

# LESSONS FROM AFGHANISTAN AND THE DEMOCRATIC REPUBLIC OF THE CONGO

## INTRODUCTION

Quick and clean transitions from war to peace are rare. International interventions tend to bring about transitions from conflict to awkward peace and from failed to dependent states. While such transitions solve some problems, they exacerbate others; for example, post-conflict state building is often challenged by a rise in corruption and organised crime.

This article compares two contemporary transitions that have been neither quick nor clean and where the transition itself has added new challenges to already complex political and security contexts. The transitions are those in Afghanistan and the Democratic Republic of the Congo (DRC). The comparison focuses especially on the role that the European Union – including its institutions and its member states – has played in these transitions. Through case studies focusing on the political and security context in Afghanistan and the DRC, this article aims to identify lessons about the EU as an actor in post-conflict, transitional societies and contribute to the ongoing discussions about the EU's crisis management capabilities.

## CASE STUDY: AFGHANISTAN

### The challenges of insecurity in 'post-conflict' Afghanistan and the role of the EU

Eight years after the US-led military intervention to oust the Taliban regime and eradicate Al Qaeda, Afghanistan continues to face pervasive political and security challenges. These range from the legitimacy crisis of the Afghan government due to extensive corruption and its inability to ensure security and (licit) economic development, and declining public (Afghan and international) trust in the international community's commitment to an agenda for peace and state building in Afghanistan.<sup>1</sup> Armed conflict has continued – and intensified – between the Taliban and Afghan and international security forces in large parts of southern and eastern Afghanistan, and insurgency-related violence in and around Kabul and in the north and west are on the rise.

It is in this context that the EU and its member states are attempting to prove their ability as political, military and development actors. The EU does have a considerable presence in Afghanistan, but it has also been criticised for failing to carry its

weight.<sup>2</sup> The European Union Special Representative (EUSR) and the European Commission (EC) presences have steadily grown in size over the years. The European Commission Humanitarian Office (ECHO) continues to have an in-country presence, and in 2006 the EU Police Mission for Afghanistan was launched. The EU deployed election missions to the previous elections and also deployed one for the challenging presidential elections in August 2009. All major and many smaller EU member states have embassies in Afghanistan. Many of the EU member states also retain political, military and development presences at the sub-national level, through the International Stability Assistance Force (ISAF) regional commands and provincial reconstruction teams.

The perception amongst Afghans of the EU and its member states, especially during the previous US Administration, seemed to be that Europe has the potential to be a counterweight to US policies.<sup>3</sup> The European focus on state and institution building and its long-term commitment to democratisation and human rights have been appreciated.<sup>4</sup> At the same time, the EU has consistently been criticised for failing to

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<sup>1</sup> For a more comprehensive overview of the challenges to peace and state building in Afghanistan, see F. Ayub and S. Kouvo (2008), 'Righting the course? Humanitarian intervention, the war on terror and the future of Afghanistan', *International Affairs*, No. 84, p. 641.

<sup>2</sup> 'Rebuilding the Afghan state: The European Union's role', International Crisis Group, Asia Report No. 107, 30 November 2005; 'Afghanistan: Europe's forgotten war', *European Council for Foreign Relations*, 17 January 2009.

<sup>3</sup> Authors' interviews in Afghanistan 2004–2006.

<sup>4</sup> *Ibid.*

make use of the political space offered to it.<sup>5</sup> The stepping into office of the new US Administration and the developments after the presidential elections in Afghanistan are opportunities for all engaged actors, including the EU, to review and revise their strategies for peace and state building in Afghanistan.<sup>6</sup>

### Reform of the security and justice sectors<sup>7</sup>

In its post-9/11 military intervention in Afghanistan, the United States relied on the cooperation and support of military commanders with ethnic and geographic power bases who had gained fame and power as resistance fighters against the Soviet occupation. These commanders, often called 'warlords', tried to transform themselves into political leaders after the withdrawal of the Soviet forces, but instead ended up plunging Afghanistan into a civil war.<sup>8</sup> To some extent, the Taliban movement developed as an alternative to the anarchy of the civil war.

Relying on the commanders that had plunged Afghanistan into the civil war in the offensive against the Taliban regime was from a short-term perspective a cheap and smart military tactic, but it also resulted in the re-empowerment of leaders who

had already once shown themselves unfit to rule Afghanistan and who are considered by many to be among the main perpetrators of war crimes and human rights violations in that country. Many of the commanders have managed to cling to power in the post-9/11 state-building process through inserting themselves and/or their allies into powerful positions in key Afghan institutions.

The Bonn Agreement, the UN-brokered power-sharing and state-building agreement adopted in December 2001, contributed to creating a culture where access to power is determined by political deal-making rather than public legitimacy. It also laid the ground for a state-building process that has given insufficient attention to long-term institution building. For example, the Bonn Agreement only addressed SSR indirectly. It called for the deployment of an international security force and demanded that all Afghan armed forces should come under the control of the interim government. Largely for political reasons, the deployment of ISAF was limited to Kabul and surrounding areas, in case a more comprehensive deployment compromised the counter-insurgency mission of the US-led Operation Enduring Freedom (OEF). NATO took command of ISAF in 2003, and are today present in all regions.

The urgent need for a security force (especially police) and the failure to institute a proper disarmament process enabled some of the factional commanders to move into government positions and legalise their militias as the new Afghan National Security Force (ANSF) whilst continuing to command or have access to illegal armed groups.<sup>9</sup> The failed disarmament process, the compromised security sector reform (SSR), the marginalised justice sector reform and the institutionalised culture of impunity have contributed to the overwhelming security challenges that Afghanistan faces today.

The UN's choice of a 'light footprint' approach for its presence – rather than the UN playing a strong coordinating role in the state-building process contributed to fragmented reform processes. Lead nations cooperating with relevant line ministries were chosen for key development sectors. The G8 nations took lead in the security sectors: Japan disarmament, Germany police reform, the United States the army, the UK counter-narcotics and Italy justice sector reform. The idea of joint international and national leadership within different sectors was sound in theory, but failed to appreciate the extent to which Afghan institutional and human resources had been depleted during the conflict. An often-cited

<sup>5</sup> *Rebuilding the Afghan state: The European Union's role*, International Crisis Group, Asia Report No. 107, 30 November 2005.

<sup>6</sup> For a discussion about the new US policy in Afghanistan, see *Afghanistan: New U.S. Administration, new directions*, International Crisis Group, Asia Briefing No. 89, 13 March 2009.

<sup>7</sup> For in depth discussion about SSR and justice reform in Afghanistan, see Sari Kouvo, *Rule of Law and State-Building: Lessons from Afghanistan?* Forum Series, NATO Defence College Publication, 2009; and F. Ayub, S. Kouvo and R. Wareham (2009), 'Security sector reform in Afghanistan', [http://www.initiativeforpeacebuilding.eu/pdf/Security\\_Sector\\_Reform\\_in\\_Afghanistan.pdf](http://www.initiativeforpeacebuilding.eu/pdf/Security_Sector_Reform_in_Afghanistan.pdf).

<sup>8</sup> For an overview of human rights violations and war crimes during different phases of the conflict in Afghanistan, see [www.afghanistanjusticeproject.org](http://www.afghanistanjusticeproject.org).

<sup>9</sup> For further discussion, see Andrew Wilder, 'Cops or Robbers? The Struggle to Reform the Afghan National Police', *AREU*, July 2007.

example of the failure of the lead-nation approach is the lack of coordination between Germany's lead on police, Italy's lead on justice and the UK's lead on counter-narcotics. Germany's long-term vision for police reform (since 2006 shared with the EU Police Mission) contributed to training of some police, just as Italy's justice reform programme contributed to training of some judges, but because of the lack of coordination between the two leads and their Afghan counterparts, legal reforms such as the Interim Criminal Procedure Code and the Police Law were not coordinated with each other. The Attorney General's office, which in many ways is the link between the police and the judiciary, received next to no donor attention (and nor did the prison system). The UK has added to the lack of coordination by creating a parallel structure with a narcotics police and a special court for narcotics cases.

The Afghanistan Compact and the Afghanistan National Development Strategy, the political and development agreements for the consolidation of the state-building process from 2006 onwards, sought to overcome some of the shortcomings of the Bonn process. The Afghanistan Compact adopted in January 2006 prioritised SSR and justice reform. The Compact abolishes the lead-nation approach in favour of a key-partner approach that seeks to encourage a more pronounced national lead and allow for increase coordination between different donors.

It is after the adoption of the Afghanistan Compact that both the UN and the EU have come to build up their commitments to SSR and justice reform. The UN established itself more firmly as a coordination body for reform processes, leading many of the sectoral and sub-sectoral reform working groups, including in the area of justice. With the aim of supporting the Italian lead on justice, the EU began to plan the deployment of a European Security and Defence Policy (ESDP) mission with a focus on justice and police. The first planning mission sent to Afghanistan in September 2006 came to emphasise the need for increased synergies between justice and police reform. However, allegedly due to disagreements between the Commission and Council in Brussels, the Council ended up deploying a police mission while the Commission decided to develop its own programming for the justice sector. The EC was already one of the major contributors to police/security sector reform through its financial commitments to the Law and Order Trustfund. The start-up phase for the EU Police Mission (EUPOL) was troubled: as former lead on police, Germany wanted EUPOL to be launched during its Presidency, resulting in a premature launch in June 2007 before the mission was properly established and staffed. The consequence of this was that Afghan and international expectations of EUPOL were raised before it was able to deliver. While EUPOL is slowly overcoming the negative impact of its initial difficulties, the mission continues to struggle with extreme, military-style security measures, under-staffing and

high turnover of staff, and a lack of focus of the mission. Europe's initial emphasis on justice and police reform also raised expectations that Europe would become a strong actor in the justice sector. However, while the EC did commit increased funds to the justice sector, the EC lacks implementation capacity and subcontracted its justice reform programme to Adam Smith International. While quickly on the ground with a small team of qualified consultants, Adam Smith International has taken a long time to develop functioning programmes and continues to focus largely on the national level (Kabul) and has not moved its reform efforts to the provinces. It is only in the last year that the EC's commitment has consolidated itself.

#### **Reform of the political institutions (and political culture)**

There was no peace agreement after the fall of the Taliban regime, and the Bonn conference was a power-sharing deal between some (but not all) warring parties. This has had a profound impact on political developments in Afghanistan. It has also resulted in the marginalisation of justice issues in the state-building process, as many of the key perpetrators of war crimes and human rights violations used their newfound power positions to marginalise questions of accountability.

Afghanistan has never had a strong central government: the power of Kabul-based central governments has been dependent on negotiations and trade-offs with regional

and local leadership structures. However, both the formal and informal government structures have been eroded by decades of conflict. The conflicts (and influx of foreign economic and military support to militants) have also shifted the power balance at the central and regional levels in Afghanistan.

The key decisions on Afghanistan's political future, including those taken at the Emergency Loya Jirga (2002) and the Constitutional Loya Jirga (2004), the elections (2004 and 2005) and the presidential elections (2009) have contributed to consolidating the power of some of the warring factions and consequently also to institutionalisation of a culture of impunity. For example, only a year after the Afghan Parliament stepped into office, an ad hoc parliamentary committee was established that drafted an Amnesty Law that provided amnesty for all those involved in the last two and a half decades of Afghan conflict. Not until its recent submission to the UN Human Rights Commission did the Afghan Government take a firm stance, acknowledging that the Amnesty Law is not in accordance with the Afghan Constitution and is not a recognised law in Afghanistan. However, the Amnesty Law is already used by some lower courts in the country.

Afghanistan has developed from a 'failed state to a danger state',<sup>10</sup> and the international community's engagement with the

government has shifted from big brotherly indulgence to a growing disillusionment and to development of strategies for marginalising the Afghan government. It is in this context that the EUSR, in cooperation with ambassadors from key EU member states, has been the main political face of the EU in Afghanistan and has in many ways served as a 'voice of reason' vis-à-vis both the Afghan government and its international partners. The EUSR office has also been a strong proponent for both the transitional justice and human rights agendas. In many cases, the EUSR has been able to push issues further than ambassadors of EU member states. This has partly been due to the EUSR offices being a new and rather undefined EU foreign policy tool and partly due to the choice of experienced and respected EUSRs. However, the EUSR's advocacy and/or silent diplomacy pushing for increased accountability and respect for human rights has also been limited by the relative newness of this office: that is, the success of the EUSR's political leadership is dependent on to the extent to which the member states choose to be guided by him and/or can agree on a common position. Consequently, the EU has not consistently managed to promote a common agenda. The fragmentation between European institutions, missions and countries is further complicated by European commitments to NATO and varying relations with the new US administration.

## CASE STUDY: DEMOCRATIC REPUBLIC OF THE CONGO

### The challenges of insecurity in 'post-conflict' DRC

As the case study on Afghanistan showed, insecurity poses serious challenges to state building: resolving the root causes of insecurity and long-term reform of the security system are overshadowed by the need to address immediate security concerns; insecurity enables criminal networks to operate within state institutions; and the effectiveness of vital reform of other sectors, such as the justice sector, is severely undermined.

After colonialism, kleptocracy and state collapse, DRC was riven by two bloody conflicts between 1998 and 2002 which combined local, national and international conflicts and combatants. In 2002, talks in Sun City brought a formal end to the conflict, although fighting continues in the east.<sup>11</sup> The agreement that followed the Sun City talks established a transitional government to prepare the way for democracy and sustainable peace; democratic elections in 2006 ushered in the Third Republic.

Efforts to halt the fighting in the DRC have gained considerable international attention over the years. The Organisation of African Unity (now the African Union) facilitated the Sun City talks. The UN Mission in the DRC (MONUC) has been active in

<sup>10</sup> Discussion between the author and a legal expert in Afghanistan, September 2006.

<sup>11</sup> At the time of writing, the government and the Congrès National pour la Défense du Peuple (CNDP) have agreed a peace deal (signed in March 2003) and together are fighting the Forces Démocratiques de Libération de Rwanda (FDLR). Civilians continue to suffer as a result of the fighting, and the FLDR and the Lord's Resistance Army continue to perpetrate atrocities against the population in the eastern DRC.

peace negotiations since it was established in 1999. With 17,000 troops, it is now the largest peacekeeping operation in the world. Since mid-2007, the United States has been increasingly engaged in the DRC.

The EU has been an important part of the international community in the DRC, which has proven something of a test case for the Union. The first EUSR for the African Great Lakes region, Aldo Ajello, was appointed in 1996,<sup>12</sup> and was succeeded in 2007 by Ambassador Roeland van de Geer.

In 2003 the EU launched its first military operation independent of NATO assets in Bunia, Ituri, at the request of the UN Security Council.<sup>13</sup> French-led and code-named Artemis, it was the first ESDP mission in the DRC. It was a short-term mission (less than three months) and geographically limited to Bunia. A highly trained and well-equipped peacekeeping mission, it was charged with increasing security and protecting civilians.<sup>14</sup> It had considerable impact on the ground, and also showed that the EU was united and that it could act quickly and decisively when there was the political will to do so. In 2006 the EU launched a second military operation,

EUFOR RD Congo, to help provide security in Kinshasa during the elections.<sup>15</sup>

By 2008, however, the EU's enthusiasm for peacekeeping had waned. In November 2008 the UN Security Council authorised an increase of nearly 3,000 peacekeepers in the DRC,<sup>16</sup> and in December UN Secretary General Ban Ki-moon made a formal request to the EU for such a mission, but his request was turned down.<sup>17</sup>

Although there are now no EU military operations in the DRC, two of the current 11 ESDP missions are in the DRC: the EU Mission to provide advice on and assistance with security sector reform in the DRC (EUSEC RD Congo) and the EU Police Mission in the DRC (EUPOL RD Congo). Both are civilian missions, concerned with reform of the military and police respectively.<sup>18</sup>

The EC has a significant presence and has large development and humanitarian aid programmes, plus projects financed under other instruments such as the Instrument for Stability and the Instrument for Democracy and Human Rights (EIDHR). It was a major contributor to the electoral process in 2006.

Since 2003, for example, the EC has committed EUR 300 million for humanitarian assistance, rehabilitation and capacity-building programmes in eastern DRC. An additional EUR 75 million was made available for post-urgency programmes in the east via the European Development Fund (EDF), and a further EUR 50 million of humanitarian aid in 2008 that focuses largely on the east.<sup>19</sup> The EC also made EUR 10 million available to support peace and stabilisation in the Kivus via the Instrument for Stability.<sup>20</sup>

In addition to the European institutions, many member states themselves 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. Of these, Belgium, France and the UK have the strongest presence; each has its own history in the region that influences its engagement in the DRC. Member states retain bilateral aid programmes of varying sizes covering a range of areas. These programmes are decided in national capitals and designed separately from EC programmes, while bilateral defence programmes are sometimes decided in national capitals without consultation of in-country

<sup>12</sup> Then Special Envoy.

<sup>13</sup> UN Security Council Resolution 1484, 30 May 2003, and Council Joint Action 2003/423/CFSP, 5 June 2003, on the EU military operation in the DRC.

<sup>14</sup> 40 UN Security Council Resolution 1484, 30 May 2003, para. 1.

<sup>15</sup> UN Security Council Resolution 1671, 25 April 2006, and Council Joint Action 2006/319/CFSP, 27 April 2006.

<sup>16</sup> UN Security Council Resolution 1843, 20 November 2008.

<sup>17</sup> For example, see: T. Vogel, 'EU rejects UN request for Congo force', *EuropeanVoice.com*, 12 December 2008, available at <http://www.europeanvoice.com/article/2008/12/eu-rejects-un-request-for-congo-force-/63419.aspx>.

<sup>18</sup> EUSEC is staffed primarily by military personnel, but unlike Artemis (2003) and EUFOR RD Congo (2006), EUSEC is a civilian mission: its mandate does not include peacekeeping tasks.

<sup>19</sup> European Commission (undated), *Democratic Republic of Congo (DRC): Elements of the European response to the crisis*, available at [http://www.consilium.europa.eu/uedocs/cmsUpload/DRC-Elements\\_on\\_European\\_response-v.EN.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/DRC-Elements_on_European_response-v.EN.pdf).

<sup>20</sup> European Commission External Relations website, available at [http://ec.europa.eu/external\\_relations/ifs/projects/sub\\_saharan\\_africa/index\\_en.htm](http://ec.europa.eu/external_relations/ifs/projects/sub_saharan_africa/index_en.htm).

embassy staff.<sup>21</sup> Despite these structural hurdles to cooperation, EU member states in the DRC manage a level of coordination and information sharing that, while falling short of a common policy or common strategy, is probably 'as good as it gets anywhere'.<sup>22</sup>

#### The army: DDR and SSR

Today, the security agencies are unable to defend the integrity of the state, or neutralise illegal armed and violent groups. Elements within the state security system pose a serious threat to the population, especially women and girls.

The national army was created from the forces of the signatories to the Sun City agreement and some other militias. Various disarmament programmes were supposed to create a trained, disciplined, unified republican army. But they met with considerable resistance; national and international agencies did not cooperate or coordinate adequately; and disarmament, demobilisation and reintegration (DDR) was de-linked from reform. The result is a badly trained army (where trained at all), which is undisciplined, ill equipped and lacking basic support services. There is no clear command and control. Networks involved in the illegal extraction of natural resources operate within the security system, even in collabo-

ration with armed groups. The abuse of the civilian population goes unchecked. The international community had the opportunity to insist on reform during the transition, but missed it. Reform is now perhaps both more pressing and more difficult.

DDR and SSR (particularly defence reform) have been high priorities for the international community as a whole, with a plethora of multi- and bi-lateral programmes implemented by MONUC and regional actors such as Angola, as well as the United States and of course the EU and its member states. Two ESDP missions support police and army reform; the European Commission also supports police reform and there are a range of bi-lateral SSR projects.<sup>23</sup> But most EU interventions have focused on technical projects. Reform of the security system, its mission, behaviour, culture and relationship with the civilian population (and especially women and girls) is desperately needed but remains unaddressed. The EU actors coordinate well on SSR, but this is limited to information exchange rather than strategic planning.

Despite the atrocities committed by the army, there is no discipline nor accountability for abuses committed in the past and continuing today. Rape and sexual violence are particularly prevalent amongst security

agents. The justice system is largely dysfunctional, and there is no effective oversight of the security services by the Parliament. There have been numerous calls for 'vetting' of the army to exclude at least the worst perpetrators,<sup>24</sup> but to date no action has been taken.

#### Political culture and political institutions

The culture of impunity in the DRC has been entrenched by the peace deals that shaped the state, dividing power between the belligerents. Provisions for accountability in peace deals made between 1999 and 2008 had some strong points, but more weaknesses. Amnesty provisions excluded genocide, war crimes and crimes against humanity, in line with international standards and best practice, but the absence of domestic prosecutions of human rights abusers renders the value of the limitations on amnesty questionable.

There was little provision for measures to pursue accountability, with the exception of the flawed truth and reconciliation commission agreed to at Sun City. The reports of the Goma peace conference in 2008 made detailed demands for truth-seeking, reparations and institutional reform, but these were not implemented.<sup>25</sup>

<sup>21</sup> Interviews with European diplomatic staff, Kinshasa, June 2008; Interviews with European officials, Brussels, May 2008.

<sup>22</sup> Interview with European official, Brussels, May 2008.

<sup>23</sup> For more detailed discussion see L. Davis (2009), *Justice-sensitive security system reform in the Democratic Republic of Congo*, Initiative for Peacebuilding, <http://www.initiativeforpeacebuilding.eu/>.

<sup>24</sup> For example, UN Security Council document S2009/253, *Interim report of the Group of Experts on the Democratic Republic of the Congo*, May 2009, paragraph 114.

<sup>25</sup> L. Davis and P. Hayner (2009), *Difficult peace, limited justice: Ten years' peacemaking in the DRC*, International Centre for Transitional Justice, New York, [www.ictj.org](http://www.ictj.org).

The only impediment to this culture of impunity is the International Criminal Court (ICC).<sup>26</sup> Since March 2006, three Iturian warlords have been arrested for war crimes and crimes against humanity, and transferred to The Hague for trial. (The first trial, of Thomas Lubanga, opened in January 2009.) But Bosco Ntaganda, also charged with war crimes by the ICC, currently holds a high position in the army and the Congolese authorities are resisting calls, including those from the EU, to arrest and transfer him to The Hague.

The Congolese justice sector is woefully inadequate and is unable to deliver everyday justice, let alone address serious human rights violations. The European Commission is the largest EU contributor to justice sector reform, and this will continue through the 10th EDF. Yet, as with police reform projects in the ninth EDF, the identity of the EC as both donor and implementer, and indeed its capacity to implement such projects, can be problematic for other stakeholders. EDF financing procedures are also very cumbersome, especially in comparison with either the Instrument for Stability or member state procedures, and are not necessarily flexible enough for supporting institution-building projects in contexts as unstable as the east of the DRC. And as with other state-building programmes, information exchange and coordination on the technical level are no substitute for political leadership.

In the DRC, the EUSR, in close partnership with the United States and UN representatives, was able to lead European diplomacy in facilitating a peace process in the east during 2007 and 2008. Lessons from the DRC and elsewhere suggest that the good justice provisions (and conversely, a lack of the same) in peace agreements can contribute significantly to peace building. The EU is becoming increasingly engaged in facilitating peace processes around the world, but it lacks institutional memory and expertise in mediation. It has not yet developed policy in the key areas of amnesty and transitional justice which could to strengthen the EUSRs' role in promoting justice during future peace negotiations.<sup>27</sup>

#### COMPARISON BETWEEN THE CASE STUDIES: AFGHANISTAN AND THE DEMOCRATIC REPUBLIC OF THE CONGO

The peace and state-building processes in Afghanistan and the DRC face similar constraints, including ongoing conflict, fragmented states over which the government has limited reach, and entrenched impunity and corruption. The international community – with its varied interests and priorities – has also played a major and not altogether constructive role in both peace and state-building processes: the UN's commitment has varied and it has failed to play a strong political and coordinating role, and the EU's approach has been fragmented and marked

by glancing towards the United States. A comparison between the peace and state-building processes in Afghanistan and the DRC suggests that these processes would have been considerably strengthened if attention had been given early on to addressing root causes of the conflict and to sequencing in the post-conflict 'state-building package'.

Transitions create opportunities for political change and for re-negotiating the founding principles of the state. The case studies from Afghanistan and the DRC both show the fierce power struggles between different national actors and the complex interaction between national and international agendas. In Afghanistan the political future was largely determined by the fact that no peace agreement was made and that the power-sharing was done between some of the main factional groupings that had supported the US-led military intervention. This created a political setting that was biased towards certain factions and that began the institutionalisation of a culture of impunity. Similarly, in the DRC, the absence of an outright winner in the 1998–2002 conflict meant that the 2002 peace agreement was simply a dividing up of political power between the belligerent groups, each seeking to consolidate its control of the state's assets rather than found a new republic.

<sup>26</sup> The DRC signed the Rome Statute in 2000 and ratified it in 2002. In 2004 the transitional government asked the prosecutor to investigate crimes committed in the DRC. The Court can consider only crimes that took place after 1 July 2002, when the Rome Statute entered into force – a serious limitation on the ICC's effectiveness in the DRC.

<sup>27</sup> L. Davis (2009), *Small steps, large hurdles: The EU's role in promoting justice in peacemaking in the DRC*, Initiative for Peacebuilding, <http://www.initiativeforpeacebuilding.eu/>.

The early phases of a transition do provide opportunities for the international community to push for reforms that contribute to democracy building, such as integrating SSR with DDR and supporting accountability measures. In both Afghanistan and the DRC, the international community has failed to take this opportunity: in both countries the early phases of the transition were marked by an almost complete lack of a coherent international state and institution-building strategy, which has led to political manipulation. The international community deferred to national ownership and therefore did not take the lead in developing a strategy for reform. But at the same time, national authorities were unwilling or unable to develop a strategy which would be acceptable to the international community. The result was a plethora of technical assistance programmes delivered by different agencies with no overarching strategy to ensure coherence. For example, in Afghanistan and the DRC, elections were held before comprehensive disarmament processes were implemented and SSR was initiated without any coordination with civil administration or justice sector reform. Consequently, in both countries, the political developments coupled with the lack of comprehensive disarmament, SSR and justice sector reform have resulted in a culture of impunity and corruption which in turn makes reform increasingly difficult.

The EU and its member states have played important roles in both Afghanistan and the

DRC. All relevant EU institutions and major member states are present in both countries. The analysis of the two case studies shows that the EU and its member states have the political clout and the necessary technical tools at their disposal to be efficient and reliable actors in post-conflict and transitional contexts. However, both case studies also show that the EU has not made full use of its political potential. For example, both Afghanistan and the DRC can be seen as test cases for the relatively new foreign policy tool of EUSR; in Afghanistan the EUSR and his office have provided on-the-ground leadership for the EU, but the EUSR has limited impact on priorities established by member states at headquarters level. Consequently, the EUSR has political leadership in day-to-day political decision-making (which is often very important), but not on the overall agendas decided between capitals and Brussels. In the DRC, the EUSR has represented all the member states in peace talks in the east of the country, to the extent that the Belgian Special Envoy (who had been a core part of the international facilitation team) declined to witness the Goma peace agreement of 2008, preferring that the EUSR represent all 27 member states. However the EUSR's political role beyond the peace talks is much more limited.

As Artemis, the first ESDP mission in the DRC in 2003, showed, when the member states choose to they can mobilise effective short-term missions. However, the

current reform-oriented ESDP missions in both Afghanistan and the DRC are hampered by a lack of strategy, political leadership and support. Although the member states may decide to deploy ESDP missions, they do not necessarily prioritise making the necessary resources (human and financial) available, thus hampering the mission in the longer term. This is compounded by the short-term nature of the mandates of the missions (reviewed annually) despite their long-term presence. The effectiveness of ESDP missions is also undermined by inter-pillar competition with the European Commission.

The European Commission is an experienced development actor. Its long-term planning cycle makes it a good state-building partner. In addition, the Commission is able to mobilise substantial funds, which makes it well adapted to fund structural and institutional change-focused reform processes. However, the EC is not in itself a state-building or institutional reform actor: the EC can negotiate priorities with the receiving state and it can provide funds, but it may often need to rely on other actors for strategic partnerships and technical implementation. In Afghanistan the EC has been one of the main contributors to the Law and Order Trust Fund for Afghanistan (LOTFA), which amongst other things funds police salaries. While funding police salaries is crucial, the lack of in-depth knowledge about the number of police in different districts and provinces and of a comprehensive SSR

strategy has made paying of police salaries controversial. The EC's contributions to the justice sector (which were supposed to complement the deployment of an ESDP mission focused on police) have remained largely invisible, possibly due to the choice of implementing partner. In the DRC, the EC's police reform project has at times clashed with similar projects implemented by the UN and the ESDP police-reform mission, and partners have found its dual role as donor and implementer difficult to deal with.

In sum, the EU is an important part of the international community, yet the case studies for Afghanistan and the DRC show that it frequently fails to punch at its weight. The lack of a coherent EU strategy (including member states, the Common Foreign and Security Policy (CFSP) and the Commission) has undermined the EU as an effective political and security actor in both Afghanistan and the DRC. The different EU instruments may individually be on the road to becoming politically and technically sound, but there is a lack of coherence and coordination. In cases where an EUSR or ESDP mission is deployed, the EU actors should overcome sensitivities and develop a diplomatic and technical strategy.

## CONCLUSION AND RECOMMENDATIONS

It is difficult to promote accountability in contexts such as Afghanistan and the DRC because the threat of continued violence is ever-present. Diplomacy at the European

level requires consensus among the member states, which is not always possible. Recognising these two considerable constraints, this article argues that the EU needs to develop coherent policies for its interventions in contexts such as Afghanistan and the DRC that build on EU's comparative advantage in areas such as democratisation, governance/rule of law and justice reform.

### Recommendations

1. The EU has core values that should be seen as a strength of its external action. Integral to any EU strategy should be Europe's commitment to human rights and transitional justice.
2. When the EU chooses to engage in institution building, it should recognise that changing and reforming institutions in post-conflict or transitional environments is in equal parts a political and a technical task, and that all reform demands long-term commitment.
3. Important, long-term reform, such as justice sector reform, must take into account the problems posed by insecurity. And vice versa, short-term security measures should take into account the need to strengthen governance and the rule of law in order to contribute to long-term security and peace. At the level of EU policies, the interaction between long-term reforms and short-term security demands increased cooperation between the EU/ESDP and the EC in developing and implementing reform and security strategies.
4. DDR must include SSR. This is politically difficult, but SSR becomes more difficult if postponed. SSR must include a justice-sensitive approach. In its involvement in DDR and SSR, the EU should be careful not to develop parallel structures on the ground. Although the establishment of parallel structures is understandable when the host government is not fully engaged in the process, the short-term gains of parallel structures have long-term costs due to lack of local ownership and sustainability.
5. As the EU is increasingly engaged in facilitating peace processes throughout the world, usually through the offices of the EUSRs, the EU should develop a policy framework to provide EU mediators with guidelines and options for how to address questions of impunity throughout the process.