The EU and post-conflict interventions: supporting reform or business as usual?

The Democratic Republic of Congo

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The Treaty on European Union commits the EU to advancing peace, security, the protection of human rights and the development of international law as well as sustainable development in its foreign policy (European Union, 2008). The EU is also a strong advocate of the International Criminal Court. This paper considers security-related EU interventions in the Democratic Republic of Congo (DRC): the EU Special Representative’s facilitation of peace processes in the east (2007-2008) and EU support to security sector reform (SSR), including governance of the security sector and the potential contributions of SSR to good governance more generally. Drawing on field work and interviews conducted in the DRC and Brussels (2006-2011), this paper considers how EU interventions may promote peace, justice and good governance in dynamic, fragile contexts such as the DRC in which violence was either ongoing or seemed likely to erupt, where peace deals have entrenched impunity for human rights violations within public institutions and particularly within the security system, and how and whether they do so in practice.

1. The EU, peace and justice in the DRC

Congo’s peace agreements were usually negotiated against the backdrop of ongoing fighting in some part of the territory or sub-region, or when the threat of a return to violence was very real. The result has been power-sharing between the belligerent groups and attempts to dismantle the armed groups and create a national, republican army (Forces Armées de la République Démocratique du Congo, or FARDC). Even when these agreements are in place, the population continues to suffer extensive human rights violations, perpetrated by armed groups, the army and police. There have been some limited attempts at promoting accountability for past abuses, such as limited amnesties and calls for prosecutions, but they do not go as far as public demands, such as those made during the Goma process in 2008, for prosecutions, truth-seeking, institutional reform (vetting) and reparations for victims. The national justice system is extremely weak. The International Criminal Court, which has been active in DRC since 2004, has had a mixed impact and anyway at best could only prosecute a small number of cases. The police force is dysfunctional, and the army continues to be abusive and is not able to protect the territory or population. The result is entrenched impunity, which enables and perhaps even encourages ongoing violence, particularly against the civilian population.²

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² For discussion of Congo’s peace agreements and the justice provisions within them, see (Davis & Hayner, Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC, 2009)
foreign policy (European Union, 2008, p. Art 3.5). The EU is also a strong advocate of the International Criminal Court: it is committed to advancing universal support for the Rome Statute (European Council, 2003) and it has an extensive agreement on cooperation and assistance with the ICC (European Council, 2006).

The Country Strategy Papers – CSPs - (République démocratique du Congo, Communauté européenne, 2002; 2007) and Council Conclusions (Council of the European Union, 2004; 2006; 2008) show that the EU intended to support peace processes, the rule of law (including justice sector reform and compliance with the ICC) and security sector reform, particularly of the army and police, and the EU engaged a range of its instruments to implement these objectives. European Parliament resolutions from this period also emphasise the importance of peace processes, combating impunity and furthering the rule of law (European Parliament, 2011). Regarding the International Criminal Court (ICC), the CSP (2008-2013) calls for full compliance with the Court, and EU statements at this time noted that ‘a sustainable peace requires, inter alia, broad reconciliation and the fight against impunity. In this context, the EU also calls on all stakeholders to cooperate with the International Criminal Court (Council of the European Union, 2009). Both the Commission and Council place the EU in a multilateral framework; Council conclusions emphasise the importance of the UN mission in DRC (MONUC/MONUSCO), EU cooperation with the UN and African Union as well as ‘other relevant actors of the international community in efforts to stabilise the entire region.’ (Council of the European Union, 2004; 2008)

The EU has engaged all of its peacemaking and peacebuilding instruments in the country at one time or another: the EU’s first Special Envoy, later renamed Special Representative (EUSR), Aldo Ajello, was appointed in 1996. EUSR Roeland van de Geer succeeded him in February 2007 and remained in post until early 2011. The European Commission (EC) also has a strong presence and large humanitarian and development programmes (European Commission, undated) and it also finances projects under other instruments, such as the Instrument for Stability (IfS) and the Instrument for Democracy and Human Rights (EIDHR).

There have been to date four CSDP missions in DRC, two with peacekeeping mandates: Artemis in 2003 (Council of the European Union, 2003) following UNSCR 1484 (2003) and EUFOR RD Congo in 2006 (Council of the European Union, 2006), following UNSCR 1671 (2006); and two with security sector reform mandates: the EU Police Mission in the DRC (EUPOL RD Congo, henceforth EUPOL) established in 2005 and the EU Mission to provide advice on and assistance with security sector reform in the DRC (EUSEC RD Congo, henceforth EUSEC), also in 2005 (Council of the European Union, 2005).

Many member states also have a presence in the DRC: the most active in terms of bilateral diplomacy and aid are Belgium, France, the Netherlands, Sweden and the UK, each of which has its own history in the region that influences its engagement in the DRC. Many other international and bilateral actors are also engaged, notably the UN mission (MONUC/MONUSCO), the USA, China, the African Union, Angola, South Africa, the International Conference on the Great Lakes Region (CIRGL).

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3 EUPOL RDC followed on from EUPOL Kinshasa, established by Council Joint Action 2004/847/CFSP of 9 December 2004; EUPOL RDC was established by Council Joint Action 2007/405/CFSP of 12 June 2007 on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo)
This paper considers how the EU has engaged in the complex, dynamic and difficult environment in DRC, and the extent to which it has pursued its commitments to peace, human rights and justice, by examining two examples: EU support to SSR more broadly, and the EUSR’s facilitation of peace processes in eastern DRC (2007-2008).

2. The EU and SSR

EU support to SSR has been split between the two pillars, which has often proved a source of tension, yet the two Concepts governing CSDP and EC support to SSR are very similar. The EU Concept for ESDP support to Security Sector Reform (SSR) states that:

‘EU support to SSR will be based, inter alia, on [...] democratic norms and internationally accepted human rights principles and the rule of law, and where applicable international humanitarian law.’ (Council of the European Union, 2005)

While EC support to SSR would support

‘nationally/regionally owned reform processes designed to strengthen good governance, democratic norms, the rule of law and the respect for human rights, in line with internationally agreed norms.’ (European Commission, 2006)

Both concepts, therefore, ground the EU’s approach firmly in its normative commitments to democracy, the rule of law and protection of human rights. Three classified documents (from 2006, 2010 and 2011) lay out a comprehensive EU approach to SSR in the DRC for both CFSP and Community instruments, the first of which (in 2006) was the first time that such a concept was produced, spanning both pillars, and was developed at the same time as the Concepts for SSR support by Community measures and for ESDP support to SSR (A, 2006). This suggests an important recognition of cross-pillar coherence and is a step towards developing a comprehensive approach on the ground.

a. Justice sector reform

The EU institutions and member states support a range of programmes to promote justice, human rights and the rule of law in the DRC. The justice sector has been a priority area for the EC in DRC since 2002, and indeed EC delegation describes itself as a leader donor in the sector.4 Since 2005, the head of the EC delegation has co-chaired the Comité Mixte de Justice (CMJ) with the Minister for Justice. The CMJ brings together the key donors in the section (which include the EC, the US, the UK, France, Belgium, the Netherlands, MONUC, and UNDP). EUPOL also participates in CMJ, but its participation has not been effective (Boshoff, Hendrikson, More, & Vircoulon, 2010, p. 9). The CMJ is intended to coordinate donor interventions in the sector, to ensure that these interventions are in line with the ministry’s strategy, and to provide the basis for partnership between the ministry and the donors. Commission support to the justice sector has fallen into two categories: the first is long-

4 ‘Depuis 2002, la Commission européenne est devenu leader du secteur aux côtés du gouvernement congolais’ (European External Action Service, undated)
term reform under the 9th and 10th European Development Fund (EDF) with an emphasis on criminal justice including for human rights violations. The second type of justice sector intervention the EC has supported are ‘urgent projects’ aimed at restoring the rule of law in Bunia in response to the crisis using the ‘B-envelope’ of EDF which makes provision for unforeseen or emergency funding. This was piloted in Bunia (Ituri) in 2003; this project provided the model for the Rejusco project, (Restauration de la Justice à l'est du Congo or the Restoration of the justice system to the east of Congo). This project had a total budget of €15 million and was co-financed by the EC (€7.9 million), Belgium, the Netherlands and the UK. Sweden later supported an additional part of the project to deal specifically with sexual violence. Launched in 2006 and running until March 2010, it built on the pilot project in Ituri, and had an extended geographical reach to North and South Kivu. Rejusco had several achievements despite operating in a very difficult environment, but lacked political support: 20 FARDC soldiers were found guilty of serious human rights violations, including crimes against humanity in 2009 in Walikale (North Kivu) at an audience foraine (a mobile session) of the military tribunal of the garrison of Goma organised by Rejusco. The perpetrators were then released by the garrison, but despite remonstrations by Rejusco personnel, neither the Commission delegation nor the other donors raised the question of the release of soldiers found guilty of serious crimes, including crimes against humanity, in discussion with the Minister (Y, 2010; W, 2010; X, 2010).

b. Police reform

Particular areas of engagement for the European institutions and member states in police reform have been in providing equipment, infrastructure and technical support to, and training personnel within, the relevant ministries (Keane, 2008). For example, EUPOL have trained personnel in various police units, and through the Stability Instrument and the 9th and 10th EDF, the EC has been active in developing human resources systems within the police, including collecting biometric data. This was intended as a basis for future reform to be managed by the Comité de Suivi de la Réforme de la Police (CSRP), a mixed committee chaired by the Minister of the Interior which monitors the police reform process and coordinates donor engagement. The EC has supported the preparatory work of the CSRP, and provided offices and equipment, and ensuring that it is operational will be key for future European engagement in police reform, as it will provide the focus for European activities, as is clear from EUPOL’s mandate and the EC’s Country Strategy Paper (CSP).

The mandate for EUPOL is clear: it is not an executive mission and its role is to mentor, monitor and advise:

The mission must provide advice and assistance directly to the responsible Congolese authorities and through the police reform monitoring committee (CSRP) and the joint committee on justice, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law. (Council of the European Union, 2007)

However, officials express frustration that very little has been done in the way of reform – the focus is rather on (technical) capacity-building, without addressing the fundamental issues of what the mission of the police service is, and how it – and the other security institutions - should serve the needs of the population (B, 2008; C, 2008; K, 2008).
c. Defence reform

In addition to EU Concepts on SSR, the EU’s Concept on Disarmament, Demobilisation and Reintegration (DDR) is relevant to the DRC case as the national army was created through numerous DDR processes (including after the Goma process, which is discussed below). The EU’s Concept on DDR states that

‘Human rights of all, both victims and offenders, should be ensured at all stages of the [DDR] process and at all times. This requires ending the culture of impunity, such as granting a role to war criminals in a national army or political bodies. All war crimes, crimes against humanity and other offences must be duly and timely investigated and the perpetrators brought into a fair trial. Sufficient support should be given to the International Criminal Court (ICC), International Criminal Tribunal for Rwanda (ICTR) …and other similar structures. (Council of the European Union, 2006)

The Concept is, therefore, unambiguous on the role that EUSEC could play in supporting the work of the International Criminal Court (active in DRC since 2004) and in other initiatives to pursue accountability for the worst crimes. Vetting of security personnel may be one way to achieve this, and was included in UNSCR 1794 (2007), in which the Security Council

‘reiterate[d] its call upon the Congolese authorities to put an end to impunity, … and to establish a vetting mechanism to take into account when they select candidates for official positions, including key posts in the armed forces, national police and other security services, the candidates’ past actions in terms of respect for international humanitarian law and human rights’

In reality, policymakers and practitioners in national capitals and in-country talk of ‘screening’ in DRC, rather than vetting: vetting implies a thorough process undertaken with the consent of the government in which those left in the security system are certified as ‘clean’. Screening, on the other hand, involves scanning the human rights records of certain individuals in connection with external support (e.g. logistical support to particular units, or participation in training programmes) and the insistence by the donor that certain individuals be removed from the chain of command before a unit can receive support, or that named individuals be excluded from training programmes (ZB, 2011; V,

Vetting is part of a justice-sensitive approach to SSR which, when combined with other SSR programmes designed to improve the accountability, functioning and oversight of public institutions, can contribute to both building the integrity and the legitimacy of the institution concerned. “Vetting” is used here to mean ‘processes […] aimed at screening public employees or candidates for public employment to determine if their prior conduct (including, most importantly from a transitional justice perspective, their respect for human rights standards) warrants their exclusion from public institutions’ (Duthie, 2007, p. 17). For more detailed discussion of vetting and justice see (Davis, 2009b)

Article 15 reads in full:

‘Reiterates its call upon the Congolese authorities to put an end to impunity, by bringing to justice without delay perpetrators of grave violations of human rights and of international humanitarian law, with special attention to those responsible for recruitment and use of children as well as for grave violations against women and children, in particular sexual violence, to fully support the human rights mapping exercise initiated in the country by the High Commissioner for Human Rights, and to establish a vetting mechanism to take into account when they select candidates for official positions, including key posts in the armed forces, national police and other security services, the candidates’ past actions in terms of respect for international humanitarian law and human rights’
MONUC/MONUSCO pioneered the principle of screening in DRC as a condition for UN support to FARDC units (for example during operations against the FDLR) or for participating in training, in the face of government resistance (ZB, 2011). There is some limited information sharing on known human rights violators between the UN and EU, yet according to UN officials, human rights has never been ‘important enough’ for EUSEC. The EUSEC programme on issuing biometric data cards could have been an opportunity for a range of screening (or vetting) measures on human rights grounds, such as – for example - identifying child soldiers within the ranks of the FARDC, and helping to demobilise them. In this example, a UN official reported that EUSEC personnel have come into conflict with UN Child Protection officers over the numbers of child soldiers present within the ranks of the FARDC and at the point at which soldiers were biometrically registered; in effect, acting against the human rights agenda of MONUC/MONUSCO (ZB, 2011).

However, the EU’s efforts at defence reform - like police reform – have rather been mostly focused on technical capacity-building projects through EUSEC, although one notable exception could be the chain of payments project which may well go some way to addressing corruption within the system, reducing the ability of senior officers to embezzle soldiers’ pay (Davis, 2009a). Projects so far have not focused on democratic oversight of the army. Other projects seemed particularly remote from positive reform of the army: despite criticism from within the EU institutions and member states, (D, 2008) EUSEC supported construction of five farms at military bases (EUSEC RD Congo, 2010), proposed by Minister Chikez only for the subsequent Defence Minister to abandon the plan.

Community measures have also been engaged in defence reform, through EDF and the Instrument for Stability (Commission of the European Communities, 2008). The EU and member states also use a range of policy and funding tools to contribute to SSR beyond technical assistance to the security actors themselves, including civil society organisations and the parliament (Davis, 2009a).

Although EUSEC has a coordinating function amongst the EU member states, to date strategic coordination has been lacking, and indeed the government has resisted any attempts by outsiders, including the UN, to coordinate support for defence reform. (S, 2008; D, 2008; L, 2008; ZB, 2011). Experts observe that coordination in defence reform is always a delicate area, in which states are most reluctant to share sensitive information – although more information is probably shared between European actors in the DRC than elsewhere precisely because bilateral defence reform projects are largely limited to technical capacity-building (G, 2008). Indeed, bilateral projects almost always focus on relatively short-term goals; despite the desperate need to improve the logistical support to army units, few donors wish to be involved as it is low-visibility, difficult, expensive and long term, preferring higher visibility projects such as training combat troops, for example (H, 2008; J, 2008).

3. The EUSR and the peace processes

The EU has been represented in Congo’s peace processes since 2002, first by Special Envoy /Special Representative Aldo Ajello, and since 2007 and during the period of this study by EU Special Representative Ambassador Roeland van de Geer. Throughout 2007 and 2008, the EUSR played an important role in the negotiations between the government and armed groups.
a. Policy framework: EUSR mandate

EUSR van de Geer’s mandate included contributing to the stabilisation and consolidation of the postconflict situation in the African Great Lakes region; addressing the problem of cross-border armed groups; and contributing, ‘where requested, to the negotiations and implementation of peace and ceasefire agreements between the parties’ and to accompanying peace negotiations with armed groups like the Forces Nationales de Libération (National Forces of Liberation, or FNL) and the Lord’s Resistance Army (LRA) (Council of the European Union, 2008). The DRC-specific policy objectives relate to SSR and consolidating the new “post-transition” institutions; there is no reference to accompanying peace negotiations (Council of the European Union, 2007; 2008). This discrepancy was apparently not due to a lack of will for the EUSR to be engaged in talks in the DRC, for he enjoyed considerable political support from member states in this regard. Rather the explanation lies in the date that the EUSR’s mandate was drafted: no talks were foreseen in February 2007 when the original mandate was drawn up, and by February 2008, when the mandate was renewed, the Nairobi and Goma agreements had already been finalised. (ZC, 2008) The EUSR is also to promote a human rights agenda based on the EU’s human rights policies (Council of the European Union, 2007; 2008). He was not, however, mandated to cooperate with or support the work of the ICC despite the fact that the Court had open investigations and had issued warrants in relation to two of the countries covered by his mandate: Uganda and the DRC.

b. EU political context

During the summer of 2007, concerned at the lack of progress in addressing the problem of armed groups in the DRC, a group of European diplomats started meeting informally in Kinshasa to reflect on possible strategies. One of the main impediments the group saw in the government’s response to the Congrès National pour la Défense du Peuple (CNDP), and the Forces Démocratiques de Liberation de Rwanda (FDLR) was the government’s insistence on tackling the problem militarily (which, given the state of the army, it was badly placed to do) rather than politically. The group was informal, the core comprising British, Dutch, French and Swedish diplomats, and drew in experts from other institutions, former military advisers, and consultants. The group drafted a proposal with a common approach based on a shared analysis. It suggested a range of options within an integrated plan for addressing the FDLR and CNDP in turn. The plan adopted a “3-D approach” – development, diplomacy and defence – that included activities in Europe (and elsewhere) to target FDLR leaders (O, 2008; P, 2008; U, 2009).

The group met resistance from some national capitals, which found the proposal simply “too political,” (O, 2008) but they persisted and members of this Kinshasa group recounted how they found in the EUSR a catalyst for a common European position; in some cases, they turned to him in an effort to help shift the policy positions held by their own capitals. This dynamic probably reflected the commonality between member state positions on DRC by this stage. Had the member states

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7 The FNL and LRA are respectively Burundian and Ugandan rebel groups, although the LRA is active across the central African region.
8 The two most prominent of the armed groups active in eastern DRC at this time were the Forces Démocratiques de Liberation de Rwanda (FDLR), mainly in South Kivu, and the Congrès National pour la Défense du Peuple (CNDP), led by Laurent Nkunda until his arrest by Rwandan authorities in January 2009, and then predominantly active in North Kivu. The CNDP was party to the Goma Accords, the FDLR was not.
been divided, it is likely that those divisions would have been replicated in Kinshasa; this effort by the group of diplomats to adjust (rather than fundamentally change) their capital’s policies can be seen therefore a reflection of the commonality of EU member state positions at this point.

Members of the Kinshasa group underlined how the EUSR supported the EU in developing common positions. At the same time, international concern at the growing casualties – and particularly the extent of rape and sexual violence in the east – brought more political attention in many European capitals to the conflict in eastern DRC and member states that were not willing or able to increase their diplomatic engagement in the Kivus were happy to see an increased role for the EUSR (M, 2008).

During this period, EUSR van de Geer enjoyed strong political support from European diplomats in the DRC and in national capitals. Although not every member state may have agreed with every action he took, they did agree (publically at least) that he spoke for the EU as a whole, and through him the member states, even the larger and more active ones, presented a united front. For example, Belgium’s Special Envoy to the Great Lakes played an active role during the Goma talks, yet Belgium declined to sign the agreement bilaterally, preferring to reinforce the EUSR’s role in representing all Member States (G, 2008).

c. The EUSR, peace and justice in practice

In January 2008, the government organised talks in Goma with the main armed groups in the Kivus (but not the FDLR) and a parallel peace conference. The EUSR was part of the International Facilitation Team (IFT) of this Goma process; the EUSR’s role as a mediator was not a role he played independently: he was very much part of the IFT – the core of which consisted of the EU, UN and USA – and he acted as part of that team. Observers considered the coordinated operations of the EU, UN and USA in the talks as an advantage; the close working relationship particularly between Roeland van de Geer and his US counterpart Tim Shortley (and also with William Swing and then Alan Doss for the UN9) was considered one of the strengths of the team. Other international actors welcomed the fact that all EU Member States were represented by the EUSR and so could ‘speak with one voice’ (I, 2008).

The most important aspects of the peace talks concerning justice were the amnesty provisions in the Goma accords, although as with previous peace accords, the provisions with the most impact on human rights – and the pursuit of those violating them – were those connected to security arrangements rather than justice per se.

At Goma, the CNDP reportedly demanded amnesty, and the EUSR discussed the question with them over two days (R, 2008). The EUSR and his team took the position that he could not witness a peace agreement which included an amnesty that did not explicitly exclude genocide, war crimes and

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9 Tim Shortley was senior advisor for conflict resolution in the US Department of State and represented US Assistant Secretary of State for African Affairs Jendayi Frazer. Alan Doss became special representative of the UN Secretary-General (SRSG) in the DRC in January 2008. UN representation at Goma was somewhat interrupted: the outgoing SRSG, William Swing, was present at the opening ceremony, and Doss took up his position as SRSG while the negotiations were underway. For the most part, the UN was not represented in the Goma talks, although staff from the mission headquarters in Kinshasa participated in parts of the parallel conference and some of the briefings about the talks.
crimes against humanity. This position was heavily influenced by a belief that an EU mediator had to act in accordance with the Rome Statute, some provisions of which may be interpreted as prohibiting amnesty for these crimes (Davis, 2010). The EUSR and his team also cited experience from previous peace processes, particularly the Juba talks with the LRA, as influencing his position (R, 2008). In the end, the Goma agreement included an amnesty which excluded these crimes. The EUSR (and his colleagues in the IFT) did not however, push for explicit reference to the Women, Peace and Security UNSC Resolutions (1325+) which include demands for accountability for crimes perpetrated against women and girls in conflict, despite the EU’s vocal support for these resolutions.

Interviews with the key protagonists at the time made clear that the invisible presence of the ICC influenced the meditators; the Court was independent from them and clearly at times the IFT (including the EUSR) disagreed with the Court’s actions. The existence of the warrant for Bosco Ntaganda, then Laurent Nkunda’s chief of staff, was already widely rumoured before the Goma talks in January and there was considerable concern that the ICC’s decision to unseal the warrant in April 2008 would derail the Goma process which was already extremely fragile.

As well as official talks which led to agreements (such as at Goma and at Nairobi in 2007), the EUSR (and the rest of the IFT) were engaged in ongoing talks and negotiations between the government and the armed groups. The EUSR was heavily engaged in a series of meetings with the FDLR (such as at Kisangani in May 2008) and worked to draw attention to the presence of FDLR leaders in Europe and North America and their continued engagement in the violence. The EUSR played a behind-the-scenes role in the prosecution of FDLR leaders within the EU: German authorities (supported in their investigations by the ICC) arrested Ignace Murwanashyaka and Straton Musoni in November 2009 under universal jurisdiction and in October 2010, French authorities arrested Callixte Mbarushimana, acting on an arrest warrant issued by the International Criminal Court against him on charges of war crimes and crimes against humanity. Neither arrest was an ‘EU activity’ - there is no relevant EU jurisdiction - yet they illustrate a willingness by EU member states to bring alleged perpetrators of the most serious crimes committed in third countries to account within the EU – either through universal jurisdiction in states such as Germany which have such provisions, or through cooperation with the ICC in states – like France, in this case – which are not able to prosecute perpetrators themselves and they show how EU institutions (in this case the EUSR) can facilitate these activities.

d. Supporting Implementation: CSDP

The EUSR’s signature to the Goma peace agreement is as an observer and as a guarantor of its implementation, particularly the disarmament, demobilisation and reintegration of the armed groups (Republique Democratique du Congo, 2008). The signature then did not and could not commit the

10 The Juba process – intended to end the conflict in Northern Uganda and disarm the Lord’s Resistance Army (LRA) – began in 2006 and ended when LRA leader Joseph Kony refused to sign the final agreement in 2008. The International Criminal Court issued indictments against Joseph Kony, Vincent Otti, Okot Odiambo, Dominic Ongwen and Raska Lukwiya, five LRA leaders, on charges of crimes against humanity and war crimes in 2005.
11 The EUSR’s mandate specifically references these resolutions in Art. 2(g) (Council of the European Union, 2008)
12 Bosco Ntaganda is wanted by the ICC on three counts of war crimes (including the enlistment, conscription and use in armed conflict of children) dating from the time he was the deputy chief of staff of the Patriotic Forces for the Liberation of Congo (FPLC) – the military wing of the Union of Congolese Patriots (UPC) led by Thomas Lubanga (currently on trial at the ICC). Bosco Ntaganda remains at large.
EC to anything. But the EC and member states committed funding to follow up and implement the agreements, and the EUSR was certainly perceived as being able to influence these decisions. A key component of the Goma agreements was the creation of a technical committee to attempt to get the parties to agree a plan for DDR, as they could not reach agreement during the talks. In June 2008 the mandates of EUSEC and EUPOL were extended to explicitly include support for implementing the Goma agreements.

In addition to the EU’s Concepts on SSR and DDR discussed above, EU guidelines on promoting compliance with international humanitarian law (IHL) state that ‘the European Union should ensure that there is no impunity for war crimes’ (European Union, 2008) and

‘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’. (European Union, 2008)

In response to the Goma agreements, EUSEC was tasked with ‘providing support for the EUSR, as and when necessary, in the context of the work carried out by the committees for the process of pacification of the Kivus’ (Council of the European Union, 2008) which would include aspects of SSR and DDR, and contributing to overall army reform in which ‘particular emphasis should be placed on the ‘human resources’ function.’ (Council of the European Union, 2008) This emphasis on the human resources function could open the possibility for (support to) vetting, in accordance with UN Security Council Resolution 1794 adopted six months prior to the CSDP mandate extensions, and discussed above.

But the EU did not pursue this course of action. According to a senior official, the EU, through EUSEC, pushed for vetting in DDR/SSR following Goma and indeed EUSEC’s previous work on census and identification (including issuing identity cards for FARDC personnel) could have formed the basis for this (Z, 2011). Yet this was resisted by the CNDP who have consistently refused to accept measures, particularly related to human rights or reform, which go beyond previous DDR agreements in the DRC, as well as by the government (S, 2008; Z, 2011).

EUPOL was to provide support to implementing police reform in the context of the Goma agreements. Its mandate was extended to:

‘contribute to the police as well as to the gender, human rights and children and armed conflict aspects of the peace process in the eastern DRC and especially to its linkage to the reform process of the PNC.’ (Council of the European Union, 2008)

As with EUSEC, this mandate extension appears to create space for EUPOL to pursue a more human-rights focussed agenda, yet in practice, the mission remained focused on mentoring, monitoring and advising.

The fact that the mandates of both missions were extended in recognition of the changing context and the need for follow up to the Goma agreements showed flexibility and commitment from the EU. Although by the time the mandates were changed (June 2008) the agreements were clearly failing, the EU’s ability to engage the CSDP missions in the technical aspects of implementing the Goma processes was an important contribution by the EU to the process. The missions had political
guidance from the EUSR and provided important expertise, particularly on the military aspects of implementing the agreements. But in light of the provisions in EU policy, the detailed calls in UN Security Council Resolutions for an end to impunity for the perpetrators of serious human rights violations, including through vetting, and the unsealing of the ICC warrant against Bosco Ntaganda in April 2008 before the CSDP mandates were extended, it is striking that there is simply no reference to the ICC, or impunity for international crimes in the mandates. While there is arguably space in the mandates to contribute to justice, in practice the CSDP missions have rather focused rather on support to ongoing processes. Without underestimating the complexity of the context, the picture which emerges is that the EU – despite the extent of its engagement in the DRC - was not willing to use the opportunity of facilitating and supporting a peace process (which, after all, benefitted the government ) to give sufficient political weight to insist on reform measures, including the justice agenda as defined by the UN. This has serious implications both for the Congolese and for the image of CSDP missions within the EU.

4. Coherence between principles and practice

The preceding analysis of whether and how the EU has pursued peace and justice in practice in the DRC shows that the EU has sought through CFSP and Community measures to further both aims. The EUSR has been active in facilitating formal peace negotiations while the EC and member states have provided substantial funding to support peace processes and implement the agreements. The Commission and CSDP missions have also aimed to contribute to reforming the security system, including the justice sector. These programmes – particularly the long-term Commission development programmes for justice reform – are perhaps an implicit acknowledgement that in societies emerging from violent conflict where the state (as any other) is obligated to prosecute the most serious crimes including those coming under ICC jurisdiction, there needs to be a certain level of support to the justice sector specifically to address human rights violations, including and going beyond more general rule-of-law programming. The EU has also recognized that reform of the justice sector requires reform of the police in order to be viable. It has also identified that as long as the army remains both incapable of defending the state and abusive of the population, neither peace nor justice can prevail.

Yet closer examination suggests a more mixed picture. The extent to which the principles of peace and justice have been pursued by the EU at the country-level – that is, in all dealings with the government and other stakeholders, not just on those specifically related to peace processes, SSR and human rights – is unclear. Within these sectors, the commitments to both peace and justice may be patchy. The EUSR is not mandated to support the work of the ICC, yet while facilitating the Goma and Nairobi processes he – along with his co-facilitators – pushed for and achieved an amnesty limited to exclude crimes coming under the jurisdiction of the ICC. The two CSDP missions were then engaged to support the Goma process, including the sensitive area of DDR/SSR, which was an important follow-up to the EUSR facilitation role. But although there were clear provisions in UN Security Council Resolutions and EU policy, neither mission was mandated to support the ICC’s work, contribute to the prosecution of alleged war criminals (despite the unsealed ICC warrant for Bosco Ntaganda) or to support vetting procedures.
It is in the field of ‘ongoing’ security sector reform that the gap between principle and practice becomes most apparent. In each sector (justice, police and defence) the emphasis of EU engagement has been on technical assistance rather than reform. There was considerable concern during this time that efforts at building the technical capacities, particularly of the army and to a lesser extent of the police, would strengthen the army’s ability to be abusive rather than lead to real change (Davis, 2009a). This fear was also articulated in a draft resolution tabled by GUE/NGL Group in the European Parliament which

‘Call[ed] for an end to the EUPOL mission to DR Congo, which along with the EUSEC DR Congo has admittedly had a negative contribution to escalating violence and the situation in the country by training soldiers and police that have been perpetrating crimes against their own civilian population and in particular against women and children’ (GUE/NGL Group, 2011)

This text was dropped from adopted resolution, but indicates that at least some MEPs shared the fear that the EU was contributing to building up an abusive security sector, as opposed to reforming it. As the analysis above shows, Community and CSDP measures have failed to engage the Congolese authorities politically on issues crucial for ending impunity and for genuine reform of the security system. In this regard, the CSDP missions fall behind the UN approach which – despite government resistance – conditions its support on (limited) screening measures on human rights grounds. EUSEC may even be acting against MONUSCO’s human rights agenda. In other cases, such as the example of constructing prison farms, the EU has supported Congolese-led projects which the EU and others felt were counter to genuine reform.

5. The EU in a multilateral context
   a. The EU and the Congolese government

The (lack of) coordination and coherence between the EU instruments and between EU and member state intervention receives much attention, particularly in the field of SSR (Lurweg, 2011; Boshoff, Hendriksen, More, & Vircoulon, 2010; Justaert & Keukeleire, 2010; Soderbaum, 2011). However, the focus of this paper is more on the role the EU has played in the multilateral context in DRC, in which its primary relationship should be with the national authorities. The Paris Declaration on Aid Effectiveness and subsequent Accra Accord emphasise the importance of national ownership and donor harmonization, meaning that the national (host) government should be developing the development agenda and harmonizing donor support for it, and, conversely, that donors should support the nationally-led development agenda and be harmonized. In other words, EU interventions should be coherent with a nationally-developed agenda. While therefore it would no doubt be preferable that EU interventions be coordinated the extent to which EU and member state interventions are coordinated internally is perhaps less important than the extent to which all donors are coordinated, or harmonized in the language of the Paris Declaration.

Seen in this perspective, the quality of political EU leadership in a given country-context becomes more important; as the president will be ultimately responsible for the development/reform agenda, then the EU should be seeking to shape that agenda at the highest possible levels in-country. In the post-Lisbon set-up this would be through the head of EU delegation as part of ongoing political dialogue with the president and ministers. This may also include interventions as necessary by the
High Representative or Commissioner. This dialogue would then be complemented at the appropriate levels by, for example, heads of CSDP missions. This would not require new tools: after all, in the Congolese, or broader ACP context, Article 8 of the Cotonou Agreement (2000) provides for precisely this form of ongoing dialogue in which to engage the Congolese government politically at the highest level on peace, justice and SSR, which would be in keeping with the national ownership approach of the Paris Declaration, yet it has never been used for this purpose in Congo. ‘There is no political dialogue’ stated one senior European official in 2008 (F, 2008); the CSP (2008-2013) signals the EC’s intention to engage in Article 8 dialogue, but notes that ‘the modalities have not yet been decided’.13

This has been partly due to the approach of the Congolese authorities as since the elections in 2006 President Kabila reduced contact with the international community. For the EU, the situation has been exacerbated by perceived interference by Commissioner Louis Michel in Congolese politics and the deteriorating relations between the DRC and Belgium, an interpretation reinforced by the view held by insiders that as Commissioner Michel’s engagement in DRC waned after the elections, so did the EU’s ability to press for reform (E, 2008; F, 2008; European Peacebuilding Liaison Office, 2011). Article 8 dialogue is not punitive but intended to foster partnership provide the platform through which the EU could engage politically with the authorities on developing a development agenda, including for SSR. The same agreement does indeed provide incremental steps for conditionality, including Article 96 consultations which are triggered in the case of a breach of commitments to good governance and human rights. So the EU has the instruments to engage the government politically at the highest level, but has not used them.

Examining SSR efforts in DRC reveal a fundamental problem: the Congolese government has always resisted donor coordination in the security system. There are sectoral coordination mechanisms for the justice (CMJ) and police sectors (CSRP), but there has been to date no ministerial level coordination mechanism for defence reform as the Congolese authorities prefer bilateral relations with donors in this field. The UN has taken the role of coordinating SSR by external donors – a role once mooted for the CSDP missions - but this role is largely limited to information sharing between donors rather than supporting an agenda led by the government. (S, 2008; ZB, 2011; Q, 2008). Yet these approaches remain sectoral, with no system-wide approach to SSR. They also remain largely technical, overlooking the extensive political aspects that successful SSR entails.

When it comes to facilitating formal peace processes, the ‘special’ nature of EUSRs is apparent. Unlike the Commission delegation, the EUSR is not accredited to the government or engaged in broader policy areas such as development or trade. As with bilateral envoys, this enables the delegation or embassy to distance themselves from the EUSR, which may be of use to them politically in their ongoing work with the national government. This possibility of allowing a representative to be ‘plausibly deniable’ for the delegation may have significant benefits when there are ongoing peace negotiations in which the government is involved.

13 ‘Pars ailleurs, l’UE va proposer au nouveau gouvernement la mise en place d’un processus de dialogue au titre de l’article 8 de l’accord de Cotonou, dont les modalités ne sont pas encore arrêtées’ p.26 (République démocratique du Congo – Communauté européenne, 2007)
b. Relations with other actors

The international community has been heavily engaged in DRC, particularly from the Inter-Congolese Dialogue onwards, and the EU has formed part of this international community. It is striking that throughout the Common Positions, EUSR mandates and CSP the extent to which the EU references other international actors. The two CSDP missions (Artemis and EUFOR) with peacekeeping mandates were set up following UN Security Council Resolutions. MONUC/MONUSCO is the largest international actor present in the DRC and is engaged in the whole range of activities related to this study. The EU has been a vocal supporter of the UN, in public at least, although at the technical level there have also been problems of coordination between MONUSCO’s SSR efforts and EUSEC (as discussed above) and the UN Rule of Law unit and other SSR actors, including the EU (Boshoff, Hendrikson, More, & Vircoulon, 2010).

During the Goma process, the facilitation was largely led by the US Envoy Tim Shortley and EUSR Roeland van de Geer; MONUC was between SRSGs and staff from the mission headquarters in Kinshasa were not always present. However, the reliance of all parties on the UN particularly for logistical support and security made up for this absence, and certainly the UN was perceived to be actively engaged in the talks. As was noted above, the strength of the facilitation team as outsiders saw it was precisely the close alliance between the EU, US and UN, and the absence of any one of these parties would likely have weakened it. It is also difficult to imagine the EU engaging in this type of mediation without the UN or US, as both are key stakeholders not only in DRC but in the region more broadly.

In this case, as in others, the EUSR has a regional mandate, in contrast to the Commission’s country mandate. This enables the EUSR to deal directly with regional governments and stakeholders engaged in the conflict – such as the government of Rwanda - in a way that a Commission official (at least at field level) could not. (A Development Commissioner arguably could fill this role, and Commissioner Michel is an example of this, yet Commissioners have extensive mandates and workloads and are not usually able to engage in a particular region over an extended period of time in the same way that an EUSR can.) The EUSR was able to consult with all the regional heads of delegations, which no single head of delegation would have been able to do.

At the international level, the EU has been active through the International Committee to Accompany the Transition (known by its French acronym, CIAT) and then the DRC Contact Group – indeed at various times, the Commission, ESDP missions and EUSR have all participated in addition to member states (notably, Belgium, France, Netherlands, UK) and other actors such as the UN, US and AU. The EUSR has also participated in or facilitated other international groupings on particular subjects, such as the FDLR working group.

6. Delivery

Any discussion of the impact of EU interventions in the DRC is hampered by two critical elements: the first is more general problem, the difficulty of assessing the extent to which any intervention has prevented violent conflict, precisely because the conflict did not happen. The EU has contributed to MONUC’s peacekeeping role, through CSDP peacekeeping missions (Artemis and EUFOR) which suggests that the EU has contributed to security in specific locations at particular times. When it
comes to ‘softer’ interventions, such as mediation or SSR, it is more difficult to draw such conclusions.

This is exacerbated by the second problem: the lack of evaluation (public or classified) of the impact of EU interventions on the populations concerned. This is particularly acute when it comes to the CSDP missions, and to combined EU interventions. When it comes to SSR, as has been noted above, there is a widespread concern that efforts by the EU and others to provide technical assistance to the security sector may be strengthening the ability of these services to abuse and resist reform.

Regarding mediation, at the time other actors both inside and outside the processes felt the EUSR’s contribution was important. At least part of this contribution was the public joint stance of Belgium, France, and the UK in a region where these countries have traditionally pursued divergent agendas. The EUSR and his co-facilitators insisted on an amnesty in the Goma agreement which, in line with emerging international standards, excluded the crimes of genocide, war crimes and crimes against humanity. But since the Goma process, the lack of prosecutions of high-level alleged perpetrators of these crimes suggests that the amnesty remained words on paper rather than implemented. In February 2009, the Minister of Justice wrote to the State Attorney General and the Judge Advocate General of the FARDC instructing them ‘not to engage in proceedings against the members of the aforementioned armed factions [CNDP] and to stop all proceedings that have already been initiated’.¹⁴ Rather than arrest Bosco Ntaganda, who is wanted by the ICC on charges of war crimes, and transfer him to the Hague in accordance with their obligations under the Rome Statute, the Congolese authorities have given him high rank in the national army. The army, police and armed groups continue to abuse the population, particularly, but not exclusively in the east. The extent to which the EU has challenged the Congolese authorities to abide by their national and international obligations to prosecute the perpetrators of the most serious crimes remains unclear.

A final aspect to consider is the question of leverage. Some observers have argued that extensive EC and member state aid provides much of the leverage for the EU in mediation contexts (Herrberg, 2008). But in aftermath of the Goma process, insiders on the ground felt it was not an option to withdraw this “carrot” – officials were determined that a lack of money will not cause a peace process to falter in the east. (N, 2008; T, 2008). Indeed, EU and member state officials alike interviewed for this research regretted the EU’s lack of “sticks” to help enforce peace agreements, and some European officials bemoaned the lack of conditionality on EU aid, especially EDF (T, 2008; N, 2008; L, 2008).¹⁵ There was no agreement within the EU to deploy an “Artemis II” peacekeeping mission, which for many would have sent a clear message not only to the CNDP but also to government of the EU’s determination to support peace in eastern DRC. As noted above, the CSDP missions have not attempted the UN’s approach of conditioning their support on even limited human rights screening, and may even in some cases have undermined MONUSCO’s efforts in this area.

During interviews conducted in DRC between 2007 and 2008, no officials (EU or member state) raised the option of Article 8 dialogue, other than to state that there was no political dialogue with the government. Those interviewed believed that the only stick is the ICC, which is of course independent, can target only a very small number of alleged abusers, and is entirely dependent on the national government to execute its arrest warrants, either directly or through requesting the assistance of a third party (in this case, MONUC/MONUSCO was the most obvious candidate).

¹⁵ Arguably there is conditionality on EDF aid – see discussion above
Conclusion

In DRC the EU has sought to turn its commitments to the principles of peace and justice into policy; this is reflected in the overlap between the Country Strategy Papers, Council Conclusions, and Parliament resolutions. It has also engaged all of the tools at its disposal to achieve these aims: Community measures (EDF, EIDHR, IFS), an EUSR, CSDP missions charged with security sector reform (EUSEC and EUPOL) and peacekeeping (Artemis and EUFOR). It has engaged in formal peace mediation and pursued accountability measures within those processes, and has recognised that without reform of the justice, police and defence sectors peace and justice in the long term will be illusory. It is also clear that there is a strong convergence, maybe even commonality between the member states and the EU positions; arguments over coordination persist, yet there is no substantive divergence on policy. Member states such as Belgium, France and the UK which traditionally have had differing policies towards DRC and Rwanda were happy (at least publically) to be represented by the EUSR during the Goma and Nairobi processes. Some member states representatives in Kinshasa even sought to shift the policies of their capitals towards the FDLR through the EUSR. The divisions which exist in other contexts, where member states have fundamentally opposed views, simply are not present in DRC.

Two contradictory observations also emerge: the first is that some EU engagements took place within a policy vacuum. The EU has been long engaged in mediation in DRC through its Special Envoy and then EUSR yet the Mediation Concept was only adopted in 2010 (Council of the European Union, General Secretariat, 2009) and as of late 2011 there were still internal discussions within the EEAS as to whether the EU ‘does’ mediation (ZA, 2011). The EUSR was operating in a policy vacuum with no guidelines, or technical support from headquarters particularly on accountability for human rights violations in peace negotiations. He derived a position – that he could not witness an amnesty for the most serious human rights violations - from the EU’s commitment to the ICC, which is based on an untested interpretation of the Rome Statute. Indeed, there was – and is - no clear understanding of what his signature to the Goma agreements meant. The mandates of EUPOL and EUSEC were amended to support the Goma process, again without policy guidance.

The second observation is that where there are policy guidelines on justice-related measures, such as the EU’s Human Rights guidelines, they are not uniformly implemented. The EU is a staunch supporter of the ICC, yet neither the EUSR nor the CSDP missions were mandated to support the ICC’s work in DRC. Community measures to further justice such as the Rejusco project did not receive political support in face of flagrant injustice. The EU has not entered into a political dialogue with the Congolese government on issues related to peace and justice, despite the potential for an Article 8 dialogue. The EU has not made its support to SSR, particularly of the army, conditional on even limited human rights screening, despite the opportunity (e.g. EUSEC’s biometric data programme) and moves in this direction by MONUSCO.

Analyzing the EU’s engagement in a country underlines the importance of the EU engaging with other actors. The multilateral nature of the International Facilitation Team (EU, US, UN) was an important strength; the ability of the EU to work through the Contact Group and FDLR working group has led to important breakthroughs, such as the prosecution of the alleged perpetrators of war crimes in Congo, residing in the EU. Yet in other fields, notably SSR, the lack of coordination between the actors has weakened international interventions in general.
The EU does not evaluate its impact and therefore cannot make changes to improve its interventions. At the same time, there is a certain siege mentality within the institutions that any sign of (self-) criticism would be taken as a failure of the whole EU approach and perhaps bring the instruments themselves into question, particularly by elements of member state polities and the press hostile to European integration. Deployment and visibility then become the measure of success, which, without evaluation, increases the risk that interventions at best contribute little to positive change and at worst do harm.

The EU would not be able to ‘fix’ Congo, nor should it aspire to. Any process of reform must be nationally owned; many of those in positions of authority may not wish for reform, preferring instead to benefit from the power they derive from the formal and informal institutions. Yet the EU can condition its support on progress in areas such as human rights and justice. There is a constituency in DRC which has been repeatedly and determinedly calling for peace and justice since the Mobutu era. In the absence of evaluations to determine the impact of the EU’s interventions, it would appear that the EU has supported this constituency, often in an innovative manner. Yet it has also failed to stand up to those who would impede it, by supporting ‘business as usual’ as opposed to genuine reform, particularly of the security sector.

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