case basis, thus allowing for instance its membership to vary from case to case. In this second sense, a grouping of actors would constitute the international community within a particular context, but the actors composing that group need not be consistently always the same from one context to another. This is in line with paragraph 139 of the Outcome document, which states that the international community is prepared to take collective action on a case-by-case basis. If action is to be taken on such basis,

⁶⁸ For a more detailed account, see Peltonen, 'In or out? International community membership: beliefs, behaviour, contextuality and principles', available at <<http://www.tandfonline.com/doi/pdf/10.1080/09557571.2012.684669>>.

it is possible to consider that the group of actors taking it is also determined on a case-by-case basis.

Thus, contrary to the orthodox approaches, the proposal put forward here is that the international community or its membership is not determined a priori on the basis of a common identity or ethos, but on the basis of contextual relevance and requirements as determined by the case at hand. To that extent, then, the concept 'international community' is not a reference to some existing group but a means of bringing together configurations of various actors for particular purposes on a case-by-case basis.

In this paper I have used RtoP as my foil, and therefore it seems appropriate to exemplify what I mean with an RtoP example. Consider Security Council Resolution 1973 on Libya, usually understood as a direct reference to RtoP.⁶⁹ To keep the example short and to the point; the international community acted as a result of this particular resolution, and the international community used force to protect Libyan populations,⁷⁰ but the actors, which authorised the use of force, differ from those who actually used force in Libya. Both of these groups of actors differ from the much wider group who may be said to have failed in prevention, which is part of RtoP. Moreover, the group of actors, who ought to have been part of rebuilding the Libyan state and society, had external intervention and reached its goals, would again differ from the previous groupings, as does the group of actors who are and should be part of contemporary international assistance and capacity building. In all of these phases – prevention, reaction and rebuilding – the international community is assigned some responsibility (and therefore also at least some authority) in the World Summit Outcome. Yet, if we look at the actors composing the international community in each of these phases, we either have different international communities or, better in accordance my proposal in this paper, the concept 'international community' operates to form the group for a particular purpose and in a particular context. Some of the actors might be the same in each phase, but others may be relevant in only one or two of the phases. In this sense, the concept 'international community' is a means of bringing about a configuration of relevant actors on a case-by-case, and even phase-by-phase basis, while simultaneously maintaining the authority and responsibilities given to such a collectivity.

Furthermore, it is relatively easy to see, how a change of context would also alter the relevant actors forming the international community. Consider, instead of the RtoP, the global financial situation or climate change. Since some international actors are so prominent in various global issues, they would be relevant to any configuration deemed responsible for finding solutions to human security, global finance, or climate change. Yet, there are numerous actors who would be relevant as 'members of the international community' in one context but not in the other two contexts. To exemplify, the United States and the EU (or many if not most of its individual members) would be relevant to all three

⁶⁹ United Nations Security Council, 'Security Council Resolution Number 1973 of March 17 2011' (2011).

⁷⁰ Naturally the case is more complex than presented here, but details have been sacrificed for clarity of illustration.

global themes. Yet, for instance Saudi Arabia is relevant if considering global finance and climate change, and India and China are especially relevant if considering climate change and global finance, whereas China would be most relevant due to its permanent member status, if for example humanitarian intervention was proposed at the Security Council. If one considers the context of human security, such non-governmental organisations as the Red Cross are highly relevant, but they would be somewhat odd additions within the contexts of global finance and climate change.⁷¹ As these illustrations hope to show, my proposed alternative understanding of the international community explains why, at times, its membership may differ rather radically without the different membership indicating a different international community.

4. THE EU AND CONFIGURING THE INTERNATIONAL COMMUNITY

The discussion so far has applicability for the EU regarding global human security. To return to my primary example in this paper, RtoP, the UN Secretary-General has emphasised the different actions that members of the international community ought to take in order to ensure that the collective responsibility to protect populations from grave human insecurity is fulfilled. Particularly the second pillar in his approach deals with the active partnership between the international community and individual states. To recall, the Secretary-General understands the international community to be composed of not just states and their organisations, but also of such actors as the domestic and transnational civil society, individuals, advocacy groups, women's groups and the private sector. If one were to understand the international community in the orthodox manner, one would need to find a common ethos or some kind of a common identity shared by the various actors mentioned by the UN Secretary-General. Yet, in all likelihood, such shared ethos or identity would be rather thin, quite abstract, or non-existent.

In contrast, if one were to adopt the alternative proposal, presented in this paper, to understanding the international community as a context-dependent configuration, one does not need to find a shared identity or ethos when determining membership. Instead, one ought to begin with the tasks and their requirements, and then move on to considering which actors could contribute constructively.

Note here, though, that constructive contribution does not refer only to like-minded actors (colloquially one might say 'yes-men'), since criticism and a system of checks-and-balances is needed in any collective project. The important aspect is therefore *not* to simply look for those who share the same ethos or identity – the very opposite of what one would do if one used the orthodox approaches! – but for those who can and should contribute to solving the task at hand, even if by providing a critical voice to deliberations. This clearly requires one to leave behind traditional notions of who are the relevant actors simply

⁷¹ Possibly the Red Cross would not be totally irrelevant, but I hope the gist of the example is conveyed.

on the basis of status, and to that extent it may be challenging. Yet, as we see every day at least in the field of human security, there are numerous varied actors who are contributing to improving human life and health globally – and many of these actors hold no traditional status as relevant actors in international politics.

This brings me to the double opportunity for the EU which is provided by re-thinking the international community. The dynamic understanding of the international community is challenging, because it implies fluidity. Yet, the same dynamism implies that one need not be 'stuck' with the same actors from the beginning until the end. Thus, one needs coordination and leadership, first of all, in establishing a given configuration as the international community within a particular context and, second, in ensuring that the membership remains relevant throughout the process and collective action. For instance, the beginning of a humanitarian RtoP operation requires different kinds of actors as later stages. Yet, it is not self-evident who decides, and how, which actors are relevant in each stage, and this, I suggest, is an opportunity for the EU.

I have argued that the international community has certain collective responsibilities, some of which are determined on a case-by-case basis. I have also argued that the international community itself is best understood as a context-dependent configuration of actors. These two points open a need for some respectable and appropriate actor or organisation to play the role of a coordinator and to assist in configuring which actors are to form the international community within particular contexts. While many might look at the United Nations or the United States as the appropriate actor or organisation, I would like to suggest that the EU is a unique organisation for this position. It wields more legitimacy and normative power than the United States in the eyes of many, and it is more efficient than the United Nations. The EU has connections either directly or indirectly with other relevant international organisations – not to mention the networks which individual EU members hold. Moreover, based within the EU are a number of those various actors that the Secretary-General mentioned as relevant to RtoP: the domestic and transnational civil society, individuals, advocacy groups, and women's groups. These diverse actors may contribute directly to RtoP operations, but the EU could channel their efforts by helping in coordinating them. Moreover, these diverse non-state actors within the EU could operate as a system of checks-and-balances on the EU itself. The existence of such a system would enhance the EU's legitimacy in its coordinator role. Furthermore, by taking the role of a coordinator, the EU would ensure its relevance in all cases in which calls are made to the international community. At the same time, the EU could legitimately reduce its other roles and contributions, since it would already be contributing in a highly significant manner by operating as a coordinator. One should note, though, that taking on a coordinator role would also entail accountability, since in cases of failure many would turn their eyes on whichever actor was responsible for the coordination of diverse efforts.

5. CONCLUSION

This paper aimed to understand what is meant by the concept 'international community' regarding global human security and the responsibility to protect, and why such a question might be of relevance to the EU. After having outlined the collective responsibility to protect and the international community's roles present in the World Summit Outcome document, I suggested that the EU's potential role as part of the international community comes out best in relation to RtoP's second pillar, namely international assistance and capacity-building.

As a second step, I reviewed orthodox understandings of the concept 'international community' as distinguished from the concept 'international society'. My argument was that such orthodox approaches, which focus either on a shared identity or a common ethos, appear to consider that the concept 'international community' refers to some collectivity 'out there'. Instead, in my own proposed understanding of how this particular concept functions I emphasised that the concept 'international community' is not a reference to an existing group of actors, who share something, but part of the act of constituting the group in the first place.

This led me to my third step; the EU is a unique actor to operate as the kind of coordinator implied by my fluid understanding of the international community. If indeed the international community is best understood as a context-dependent configuration, at least with regard to global human security, there is a need for some respectable actor to take the role of a coordinator, whose task would be the identification of appropriate and relevant actors to 'be' the international community within a given context and the oversight of ensuring that the 'membership' remains relevant throughout the different stages of collective action. Given its normative power, its capabilities and networks as well as its quite autonomous standing from its members, at least on a number of human security issues, the EU would be a strong candidate for playing this role. Taking it on would allow the EU to maintain that it is fulfilling an important part of the collective responsibilities assigned to the international community – thus providing justifications for taking on less of other aspects of those collective responsibilities – but it would also entail a certain risk. The coordinator role would imply high levels of accountability, since success or failure in a given case of collective action could be determined by the coordination of efforts. It is, however, a risk worth taking for the EU, particularly since institutionally speaking, the EU has decades of experience in coordinating collective action by state and non-state actors.

This paper's focus has been on human security. Between the lines it is possible to notice that the assumption has been that human security concerns positive and negative peace. Yet, it ought to be clear that global human security cannot be isolated from other global concerns. To name two examples, global finance and climate change are not traditional human security concerns, but their interconnections are evident. Poorly performing or highly unequally functioning global financial system poses serious human security concerns around the globe. Similarly, it is not a question whether climate change will

have human security implications, but how and where human security will be (more) threatened as a result of our warming planet.

As a final note, I would like to suggest that in addition to being potentially a significant coordinator regarding the international community and human security, the EU could play a similar role with regard to global finance and climate change. These three themes are interconnected and each of them requires collective action by the international community. Yet, the international community in each theme differs from the others in its membership. The EU, however, would probably be part of all such configurations of actors. In global finance, the EU is for instance a central actor in financial governance.⁷² In relation to climate change, the EU is home to high levels of development but with per capita greenhouse gas emission of approximately half of those of the USA.⁷³ Especially the latter fact gives the EU significant normative weight in ongoing discussions regarding climate change and our global responses to it. In turn, this illustrates the EU's capabilities to promote principles, values and best practices are some of the best in the world, and in so doing, the EU speaks with 28 voices.

⁷² See e.g. D. Mügge (ed.), *Europe and the Governance of Global Finance* (Oxford: Oxford University Press 2014). Moreover, a recent IMF warning that the European banking system poses a threat to global financial stability drives home the point from the opposite perspective. See P. Inmann, 'IMF warns Europe's banking system poses threat to global financial stability', *The Guardian*, 9 April 2014.

⁷³ See e.g. J. Nolt, 'Greenhouse gas emission and the domination of posterity', D. G. Arnold (ed.), *The Ethics of Global Climate Change* (Cambridge: Cambridge University Press 2011).