



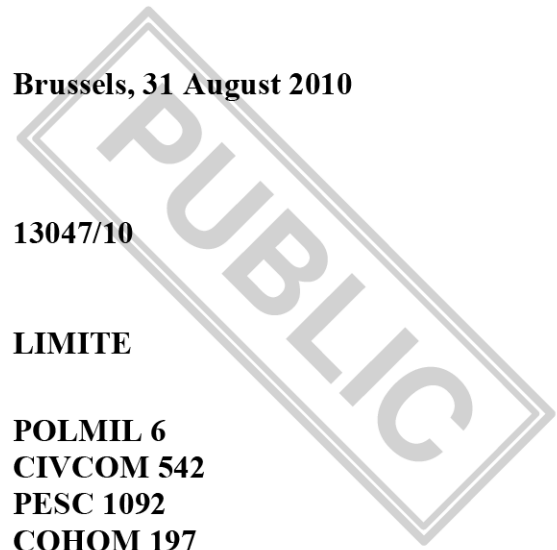
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**NOTE**

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From: Services put at the disposal of the High Representative  
To: Delegations

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Subject: Draft Revised Guidelines on the Protection of Civilians in CSDP Missions and Operations

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Delegations will find attached a document in response to the PSC request of 27 April 2010 to *review and update the 2003 draft Guidelines on the Protection of Civilians in EU-led Crisis Management Operations* (doc 14805/03). If agreed, this document will supersede the 2003 guidelines.

# REVISED DRAFT GUIDELINES ON THE PROTECTION OF CIVILIANS IN CSDP MISSIONS AND OPERATIONS

## I. INTRODUCTION

1. Since the Draft Guidelines on the Protection of Civilians in EU-led Crisis Management Operations were introduced in 2003, CSDP has developed significantly and the number of missions and operations has risen sharply. Conceptually related areas such as the mainstreaming of human rights; women, peace and security; children and armed conflict, as well as international humanitarian law (IHL), have taken on prominence, as exemplified by the adoption of EU guidelines and checklists on these topics. The UN has also developed an approach on the Responsibility to Protect<sup>1</sup> to be taken into consideration, given the clear relation of these two concepts.

2. On 27 April 2010, and following the adoption of UNSCR 1894 (2009), PSC asked the GSC, in close co-operation with the Commission, to *review and update the 2003 Draft Guidelines on the Protection of Civilians in EU-led Crisis Management Operations* (doc 14805/03):

- taking stock of existing experience and measures concerning the implementation of the Protection of Civilians (PoC) in CSDP missions and operations and assessing the extent to which the PoC has been included in mandates/planning documents;
- taking account of best practices identified by the UN and other relevant organisations (i.a. UN and ICRC) concerning the PoC; and
- taking account of previous/ongoing work on the PoC in CSDP missions and operations, including both the non-paper presented by Austria, Belgium and Italy in December 2009, and the Secretariat document Protection of Civilians in EU-led crisis management operations - recommendations on the way forward (8830/10).

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<sup>1</sup> Endorsement at the UN 2005 World Summit of the UN concept of the Responsibility to Protect (R2P) populations from genocide, war crimes, ethnic cleansing and crimes against humanity (paragraphs 138-139 of A/RES/60/1 - 2005 World Summit Outcome Document)

## II. AIM

3. The aim of this paper is to revise the 2003 guidelines, including in light of the proposals contained in both the non-paper and the Secretariat recommendations referred to above, assessing:

- the extent to which PoC concerns and implementation of UNSCR 1894 (2009) are considered during planning and conduct of CSDP missions and operations (including in mandates and planning documents), as well as in the subsequent lessons identified processes; and
- conceptual development and experience of other organisations.

This is done with a view to proposing a way forward for strengthening and further integrating PoC aspects in CSDP missions and operations.

## III. EU OPERATIONAL EXPERIENCE

4. Many CSDP missions and operations include provisions relevant to the PoC in their mandates, in particular regarding women, peace and security<sup>1</sup> and children and armed conflict<sup>2</sup>. In some military operations, such as EUFOR Artemis in the DRC, the PoC has been the main focus of the operation: addressing the large scale attacks being committed against civilians in the district of Ituri. The EU civilian-military supporting action to the African Union mission in Darfur (AMIS) contributed to the protection of the civilian population and to efforts aimed at improving the security and humanitarian situation. Similarly, providing a safe and secure environment for refugees and internally displaced persons was a key objective of EUFOR Tchad/RCA. In a similar vein, EUFOR ALTHEA's (BiH) role is to provide a military presence in order to contribute to a safe and secure environment and deny conditions for a resumption of violence.

5. In respect of other (civilian) missions, EULEX Kosovo plays an important role, in the development and strengthening of an independent and multi-ethnic justice system adhering to internationally recognised standards, thus contributing to the fight against impunity e. g. on war

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<sup>1</sup> Addressed in UNSCRs 1325, 1820, 1888 and 1889

<sup>2</sup> Addressed in UNSCRs 1612, 1882

crimes, terrorism, organised crime and inter-ethnic crimes. Other civilian CSDP missions, such as EUMM Georgia and EUPOL RD Congo, also have an important role in respect of the PoC, including on police reform and through monitoring and reporting. Noting that provisions relevant to the PoC have been included in several mandates, the concept of PoC as such has not been explicitly mentioned in the mandates of CSDP missions or operations.

#### **IV. OTHER EXPERIENCE AND CONCEPTUAL DEVELOPMENTS**

6. Whilst there is still no single agreed definition of the PoC, a number of actors base their understanding of the PoC on IHL and human rights law, and it is also the notion used in this paper. This is in line with the view of the Inter-Agency Standing Committee<sup>1</sup>, which defines the PoC as “encompassing all activities aimed at obtaining full respect for the rights of the individual in accordance with international humanitarian, human rights and refugee law”. From a UN perspective, further granularity in terms of defining the PoC is found in the MONUC PoC strategy, where the PoC is defined as encompassing “all activities aimed at ensuring the safety and physical integrity of civilian populations, particularly children, women, and other vulnerable groups, including IDPs; preventing the perpetration of war crimes and other deliberated acts of violence against civilians; securing humanitarian access; and ensuring full respect for the rights of the individual, in accordance with relevant national and international bodies of law, i.e. human rights law and international humanitarian law”.

7. The EU has been an active player in UN discussions on the PoC and a driving force in the adoption of UNSCR 1894(2009) on the PoC in armed conflict. The UNSG report on the Implementation of the recommendations of the Special Committee on Peacekeeping Operations (C-34) of 22 December 2009 focused on four main priority blocks considered essential to increase the future effectiveness of UN peacekeeping. The PoC falls under the first block of "Developing practical guidance on critical roles for modern UN peacekeeping", and reflects the core principles of the UN Charter, but is an area of activity where there has been a lack of clear guidance.

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<sup>1</sup> Forum for co-ordination, policy development and decision-making involving key UN and non-UN humanitarian partners

8. The UN has taken important steps towards ensuring that the PoC in the context of UN peacekeeping is better understood. This process has included the publication in early 2010 of an independent study commissioned by the Department of Peacekeeping Operations (DPKO) and the Office for the Coordination of Humanitarian Affairs (OCHA) entitled ‘Protecting civilians in the context of United Nations peacekeeping operations – successes, setbacks and remaining challenges’ and the resulting development of an operational concept by DPKO/DFS.

9. The EU has welcomed the UN DPKO/DFS Operational concept on the PoC in UN peacekeeping operations and the Lessons learned note on the same subject . The operational concept is organised around a three-tiered approach to protecting civilians:

- Tier 1 Protection through political process;
- Tier 2 Providing protection from physical violence;
- Tier 3 Establishing a protective environment.

10. The UN Operational concept rests on the understanding that the PoC tasks undertaken by UN peacekeeping operations must reflect and uphold the principles of UN peacekeeping: consent of the host government and the main parties to the conflict; and impartiality and the non-use of force except in self-defence and defence of the mandate. It also recognizes that the PoC is the primary responsibility of the host government and that relevant peacekeeping missions with a PoC mandate should conduct their tasks without prejudice to the primary responsibility of the host government to protect civilians.

11. The concept is to be further developed over time, and will be the UN basis for the development of mission-wide protection strategies, and for training standards. The Lessons learned note indexes a number of good practices and lessons as well as policy and strategy dilemmas that UN Heads of Mission/Force Commanders are confronted with. It also highlights that there is a need to match mandates and means for mission planners and decision-makers. The Operational concept on the PoC in UN peacekeeping operations and the Lessons learned note clearly acknowledge that further work is needed in this area. The EU should examine what extent of the experience is transferred as work develops.

12. In addition to the UN, the ICRC has also maintained its focus on the PoC and aims to ensure access to the civilian population by maintaining a constant dialogue with the host governments and reminding them of their responsibilities for the PoC. This is achieved both through dissemination of IHL, and also through confidential reporting to the party concerned on violations of IHL and relevant human rights norms committed by that party, making recommendations on measures to be taken. In order to be able to do the latter, ICRC access to the vulnerable populations (detainees, IDPs, women, children) and combatants must be ensured for humanitarian assistance, to maintain dialogue, and to gather information relevant to the PoC.

13. In the EU examination of how to enhance integration of PoC concerns in our own CSDP missions and operations, the relevant UNSCRs, the UN Operational concept and the Lessons learned note, as well as ICRC and other organisations' (i. a. NATO, AU, OSCE) relevant experiences, provide valuable input. However, it is also important to clarify roles and responsibilities and take note of the differences between organisations involved in the PoC. Civilians will gain if distinction between actors is kept clear and the tasks are carried out complementarily. For example, "robust peacekeeping" has been less of a contentious issue for EU missions and operations than for the UN. With the combination of the EU's civil and military resources, as well as considering the EU's possibility to provide humanitarian aid and long-term support in terms of development co-operation, the EU should be well placed for developing a coordinated approach to the PoC in its broadest sense.

14. In addition to the experience of external actors, efforts at further integrating PoC concerns into EU policy need to take fully into account, and build upon, internal developments. There is also a link to the strategies on combating the illicit accumulation and trafficking of small arms and light weapons (SALW) and their ammunition, as well as activities undertaken under the European Instrument for Democracy and Human Rights (EIDHR) and the Instrument for Stability (IfS) aimed at promoting the PoC (e.g. the IfS has supported the training of Chadian police operating in the framework of the UN MINURCAT mission providing protection for refugees and IDPs, thus complementing the efforts of the EUFOR military mission which was present in eastern Chad at that time).

## V. STRENGTHENING/FURTHER INTEGRATING THE POC IN CSDP

### *EXTERNAL MEASURES*

15. The EU has expressed its readiness to co-operate with the UN through the New Horizons process in further developing UN concepts and guidelines (including on capacity requirements), as well as training programmes in relation to the PoC, drawing on the EU's work and experience related to this domain. In this regard, the EU will draw from its relevant previous efforts, including:

- Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP (15782/03/08),
- Mainstreaming human rights and gender into ESDP (also including the EU Guidelines on children affected by armed conflict" (10019/08)) ,
- Checklist for the integration of the protection of children affected by armed conflict into ESDP operations (9822/08) and
- the EU guidelines on promoting compliance with international humanitarian law (16842/09).

Furthermore, the "Toolkit on the rights of the child", currently elaborated by the European Commission with UNICEF, including a tool on children in emergencies, could be used in this context as well. Building on these efforts, there is a continuous need to ensure their further practical implementation.

16. The EU-UN Steering Committee on crisis management as well as the EU-UN Desk-to-desk dialogues on conflict prevention provide useful mechanisms ensuring exchanges on the PoC between the EU and the UN. The co-operation with the UN should involve DPKO/DFS, OCHA and the various offices and agencies responsible for relevant thematic issues, such as the UN Special Representatives on Children and on Sexual Violence in Armed Conflicts. Exchanges between the EU and the UN, as well as other organisations such as the ICRC, NATO, AU, OSCE, the Council of Europe and NGOs on how to mutually take forward work on the PoC in crisis management, should be intensified.

17. The EU should proactively use political dialogue to engage with local and regional actors on PoC-related issues. EUSRs and EU Heads of Delegation have an important role in this regard. The EU should continue to promote the adoption of targeted and graduated measures as part of EU and UN sanction regimes against parties of an armed conflict in order to ensure compliance with applicable international law. The EU should also increasingly seek to engage with non-state actors in the process.

18. Furthermore, addressing impunity is vital in attempting to secure the PoC, including as an essential preventive element. CSDP activities in this regard should, if so mandated, seek to support the establishment of an environment in which all persons, institutions and entities are accountable to laws which are consistent with international human rights norms and standards. The protection of victims and witnesses has to be ensured. The EU should further encourage ratification of the ICC Rome Statute and compliance with the Court as a key player in ensuring that crimes of international concern do not go unpunished as well as the deployment of Commissions of Inquiry to address specific violations and abuses.

## ***INTERNAL MEASURES***

### ***Guidelines in respect of planning and conduct of CSDP missions and operations***

19. In accordance with the development of the PoC-related areas, implications of mainstreaming of human rights; women, peace and security; children and armed conflict, as well as IHL, as exemplified by the adoption of EU guidelines and checklists on these topics, should be taken into account. This should be done in co-operation with the UN and other relevant international and local organisations to help create a secure environment for civilians endangered by a conflict to which a CSDP mission/operation relates, within the mandate of this mission/operation. The aim should be to guarantee or contribute to, to the greatest extent possible, safe and unhindered humanitarian access to civilians as well as the safety and security of all relevant operational actors.



20. Furthermore, in close co-operation with the relevant international organisations and, whenever possible, with the host government, special protection and assistance should be afforded to internally displaced persons in conformity with relevant obligations under IHL and the Guiding principles on internal displacement and to refugees, in particular to the most vulnerable groups. Bearing in mind the need to maintain the humanitarian and civilian character of camps for refugees and internally displaced persons, the forces/personnel deployed in CSDP missions and operations should also, within the mandate of a mission/operation, co-operate with the actors referred to above in the provision of security measures, including through technical assistance and training and in the deployment of multidisciplinary teams, in particular to assist and support the separation of civilians from combatants.

21. When a CSDP mission/operation with a PoC mandate will be deployed to a country where the Commission's Humanitarian Aid Department (DG ECHO) is providing humanitarian assistance, DG ECHO should be consulted in the (mission/operation) planning process.

## 1) Advance planning

### *Early Warning and Situation Analysis*

- EU Delegations, CMPD, SITCEN, EUMS and CPCC should consider the nature of risks and threats to the civilian population as factors in situation analyses and be encouraged to liaise and share information with other international actors, including relevant UN agencies, ICRC, NATO, AU, OSCE and the Council of Europe, as well as civil society organisations and research bodies, who can provide valuable information and experiences.
- Issues covered should include physical violence (including killing, maiming, sexual and gender-based violence, etc) and potential risks associated with it. In addition, potential or ongoing humanitarian law and human rights violations, freedom of movement and route security and conditions of delivery of humanitarian assistance, forcible displacement, ongoing conflict resolution activities including DDR, SSR, institution-building and Rule of Law initiatives and their impact on the PoC, as well as other threats to a civilian population such as unexploded mines or small arms and light weapons.

- Specific attention should be paid to vulnerable groups such as women, children, refugees and internally displaced persons, as well as ethnic minorities.

#### *Exploratory Missions, Fact Finding Missions and Planning Teams*

- Adequate expertise should be included in the exploratory missions, fact finding missions and planning teams, in order to ensure that PoC concerns are covered from the very beginning of a planning process.
- Exploratory missions, fact finding missions, planning teams and all other planning activities should consider the PoC aspects and identify, where appropriate, necessary PoC expertise for the purpose of the mission/operation.
- Analysis at this stage should consider the range of international and national protection actors present in the country or region, including the host state, mandated UN protection agencies and peacekeeping missions, non-governmental organisations and the ICRC, and seek to identify and document the protection gaps that a CSDP mission/operation could seek to cover within its mandate.

#### *Crisis Management Concept/Strategic Options/Initiating Military Directive*

- A description of PoC-related issues, should be included where appropriate, identifying those threats to the civilian population that would be most adequately addressed by the mission/operation under preparation.
- Where appropriate, PoC concerns should be assessed for each option presented, in order to allow decision-makers to assess the different options from this perspective and analyse the strengths and the weaknesses of the options with regard to the PoC. At this stage the future missions' s/operation' s capacity to prevent, deter, and if necessary, respond to situations in which civilians are under the threat of physical violence, should be realistically assessed, and the human and other resources deemed necessary identified.

- Mandates in respect of PoC should be well defined and achievable. Accordingly, CSDP missions and operations must be provided with all the necessary resources to carry out PoC tasks in a timely and efficient manner.

## 2) Operational planning

### *Concept of Operations - CONOPS*

- Where specific PoC concerns and priorities have been identified in the crisis management concept, and if it has been agreed that they should be taken into account by the CSDP mission/operation, the CONOPS should address this by way of appropriate identification of related tasks and necessary human and other resources.
- As deemed appropriate according to the specific mission/operation mandate, relevant mission/operation tasks related to the PoC could include assisting in:

#### Political process

- facilitating the political process through mediation and support to reconciliation processes;
- conflict mediation and support to inter-community dialogue;
- strengthening the judiciary at national and international levels, including through supporting domestic prosecutions of serious crimes of the past, as well as international courts/tribunals,
- supporting transitional justice mechanisms, such as institutional reform (e.g. vetting), truth seeking and reparation programs for victims;

#### Operational aspects

- monitoring the implementation of a peace agreement and ceasefires;
- creating conditions conducive to safe, timely and unimpeded delivery of humanitarian assistance;
- ensuring freedom of movement and route security (including for refugees/IDPs);
- public order management or assistance therein;

- monitoring (including of the human rights situation) and reporting;
  - police and military patrols;
  - mentoring and training of local military or police structures to ensure the PoC;
  - stabilisation of a post-crisis situation through DDR and SSR.
- CSDP missions/operations with PoC mandates should develop comprehensive protection strategies, as has already happened in many UN missions. This should be done in consultation with the host government and relevant international and local actors, aligned with the mission's/operation's CONOPS.

#### *Operation Plan - OPLAN*

- Where relevant, the OPLAN should contain further guidance on any PoC aspects, in line with the mandate, further developing the tasks identified in the CONOPS and translating the tasks in operational terms easily understood by individual actors within missions/operations. Where deemed useful, the OPLAN can be complemented by a mission/operation-specific PoC strategy, adapted to the mandate and the particular circumstances in the area of deployment. Any revisions to OPLANs should again reassess the needs related to the PoC.

### **3) Conduct of operations**

#### *Reporting*

- Reporting on the PoC should be conducted primarily with a view to enhancing the monitoring and oversight of the implementation of PoC aspects of mission/operation mandates. Secondly, there is reporting needed in view of specific protection issues. For example, child protection and gender/women, peace and security aspects should be more systematically included in monitoring and reporting. Major developments related to the PoC should be given prominence in the reporting, if this is in accordance with the mandate.

### *Supportive measures to contribute to the PoC*

- Where appropriate for a specific CSDP mission/operation the EU should systematically call on all parties to take special measures to protect civilians and promote co-ordination between the different actors present, in order to enhance the effectiveness of the protection. Additional measures could include informing the local population of the operation's role in the PoC, and as a preventive measure, signalling to potential aggressors or perpetrators of human rights violations that they will be held accountable.
- The EU should call on all parties to respect and ensure the application of the provisions of IHL, in particular the four Geneva Conventions and their additional Protocols, and ensure access by humanitarian actors to assist the civilian population in all areas, including those under the control of armed non-state actors.
- A mission/operation with PoC-related mandate should interact closely with the host government, international and regional actors, local authorities and the local population, and have a budget to that end, in order to raise awareness and understanding of its PoC mandates and activities (e. g. through public information and outreach strategies).
- Heads of Missions/Operation Commanders and other CSDP/mission staff, as well as EUSRs, and, where relevant, EU Heads of Delegation, should be familiar with the PoC as well as human rights and gender aspects of CSDP. Where appropriate, clear directives should be developed, setting out the key co-ordination structures and responsibilities (within the mission/operation).

### *Training*

- As a general rule, pre-deployment (mission personnel) training should include relevant international humanitarian, human rights and refugee law, as well as elements on the protection, special needs and human rights of women and children in armed conflicts. Personnel involved in the planning of CSDP missions and operations should also be familiar with these issues.

- Consolidated and mission-specific training in all the PoC-related operational matters to enhance operational capacity should be provided to personnel deployed in CSDP missions and operations, including senior leadership before and during deployment, both at the national level and through European programmes such as those run by the European Police College (CEPOL) and the ESDC. Where appropriate, consideration should be given to doing this in co-operation with the UN and other relevant international organisations. To ensure consistency with efforts already undertaken in this regard in other fora, such training should draw upon all relevant materials already available, such as UN Standard Training Modules.
- In the preparation of relevant training curricula, guidelines and materials, particular emphasis should be placed on the following areas:
  - a) human rights, gender, international humanitarian, refugee, international and national criminal law;
  - b) issues regarding discrimination;
  - c) the rights and protection of children and other vulnerable groups, including the special needs of women and girls to be protected from sexual and gender-based violence, forced labour, trafficking and all other forms of violence in situations of armed conflict and post-conflict environments; and
  - d) the human rights situation and the international human rights obligations of the Host State or States of a CSDP mission/operation.
- A pocket card for CSDP personnel should be developed to summarise core EU human rights policy guidelines.

#### 4) **Lessons identified**

- The PoC aspects should be included (and evaluated) as a specific item in processes to identify lessons and best practices in light of the mandate of the CSDP mission/operation.

## VII. RECOMMENDATIONS

22. It is recommended that the PSC:

- agrees this document, with a view to its submission to the Council for approval; and
- asks the relevant services put at the disposal of the High Representative to
  - keep under review experiences and measures concerning the implementation of the PoC in CSDP missions and operations, including to what extent the PoC has been included in mandates and planning documents as well as the reporting by CSDP missions and operations;
  - examine in greater detail training requirements in relation to the PoC;
  - continue to take into account best practice identified by the UN and other relevant organisations concerning the PoC (mandates); and
  - take stock of the implementation of these guidelines and report to the PSC at an appropriate interval.

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## REFERENCES

Ref A. UNSCR 1894(2009) on protection of civilians in armed conflict (+ possibly add UNSCRs 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006) on protection of civilians, as well as other UNSCRs on women, peace and security, and children and armed conflict)

Ref B. Draft guidelines on protection of civilians in EU-led crisis management operations (doc 14805/03)

Ref C. Mainstreaming human rights and gender into European security and defence policy (including the EU Guidelines on children affected by armed conflict (10019/08)) (compilation of relevant documents, 2008 (Council website))

Ref D. Agreement between the International Criminal Court and the EU on cooperation and assistance (OJ L 115, 28.4.2006, p. 50.)

Ref E. Comprehensive approach to the EU implementation of the UNSCRs 1325 and 1820 on women, peace and security (15671/1/08)

Ref F. Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP (15782/3/08)

Ref G. Implementation of UNSCR 1325 and UNSCR 1820 in the context of training for the ESDP missions and operations - recommendations on the way forward (13899/09)

Ref H. EU guidelines on promoting compliance with international humanitarian law (16842/09)

Ref I. Draft DPKO/DFS operational concept on the protection of civilians in United Nations peacekeeping operations

Ref J. DPKO/DFS Lessons learned note on the protection of civilians in UN peacekeeping operations)