



The European Union: Time to Further Peace and Justice

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The EU has become increasingly engaged in peace processes, which is welcome. This engagement has often been through the European Union Special Representatives (EUSRs), and had tended to be ad hoc. This brief argues that the External Action Service (EAS) should address the role the EU could and should play in peace processes early. It is not a role that should develop organically anymore; it is time for strategic decision-making. Ten years on, the review of the Gothenburg programme on conflict prevention has been shelved, and the direction of the so-called ‘horizontal’ issues – like peace mediation – in the EAS are still under consideration. This presents an ideal opportunity to assess what EU diplomats should be contributing to peace processes, and making the necessary support available. After all, interventions of this kind affect not only the EU’s external action and its intended beneficiaries, but also the Union’s identity on the world stage.

As the EU emerges as a global player, it should engage more effectively in mediating an end to violent conflicts, especially given the extent of EU aid for post-conflict reconstruction.

This need not equate with a global role as a peace broker; there may be many reasons why the EU cannot or should not engage in particular places, but where it does intervene it should be more effective and build on experience from places such as Georgia or the Democratic Republic of Congo (DRC).

The European Security Strategy (ESS) called for ‘stronger diplomatic capability’¹ including in the context of conflict prevention and crisis management; the 2008 ESS Implementation report noted that ‘We should ...expand our dialogue and mediation capacities’² which led to the Concept on Strengthening EU Mediation and Dialogue Capacities, adopted in 2009.³ ‘Mediation’ is used in this brief to mean an intervention in an international crisis or intrastate crisis with potential international repercussions designed to help the parties find a negotiated solution rather use force. The role the EU plays in mediation goes to the heart of EU foreign policy, yet it has no policy guidance on it.

The EU and Mediation tracks

This paper focuses on official negotiations at diplomatic levels, or Track I mediation. Over time there may be a range of engagements with different actors– the ‘multi-track’ approach. Track II refers to individuals or

organisations who have privileged access to Track I actors, but are not themselves party to the negotiations. Track III is the grassroots, or community level talks and dialogues which may have no direct connection with Track I but may influence negotiations indirectly. Track III-type dialogue projects can be very important for the long-term success of peace agreements brokered at the Track I level. The tracks may not necessarily operate in parallel; there may be considerable fluidity between them. Progress may vary between different tracks. Track I actors may also be supporting other efforts at Track II or III, or Track II or III initiatives may be creating an enabling environment for Track I processes.

The EU may be involved in all aspects of multi-track diplomacy: EU representatives (the High Representative, an EUSR or ambassador, or a member state acting on the EU's behalf) may be engaged in Track I processes. The EU may convene (directly or indirectly) Track II initiatives, and it may support talks at Track I or II, without participating directly. CSDP missions may have a direct role in Track I or Track II processes, and may also be key for monitoring and/or implementing agreements. The EU regularly funds Track I, II and III initiatives through the European Development Fund (EDF), European Instrument for Democracy and Human Rights (EIDHR) or the Instrument for Stability (IfS). The EU has the necessary instruments for engaging in each of these tracks; the question is whether it is able to engage them systematically and strategically across the tracks.⁴

Mediation

Mediation approaches may be power-based or interest-based, or somewhere in between. In the first, mediators use power or leverage (the promise of rewards and the threat of punishment) to broker a deal which reflects the balance of power rather than the roots of conflict. Interest-based or problem-solving

mediators use a more facilitative style, promoting the ownership of the parties over the process and supporting outcomes which meet the interests of all parties and addresses the root causes of the conflict.

'Mediation' includes a broad range of processes, the results of which can be quite different. Power-based negotiations may lead to a cease-fire which (temporarily at least) halts the violence but may not address the underlying causes of the conflict: a conflict management approach, particularly relevant to CDSP. Interest-based facilitation seeks longer-term and more sustainable resolution – the conflict prevention or peace-building approach usually associated with the EC. Different approaches can be applied together; the EU has the range of instruments to (potentially) engage in different forms of mediation *and* in different tracks.

The challenge of 'normative mediation': combining peace and justice

Geopolitical concerns are not the only factors determining how the EU might engage in peace mediation. Peace agreements are usually reached in the aftermath of protracted violent conflict in which all sides have committed grave human rights violations and other crimes, and violence may be ongoing. Keeping the options open for pursuing accountability for serious human rights violations can be a major challenge for victims and human rights activists. Mediators are increasingly expected to ensure that peace agreements respect international standards on human rights. UN mediators, for example, are prohibited from witnessing deals allowing amnesty for genocide, war crimes, crimes against humanity or serious human rights violations.

The EU has strong commitments to international justice and human rights, as well as to peace: it is a strong supporter of the International Criminal Court (ICC), and other

international tribunals. It has large programmes addressing the rule of law (EDF), human rights promotion (EIDHR) and security system reform through EDF and CSDP. The EU also supports the group of UN Security Council Resolutions (UNSCRs) on women, peace and security including UNSCR 1325 (2000), UNSCR 1820 (2008), UNSCR 1888 (2009) and 1889 (2009). These resolutions reiterate states' obligations to prosecute perpetrators of sexual violence, prohibit amnesty for these crimes and call for vetting of armed forces to remove and prosecute perpetrators. EU human rights guidelines are piecemeal when it comes to peacemaking, however.⁵

The mediation concept notes that:

'EU mediation efforts must be fully in line with and supportive of the principles of international human rights and humanitarian law, and must contribute to fighting impunity for human rights violations'.⁶

EU mediators are expected to address human rights violations in peace processes and to assess support to transitional justice initiatives, but the concept gives no indication for how they may do so. While UN mediators have detailed guidelines to follow relating to accountability for human rights violations in peacemaking, EU mediators have no policy guidance on mediation in general or accountability in peacemaking.

The EU Special Representatives

The EU Special Representatives are frequently described as mediators, but to date there has not been any comprehensive study of mediation as practiced by EUSRs. 'Mediation' only appeared in one EUSR mandate in 2010: the EUSR to the African Union should support the AU in developing its mediation capacity.⁷

The mandates for the EUSRs to the South Caucasus, the crisis in Georgia, Moldova, the Great Lakes and Central Asia all use different

language to describe mediation-related activities: confidence-building measures between parties (South Caucasus); preparing international talks (crisis in Georgia); contributing to the negotiation and implementation of peace and cease-fire agreements (Great Lakes); and building relationships with stakeholders to prevent conflict (Central Asia). The EUSRs for Afghanistan, Sudan, and the Middle East peace process are mandated to support, rather than engage in, processes, while the EUSRs in the Western Balkans are mandated to support the implementation of peace agreements.

Turning to international justice, EUSRs cover three situations under investigation by the ICC—Sudan, Uganda and the DRC (the EUSR for the Great Lakes covers both Uganda and DRC). But only the EUSR for Sudan is mandated to support the ICC's work. Georgia is one of the cases under preliminary investigation by the ICC, but neither EUSR working on Georgia is mandated to support the Court's work there.

The ICC is not the only mechanism through which justice can be pursued for serious human rights violations. Transitional justice approaches include criminal prosecutions through international, national or hybrid tribunals; truth-seeking (through, for example, truth commissions); reparations for victims; and reform of public institutions. Planning for these approaches may be particularly appropriate in peace processes, and the mediation concept recognises this. Yet despite its extensive support for transitional justice processes worldwide, the EU is yet to develop an EU approach to supporting transitional justice.

EU mediation in Georgia and Congo

Two very different contexts, Georgia and the DRC, illustrate how EUSRs have contributed to mediation. Georgia provides a particularly

complex example of different EU actors at work: President Sarkozy of France led EU efforts on behalf of the French presidency of the EU in brokering a ceasefire in the Georgia-Russia conflict in 2008. An EUSR for the South Caucasus has been in place since 2003 and was mandated to support confidence-building initiatives between Armenia, Azerbaijan and Georgia, including through EUSR's Border Support Team. In 2008, Pierre Morel, EUSR for Central Asia, took on the additional post of EUSR to the crisis in Georgia.

Overlaps between the two and perceptions of their differing roles have caused considerable confusion. A CSDP civilian monitoring mission (EUMM) is also deployed in Georgia, and facilitates talks between representatives of the parties on security issues. EUSR Morel co-chairs the Geneva talks, with the OSCE and the UN, in which representatives of EUMM participate but EUSR Semneby does not. Mediating a resolution to the conflict presents many challenges beyond the EU's control, but the EU's effectiveness is undermined by a lack of clarity and coordination between the different EU institutions engaged in the mediation process.⁸

In Congo, EUSR van de Geer co-facilitated, with the USA and UN, negotiations between the government and armed groups which led to the Goma ceasefire agreement of 2008. The facilitators insisted that war crimes, crimes against humanity and genocide be excluded from the amnesty in the agreement. The mandates of the two CSDP missions (EUSEC and EUPOL) were then extended to support implementing the agreements⁹ and the EC and member states provided additional funding and technical assistance. The EUSR could not commit the EC or member states to anything, but he was perceived as being able to influence these decisions. The EUSR's regional mandate was also important in this mediation role.¹⁰

Conclusion

It is in the EU's interest to develop a greater capacity to mediate violent conflicts. The EU has engaged in mediation for some time, particularly at Tracks II and III. The variety of EU actors and tools with which to engage in mediation could be a strength for the EU, enabling flexible responses at Tracks I, II and III. But without a policy or support from headquarters this potential is not realised, and flexibility is replaced by inconsistency. At best different EU actors fail to complement each other, at worst they undermine each other's interventions.

The creation of the EAS offers an ideal opportunity to place peacemaking firmly at the heart of EU foreign policy. Going forward, the EAS could start with reflecting on the EU's experience to date. EUSRs have engaged in some processes at Track I, and as single-country EUSRs are replaced by EU ambassadors, lessons should be drawn from these experiences. Not all conflicts are confined to one state, however. To date, one clear advantage of the EUSR function has been cross-border mandates in conflict-affected regions, which has added considerable value to EU engagement.

EU diplomats have insufficient policy guidance and technical support in peacemaking. There is no technical support in mediation processes, or on thematic substance issues like accountability for human rights violations and the parameters of international law. The result may be inconsistent approaches, allowing too much flexibility for individuals and insufficient clarity of the EU's foreign policy.

The EAS should create capacity to support its diplomats engaged in peace processes in headquarters. But this is a long-term process; it takes time to build up this capacity and the first step should be assessing what the EAS actually needs. Undoubtedly the EU needs to

develop its own approach and its own internal support, but it should also consider the models used by other states and the UN, such as mediation support teams, rosters and so forth. There may be some skills – such as mediation process design – that are better contracted in from external specialists than developed in-house.

Independent organisations may provide a way of supporting internal EU capacity-building while also engaging expertise from outside. An EU Institute for Peace could fulfil other important functions too, such as preparing the ground for official talks, hosting Track II meetings and providing thematic and process expertise. This would complement existing security and foreign policy think tanks and practitioner networks and provide a platform for delivering timely expert support to peace processes.

Finally, EU mediators need to address multiple competing needs and principles. The EU needs to address how it pursues its commitments to both peace and justice. Although the mediation concept states that mediators must respect international standards and consider transitional justice options in peace processes, there is not yet any guidance for *how* EU officials may do this.

Maximising the chances for peace and justice in negotiations is rarely an easy task, and one for which mediators need policy guidance and technical support. UN mediators have guidelines to follow in peacemaking, there may be interesting learning from this that the EU could benefit from. The EU also has considerable experience of its own in these questions – both within its borders and abroad – which it should combine with learning from the UN and others to develop an EU approach to peace and justice.

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Endnotes

¹ European Security Strategy p.12

² European Council (2008) *Report on the Implementation of the European Security Strategy - Providing Security in a Changing World* Brussels p.9

³ The Council of the European Union *Concept on Strengthening EU Mediation and Dialogue Capacities* 10 November 2009 Doc. 15779/09 hereafter “the Mediation Concept”.

⁴ See A.Herrberg with C. Gündüz and L. Davis (2009) *Engaging the EU in mediation and dialogue* Brussels: Initiative for Peacebuilding.

⁵ L. Davis (2010) *The European Union, transitional justice and peace mediation* Initiative for Peacebuilding

⁶ Doc. 15779/09 II. 4 (d), p.8.

⁷ Council Decision 2010/441/CFSP of 11 August 2010 Article 2 (c)

⁸ M. Frichova Grono (2010) *Georgia's Conflicts: What role for the EU as mediator?* Brussels: Initiative for Peacebuilding p.14; S. Fischer ‘EUMM Georgia’ in G.Grevi, D. Helly, D. Keohane Eds. (2009) *European Security and Defence Policy: the First Ten Years (1999 – 2009)* Paris: European Union Institute for Security Studies p.389.

⁹ Council Joint Action 2008/491/CFSP, 26th June 2008 and Council Joint Action 2008/405/CFSP, 23rd June 2008.

¹⁰ L. Davis (2009) *Small Steps, Large Hurdles: the EU's role in promoting justice in peacemaking in the DRC* Brussels: Initiative for Peacebuilding.

The Security Policy Brief is a publication of Egmont – Royal Institute for International Relations

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