

IFP MEDIATION CLUSTER

---

# THE EUROPEAN UNION, TRANSITIONAL JUSTICE AND PEACE MEDIATION

Laura Davis

July 2010



INITIATIVE FOR PEACEBUILDING



THIS INITIATIVE IS FUNDED  
BY THE EUROPEAN UNION

## ABOUT IFP

The Initiative for Peacebuilding (IfP) is a consortium led by International Alert and funded by the European Commission. IfP draws together the complementary geographic and thematic expertise of 10 civil society organisations (and their networks) with offices across the EU and in conflict-affected countries. Its aim is to develop and harness international knowledge and expertise in the field of conflict prevention and peacebuilding to ensure that all stakeholders, including EU institutions, can access strong independent analysis in order to facilitate better informed and more evidence-based policy decisions.

This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of IfP/ICTJ and can under no circumstances be regarded as reflecting the position of the European Union. To learn more, visit [www.initiativeforpeacebuilding.eu](http://www.initiativeforpeacebuilding.eu)

## ABOUT ICTJ

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

Cover image: © Mitchell, South Dakota, United States. A corn mosaic of a handshake. Photo by Mykl Roventine  
© Initiative for Peacebuilding 2010

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.

# THE EUROPEAN UNION, TRANSITIONAL JUSTICE AND PEACE MEDIATION

## AUTHOR PROFILE

### **Laura Davis**

Laura Davis is a consultant and senior fellow at MediatEUr: the European Forum for Dialogue and Mediation. Previously, she was the justice expert at the Belgian Development Agency (BTC). Between 2006 and 2009, she worked for the International Center for Transitional Justice (ICTJ) in Brussels, latterly as senior adviser to the ICTJ's Europe and Africa programmes. In 2007-2008, she was senior associate based in Kinshasa where she ran the ICTJ's Democratic Republic of Congo (DRC) programme.

Before joining ICTJ, she worked in the conflict prevention and peacebuilding sector. She was co-chair of the Human Rights and Democracy Network of NGOs and a member of the steering committee of the European Peacebuilding Liaison Office (EPLO). She has published on European integration, transitional justice and peacebuilding, and the DRC. She holds degrees in modern history from the University of Oxford, and is studying for a PhD at the University of Ghent.

## ACKNOWLEDGMENTS

I am grateful to all those who agreed to be interviewed and to share their insights for this paper, and to the European Commission-funded Initiative for Peacebuilding for its financial support to ICTJ for this project. I would like to thank Roger Duthie, Canan Gündüz, Priscilla Hayner, Antje Herrberg, Lisa Magarrell, Hanny Megally and Jessica Santos for their comments on the draft.

# CONTENTS

Introduction	7
Definitions and scope	8
The EU's policy framework	10
The EU, peace and justice	13
EU foreign policy	13
A comprehensive approach to justice and peacebuilding	14
On the ground	15
Peace and justice support	15
Conclusions and recommendations	16
Annex	18

## ACRONYMS

<b>AU</b>	African Union
<b>BiH</b>	Bosnia and Herzegovina
<b>CFSP</b>	Common Foreign and Security Policy
<b>CSDP</b>	Common Security and Defence Policy
<b>DDR</b>	Disarmament, demobilisation and reintegration
<b>DRC</b>	The Democratic Republic of Congo
<b>EAS</b>	External Action Service
<b>EC</b>	European Commission
<b>ESS</b>	European Security Strategy
<b>EP</b>	European Parliament
<b>EU</b>	European Union
<b>EUSR</b>	European Union Special Representative
<b>ICC</b>	International Criminal Court
<b>ICTJ</b>	International Center for Transitional Justice
<b>ICTY</b>	International Criminal Tribunal for the Former Yugoslavia
<b>IfS</b>	Instrument for Stability
<b>IHL</b>	International Humanitarian Law
<b>MEP</b>	Member of the European Parliament
<b>MSG</b>	Mediation Support Group
<b>SSR</b>	Security sector (or system) reform
<b>UNSCR</b>	United Nations Security Council Resolution

## INTRODUCTION AND SCOPE

The European Union is increasingly involved in mediating peace deals around the world. In 2008, the European Security Strategy (ESS) implementation report acknowledged the EU's need to 'expand [its] dialogue and mediation capacities'.<sup>1</sup> As a result, the Concept on Strengthening EU Mediation and Dialogue Capacities was developed and adopted in November 2009, following an initiative by the Swedish presidency.<sup>2</sup> As the EU has long been a major contributor to peacebuilding, crisis management, and development in post-conflict areas, formalising its engagement in mediating peace processes makes sense.

But peace agreements are usually reached in the aftermath of protracted violent conflict in which all sides have committed grave human rights violations and other crimes. The EU has strong commitments to international justice and human rights, so the notion of mediation by EU actors raises crucial questions which go to the heart of the EU's image as a value-based or normative power.<sup>3</sup>

The Concept establishes a small informal mediation support group (MSG) comprising Commission and Council officials to coordinate mediation-related work, and the whole process is to be reviewed by November 2010. Concurrently, institutional reforms following the entry into force of the Lisbon Treaty, and particularly the establishment of the new External Action Service (EAS), are likely to affect future EU mediation support.

As part of the Initiative for Peacebuilding project, ICTJ analysed how justice for human rights violations was handled in four mediation processes in Indonesia (Maluku and Aceh), Nepal and the Democratic Republic of the Congo (DRC).<sup>4</sup> A comparison between these four case studies identified common issues to the four processes. Firstly, it is important to bring questions of justice, gender or security system reform to the table, and mediators may play a key role in this. Despite calls for justice from the public, or from one or more of the parties to the negotiations, mediators do not always prioritise justice issues. Secondly, technical assistance for the mediators and parties in drafting high-quality, clear provisions can help ensure there is no misunderstanding later as to what has been agreed on. Finally, other activities will make important contributions to addressing justice for human rights violations. These may include monitoring human rights during negotiations, international monitoring of implementation of peace agreements, the engagement of civil society in all parts of the peace process, and post-conflict institutional reform. A range of actors beyond the mediators and their advisers will be engaged in these activities; the EU will often be one such actor.<sup>5</sup>

This paper complements this IfP research by assessing existing policy guidance in this area and the "peace and justice" debate within the EU institutions – the EU Council Secretariat, the European Commission (EC) and the European Parliament (EP). It analyses existing EU capacities for promoting justice for human rights

1 *Report on the implementation of the European Security Strategy - Providing security in a changing world*. Brussels 11 December 2008 Document S407/8 p 9. EU High Representative Javier Solana was responsible for drafting this report, which was approved by the European Council in Brussels in December 2008.

2 Doc. 15779/09 hereafter "the Concept".

3 'The concept of normative power is an attempt to suggest that not only is the EU constructed on a normative basis, but importantly that this predisposes it to act in a normative way in world politics'. I. Manners (2002). 'Normative power Europe: A contradiction in terms?' *Journal of Common Market Studies* 40/2, p.252, quoted in C. Hill and M. Smith (2005). *International relations and the European Union*, OUP, p.375.

4 S. Cunliffe, E. Riyadi, R. Arwalembun and H. B. Tobi (2009). *Negotiating peace in Indonesia: Prospects for building peace and upholding justice in Maluku and Aceh*. Brussels: Initiative for Peacebuilding; W. Farasat and P. Hayner (2009). *Negotiating peace in Nepal: Implications for justice*. Brussels: Initiative for Peacebuilding; L. Davis (2009). *Small steps, large hurdles: The EU's role in promoting justice in peacemaking in the DRC*. Brussels: Initiative for Peacebuilding. All available at [www.ictj.org](http://www.ictj.org) and [www.initiativeforpeacebuilding.eu](http://www.initiativeforpeacebuilding.eu)

5 L. Davis (forthcoming 2010). *The EU and advancing justice issues in mediation*. Brussels: Initiative for Peacebuilding.

violations in peacemaking, identifies gaps, and recommends ways in which these gaps may be closed. In this way, it seeks to contribute to the processes to develop an EU mediation support capacity and to design the External Action Service.

## DEFINITIONS AND SCOPE

### MEDIATION, PEACE AND JUSTICE, AND TRANSITIONAL JUSTICE

“Mediation” – used here to mean international peace mediation – covers a range of activities within broader peacebuilding processes.<sup>6</sup> This paper focuses on “Track I” mediation: formal engagement by a representative of the European Union in a formal negotiation process between parties in conflict,<sup>7</sup> and specifically, the way in which EU Track I mediators handle justice for human rights violations in peace deals. In the past, Commission officials and European Union Special Representatives (EUSRs) have taken on the role of Track I mediators, and Common Security and Defence Policy (CSDP) missions have been deployed specifically to provide monitoring and/or technical assistance in implementing agreements. In the future, the function of Track I mediator may be taken on by EUSRs, EAS or other officials. This paper makes recommendations for future EU mediators, whatever the new institutional arrangements may be.

The EU does not have a common definition of “transitional justice” despite its support for and engagement in transitional justice processes in Europe and beyond.<sup>8</sup> This paper uses the UN Secretary-General's definition of transitional justice:

‘... the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation...’

‘Transitional justice consists of both judicial and non-judicial mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations. Whatever combination is chosen must be in conformity with international legal standards and obligations’.<sup>9</sup>

Transitional justice approaches can be adopted by societies emerging from violent conflict, authoritarian regimes, or indeed established democracies seeking to address systematic abuse in the past. Within this broader context, this paper examines how provisions for justice for the victims of a conflict may be made at the negotiating table, as an important contribution to durable peace. This may include a commitment to prosecute the worst offenders, or at the very least, the exclusion of amnesty for genocide, crimes against humanity and war crimes from the agreement. But justice is not limited to criminal prosecutions, and a whole range of transitional justice approaches can contribute, including truth commissions, reparations programmes, and reform of public institutions, particularly the security sector. The particular harms suffered by women and children should also be acknowledged.<sup>10</sup>

Including measures to tackle impunity in a peace deal – and ensuring donor support for their implementation – may make a significant contribution to longer-term peace- and state-building programmes. Firstly, transitional justice can contribute to the rule of law by strengthening the legitimacy of public institutions and the processes by which laws are made, including through promoting public participation. Transitional justice can also contribute to changing social norms which in turn strengthen legitimate rule of law and democracy. Transitional justice contributes to public recognition that the abuse suffered by victims was and remains wrong; this recognition can help strengthen inclusive citizenship, enabling the excluded and marginalised more generally to become fully rights-bearing citizens who participate in a common political project.<sup>11</sup> Transitional justice therefore creates

6 A. Herrberg with C. Gündüz and L. Davis (2009). *Engaging the EU in mediation and dialogue: Reflections and recommendations*. Initiative for Peacebuilding, p.12.

7 This “Track I” engagement will likely be supported by other EU interventions directly or indirectly, but these are beyond the scope of this paper. For full discussion of the EU's role in multi-track mediation see Herrberg et al., *Op. cit.*, pp.13-14.

8 This is discussed in detail in L. Davis (2010). *The European Union and transitional justice*. Brussels: Initiative for Peacebuilding.

9 Guidance Note of the Secretary-General (2010). ‘United Nations Approach to Transitional Justice’, p.2.

10 *Ibid.*, p.10.

11 P. de Grieff (2009). ‘Justice and social integration’ in P. de Grieff and R. Duthie (Eds.). *Transitional justice and development: Making connections*. New York: Social Science Research Council, pp.56-62.

opportunities for renegotiating the founding principles of the state. In Afghanistan and the Democratic Republic of Congo, for example, opportunities to address the root causes of the conflict and impunity for abuse and corruption early on in the transition were missed, which has stymied subsequent attempts to reform public institutions and the security sector.<sup>12</sup> These examples suggest that the ways in which legacies of human rights violations are addressed (or not) early in the transition – including therefore at the negotiating table – may have far-reaching implications for the post-conflict settlement.

---

12 S. Kouvo and L. Davis (forthcoming 2010). 'European Union approaches to peace, justice and security in post-conflict contexts: Lessons from Afghanistan and the Democratic Republic of Congo' in European Communities, *Making the difference? What works in response to crises and security threats – the debate continues*.

## THE EU'S POLICY FRAMEWORK

The EU is committed to promoting peace, to the protection of human rights and to the strict observance and the development of international law.<sup>13</sup> One of the objectives of the Union's common foreign and security policy (CFSP) is 'to consolidate and support democracy, the rule of law, human rights and the principles of international law'.<sup>14</sup>

The Concept on Strengthening EU Mediation and Dialogue Capacities states that:

'Issues such as holding human rights violators accountable in justice for their actions, reparations to victims, reintegration of ex-child soldiers, restitution of property and land ... have to be tackled during the peace negotiations and the drafting of peace agreements. Although it is widely acknowledged that it is only through justice to victims that enduring peace can be achieved, there are often tensions between these two objectives, and the EU should consider on a case by case basis how best to support transitional justice mechanisms, including addressing impunity.

EU mediation efforts must be fully in line with and supportive of the principles of international human rights and humanitarian law, and must contribute to fighting impunity for human rights violations'.<sup>15</sup>

This indicates that EU mediators are expected to address human rights violations in peace processes, but gives no indication for how they may do so. Unlike their UN counterparts, EU mediators have no guidelines to follow. The EU has many tools at its disposal to promote justice, human rights and peacebuilding in the post-conflict period, and the Instrument for Stability can disburse funds quickly to support peace conferences and other mediation processes. But it does not have any policy on transitional justice, so how can the EU 'consider on a case by case basis how best to support transitional justice mechanisms', and what policy guidance is there for EU mediators regarding justice for human rights violations?

The EU's commitment to the International Criminal Court (ICC) and the Rome Statute is cited as an important influence on EU mediators.<sup>16</sup> All 27 EU Member States are party to the ICC. The EU is committed to advancing universal support for the Rome Statute and for the Agreement on Privileges and Immunities of the International Criminal Court.<sup>17</sup> It contributes significant funding to the cause as well as political support: EUSRs, for example, play an important role in promoting ratification of the Statute from Moldova to Afghanistan; the EU's Strategy on Central Asia includes the goal of ratifying and implementing the Rome Statute as part of the Rule of Law initiative.<sup>18</sup> The European Parliament is a staunch supporter of the ICC, particularly through the informal grouping 'EP friends of the ICC- Action Group of Parliamentarians'. The EU has an extensive agreement on cooperation and assistance with the ICC that was signed in 2006.<sup>19</sup> This is important, as the Rome Statute provides policy guidance by invoking 'the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes'.<sup>20</sup> It also provides that immunities enjoyed by heads of state, for example, are not a bar to prosecution by the ICC for these crimes.<sup>21</sup> These provisions can be interpreted as rendering amnesties for

13 Treaty on European Union Article 3 paragraphs 1, 5.

14 Treaty on European Union Article 21.2 (b).

15 Doc. 15779/09 II. 4 (d), p.8.

16 L. Davis (2009). *Op. cit.*, p.17.

17 Council Common Position 2003/444/CFSP.

18 European Communities (June 2009). *The European Union and Central Asia: The new partnership in action*, pp.16-17.

19 Agreement between the International Criminal Court and the European Union on cooperation and assistance, ICC-PRES/01-01-06.

20 The Rome Statute of the International Criminal Court (July 2002), Preamble.

21 *Ibid.* Article 27.2.

international crimes irrelevant to ICC prosecutions, even if they are in place nationally. Although the Rome Statute and ICC remain largely untested in this respect, these provisions have nonetheless been understood by EU mediators as the basis of a non-negotiable policy for EU representatives: the EU can never witness or otherwise endorse an amnesty for international crimes.<sup>22</sup>

The cooperation and assistance agreement between the ICC and the EU also sets out the ways in which, in accordance with the EU Treaty, the EU institutions would share information (including EU classified information) with the ICC, cooperate with the prosecutor, waive privileges and immunities, and support training for court personnel.<sup>23</sup> The EU, upon the request of the ICC, shall also provide facilities and services, including 'support at field level'.<sup>24</sup> These commitments have important implications for EU mediators and CSDP missions. Indeed the European Union guidelines on promoting compliance with international humanitarian law (IHL) note:

'The importance of preventing and suppressing violations of IHL by third parties should be considered, where appropriate, in the drafting of mandates of EU crisis-management operations. In appropriate cases this may include collecting information which may be of use for the ICC or in other investigations of war crimes'.<sup>25</sup>

But this potential role that the crisis management operations (CSDP missions) could play is yet to be realised. For example: The ICC has been active in the Democratic Republic of Congo since 2004. Since then, three different CSDP missions have been operational in the DRC,<sup>26</sup> but none of their mandates have included a provision related to the ICC despite the outstanding ICC warrant against Bosco Ntaganda for war crimes.<sup>27</sup> Neither have the mandates of the EUSRs in DRC included cooperation with the ICC. In fact, the only EUSR to have an ICC clause in his mandate is the EUSR for Sudan:

'With regard to human rights, including the rights of children and women, and the fight against impunity in Sudan, [to] follow the situation and maintain regular contacts with the Sudanese authorities, the AU and the UN, in particular with the Office of the High Commissioner for Human Rights, the human rights observers active in the region and the Office of the Prosecutor of the International Criminal Court'.<sup>28</sup>

The only other example of an EUSR mandate that includes reference to international justice is the EUSR in Bosnia and Herzegovina (BiH), who is mandated to 'engage with relevant BiH authorities on their full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY)'.<sup>29</sup> Even so, the comparison is stretched as it relates to post-settlement implementation rather than ongoing peace negotiations.<sup>30</sup>

Beyond commitments to the ICC, EU human rights policies give only limited guidance regarding justice options in peacemaking. EU policy on amnesty is piecemeal: amnesties for certain crimes, such as war crimes, or against certain victims, such as children, are explicitly banned.<sup>31</sup> Despite the EU's political commitment to supporting international justice, there is no central statement of EU policy on amnesty for all three of the core international crimes: genocide, war crimes and crimes against humanity.

22 L. Davis (2009). *Op. cit.*, p.17; Interview B.

23 The agreement applies to the EU institutions, namely the Council of the European Union, the Secretary-General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities and explicitly not including the Member States ICC-PRES/01-01-06. Article 2.1.

24 Agreement between the International Criminal Court and the European Union on cooperation and assistance, ICC-PRES/01-01-06 Article 14.

25 'The European Union guidelines on promoting compliance with international humanitarian law (IHL)'. Doc. 15246/05 III, Operational Guideline B16 (f).

26 EUFOR RD Congo in 2006; EUSEC RD Congo since 2005; and EUPOL RD Congo since 2007. The first CSDP mission, Artemis, in Bunia in 2003 preceded the ICC's engagement in DRC.

27 The ICC issued a sealed warrant for the arrest of Bosco Ntaganda on charges of war crimes in 2006. The warrant was unsealed in 2008. He remains at large.

28 Council Decision 2010/110/CFSP 22 February 2010 Article 3.f.

29 Council Decision 2010/111/CFSP 22 February 2010 Article 3.p.

30 Cooperation with the ICTY is a condition of EU cooperation with the Western Balkans, which perhaps sets an example for EU interventions elsewhere.

31 European Union Guidelines on Promoting Compliance with International Humanitarian Law. (IHL)(2005) Doc. 15246/05); EU Guidelines on Children and Armed Conflict (2008) Doc. 10019/08 II. 7.

More policy guidance can be found indirectly, through EU support for UN measures, such as to the women, peace and security resolutions.<sup>32</sup> According to the European Security Strategy report:

'In many post-conflict zones, we have to address the appalling use of sexual violence as a weapon of intimidation and terror. Effective implementation of UNSCR 1820 on sexual violence in situations of armed conflict is essential'.<sup>33</sup>

The Mediation Support Concept declares, 'Mediation processes must adequately account for sexual violence as well as the need to protect civilians from it and to fight impunity'.<sup>34</sup> UNSCR 1820 – referred to directly in the ESS report – details how sexual violence should be addressed, including:

'Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, *stresses the need for* the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and *calls upon* Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresses* the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation'<sup>35</sup>

UNSCR 1888 of 2009 goes further:

'*Urges* that issues of sexual violence be included in all United Nations sponsored peace negotiation agendas, and *also urges* inclusion of sexual violence issues from the outset of peace processes in such situations, in particular in the areas of pre-ceasefires, humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, DDR and SSR arrangements, vetting of armed and security forces, justice, reparations, and recovery/development'.<sup>36</sup>

These resolutions go beyond seeking to exclude these crimes from amnesties: they demand that justice be done for the victims, and that justice is pursued in a range of ways including vetting and other attempts at tackling impunity. They also emphasise engaging women and women's associations in peace processes, which will also have an impact on the justice and human rights agenda at the table. These UN resolutions, therefore, have multiple implications for EU mediators.

The EU Checklist on children affected by armed conflict refers to more comprehensive processes, including provisions for engaging children in accountability and truth-seeking mechanisms and for protecting child participants in them.<sup>37</sup> But these provisions for child participants in accountability measures further emphasise the lack of policy guidance for addressing human rights violations more generally in the context of peace mediation.

32 The group of UN Security Council Resolutions (UNSCRs) including UNSCR 1325 (2000), UNSCR 1820 (2008), UNSCR 1888 (2009) and UNSCR 1889 (2009).

33 *Report on the implementation of the European Security Strategy – Providing security in a changing world*. Brussels 11 December 2008 Document S407/8, p.8.

34 Doc. 15779/09 II.4.e, p.9.

35 UNSCR 1820 (2008), paragraph 4.

36 UNSCR 1888 (2009), paragraph 17.

37 European Communities (2008). *Checklist on children affected by armed conflict* Doc. 9822/08.

## THE EU, PEACE AND JUSTICE

'For our full potential to be realised, we need to be *more capable, more coherent, more active...*'<sup>38</sup>

This statement from the European Security Strategy report is a familiar refrain. Yet what does this mean for promoting justice in peace mediation and what might be the EU's full potential in this area? In what ways could the EU be more capable, more coherent, more active? This section reviews the "peace and justice" debate within the EU institutions. It draws on interviews conducted by the author between January and March 2010 in Brussels with current and former officials from the EU Council Secretariat, the European Commission, the European Parliament and expert external analysts.

### EU FOREIGN POLICY

The challenge of a unified foreign policy will always affect the EU's ability both to intervene in peacemaking, and to promote justice issues as part of this approach. In Afghanistan, where arguably the EU's presence is less visible than that of some Member States, EU officials spent the first two years reconciling different Member-State viewpoints and policy approaches to the situation.<sup>39</sup> Factors other than a common approach to a conflict may also affect direct EU engagement: where one party to the conflict is an EU Member State, and the second is not, EU engagement would be inappropriate, according to one interviewee.<sup>40</sup> In some cases, where there are simply too many actors already involved, the EU would bring more added value through indirect rather than direct engagement.<sup>41</sup>

The European Commission is yet to engage in promoting justice for human rights violations in peace processes. The Instrument for Stability (IfS) is an important tool for the EC in peace processes as it has a fast and flexible financing mechanism. Through the IfS, the EC has supported numerous short- to medium-term mediation interventions by third parties, including interventions initiated by the Commission.<sup>42</sup> It has also financed transitional justice mechanisms and processes, through a €12 million transitional justice facility.<sup>43</sup> But to date the IfS is yet to support a project that specifically promotes justice and other forms of accountability for human rights abuses in a mediation process.

Peacebuilding and human rights agendas are pushed by activist Member States (usually Sweden, Denmark, Finland, the Netherlands, Belgium and sometimes the United Kingdom, plus others depending on the issue) and by activist officials in the national capitals and in Brussels.<sup>44</sup> The extent to which these issues are prioritised in dealing with third countries depends on Member States' other interests there, or indeed the interests of third countries: in Afghanistan, reportedly Member States such as the UK were reluctant to engage in transitional justice without the blessing of the US, which was not open to a justice agenda.<sup>45</sup> In the Western Balkans, by contrast, human rights and justice are seen as integral to the EU's interests in the region and cooperation with

38 *Report on the implementation of the European Security Strategy – Providing security in a changing world*. Brussels 11th December 2008 Document S407/8, p.2.

39 Interview B, G.

40 Interview D.

41 Interview F.

42 Interview E.

43 Commission Staff Working Document SEC(2009) 932: Accompanying document to the *Annual report from the European Commission on the Instrument for Stability in 2008* COM(2009) 341.

44 Interviews D, F.

45 Interview B.

the ICTY is a condition of furthering relations with the EU. Yet even there, Member States set the bar at different heights.<sup>46</sup>

The European Parliament is active in promoting human rights, international justice and peacebuilding, although to date has had little power on foreign policy.<sup>47</sup> Many members of the European Parliament (MEPs) have personal experience of authoritarian rule and repression in Spain, Greece, Portugal and the countries of Central and Eastern Europe, and MEPs can be outspoken on human rights issues.<sup>48</sup> The Parliament is a staunch supporter of the ICC and the ad hoc tribunals. Its role in future foreign policy is not yet clear, but it is likely that there will be at least more structured consultation between EUSRs and the parliament than there has been to date.<sup>49</sup>

## A COMPREHENSIVE APPROACH TO JUSTICE AND PEACEBUILDING

Several interviewees identified an urgent need to think through a comprehensive strategic approach to peacebuilding, including related fields such as transitional justice and mediation.<sup>50</sup> Contrary to expectation, discussions surrounding the EAS seem not to have addressed peacebuilding in a strategic sense, despite strong expectations that the new service would prioritise peacebuilding and conflict prevention.<sup>51</sup> Some interviewees expressed unease that military-led crisis management is dominating current approaches to peacebuilding, and that conflict prevention and human rights may be marginalised.<sup>52</sup>

The Mediation Support Concept notes that:

'Lack of political will to become engaged, failure to be accepted as a mediator by the conflict parties or potential tensions between the EU's normative commitments in the area of human rights and international law and short-term conflict management objectives may pose additional challenges and prevent the EU from becoming involved in a mediation process. Other actors, including NGOs may be in a better position to do so and the EU may choose to support their activities.'<sup>53</sup>

This suggests that the EU's normative commitments to peace and justice could weaken it as an effective mediator. But this same tension has not prevented the UN from developing as an important mediator. One mediation expert points out that as many conflicts are based on perceived injustice, parties to the conflict may welcome transitional justice initiatives and be empowered by them. Far from weakening the EU's potential role as a mediator, a positive commitment to transitional justice may strengthen it.<sup>54</sup>

However, the "credibility gap" between the EU's normative commitments and delivery concerned several interviewees: The result is the worst of both worlds where rhetorical commitments to justice issues damage the EU's ability to make peace and the lack of follow-through on the same issues undermines its credibility.<sup>55</sup> According to another interviewee, strong normative commitments supported by a balanced toolbox would make the EU more credible.<sup>56</sup>

One way in which this credibility gap could be closed could be by developing justice-related benchmarks, and developing careful monitoring. Large-scale aid programmes to support the implementation of a peace agreement may give the EU leverage.<sup>57</sup> EU officials have found it extremely difficult to generate the political will amongst Member States for this type of conditionality on the ground in contexts like the DRC and Afghanistan.<sup>58</sup> This

46 Interview D.

47 Interview J.

48 Interview J.

49 Interview I.

50 Interview I.

51 Interviews A, C, H, I.

52 Interviews C, H.

53 Doc. 15779/09 II. 4 (d), p.7.

54 Interview with A. Herrberg, Brussels, 11th May 2010.

55 Interview G.

56 Interview C.

57 A. Herrberg (November 2008). *Perceptions of international peace mediation in the EU: A needs analysis*. Brussels: Initiative for Peacebuilding, p.15.

58 Interviews B, G; L. Davis (2009). *Op. cit.*, p.15.

may be due, in part, to the new architecture for development aid, which since the Paris Declaration of 2005 places much weight on national ownership. Effective monitoring is also difficult and time-consuming: it is easier to provide assistance without monitoring, even if this disregards calls from local actors engaged in reform processes who encourage conditionality to help them achieve their reform objectives.<sup>59</sup>

## ON THE GROUND

The UN has led the field in developing norms and standards regarding human rights and peacemaking, and in practice, EU mediators are already actively engaged in these issues. Yet despite this emerging normative framework, the extent to which peace and justice issues are brought to the fore depends very much on the conflict and on the personality and personal experience of the mediator, regardless of his/her institutional affiliation.<sup>60</sup>

## PEACE AND JUSTICE SUPPORT

Transitional justice is recognised as an important policy area in the Mediation Support Concept, and indeed, the transitional justice element of the concept was the subject of most substantive debate during the drafting process.<sup>61</sup> The concept also states that ‘the EU should consider on a case by case basis how best to support transitional justice mechanisms, including addressing impunity’.<sup>62</sup> The absence of an EU approach to transitional justice is a major weakness for developing mediation support within the EU institutions.

Interviewees identified the need for peace and justice support, or a “back office” to support mediators in the field.<sup>63</sup> This should include specialist transitional justice expertise, and part of the support function would include identifying gaps and resources, and outreach to and training of delegation staff and other officials.<sup>64</sup> What such a resource would look like, and where its “intellectual home” would be in the new institutional order is unclear.<sup>65</sup> The EU institutions may lack the research facilities which officials in Member States can draw on in developing policy,<sup>66</sup> but arguably resources need not be centralised necessarily in one institution – activist officials can be very effective in mobilising networks and resources to drive policy forward, either from independent specialists<sup>67</sup> or – as the example of the commitment to women, peace and security demonstrates<sup>68</sup> – from national capitals.

---

59 Interview B.

60 Interview B; see also L. Davis (2009). *Op. cit.*

61 Interview A.

62 Doc. 15779/09 II. 4 (d), p. 8.

63 Interview C.

64 Interview I.

65 Interview A, C, I.

66 Interview D.

67 Interview E.

68 Interview F, I.

## CONCLUSIONS AND RECOMMENDATIONS

As the European Union is increasingly engaged in peace processes around the world, it makes sense that it formalises its engagement in international peace mediation. To date, one of the EU's strengths has been its ability to engage in long-term peace- and democracy-building projects, so its engagement in peace mediation should be seen as complementary to this. It has strong normative commitments to human rights and international justice, as well as to peace. These normative commitments should strengthen the EU's credibility in promoting sustainable peace, but only if delivery can match rhetoric. Combating impunity at the negotiating table should also improve the impact of peace- and democracy-building interventions in the post-conflict period.

To echo the words of the ESS report, realising the EU's full potential as a peace mediator means becoming more capable, more coherent, and more active in promoting justice at the negotiating table. The EU could become more capable by developing a strategic approach to transitional justice to frame its approach to peace and justice. This could close the credibility gap between treaty commitments to peace, human rights and international law on the one hand, and delivery on the other. It should also help the EU maximise the impact of its extensive resources where it engages, and to identify gaps. A consistent approach to peace and justice should make the EU a more credible actor, even if the EU's normative commitments prevent it from engaging in some processes as a mediator.

The following recommendations offer suggestions for achieving this.

1. The process of designing the External Action Service is an excellent opportunity to set out a strategic approach to peacebuilding, including the related fields of mediation, transitional justice, and crisis management. It should also improve coherence between the different EU institutions and instruments engaged. Regardless of the final institutional arrangements, the EAS should include a unit mandated to lead on transitional justice issues, including in the context of peace processes.
2. Policy on addressing accountability for human rights violations in peace mediation currently lags behind practice on the ground, so the mediation support group (MSG) should set up a dedicated working group to develop a strategic approach and EU guidelines for mediators. The working group should lead:
  - i) a stocktaking exercise amongst EU mediators (past and present) and relevant headquarters staff, together with colleagues from the UN, other regional organisations, and independent experts to identify best practice and lessons learnt;
  - ii) a review of existing UN guidelines and an assessment of their relevance for EU mediators; and
  - iii) a review of relevant EU policy.

This process should contribute to developing relevant checklists and guidance for headquarters staff.

3. As mediation support resources develop in headquarters, these should include transitional justice expertise, or at least a "peace and justice" focal point, who should form part of the transitional justice unit mentioned in Recommendation 1, or work in close liaison with it. The focal point – which may be an individual staff member or a unit – should be mandated to monitor mediation processes closely for opportunities for transitional justice.
4. The "peace and justice" focal point should develop and support a network of experts, from within and outside the EU institutions. The network would support mediators in the field with high-quality technical assistance on a range of transitional justice-related measures. These should include prosecutions (through

international, hybrid or domestic courts); truth-telling mechanisms; reparations programmes for victims; and gender justice. Attention should also be given to the links transitional justice can make to institutional reform (including DDR/SSR and justice sector reform) and other democracy-building measures.

5. The EU should draw on its institution- and peacebuilding experience and external expertise to develop a justice-specific monitoring and evaluation process. During peace processes, the EU should then use these tools to develop, with the parties, appropriate benchmarks and monitoring mechanisms against which implementation of justice-related commitments can be evaluated. The EU actors should then monitor progress carefully, preferably with the parties but, if necessary, without. The EU should also provide in a timely manner the appropriate mix of additional financial and/or technical support, diplomatic pressure or other measures as relevant to the situation.
6. EU development assistance programmes, particularly those related to institution-building, should provide financial and technical assistance to help parties to a peace agreement implement its justice-related provisions as soon as possible. The benchmarks developed to evaluate progress should be integrated into these programmes.
7. The peace and justice focal point should provide training on the related areas of international and transitional justice and prioritise raising the awareness of EU actors in headquarters and EU delegations on these topics. All EU mediators and their teams should also receive specialist training on the range of options available which may contribute to pursuing accountability in peace mediation contexts.

# ANNEX

## INTERVIEWS

All interviews were conducted in Brussels by the author:

	<b>Institution</b>	<b>Date</b>
<b>A</b>	EU Council Secretariat	14th January 2010
<b>B</b>	Former EUSR	30th January 2010
<b>C</b>	EU Council Secretariat	12th February 2010
<b>D</b>	International NGO	2nd March 2010
<b>E</b>	European Commission	4th March 2010
<b>F</b>	EU Council Secretariat	11th March 2010
<b>G</b>	International NGO	12th March 2010
<b>H</b>	International NGO	19th March 2010
<b>I</b>	European Parliament, Policy Department	19th March 2010
<b>J</b>	European Parliament, Human Rights Unit	30th March 2010



## INITIATIVE FOR PEACEBUILDING

c/o International Alert  
205 Rue Belliard, B-1040 Brussels  
heckert@international-alert.org www.initiativeforpeacebuilding.eu



THIS INITIATIVE IS FUNDED  
BY THE EUROPEAN UNION

## PARTNERS



International Alert.



ISBN: