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**NOTE**

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From : Committee for Civilian Aspects of Crisis Management

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To : Political and Security Committee

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Subject : Transitional Justice and ESDP

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Delegations will find attached the draft document on "Transitional Justice and ESDP", in view of the PSC meeting on 20 June 2006.

## **Introduction**

1. In recent years the EU has developed its capabilities in the field of crisis management and has gained experience with the planning and conduct of a number of operations, both civilian and military. At the heart of the EU's approach to crisis management is a commitment to developing a comprehensive approach to the whole question of crisis management, conflict resolution and peace-building. In line with this commitment, consideration is increasingly being given to the sustainability of peace processes, taking into account a broad range of factors, in particular those relating to the human rights dimension. In this context, it is appropriate to give consideration to ongoing developments in the field of transitional justice.
2. Following a PSC seminar on Transitional Justice on 21 March 2006 and discussions in CIVCOM and PMG, this document outlines suggestions for how thinking on transitional justice can be further taken into account in the context of ESDP.

## **Context**

3. The concept of transitional justice is commonly understood as a framework for confronting past abuse as a component of a major political transformation - from war to peace or from authoritarian rule to democracy. This abuse can include past human rights abuses, mass atrocities, or other forms of severe social trauma, including genocide or civil war. In transitional contexts, while the perceived need for justice is high, there are usually real constraints on the capacity or willingness of successor governments to deliver this justice. At the same time, the pursuit of justice and reconciliation must be combined with other public interest objectives, such as the consolidation of peace and democracy and the need for economic development and public security.

4. The role played by the UN in transition processes has been significant. The UN and other international actors are able to play a role in helping to negotiate peace agreements and in subsequent transitional periods. As the EU continues to develop its capabilities in crisis management, conflict resolution and peace building, and as it ventures further afield into increasingly complex situations, its actions under ESDP need to take full account of the developing international standards which provide parameters and guidance on policy options for justice and accountability, in particular guidelines established by the UN in this field.
5. The concept of transitional justice offers a number of tools which may be relevant in the design of ESDP operations. Although the specific mix of tools needs to be tailored to each specific situation, there are nevertheless key elements which should be considered from the early stages of developing a concept for an ESDP operation. These include criminal prosecutions, whether national, international or hybrid; truth commissions; reparations programmes; and vetting programmes. Judicial responses, while necessary, often need to be accompanied by non-judicial responses. In particular, local ownership and public/ victim consultation are crucial elements of the transitional justice approach.
6. The field of transitional justice is based on the general premise that national strategies to confront past human rights abuses can contribute to accountability, an end to impunity, the reconstruction of state-citizen relationships and the creation of democratic institutions. These are all important elements in assuring the sustainability of peace processes and can contribute to ending the cycle of violent conflict. Contributing to a sustainable and lasting peace is key for any ESDP operation. In this context, consideration needs to be given to how transitional justice aspects can be taken into account during the planning of ESDP operations. In particular, the exit strategy for an ESDP operation and the continuing situation on the ground following the departure of an ESDP operation should be taken into account from the perspective of the transitional justice dimension. Effective coordination with the Commission throughout the planning process for an ESDP operation should also ensure that the transitional justice dimension is taken into account in the design of flanking or follow-on measures provided through Community instruments.

7. The concept of transitional justice has already been a factor in the mandates of previous and current ESDP operations, dealing with questions such as supporting the apprehension of persons indicted by international war crimes tribunals; SSR and DDR, specifically the demobilisation and reintegration dimensions; support for the vetting of personnel; and supporting the transformation of public institutions, particularly in the justice and security sectors. In the future, as the EU develops its experience and capabilities further, a more coherent approach to thinking about the transitional justice dimension will be required. In possible future ESDP operations with an executive mandate, this dimension can be expected to be even more relevant.
8. The EU is also increasingly recognising the need to devote greater attention to the facilitation of peace processes. The transitional justice framework can also provide guidance in these situations.

### **Areas for possible action**

9. The central challenge for taking full account of the transitional justice dimension in the context of ESDP is to ensure that this is a factor in the thinking on possible operations from the earliest stages, taking into account activities undertaken by other international actors. Each operation will require an approach specifically tailored to the demands of the situation, and transitional justice considerations will be of differing degrees of relevance. Nevertheless, there are a number of areas which can already be identified where concrete action may be taken to ensure that this dimension remains an active consideration throughout the process of planning ESDP operations.

- a) Planning:

ESDP operational planning documents should continue to include, where appropriate, an analysis of the transition process in the host country(ies) and an assessment of the extent to which the ESDP operation can contribute to or support the development of national strategies towards peace. Planners should consider how the exit strategy for the operation can be assured and a sustainable peace supported in the medium to long term. The transitional justice dimension should be considered from the earliest stages of the planning, including, where appropriate, in Fact Finding Missions. Coordination with relevant Community measures should also be ensured.

b) Expertise:

Taking account of the transitional justice dimension when planning ESDP operations implies a need for appropriate expertise in Member States, the Council General Secretariat and within ESDP operations themselves. Such expertise already exists: a more systematic approach should be considered, with possible consequences for the Civilian Headline Goal 2008 process.

c) Training:

Consideration should be given to the inclusion of transitional justice elements in existing and future training programmes for EU crisis management operations. This might include the development of a module on transitional justice in training for the CRTs and the inclusion of the transitional justice dimension in the courses offered by the ESDC and by other relevant bodies.

d) Facilitation:

The EU could consider enhancing further its capabilities to conduct facilitation of peace processes. Where appropriate transitional justice could be an element to take into account when defining the mandates of EU Special Representatives.

e) Development of guidelines:

The EU could consider developing further guidelines on how the transitional justice dimension could be taken into account in the context of ESDP. Any such guidelines would be inspired by and consistent with UN standards. In this light, work undertaken by the new UN Peacebuilding Commission in the area of transitional justice would also be taken into account.

f) NGOs:

Further consideration could be given to ways in which the EU can benefit from the important experience gained by NGOs on transitional justice.

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