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NOTE

from : Committee for Civilian Aspects of Crisis Management
to : Political and Security Committee

Subject : Comprehensive EU concept for missions in the field of Rule of Law in crisis management, including annexes.

Delegations will find enclosed a document on the Comprehensive EU concept for missions in the field of Rule of Law in crisis management, including annexes.

The Committee for Civilian Aspects of Crisis Management invites the Political and Security Committee to take note of this document.

**DRAFT COMPREHENSIVE EU CONCEPT FOR MISSIONS IN THE FIELD OF RULE
OF LAW IN CRISIS MANAGEMENT**

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I. Background and purpose

Background

The EU is committed towards the promotion of the principles of liberty, democracy, respect for universal and indivisible human rights, fundamental freedoms and the rule of law.

Strengthening of the rule of law was identified by the Feira European Council as one priority area for targets in civilian aspects of crisis management.

The Göteborg European Council set concrete targets in the field of rule of law, to be attained through voluntary contributions by 2003. Primarily in order to ensure a complete and functioning criminal justice process in operations in which international police perform an executive role, it was concluded that Member States should, within the general target for overall capabilities, in particular develop their capacity to deploy officials to public prosecution, courts and detention activities in crisis management operations. Strengthening their capabilities in phases, Member States should, on a voluntary basis, by 2003 be able to contribute up to 200 officials adequately prepared for crisis management operations in the field of rule of law. The need to have an appropriate balance between the various officials needed, which includes prosecutors and judges as well as correctional officers, was highlighted. This target should include a capability to supplement police rapid deployment units and fact-finding missions with officials with broad knowledge in the field of Rule of Law, enabling an early planning of rule of law support, which could be deployed within 30 days.

The Göteborg European Council stressed that rule of law capabilities will both enable the EU better to respond to requests from an international lead organisation, and to carry out autonomous missions.

At a capabilities commitment conference at high official level held on 16 May 2002, Member States made, on a voluntary basis, commitments to build up the EU rule of law capabilities for crisis management by 2003 that exceeded the above mentioned numeric targets.¹

The Göteborg European Council foresaw, that in a crisis management situation, missions in the

¹ The ensuing declaration was annexed to the ESDP report submitted to the Seville European Council.

field of rule of law could be tasked with strengthening local institutions through advice, training or monitoring, or mandated to perform executive functions through the temporary assignment of international staff, notably when local institutions are absent. In such a situation, the re-establishment of local judicial and penal systems should be initiated as soon as possible. While rule of law missions would often be deployed as a complement to a police component, they could also be undertaken without such a component. In any given mission, rapid build up of the local capacity and subsequent hand-over to local ownership is essential.

Purpose

The purpose of this document is to develop a comprehensive concept and guidelines for civilian crisis management missions in the field of rule of law.

The guidelines proposed are generic and must be adapted to correspond to the needs of each specific mission. The necessary co-ordination with other EU crisis management instruments will be assured.

Within this document, the term “personnel in the field of rule of law” covers judges, prosecutors and further categories of officials and experts in the field of rule of law.

II. Types of missions

The following two generic concepts of rule of law missions were described at the Göteborg European Council:

- Strengthening the rule of law. In this case personnel in the field of rule of law are deployed essentially to educate, train, monitor and advice with the aim of bringing the local legal system up to international standards², in particular in the field of human rights.
- Substitution for local judiciary/legal system. In this case, personnel in the field of rule of law are deployed to carry out executive functions, notably where local structures are failing (or not

² UN, OSCE and Council of Europe standards will be particularly important.

existing), to consolidate rule of law in a crisis situation and thereby restoring public order and security.

While a rule of law strengthening mission can often be contemplated without a substitution element, the opposite is not likely to be the case. Those undertaking substitution missions should therefore bear in mind that a strict distinction between the two types of missions will often not be done in concrete missions where the two elements will occur in different combinations. The two types of missions, however, differ essentially with regard to the mandate needed as well as the personnel competencies needed.

Substitution missions are typically characterised by the carrying out of executive functions that under normal circumstances would be carried out by the authorities of the country in which a mission is deployed and usually take place in a more difficult security context. This needs to be reflected in the specific mandate of a substitution mission. Procedural rules stating typical "powers" of different members of a rule of law substitution mission may be necessary.

The following non-exhaustive list of different tasks as far as the two types of missions are concerned can for illustrative purposes be drawn up:

Substitution missions:

- taking on wholly or partly within the court system on all or some levels the functions of the courts (judges, magistrates, legal experts, court officers and support staff including administrative staff)
- taking on wholly or partly within the prosecutorial system on all or some levels the functions of the prosecution system (prosecutors, legal experts and support staff including administrative staff)
- taking on wholly or partly within the penitentiary system on all or some levels the running of prisons (governor, prison officers, correctional and custodial officers and support staff including administrative staff)
- lawyers for the defence

Strengthening missions:

Technical assistance, including advice on

- implementation of legislation and administrative procedures within the field of rule of law
- drawing up of legislation and administrative procedures within the field of rule of law
- reforms within the field of rule of law
- organisation of the judiciary and penitentiary system
- implementation of activities related to the building of capacities within the field of rule of law (training, education)
- activities to promote the public's confidence in the judiciary and penitentiary system, including media campaigns
- ways and means to counter corruption within the field of rule of law
- setting up functioning legal aid schemes and promote public knowledge of such schemes

Development of activities and institutions related to capacity building within the field of rule of law (training, education, standard setting)

Monitoring of personnel and application of legislation and administrative procedures etc. within the field of rule of law

Mentoring and supervision of personnel within the field of rule of law

Training and education of personnel within the field of rule of law, including defence lawyers

In most instances - and particularly when a police component has been deployed - the primary focus of the EU's efforts in the field of rule of law will be criminal procedure with a view to underpinning a possible international police component of an international mission. However, the possibility of a rule of law mission dealing with civil law and administrative law aspects (for example family law, property, contracts, customs and taxation) should also be contemplated. A system of courts, which commands the confidence of all and that will enforce obligations (e.g. contracts), is a fundamental element of a functioning rule of law society. Such a mission would obviously need to be based on a case-by-case needs assessment, taking into account available resources and experience gained.

When considering the composition, including the staffing, of a possible rule of law mission, due attention should be given to the legal and historical context in the area where the rule of law mission is contemplated. Consideration should also be given to the fact that EU personnel in the field of rule of law would come from different legal systems. This diversity is a qualitative asset for the EU.

A comprehensive and well functioning rule of law society also requires adequate access for the public to practising lawyers, including defence lawyers. The possibility of providing adequate access will need to be addressed in designing rule of law missions.

III. Crisis situation and fact-finding missions.

Context

Rule of law missions will be adapted to the specific circumstances they will face in the mission area.

It should be emphasised that in a state of severe crisis individuals and legal entities often cannot enforce their legal rights and/or obtain judicial remedies within a reasonable period of time and crime remains unpunished. The legal system might be ineffective and inefficient due to e.g. unfit and/or unskilled judges and/or prosecutors (officials may have gained office when the appointments were made more for political expedience than on merit), cumbersome procedural codes,

unwillingness to bring to justice certain crimes, lack of adequate financing of the judiciary and/or prosecution service and/or undue external influence or a combination of one or more causes.

The following specific difficulties relevant to the rule of law may i.a. be present in the mission area:

- Inadequate resources (human, material, financial),
- Widespread corruption,
- Political interference, both in the appointment of judges and in the carrying out of judicial functions,
- Lack of enforcement capacity,
- Lack of public confidence in the legal system,
- Inappropriately close relationships between the prosecution and the judiciary,
- Backlog of cases causing serious delays and paralysis,
- Inefficient and bureaucratic legal framework,
- Non-existing or inadequate local law,
- Local law not meeting basic international legal standards and/or human rights standards (Unequal treatment of ethnic groups, difficulties in addressing human rights abuse and complaints of human rights abuses).

Fact-finding missions

- general

To have a more accurate assessment of the concrete crisis situation and the needs, it will be important to carry out a complete evaluation of the situation as early as possible. To this end a fact-finding mission should normally be dispatched in order to gather the relevant information. A fact-finding mission should include a comprehensive examination of and the lessons learned during previous assistance provided by the EU and others.

An indicative, but not exhaustive, checklist, to supplement those listed in Section D of the Annex to the general guidelines on fact finding missions contained in doc. 15048/01 that are of specific relevance to the field of rule of law is to be found in annex I. Members of future fact-finding missions may develop these checklists as necessary once assigned to the mission and in light of the mandate for the fact-finding mission.

Experience from i.a Bosnia-Herzegovina and Kosovo shows that the information and assessments needed in planning a mission in the field of rule of law, be it of a substitution or strengthening character, would in many instances be the same. The checklist in annex I could therefore be generally used. It could, however, be expected that in the case of a substitution mission, the lead time would normally be shorter and the need to collect and assess information be more urgent than with regard to pure strengthening missions.

- Types of information and assessments

It follows from the general guidelines contained in doc. 15048/01 on fact finding missions that fact-finding missions may be used at different phases of a crisis or emerging crisis and that fact-finding missions in the context of crisis management should contribute to a comprehensive assessment of the strategies, actions and tools necessary to effective decision-making, planning and control of an organised response to a crisis. To this end the fact-finding mission within the field of the rule of law will be an important contributing factor to the elaboration of an entry strategy and facilitate the shaping of a coherent EU response in this field. In order to do this the fact-finding mission will not necessarily be limited to just gathering facts, but also in line with the mandate to assess the possibilities for EU action/response and to this end provide advice and recommendations. The fact-finding mission will also in that way contribute to the decision making process.

In any case a comprehensive understanding of the local legal system and practice will be a prerequisite for planning a crisis management mission in the field of rule of law. Early information on specific difficulties that a rule of law mission could encounter in the mission area is pivotal and should, to the extent possible, be identified by the fact-finding mission

- composition

Substituting or strengthening a local judiciary system cannot be fully successful unless it is constituted by a well functioning police, prosecutorial and penitentiary system and vice – versa, just as a sufficient number of defence lawyers must be available. This fact should be reflected in the composition of a rule of law fact-finding mission or a broader fact-finding mission covering more or all aspects of a possible EU contribution to a specific crisis management operation.

The composition of a fact-finding mission should be decided on a case-by-case basis, taking into account the ad hoc nature of fact-finding mission and the varying degrees of complexity of situations to be addressed. In complex crisis situations, an effective fact-finding mission will thus require a wide variety of rule of law expertise, including judges, prosecutors, correctional officers and defence lawyers.

Rule of law experts participating in fact-finding missions with a view to establishing a mission and/or preparing a decision on a possible EU contribution should be carefully selected in order to ensure that they have the adequate knowledge of what such a mission may entail. Experience from participation in previous missions will be an advantage.

IV. Objectives for a rule of law mission.

As a prerequisite for the EU to undertake or contribute to a rule of law mission an invitation from the host government or an authorisation by the UN Security Council or otherwise in accordance with the UN Charter or another authorisation permitted under international law will be necessary.

It will be the Council, in accordance with the established procedures described in the Crisis Management Procedures, that decides that the EU will undertake or contribute to a rule of law mission.

The objectives of a concrete rule of law mission will be decided by the Council e.g. described in a mission statement accompanying the decision that the EU will undertake or contribute to a rule of law mission.

It is understood that the general objective is to provide for complete and sustainable judiciary and penitentiary systems under local ownership and meeting rule of law and human rights standards in the mission area and to improve these systems' capacities in accordance with the demands of a democratic society. The judiciary and penitentiary systems should be brought to such a standard that they enjoy the confidence of the public.

To this end, consideration will need to be given to addressing the institutional weaknesses described in section III. A range of mechanisms may be possible and will depend on the mission mandate and

the circumstances of each particular mission. (As regards personnel issues, these would range from training and warnings to de-certification and removal). These mechanisms must themselves meet the principles of rule of law.

As a principle, local law should be applied by the international and local actors to the largest extent possible. However, if appropriate, the mandate should determine the law to be applied in the mission area. In the case of the temporary absence or inapplicability of local law (not in conformity with internationally recognised human rights standards), recourse might be made to an interim legal framework to be elaborated within the framework of the UN. In this context, it is recalled that the EU has offered to the UN High Commission for Human Rights a set of draft guidelines as an initial contribution to the work undertaken within the UN. It is also recalled that the European Community is co-funding a 2-year project presented by the office of the UN High Commissioner for Human Rights entitled “Restoring the rule of law: supporting rights – sensitive transitional justice arrangements in post-conflict and post-crisis countries”.

V. Means to reach the mission objectives

To tackle the general objective of a rule of law mission of a strengthening and/or substituting character, it is necessary, as appropriate:

- To identify the needs of the judiciary and penitentiary systems, including administrative needs and institution-building
- To identify the human and material resources required and those available for the judiciary and penitentiary systems. If necessary, to put in place, promote or improve the education systems for local judicial and other personnel in the field of rule of law
- To work with others to help ensure that the judiciary and penitentiary systems have the necessary equipment and facilities (such as temporary physical facilities, office equipment, publications, archives, databases)
- If necessary, to promote the right of victims to be treated with fairness, respect and dignity throughout criminal justice proceedings, and the right of witnesses to protection from intimidation and harassment;
- To launch public awareness campaigns in order to reach the confidence of the public.

In cases where the competence of personnel in the field of rule of law may justifiably be questioned on the basis of the said personnel's educational background, it should carefully be assessed what approach to be employed, i.e. whether they should be substituted or whether assistance in the shape of strengthening (monitoring/mentoring) should be initiated. (Such cases can lie on the borderline between strengthening and substitution functions.) In such cases it is important to preserve the independence of the judiciary.

Phases of a mission

The objective of a rule of law mission will be achieved throughout different phases. Rule of law capabilities are often an integral part of a comprehensive crisis management mission, and the development will thus in many cases depend on the deployment of other mission components such as police.

It must be kept in mind that a mission should have a phasing-out or an exit strategy already when it is launched.

The phases would normally be:

Activation phase in order to:

- Establish the mission head office,
- Work toward the full deployment of the mission,
- Establish co-operation with other civilian authorities, in particular with other international components, and, where it exists, the local judiciary, local police, local lawyers association, the local prosecution and the penitentiary system,
- Continue planning activities and assessing the needs of the judiciary and penitentiary systems.

Development phase in order to:

- Implement the objectives of the mission according to the mandate or agreement,
- In the case of a strengthening mission, to assist the local judiciary and penitentiary

systems in the reform process to ensure local ownership as soon as possible.

Consolidation phase:

- Full local ownership of the ongoing reform processes in the judiciary and penitentiary systems. This should be the aim and a basis for the exit strategy of the mission, and local ownership should thus be consolidated in this phase.

Substitution and strengthening elements within the same rule of law mission might have different activation, operational and withdrawal phases.

As regards operational issues, to ensure the ability to plan for the deployment of a rule of law component of a crisis management mission, appropriate planning capacities within the Council Secretariat need to be strengthened.

VI. Participation of non-EU states to an EU rule of law mission

It has been agreed to further develop modalities for contributions of non-EU states to EU civilian crisis management operations, which could include rule of law missions. These modalities are being considered separately as the issue is of relevance to EU crisis management as a whole.

VII. Co-ordination

Need for co-ordination

An effective co-ordination will often be important in order to reach mission objectives, since a rule of law mission will often be deployed in conjunction with other components. The strengthening and/or re-establishment of credible local police forces and a well functioning civilian administration cannot be fully successful if not complemented by a functioning judicial and penal system and vice versa.

Suitable arrangements should therefore be elaborated at an early stage in order to ensure coherence

and co-ordination both at the political/strategic level as well as in the field.

Types of EU involvement

In this context, there are different possibilities for EU involvement in an international mission. The EU could lead a mission that includes either only EU components or also contributions from other international organisations or third states. Alternatively, the EU could provide a rule of law component to a mission led by another organisation.

Co-ordination with other EU instruments

The rule of law mission will maintain close co-ordination with other possible EU components. Should, as part of a comprehensive EU response to a crisis, police, civilian administration or civil protection components be deployed, the relationship between the components must be closely developed in order to achieve the appropriate co-ordination from the outset. Close co-ordination will also be ensured with a possible military component of an EU crisis management operation.

Experience shows the need for continuity and coherence between crisis management operations and longer-term initiatives (institution building). These two aspects can complement and mutually reinforce each other. To secure a coherent policy that integrates immediate rule of law crisis management with long-term support to rule of law institution building is thus essential. Implementation of these different efforts should take into consideration previous/ongoing assistance provided by the EC.

Co-ordination with other international organisations

Close co-ordination with mission components being provided by other international organisations should also be maintained.

VIII. Close co-operation with local authorities

Rapid build up of local capacity and subsequent hand-over to local ownership is essential. The success of a rule of law mission lies to a large extent in the capacity and readiness of local

authorities to be fully involved from the beginning in the achievement of the objectives.

IX. Lessons learned

In order to develop the EU's capabilities to take on future EU missions in the field of rule of law, it is essential to draw on the experience of international organisations, in particular the UN, OSCE and Council of Europe, as well as the experience that the EU has gained in particular through Community external programmes in the area of Justice and Home Affairs, and by Member States' bilateral activities.

A lessons learned process should be established including the regular submission of Head of Mission progress reports, during the execution of the mission, on the fulfilment of the mandate and a final lessons learned report upon conclusion of the mandate/crisis management operation.

In relation to lessons learned and exchange of experience, it should also be mentioned that contacts with international organisations can be valuable. The Council Secretariat and the Commission will inform the appropriate Council bodies on such contacts.

X. Training, recruitment and selection.

The importance of the qualitative aspects of EU civilian crisis management has been recognised by successive European Councils. Accordingly, to ensure high professional standards of experts to be deployed in crisis management missions, the EU has committed itself to develop appropriate common standards and modules for training in the different civilian priority areas identified by the Feira European Council.

The overall objective of training should be to prepare personnel to undertake international missions in general and to equip them with knowledge to take on the tasks contemplated for the specific mission at hand.

Participating in a crisis management mission judges, prosecutors, penal and penitentiary experts and other relevant experts and officials will have to work under conditions and cope with situations,

which are not similar to those of their daily work in a stable democracy. Those participating in international rule of law missions should possess the necessary qualifications for undertaking the different rule of law tasks stemming from the mandate. Therefore in principle - and in a manner consistent with principles of independence of judges - all participants should participate in a general training program and a mission specific program.

It will be up to Member States to ensure that those experts who are being proposed by them as candidates for positions in a rule of law mission following a call for contributions, have the necessary qualifications, such as relevant educational background, sufficient practical experience and language skills, are mentally and physically fit etc.

At the Göteborg European Council, the EU committed itself to the development of common training modules and standards in the area of rule of law. EU standards should be compatible with, and usefully build further on, those developed by the relevant international organisations. Concrete work at EU level on the issue of training in the field of rule of law in civilian crisis management is at this stage being carried forward within the framework of the EC Project on Training for Civilian Aspects of Crisis Management that includes the organisation of common pilot training courses. The first pilot courses within this project are scheduled to be launched in January 2003 and are aimed to contribute to the work on the elaboration of common EU training standards. Work on judicial training should be pursued in co-operation with the European Judicial Training Network. Attached to this document is an annex (annex II) elaborated by the Commission on the EC Project.

It should be noted that intensive training programs for personnel with a view to participating in civilian crisis management operations already exist in member states. Training at EU level and at member states level should be complementary.

In the study on concrete targets on civilian aspects of crisis management from the Feira European Council, it is recognised that Member States could establish national arrangements for selection of judges, prosecutors, penal experts and other relevant categories within the judicial and penal system to deploy at short notice to peace support operations and consider ways to train them appropriately. At the Göteborg European Council, it was stated that the EU and its Member States should develop, on a phased basis, a comprehensive range of agreed standards for selection, training and equipment of officials and experts in the field of rule of law.

International personnel should be selected according to agreed standards. The EU's work should in this regard take full account of the body of experience built up by the United Nations, the OSCE and the Council of Europe.

At the Göteborg European Council it was highlighted that Member States should strengthen in phases their ability to provide judges, prosecutors and further categories of officials and experts to international missions. To this end the institutional capacity within Member States to provide qualified personnel should be developed. To help develop this capacity, Member States should carry out a general review, on the basis of an exchange of information of terms and conditions for officials volunteering to take up international assignments. This should include issues like career progression, to remove possible disincentives for high quality officials to put themselves forward.

Experience from previous international missions shows that it might often be difficult to recruit a sufficient number of qualified experts within the field of rule of law to concrete missions. Part of this problem has been solved by the successful outcome of the call for contribution concluded during the Spanish presidency during the first half of 2002 exceeding the quantitative targets set by the European Council in Göteborg. However, there is still scope for considering ways and means of attracting more experts. More knowledge about the possibilities of participating in international missions might be one way of attracting more experts.

In this context it should be recalled that as regards efforts to support the rule of law there is also considerable potential for contributors other than Member States' public institutions, e.g. academic and non-governmental organisations, to provide experts.

XI. Deployment conditions for the international personnel in the field of rule of law

Privileges and immunities for the international personnel in the field of rule of law should be laid down in the mandate or agreement with the country concerned and subsequently be subject to a SOMA.

It is also necessary to lay down mission-specific arrangements for personnel in the field of rule of law in the mission area, which would include disciplinary measures for cases of non- or inadequate performance of duties.

An adequate level of security is pivotal for the personnel deployed in an international rule of law mission in order to carry out its functions. The mandate of the mission should take duly into account the security aspects of the deployment of a rule of law component. In this context it should be stressed that the level of security necessary for a rule of law mission to be deployed might differ from that of a police mission. The level of security necessary might also depend on whether the rule of law mission contains only strengthening elements or also substitution elements. A higher level of security might be called for in case of a rule of law mission containing substitution elements.

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Fact-finding missions

The main factors that could be considered by a fact finding mission are the following, all of which might not necessarily be relevant in all situations:

A. Relevant local law including its applicability and conformity with human rights standards.

- Constitutional laws
- Relevant international conventions and bilateral agreements
- Penal code
- Amnesty laws
- Code of procedure in criminal cases
- All other rules and regulations regarding arrest, detention, use of evidence, witness rights and protection, victims' rights and protection
- Relevant civil and administrative law

B. The judicial, prosecutorial and penitentiary systems

- (1) General state of affairs and horizontal aspects
- (2) Formal relationship and interdependence between the judiciary and penitentiary institutions
- (3) The flow of criminal cases from police and prosecution to courts and penitentiary system.

I. The judiciary (the courts)

(1) Legal and administrative framework regarding the judiciary.

- Reference to the judiciary in the Constitution.
- Laws and regulations regarding:
 - * Personnel regime: status, promotions, assignment of judges;
 - * Model for career development
 - * Disciplinary regulations and procedures;
 - * Other legal aspects (code of conduct.)
- Degree of independence of the judiciary and amount of corruption

(2) Personnel

- Available statistics on age profile and educational standard.
- Ethnic and gender balance.
- Internal ethnic tensions
- Required education and previous carrier of judges and other legal professionals within the judiciary
- Training
- Promotion system.
- Salaries (compared to existing standards in the country),

(3) Organisation

- Structure both administrative and judicial
- Number of courts
- Ratio judges to annual caseload (civil and criminal)

(4) Logistics

- Budget and financing
- Premises: state and conditions of courthouses (local perspective).
- Office equipment

II. Prosecutorial system

Depending on the mandate, information concerning the sub items under

I. the judiciary might also be relevant as far as the prosecution is concerned taking into account the differences between the judiciary and the prosecution. This concerns the following items:

- (1) Legal and administrative framework regarding the prosecution
- (2) Personnel
- (3) Organisation
- (4) Logistics

III. The penitentiary system

Depending on the mandate, information concerning the sub items under **I.) the judiciary** might also be relevant as far as the penitentiary system is concerned adapted as necessary and taking into account the specificities of the penitentiary system. This concerns the following items:

- (1) Legal and administrative framework regarding the penitentiary system
- (2) Personnel
- (3) Organisation
- (4) Logistics

C. Possible other agencies and actors in the field of criminal, civil and administrative law

Inter alia ombudsman and NGOs.

D. Lawyers for the defense and legal aid

- Legislation and state of affairs with regard to defense lawyers, including number, education and

general capability

- Legislation on public defence counsel and legal aid, including accessibility

E. Statistics

(1) Crime statistics

- Crime level in general, including statistic on different offences
- Special attention to crimes generally occurring in crisis situation such as war crimes, terrorism, trafficking of human beings, drugs and weapons, corruption and other forms of organised crime
- Number of indictments in the various regions (courts if possible)
- Number of appeals
- Statistic on detainees
- Caseload

(2) Statistics on civil and administrative cases

- Caseload
- Nature of cases

F. Political environment

- Inter alia undue political inference in the organisation and financing and with regard to appointment of personnel and corruption regarding the judiciary, prosecutorial and penitentiary systems.

G. Social and cultural aspects

- Inter alia attitude of the public towards the legal sector including possible recourse customary law and traditional mechanisms of dispute resolution and accessibility to justice in general

Training

RULE OF LAW – TRAINING ANNEX (draft by EU Group on Training/European Commission)

1. The overall objective of training in the area of Rule of Law should be to prepare participants for exercising advisory, monitoring, fact-finding, investigation and inquiry, training and capacity-building, as well as executive functions involved in Rule of Law missions or Rule of Law duties that missions of other or wider scope could include. Training should provide participants with the specific knowledge required for such missions and enhance the skills necessary to perform in an international and crisis-stricken environment in a manner that is efficient, correct and in compliance with the principles of the Rule of Law. Training should thus ensure that future mission members will be operationally ready to assume their duties immediately upon arrival in the mission area.

2. Work at EU level on the issue of training in the area of Rule of Law in crisis management is being carried forward within the framework of the EC Project on Training for Civilian Aspects of Crisis Management, which was launched in October 2001 with the presentation of the project concept to the Committee for Civilian Aspects of Crisis Management. The project aims to promote EU training co-operation, identify joint approaches to civilian training, develop common training modules and organise common EU training through pilot courses. The modules developed might in the future form the agreed basis for common civilian training modules in the EU and lead to the establishment of common training standards. The project builds on and complements the training efforts currently undertaken in Member States. In order to ensure complementarity and full interoperability, the work undertaken takes into consideration the training standards and materials developed by the UN, the OSCE, the Council of Europe and other relevant international organisations.

3. During the first phase of the project, proposals were developed for common course outlines/modules and future EU training co-operation by a Core Group of interested national training institutions and focal points of the EU.³ The Core Group presented its proposals to Member States at a training conference hosted by the Spanish Presidency in Madrid on 27-28 May 2002, where they found large support. Recommendations of the conference⁴ included the organisation of EU pilot training courses in the area of Rule of Law by training institutions in Member States, based

³ See Report for the Conference on the EC Project on Training for Civilian Aspects of Crisis Management, doc. 110/02 of 16 May 2002.

⁴ See Report by the Commission and the Presidency, doc 120/02 of 7 June 2002.

on the modules developed by the Core Group. The creation of a EU Group on Training was suggested, bringing together on a regular basis (and under the chair of the training co-ordinator selected by the Group) all partners involved in the project, in order to discuss general training issues and co-ordinate the implementation and evaluation of the pilot training courses. The results of the second, implementing phase of the project (November 2002 – end of 2003) will be discussed with representatives of Member States, as well as presented to other non-EU training partners and organisations at a major training conference to be held in Italy in autumn 2003 under Italian Presidency.

4. Common course outlines/modules were devised according to the following training phases:

- Core course;⁵
- Function-specific courses;⁶
- Pre-mission training/Induction briefing;⁷
- In-mission training.⁸

5. The “Rule of Law”, as reflected in Article 6 (1) of the Treaty on the European Union, must be seen in a broad context, which embraces Human Rights and Democratisation and Good Governance. In that area, outlines/modules for three different function-specific courses were developed, which are closely interrelated:

- Function-specific course on the Rule of Law;⁹
- Function-specific course on Human Rights;¹⁰
- Function-specific course on Democratisation and Good Governance.¹¹

6. Course outlines/modules were developed on the assumption that participants will have various organisational backgrounds, expertise in their respective areas of professional competence and might already have acquired field experience; they will further be fully proficient in the mission language. Course outlines are composed of different modules, which allow for flexible

⁵ General preparation for mission involvement, regardless of the specific function and mission participants will serve; this course outline includes modules/subjects on a general introduction to crisis management and prevention (including Rule of Law and Human Rights), the role of the EU and various actors (including military, police and NGOs), cultural awareness, conflict transformation techniques, communication via interpreters, safety and security, stress management and working with trauma; see Annex 1 to doc. 110/02.

⁶ Preparation for a specific function not necessarily related to a specific mission.

⁷ Preparation for a specific mission; including modules/subjects on the country/region profile, conflict analysis, institutional framework of the mission (including mandate and actors involved), the role of the EU in the mission area; see Annex 6 to doc. 110/02.

⁸ Additional mission-related training, if required.

⁹ See Annex 2 to doc. 110/02.

¹⁰ See Annex 3 to doc. 110/02.

¹¹ See Annex 4 to doc. 110/02.

combinations, in accordance with specific training needs. The outlines of the specialisation courses were conceived assuming that participants would have already attended the Core Course or have in any case acquired through personal experience a certain level of knowledge on the work in an international mission.

7. The function-specific course on Rule of Law (in its narrow definition) was conceived on the basis that the Rule of Law covers a wider field than just criminal procedure: it shall ensure that government and other public officials act under the law, in accordance with the law and within the limits set by law, not only in criminal cases and the penitentiary system, but in civil cases as well as in the daily decision-making in the public administration.¹². Accordingly, the outline for the function-specific course on rule of Law covers the following modules and subject areas:

1. Rule of Law - International Law and Institutions
2. Rule of Law - Applicable Law and Local Institutions
 - Subject 1: Rule of law and law enforcement
 - Subject 2: Investigation of criminal offences
 - Subject 3: Corruption
 - Subject 4: Court proceedings
 - Subject 5: Prosecuting war crimes
 - Subject 6: Judicial review
 - Subject 7: Rights of victims in criminal proceedings
 - Subject 8: Prison administration
 - Subject 9: The civil procedure
 - Subject 10: Property rights
 - Subject 11: Governance and the administrative procedure
3. Monitoring and the Rule of Law
4. Fact-finding and the Rule of Law
5. Executive Functions and the Rule of Law
6. Capacity Building Assistance
7. Advising, Teaching and Training Techniques

8. It should be added that, once a specific mission arises, information on the law, jurisprudence and legal system and traditions of the country/mission area and, if the case, other relevant applicable law will have to be an essential part of training, in particular the Pre-mission training/Induction briefing, prior to deployment to the specific mission.

9. The training in the subject areas presented will be based upon a problem-oriented approach, involving the recipients of the training to high degree, in order to ensure that they themselves may advice or train others in turn. The methods of instruction will cover presentations, seminar-type

¹² Although international missions in civil crisis contexts for the sole purpose of strengthening the rule of law have been rare, there is an abundance of relevant knowledge and experiences accumulated in the United Nations, the OSCE and the Council of Europe, as a result of these organisations involvement in (monitoring) missions for Human Rights. The publication *Basic Materials for the Training of Human Rights Monitors* of the UNHCHR contains several modules, elements of which were directly transposable to the outline for the function-specific course on Rule of Law. There are also important national experiences in preparing international experts in relevant disciplines. These experiences should, *mutatis mutandis*, be put to use in EU training efforts, especially when it comes to elaborating training material.

problem solving in larger groups, as well as individual and small-group problem solving. Realistic exercises (moot court proceedings etc.) will be used to demonstrate problems and make participants used to acting in such circumstances.

10. Based on these course outline/modules, pilot function-specific courses on Rule of Law will be organised within the framework of the project by training institutions of Sweden (April 2003), Germany (April-May 2003) and Finland (June 2003). Function-specific courses on Human Rights will be organised in Italy (March 2003) and the UK (May 2003), courses on Democratisation and Good Governance by France (March-April 2003) and Finland (May 2003). Detailed curricula will be elaborated by each training provider and will be discussed in the EU Group on Training prior to the courses. As every type of course will be held more than once, the running of the pilot courses will provide a sound basis for a thorough comparative evaluation and be instrumental to test and further develop the elaborated course outlines. Following the courses, an overall evaluation will be undertaken by the EU Group on Training, with the assistance of an evaluator nominated by the Group. In view of the further development of the course outlines/modules and the possible development of training standards in the area of Rule of Law, results of the project will be presented and discussed at the training conference under Italian Presidency in October 2003.

XII. Structure of rule of law components in EU Civilian Crisis Management Operations

A. 1. Introduction

A rule of law component could be established both in missions of a substitution type and as a strengthening capacity in non-executive civilian crisis management operations.

The structure of the rule of law component will be designed in order to enable the component to fulfil the tasks foreseen in the mandate of the crisis management mission. The component structure will be put in place on the basis of the needs identified in the early planning stages, including on the basis of the findings by possible fact finding missions.

The number of staff members in a rule of law component as well as the character of the specific functions within the component will depend on the exact tasks foreseen in the mandate, and the structure outlined below therefore serves mainly as a non-prescriptive model for planning purposes.

B. 2. Structure

1. Mission structure

A rule of law component should be structured, if possible, to mirror existing local structures in order to ensure effective cooperation and support on relevant levels of the legal system. Additional specialised functions may be required depending on local structures and mandated tasks. In certain situations, expertise with regard to war crimes or organised crime will be required.

The following functions could be foreseen:

- A legislative unit for supporting review of local legislation in order to ensure compliance with international human rights standards. This task requires legal expertise with regard to law drafting

and human rights. The unit will in a substitution mission also have to take care of coordination of juris prudence.

- A court unit to support (or establish) local court administrations. This task requires international judges with extensive experience and knowledge of the local legal system. Other personnel categories may, depending on the mandate, be required in the area of court administration, i.a. court clerks, registrars, translators and interpreters.

- A prosecution unit for supporting (or establishing) local prosecution authorities. The task requires international prosecutors with extensive experience and knowledge of the local legal system. Other categories required could be i.a. assistant prosecutors, administrative personnel, translators and interpreters.

- A penal management unit to support (or establish) local penitentiary and correctional authorities. This task requires international penal management experts with extensive experience. Other categories required could be managers of pre-trial detention centres and prisons as well as trainers and administrators. In substitution missions, international correctional officers for executive functions may be required.

- A human rights unit for horizontal support to other units on human rights issues as well as support to local authorities. This task requires human rights legal experts in criminal law, procedure and property law. Human rights legal officers can also be tasked to advise, monitor and train personnel in the local judiciary and penitentiary institutions.

It should be emphasised that all parts of a rule of law component of a crisis management mission will have to include expertise on capacity and institution building.

The rule of law component should also deal with public relations regarding the work of the mission.

2. Management structure

Mission support functions, such as personnel, logistics, finance, travel, procurement and relations with the public could be part of an overall multifunctional mission and will not be established in every specific component structure unless justified by the size of a specific component, or if the

component is not part of an multifunctional crisis management mission.

In any event, a rule of law mission component would need a management structure/chain of command. A model management structure for a rule of law component could include the positions listed below:

Head of component

Deputy head of component

Chief of staff/Coordinator

Chief of administration

Heads of units

Legal adviser

Political adviser

Human rights adviser

