



In the Briefing Paper

1. Background information on the Common Security and Defence Policy
2. The Missions - overview
3. EUBAM Rafah
4. EUPOL COPPS/Palestinian Territories
5. Policy Recommendations

Background Information on the Common Security and Defence Policy

The Common Security and Defence Policy (CSDP) (originally referred to as the European Security and Defence Policy or ESDP) is part of the European Common Foreign and Security Policy (CFSP) which was established under the Maastricht Treaty which came into force in 1993 and which has been amended by the Treaties of Amsterdam (signed in 1997 and entered into force in 1999), Nice (signed in 2001 and entered into force in 2003) and Lisbon (signed in 2007 and entered into force in 2009).

The Common Foreign and Security Policy is now set out in Title V of the Treaty on European Union as amended by the Lisbon Treaty. The key provisions relating to the Common Security and Defence Policy (CSDP) are contained in section 2 (Articles 42 to 46) of that Title. Key elements of the treaty basis for CSDP missions are¹:

Article 42

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Article 43

1. The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include **joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis**

¹ Articles quoted from the Treaty on European Union are taken from the Consolidated version of the Treaty as set out on the EU-Lex website, accessed 1 April 2010, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:EN:HTML> (emphasis added by OCEA)

management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

The Missions - An Overview

The core of the CSDP is the so-called crisis management missions which have been implemented by the European Union since 2003 on the legal basis of this section of the Treaty. So far (as at May 2011), there have been 25 missions (some still ongoing, some not).

Mission	Military/Civilian	Completed/Ongoing
EUFOR - Libya	Military in support of humanitarian assistance	Not started yet - waiting for UN request
EUTM Somalia	Military Training	Ongoing since 2010
EULEX KOSOVO	Civilian (Rule of Law)	Ongoing since 2008
EUMM Georgia	Civilian (Monitoring)	Ongoing since 2008
EUNAVFOR - Atalanta	Military	Ongoing since 2008
EUPOL - Afghanistan	Civilian (Police and Rule of Law)	Ongoing since 2007
EUJUST LEX - Iraq	Civilian (Rule of Law)	Ongoing since 2007
EUPOL DRC	Civilian (Police)	Ongoing since 2007
EUPOL COPPS - Palestinian Territories	Civilian (Police)	Ongoing since 2006
EUBAM - Moldova and Ukraine	Civilian (Monitoring)	Ongoing since 2005
EUBAM Rafah	Civilian (Monitoring)	Ongoing since 2005
EUSEC DRC	Civilian/Military	Ongoing since 2005
EURFOR Althea - Bosnia & Herzegovina	Military	Ongoing since 2004
EUPM - Bosnia & Herzegovina	Civilian (Police)	Ongoing since 2003
EUSSR Guinea Bissau	Civilian/Military	Completed
EUPAT - FYRO Macedonia	Civilian (Police)	Completed
EUPOL PROXIMA - FYRO Macedonia	Civilian (Police)	Completed
EUJUST THEMIS - Georgia	Civilian (Rule of Law)	Completed
CONCORDIA - FYRO Macedonia	Military	Completed
EUFOR Chad/Central African Republic	Military	Completed
Support to AMIS II - Sudan/Darfur	Civilian/Military	Completed
EUPOL - Kinshasa	Civilian (Police)	Completed
ARTEMIS - DRC	Military	Completed
EUFOR - DRC	Military	Completed
AMM - Aceh	Civilian (Monitoring)	Completed

Of these, 7 (including the Libya mission yet to be started) have been exclusively military, 3 have been integrated civilian/military and the rest have been civilian missions.

EUBAM Rafah

Legal Basis and Background of the Mission

On 12 December 2005, the Council of the European Union adopted a joint action (2005/889/CFSP) which established the European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah). This was

a direct response to the 'unilateral disengagement' of Israel from Gaza in 2005. The immediate impact of that disengagement was that there was no longer an IDF presence at the Rafah crossing point (between Gaza and Egypt) and that the crossing point was therefore closed except in exceptional circumstances. The legal basis of the Mission states as a basis for engagement that:

The European Union, as part of the Quartet, is committed to assisting and facilitating the implementation of the Roadmap, which lays out reciprocal steps by the Israeli Government and the Palestinian Authority in the political, security, economic, humanitarian, and institution-building fields, that will result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel and its other neighbours.²



This decision was taken in response to a request from the then Quartet Special Envoy for Disengagement 'on behalf of the parties that the EU consider playing a Third Party monitoring role at the Rafah Crossing Point on the Gaza-Egypt border'³.

The decision was further based on:

- A request from the Palestinian Prime Minister to the European Commission for assistance with capacity building of Palestinian personnel at the Rafah crossing point
- An agreement between the Government of Israel and the Palestinian Authority on movement and access at border crossing points with Gaza which, inter alia, indicated the role of the EU as a third party regarding the operation of the relevant crossing points
- Letters of invitation from the Palestinian Authority and the Government of Israel respectively inviting the EU to establish a European Union Border Assistance Mission for the Rafah Crossing Point.

It is maybe interesting to note that Egypt, the country on the other side of this crossing point, is not mentioned in the recitals of the Joint Action which state all the above points.

The Mission Statement of the Mission is set out clearly in the Council Joint Action as follows:

² Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point, p. 1, accessed 1 April 2010, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:327:0028:0032:EN:PDF>

³ *ibid.*

Article 2 Mission Statement

The aim of EU BAM Rafah is to provide a Third Party presence at the Rafah Crossing Point in order to contribute, in cooperation with the Community's institution-building efforts, to the opening of the Rafah Crossing Point and to build up confidence between the Government of Israel and the Palestinian Authority.

To this end, EU BAM Rafah shall:

(a) actively monitor, verify and evaluate the Palestinian Authority's performance with regard to the implementation of the Framework, Security and Customs Agreements concluded between the Parties on the operation of the Rafah terminal;

(b) contribute, through mentoring, to building up the Palestinian capacity in all aspects of border management at Rafah;

(c) contribute to the liaison between the Palestinian, Israeli and Egyptian authorities in all aspects regarding the management of the Rafah Crossing Point.

EU BAM Rafah shall implement the responsibilities entrusted to it in the Agreements between the Government of Israel and the Palestinian Authority regarding the management of the Rafah Crossing Point. It shall not undertake substitution tasks.

The agreement between the Government of Israel and the Palestinian Authority states on the subject of the role of the European Union:

Third party

The 3rd party will have the authority to ensure that the PA complies with all applicable rules and regulations concerning the Rafah crossing point and the terms of this agreement. In case of non-compliance the 3rd party has the authority to order the re-examination and reassessment of any passenger, luggage, vehicle or goods. While the request is being processed, the person, luggage, vehicle or cargo in question will not be allowed to leave the premises of the Rafah crossing point.

The 3rd party will assist the PA to build capacity - training, equipment and technical assistance - on border management and customs.

Details of the 3rd party's role are specified in the attached memorandum of understanding.

The 3rd party will be the European Union.⁴

The memorandum of understanding referred to in the penultimate paragraph of this excerpt is not available in the public domain. However, it can be assumed from the reference in the mission statement above to the CSDP Mission not undertaking 'substitution tasks', that part of this memorandum of understanding is likely to say that the EU monitors should not act as border officials in place of Palestinian border officials.

The Mission was extended by further Council Joint Actions in

- November 2006
- May 2007
- May 2008
- November 2008
- November 2009
- May 2010
- May 2011

The expiry date set out in Council Joint Action 2011/312/CFSP of 25 May 2011 is set at 31 December 2011.

⁴ Agreement on Movement and Access between the Government of Israel and the Palestinian Authority, accessed 1 April 2010, available at:

<http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm>

The EUBAM Rafah Mission in Practice

Key date	Comment
24 November 2005	Operational phase of Mission begins
13 June 2007	Head of Mission declares a temporary suspension of operations Crossing Point
25 June 2007	Rafah Crossing Point is closed for normal operations
Since early 2011	As a result of the Egyptian revolution in early 2011, the situation at the Rafah border crossing became a little unclear. There were suggestions that the border was open but not to everyone. No reliable evidence to suggest the actual situation on the ground was available until late May 2011.
25 May 2011	A local source reported: For crossings to Egypt: some (a few) people going in/out and no goods come from the crossings from Egypt. Export outside Gaza is still restricted and very modest as only strawberries, carnations and a few vegetables are allowed for export, but import is allowed for all food items and many other goods from Israel; restriction remain on the three main construction materials: cement, construction steel and stones for concrete.
26 May 2011	<p>The Palestinian Centre for Human Rights (Gaza) (PCHR - Gaza) reports that opening times are extended and that visa requirements are lifted for:</p> <ul style="list-style-type: none"> • All Palestinian women. • Male Palestinian aged below 18 and above 40. • Patients who have medical transfers. • Children who accompany their parents, who are already exempted from applying for visas. • Palestinian families passing via Egyptian territory to travel to and from the Gaza Strip, provided that they have their Palestinian passports, identity cards, and visas to enter a country of destination. <p>PCHR (Gaza) adds:</p> <p>The newly declared policy is related to the movement of persons only and do not include commercial transactions. These procedures will not to ease the suffering of the Palestinian civilian population or change the economic situation caused by the strict closure imposed on the Gaza Strip.⁵</p>
EU position at 27 May 2011	<p>According to the Council Conclusions of on the Middle East Peace Process of 23 May 2011, the Council says in paragraph 9:</p> <p>'the EU stands ready to reactivate the EUBAM Rafah Mission, once political and security conditions allow, in order to ensure the EU third party role at the Rafah crossing point, as set out in the 2005 Agreement on Movement and Access'.⁶</p>

⁵ PCHR, Press Release, 26 May 2011, accessed on 27 May 2011 at:

http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7474:pchr-welcomes-the-egyptian-authorities-decision-to-open-all-land-and-air-passages-for-palestinians-to-and-from-the-gaza-strip&catid=36:pchrpressreleases&Itemid=194

⁶ Council of the European Union, Council Conclusions 23 May 2011 accessed on 27 May 2011 at:

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/122165.pdf

The Mission headquarters are in Ashkelon (Ashqelon on the map). As can be seen from this map⁷ this is in Israel a little north of the northern border of Gaza with Rafah on the south-western border between Gaza and Egypt.



The current Head of Mission, appointed from 25 November 2008, is Col. Alain Faugas, a French national with significant experience in the French gendarmerie and in a number of international missions in countries including Bosnia & Herzegovina, Albania, Togo, Benin, Ivory Coast, Senegal, Egypt, and Kuwait. Immediately prior to his appointment to the Rafah Mission, he was Gendarmerie Advisor to the French Military Representation to the EU.

On the welcome page of the website of the Mission he says:

EUBAM - Rafah is still in place, and will be so for at least another year. Although it has not been able to perform its primary task for some time, the Mission has a lot of commitment, energy, professional expertise and flexibility. We want to work, to be involved and to make a difference. We can do this in several ways: firstly by maintaining our operational capability in order that we can redeploy to RCP as soon as the situation demands, and secondly by putting our expertise, and the information we have available, at the disposal of our international partners and by making it clear that we stand ready to help the Parties in any way that we can.

About the situation, it must be remembered that the Mission facilitated the only part of the Agreement of Movement and Access (AMA) to be implemented and made a significant practical difference to the lives of thousands. When we talk about the achievements of EUBAM, we always have to do so in the past; however, I would like to look to the future. The Mission represents the commitment of the EU to the AMA in general and the Rafah Crossing Point in particular.⁸

The Mission currently has 24 staff of which 8 are local staff. There is no information about the staff on the website or anywhere else in the public domain except the nationalities of the EU staff. They include: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Spain, Sweden and the UK. They are police, border police and customs officers.

⁷ Map from the Atlas of Palestine, accessed 1 April 2010, available at: http://www.google.be/imgres?imgurl=http://upload.wikimedia.org/wikipedia/commons/2/2f/Palestine_Map_2007.gif&imgrefurl=http://commons.wikimedia.org/wiki/Category:Maps_of_the_Palestinian_territories&h=970&w=780&sz=103&tbnid=GT_PWA9nJcwxk9M:&tbnh=149&tbnw=120&prev=/images%3Fq%3Disrael%2Bpalestine%2Bmap&usq=__oT_63knS4C0jUFVn_aVYIzq4UUo=&ei=t6K0S5bXEdDE4gaO3d3EDg&sa=X&oi=image_result&resnum=7&ct=image&ved=OCBUQ9QEwBg

⁸ EUBAM RAFAH Mission Website accessed 1 April 2010, available at: <http://www.eubam-rafah.eu/portal/en/node/49>

The Mission has been open only for part of the time it has been operational. The number of open/closed days breaks down as follows⁹:

Period	Days of operation	Days without operation	Operational days as percentage of all days
25 November 05 to 11 July 07	295	300	49.57%
25 November 05 to 24 June 06	211	1	99.52%
25 June 06 to 11 July 07	84	299	21.93%
From July 07 to May 11	0	1419	0.00%

EUBAM Rafah has not been operational since 11 July 2007. The number of staff of the Mission has been reduced from the level when it was operational. The most recent fact sheet published by the European External Action Service (EEAS) on the mission states that:

- The mission currently (as at April 2011) has 20 staff
- At full strength, the mission had 84 staff¹⁰

That means that now after 1419 days of not being operational, the mission still has nearly a quarter of the staff that it had when it was operational.

The Cost of the Mission to date

How much has this all cost thus far? Missions under CSDP are funded in part from the EU budget (in so far as the costs can legally be charged to the community budget (i.e. they are not military expenditures) and in part from Member States' budgets. In the case of the Rafah Mission the following information can be extracted from the Council Joint Actions:

Joint Action	Financial reference amount referred to in Joint Action
Council Joint Action 2005/889/CFSP	€ 1 696 659 (for 2005) € 5 903 341 (for 2006 - up to Nov)
Council Joint Action 2006/773/CFSP	The financial reference amount given for up to Nov 2006 was extended to May 2007 without increase
Council Joint Action 2007/359/CFSP	The financial reference amount for the period 25 May 2007 to 24 May 2008 was set at € 7 million

⁹ *ibid.*

¹⁰ EUBAM Mission Factsheet Updated April 2011, accessed on 27 May 2011 at:

http://www.consilium.europa.eu/uedocs/cms_data/docs/missionPress/files/110407%20FACTSHEET%20EUBAM%20Rafah%20-%20version%2016_EN01.pdf

Joint Action	Financial reference amount referred to in Joint Action
Council Joint Action 2008/379/CFSP	The financial reference amount of € 7 million was extended to apply from 25 May 2007 to 24 November 2008
Council Joint Action 2008/862/CFSP	Financial Reference amount from 25 November 2008 to 25 November 2009 was set at € 2.5 m
Council Joint Action 2009/854/CFSP	Financial Reference amount from 25 November 2009 to 24 May 2010 set at € 1.12 million
Council Joint Action 2010/274/CFSP	Financial Reference amount from 25 May 2010 to 24 May 2011 set at € 1,95 million
Council Joint Action 2011/312/CFSP	Financial Reference amount from 25 May 2011 to 31 December 2011 set at € 1.4 million

In other words, the total financial reference amount (or to put it in plain English: the total amount of money) available to the Mission since its start in November 2005 has been € 21.57 million.

Critique of the Mission

Palestinian Control over Border at Rafah

The legal basis of the Mission is on the invitation of the Palestinian Authority and the Government of Israel as set out above and is based on an agreement on movement and access at border crossing points with Gaza. The question has to be asked whether that agreement was instrumental in restricting the operational ability of the EU mission to do its job.

The agreed principles for the Rafah Crossing Point contained in this agreement include the following provisions:

- Use of the Rafah crossing will be restricted to Palestinian ID card holders and others by exception in agreed categories with prior notification to the Government of Israel and approval of senior PA leadership.
- The PA will notify the Government of Israel 48 hours in advance of the crossing of a person in the excepted categories-diplomats, foreign investors, foreign representatives of recognized international organizations and humanitarian cases.
- The Government of Israel will respond within 24 hours with any objections and will include the reasons for the objections;
- The PA will notify the Government of Israel of their decision within 24 hours and will include the reasons for their decision;
- The 3rd party will ensure the proper procedures are followed and will advise both sides of any information in its possession pertaining to the people applying to cross under these exceptions.
- A liaison office, led by the 3rd party, will receive real-time video and data feed of the activities at Rafah and will meet regularly to review implementation of this agreement, resolve any disputes arising from this agreement, and perform other tasks specified in this agreement.¹¹

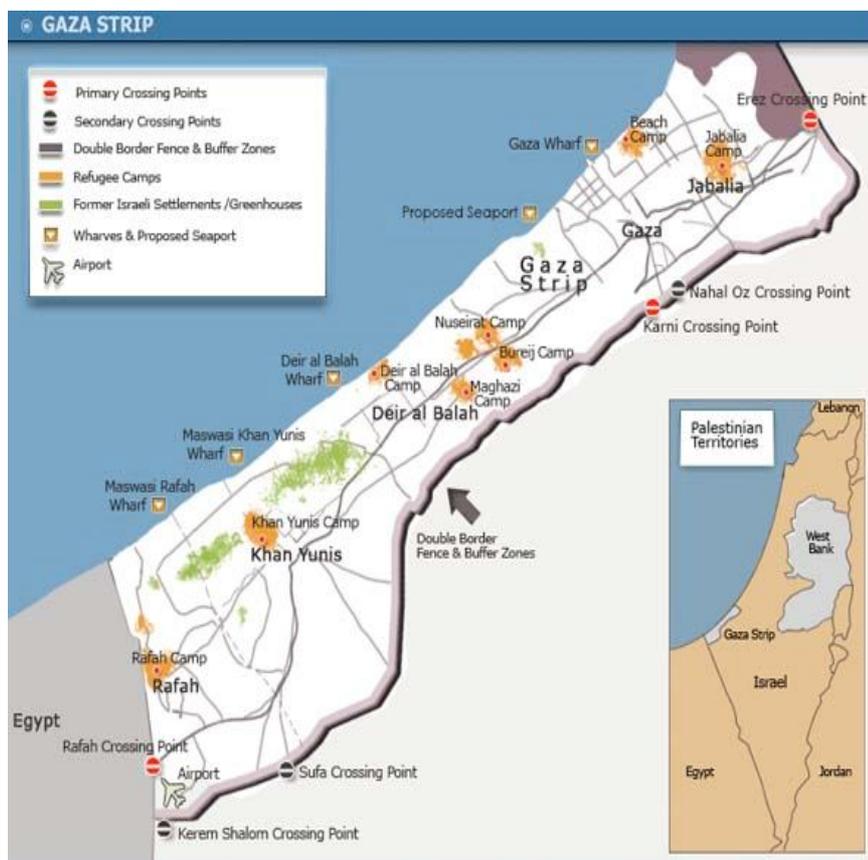
¹¹ Agreement on Movement and Access between the Government of Israel and the Palestinian Authority, accessed 1 April 2010, available at:

<http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm>

At the time the agreement was reached, the then US Secretary of State, Condoleezza Rice was quoted in the Washington Post as saying: 'For the first time since 1967, Palestinians will gain control over entry and exit from their territory.'¹² Does that statement stand up to scrutiny in light of these principles?

The first point is a restriction on the people who can use the crossing. Only Palestinian ID card holders are permitted to cross without further ado. All others, and that presumably includes Egyptian citizens living on the other side of the border, as well as diplomats, foreign investors, foreign representatives of recognized international organizations and humanitarian cases, are subject to a requirement to notify the Government of Israel 48 hours in advance of such a person crossing the border. The Government of Israel then has 24 hours to respond with any objections. Whilst the principles do not state that the Palestinian Authority have to heed such objections, they do have to respond with reason if they do not. There may be arguments for such an arrangement; but it is hard to describe it as the Palestinians 'gaining control over entry and exit from their territory'.

Secondly, the third party (the EU) is required to advise both sides of any information in its possession pertaining to people applying to cross who do not hold Palestinian ID. This appears to be a very sweeping requirement. It suggests that the EU is required to give to the Government of Israel (and the Palestinian Authority) potentially sensitive information about its own citizens. What can be excluded from 'any information pertaining to the people...?'



Finally, the Liaison Office, led by the 3rd party, is another real constraint on the freedom of movement and on the actual control over the crossing either by the Palestinian Authority or the EU, for that matter. The Liaison Office is situated at Kerem Shalom. This is a crossing point located on the point where the borders of Israel, Egypt and Gaza essentially intersect. It is also the crossing point that the EU border mission staff used when they could access Rafah. The function of the Liaison Office is for the parties (that is the Government of Israel, the Palestinian Authority and the Third Party - i.e. the EU) to liaise. The agreement foresees that the Rafah Crossing Point can only be open if the Liaison Office is functioning and agrees to the opening of the Crossing Point. And whilst the principles do not say who has to be present at the Liaison Office for it

¹² Robin Wright and Scott Wilson, 'Rice Negotiates Deal to Open Gaza Crossings', Washington Post, 16 November 2005, accessed 1 April 2010, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/15/AR2005111500144.html>

to function (and in turn, for the Crossing Point at Rafah to function) the EUBAM website used to say in its FAQ section in response to the question: 'Why is the Liaison Office based at Kerem Shalom?':

"The Liaison Office is at Kerem Shalom because that was agreed between the parties prior to the initial deployment of EUBAM. As the Liaison Office can only operate with the presence of both Parties and EUBAM, it makes no difference where it is, as either party could effectively close the crossing just by refusing to deploy their Liaison Officers in the Liaison Office."¹³

In other words, this was a clear acknowledgement that the Government of Israel has full control over the border crossing and that it exercises it and has exercised it since the start of the Mission.

Is the Mission Achieving its Objectives?

The European Union can only act on the basis of legal agreements set down in its Treaties and in other legal instruments such as (in this case) Council Joint Actions. If a mission is based on the Treaty provisions on Common Foreign and Security Policy and on a set of objectives set out in the Joint Action agreed, then it is arguable that the mission should only continue so long as it is in compliance with such legal basis.

For CSDP missions, the critical text in the Treaty on European Union is Article 43 as quoted above. This states that the actions permissible shall include **joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation**. The phrasing is clearly intended to be flexible as it suggests the list is not exhaustive. Furthermore, the list refers to the so-called 'Petersberg tasks' originally agreed in the context of the Western European Union (a defence alliance now incorporated into CFSP) and describe therefore more significantly the tasks that may be given to military missions. The Rafah Border Mission is a civilian mission.

Determining the exact legal basis for civilian crisis management missions (in general, rather than for a specific mission) is significantly more difficult. None of the reference texts available set out a clear list of what the European Union can and cannot do, or, indeed, the objectives of such actions. The broad description of possible tasks of civilian missions includes:

- Police (which may include a range of activities undertaken by police including mentoring and training)
- Rule of Law (which may include a range of activities ranging from advice on civil and criminal justice, mentoring, training, and the administration of justice in terms of the prison service)
- Civilian Administration
- Civil Protection
- Monitoring capability

In the context of the Rafah Border Mission, this fits under the headings of Police and Monitoring and thus is in compliance with the range of tasks civilian missions can undertake.

However, the question arises whether a mission has a valid legal basis whilst it is operationally suspended.

However, the Mission itself has objectives which are set out in the Council Joint Action. They are (as quoted above) to:

¹³ EUBAM Website as quoted in: David Morrison, How the EU helps to Strangle Gaza, 13 February 2008, accessed 1 April 2010, available at: <http://www.spinwatch.org/-articles-by-category-mainmenu-8/73-middle-east/4659-how-the-eu-helps-israel-to-strangle-gaza> (NB: the EUBAM website has been changed since this article was written. It no longer refers to the Liaison Office at all. However, should the Mission go operational again, there is no indication that the Liaison Office would not take up the function as before.

'(a) Actively monitor, verify and evaluate the Palestinian Authority's performance with regard to the implementation of the Framework, Security and Customs Agreements concluded between the Parties on the operation of the Rafah terminal;

(b) Contribute, through mentoring, to building up the Palestinian capacity in all aspects of border management at Rafah;

(c) Contribute to the liaison between the Palestinian, Israeli and Egyptian authorities in all aspects regarding the management of the Rafah Crossing Point.'¹⁴

It is arguable that objective (b) can still be potentially fulfilled to a certain extent. The fact sheet currently on the EU website for this mission suggests that there has been some support to the EUPOL COPPS Mission (see below) provided by the personnel of this mission in this regard.

The other two objectives are clearly not being fulfilled and there is therefore a strong argument that the Mission does not comply with its legal basis.

The recent changes in Egypt bring a further consideration into this discussion. At the time of writing (27 May 2011) the border crossing point at Rafah is open at least some of the time for at least some entry and exit of persons, even if the opening for goods is still restricted because of import and export restrictions imposed on Gaza by the Government of Israel and even if some people are still not able to cross freely. This is possible at this point because of action taken by the temporary Government of Egypt and has not involved the EUBAM Rafah mission in any way that can be inferred from publicly available sources.

This then begs the question as to whether EUBAM Rafah could conceivably be necessary or useful at any point in the future. This, too, suggests a question mark over the legal basis of the mission; it would be surprising if it is legally tenable for the EU to spend considerable amounts of money for a mission which is not necessary.

Political Impact

Clearly, the Mission is intended to contribute to the overall efforts of the EU (and the Quartet - of which the EU is a member) to contribute to a lasting peace in the region.

The Council Joint Action sets out the intention of the European Union to be seen as an actor contributing to:

- The opening of the Rafah Border Crossing (which is seen to have economic, security and humanitarian implications), and
- Building confidence between the Government of Israel and the Palestinian Authority.

Neither of these objectives is being achieved; neither of them has been a reality since the closure of the Rafah Crossing Point and the suspension of the Mission in July 2007. In other words, for over 85% of the available days since the start of the Mission it has not been able to fulfil its mandate. At best, this portrays the European Union as a weak actor. The partial opening of the border crossing by Egypt in May 2011 suggests that it also shows the EU as an irrelevant actor in this context. It must be in the interests of the EU generally not to give the impression of being both irrelevant and spending significant amounts of money in the process. At worst - and this is the case whether or not the border is open without EUBAM input, it shows that the European Union is prepared to be dictated to by the Government of Israel.

¹⁴ Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point, p. 2, accessed 1 April 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:327:0028:0032:EN:PDF>

EUPOL COPPS – Palestinian Territories

Legal Basis and Background of the Mission

On 14 November 2005, the Council of the European Union adopted Council Joint Action 2005/797/CFSP establishing the European Union Police Mission for the Palestinian Territories. The name of the Mission was agreed as: European Union Coordinating Office for Palestinian Police Support (EUPOL COPPS) and was mandated to begin operations no later than 1 January 2006. The legal basis of the Mission states as a basis for engagement that:

The European Union, as part of the Quartet, is committed to assisting and facilitating the implementation of the Roadmap, which lays out reciprocal steps by the Israeli Government and the Palestinian Authority in the political, security, economic, humanitarian, and institution-building fields, that will result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel and its other neighbours.¹⁵

This is identical to the wording in the Council Joint Action relating to EUBAM Rafah (see above).

The decision was taken on the basis of the following events¹⁶:

- The Council of the European Union, in June 2004, reaffirmed its readiness to support the Palestinian Authority in taking responsibility for law and order. This was specifically focused on civil police and law enforcement capacity.
- In April 2005, the European Union Coordinating Office for Palestinian Police Support was formally established by an exchange of letters between Palestinian Prime Minister Ahmed Qurei and the EU Special Representative to the Middle-East Peace Process Marc Otte. Essentially, the Council Joint Action establishing this Mission was a formalisation of this.
- The exchange of letters was followed in October 2005 by a formal invitation to the EU from the Palestinian Authority to launch a European Union Police Mission.

The legal basis of the Mission further sets out the role of the Israeli authorities in connection with this mission as follows:

EU assistance will be conditional on the extent of the Palestinian Authority's commitment and support for police reorganisation and reform. An adequate mechanism for coordination and cooperation with the relevant Palestinian authorities will be established during the planning phase to ensure their involvement in the development and follow-up of EUPOL COPPS. An adequate mechanism for coordination and cooperation with the relevant Israeli authorities will be established to ensure their facilitation of the EUPOL COPPS activities.¹⁷

It is interesting to note that the commitment and support of the Palestinian Authority to police reorganisation and reform appears in the same paragraph as the reference to adequate mechanisms for coordination and

¹⁵ Council Joint Action 2005/797/CFSP of 14 November 2005 on establishing a European Union Police Mission for the Palestinian Territories, p. 1, accessed 2 April 2010, available at:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_300/l_30020051117en00650069.pdf

¹⁶ All the points listed here are made in the recitals of the Council Joint Action establishing the mission.

¹⁷ Council Joint Action 2005/797/CFSP of 14 November 2005 on establishing a European Union Police Mission for the Palestinian Territories, p. 1, accessed 2 April 2010, available at:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_300/l_30020051117en00650069.pdf

cooperation with both the Palestinian Authority and the relevant Israeli authorities along with a recognition that these relevant Israeli authorities will have to facilitate the activities of the Mission.

Indeed, sources in the General Secretariat of the Council of the European Union confirmed in the summer of 2009, that the Mission cannot do anything without the consent of the relevant Israeli authorities.

The Mission was given a mandate of initially 3 years, i.e. from 1 January 2006 to 31 December 2008.

The specific objectives of the Mission are set out in Article 2 of the Council Joint Action as follows:

Article 2 Mission Statement

1. The aim of EUPOL COPPS is to contribute to the establishment of sustainable and effective policing arrangements under Palestinian ownership in accordance with best international standards, in cooperation with the Community's institution building programmes as well as other international efforts in the wider context of Security Sector including Criminal Justice Reform.

To this end EUPOL COPPS shall:

- a) assist the Palestinian Civil Police (PCP) in implementation of the Police Development Programme by advising and closely mentoring PCP, and specifically senior officials at District, Headquarters and Ministerial level;
- b) coordinate and facilitate EU and Member State assistance, and where requested, international assistance to PCP;
- c) advise on police-related Criminal Justice elements.¹⁸
- d) The Mission shall have a project cell for identifying and implementing projects. The Mission shall, as appropriate, coordinate, facilitate and provide advice on projects implemented by Member States and third States under their responsibility, in areas related to the Mission and in support of its objectives.¹⁹

The EUPOL COPPS Mission in practice

Unlike some other CSDP missions, this Mission started as the continuation of the EU Co-ordinating Office for Palestinian Police Support which had existed within the office of the EU Special Representative to the Middle East Peace Process and which had been funded by the UK government. The transfer of this project to an EU CSDP mission occurred during the UK Presidency of the EU in the second half of 2005.

Initially, it started with 11 European police experts seconded from Member States and a small administrative staff and had offices in the building of the Palestinian Ministry of Interior in Ramallah and in the Civil Police Headquarters in Gaza.

The Mission was then intended to grow to 33 police and civilian experts.

The Mission currently has 53 EU staff and 27 local staff; 19 Member States and Norway and Canada participate in the mission and the Mission is currently headed by Henrik Malmquist, a senior Swedish Police Officer with significant experience of working in a number of different countries.

One of the first things that EUPOL COPPS did was to work with the Palestinian Civil Police on developing the Palestinian Civil Police Development Programme (PCPDP) which has as its objective to establish a: 'transparent and accountable police organisation with a clearly identified role, operating within a sound legal framework,

¹⁸ *ibid.*, p. 2

¹⁹ Paragraph d of the mission was added by Council Decision 2009/955/CFSP amending the Council Joint Action 2005/797/CFSP, accessed 2 April 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:330:0076:0076:EN:PDF>

capable of delivering an effective and robust policing service, responsive to the needs of the society and able to manage effectively its human and physical resources²⁰

One of the striking features of this Mission is that it operates at least in part as a coordination point for financial support to the Palestinian Civil Police. Several of the fact sheets on the EUPOL COPPS webpage on the Council website refer to this quite clearly:

- A fact sheet dated 15 February 2006 setting out the proposals for the refurbishment of the Jericho Police Training Centre at a cost of 430 000 euros to be funded by the UK and the Palestinian Civil Police Development Fund with contributions from the Netherlands, Sweden and Norway²¹
- A fact sheet dated 1 January 2008 setting out a range of project proposals covering improvement of facilities for and training in crime investigation and forensic science, the upgrading of and equipment for prisons, further upgrading of the Jericho Police Training Centre, IT and radio equipment, public order training and equipment for public order policing, traffic police equipment (including vehicles), a general proposal for vehicles across the Palestinian Civil Police, and police infrastructure (buildings).²² It is interesting to note that in connection with several of the proposals there is reference to infrastructure and equipment having been destroyed by the Israeli Defence Forces. This is given as a reason why the need for the project exists.
- A fact sheet dated 19 May 2008 sets out the need for investment in the justice sector. This fact sheet was produced for the so-called Berlin Conference which took place in June 2008 where 40 donor countries discussed how they could contribute to the strengthening of the justice and police sectors in Palestine. The fact sheet lists 15 separate projects amounting to some 53 million US dollars (some 34 million euros).²³
- A fact sheet dated 24 June 2008, intended for consideration at the same Berlin conference and published by the Palestinian Ministry of Interior with the support of EUPOL COPPS proposes 14 projects relating to policing amounting to some 134 million US dollars (some 86 million euros).²⁴

Though the mission began as a police mission, it was widened to incorporate a rule of law section in December 2008²⁵ and now has two separate sections:

The Adviser Section (Police) which is responsible for advising the Palestinian Civil Police on criminal investigations, scene of crime management, crime prevention, forensic techniques and intelligence, command and control, public order, human resources, administration, communications, training and development of training curricula. The section also has field advisors who visit police stations to advise on day-to-day operational matters.

²⁰ EUPOL COPPS and Palestinian National Authority - Ministry of Interior, Factsheet on EUPOL COPPS and PCPDP, Feb 2006, p. 2, accessed 26 May 2010, available at: <http://www.consilium.europa.eu/showPage.aspx?id=1017&lang=en>

²¹ EUPOL COPPS and Palestinian National Authority - Ministry of Interior, Factsheet on the Jericho Police Training Centre, accessed 26 May 2010, available at:

<http://www.consilium.europa.eu/uedocs/cmsUpload/JerichoPolTrainingCentrephaselfactsheet.pdf>

²² EUPOL COPPS, Factsheet on Project Proposals 2008, accessed 26 May 2010, available at:

http://www.consilium.europa.eu/uedocs/cmsUpload/BOOKLET_cover.pdf

²³ Factsheet on Proposed Projects for Berlin Conference, May 2008, accessed 26 May 2010, available at:

<http://www.consilium.europa.eu/uedocs/cmsUpload/080519-CriminalJusticeBrochure.pdf>

²⁴ Palestinian Ministry of Interior and EUPOL COPPS, Factsheet, May 2008, accessed 26 May 2010, available at:

http://www.consilium.europa.eu/uedocs/cmsUpload/080624-Civil_Police_Brochure_fin.pdf

²⁵ Council Joint Action 2008/958/CFSP, amending Joint Action 2005/797/CFSP on the European Police Mission for the Palestinian Territories, accessed 26 May 2010, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:338:0075:0076:EN:PDF>

The Rule of Law section which focuses on the penal system, the judicial police, domestic violence and honour crimes.

Initially, the Police Mission was tasked to work with the Palestinian Civil Police in the West Bank and in Gaza. However, not unlike the EUBAM Rafah Mission, EUPOL COPPS has not been able to operate in Gaza for some considerable time and has therefore focused its attention on the work in the West Bank. It is headquartered in Ramallah and focuses a good deal of attention on the Police Training Centre in Jericho.

The Cost of the Mission

To date, the EU has approved 27.75 million euros for this Mission for the period 1 January 2006 to 31 December 2010. In addition, there have been a number of projects supported as a result of the mission's work on generating support for projects as outlined above. However, it is difficult to identify the costs incurred for such projects and, in any event, such funding will have come from Member States rather than from the EU budget.

Is the Mission Achieving its Objectives?

Looking at the Mission Statement quoted above, there is some indication that EUPOL COPPS does what it is intended to do. The main area where this is not the case is Gaza. As the Mission does not have access to Gaza it cannot do its work there.

The question arises as to whether or not this undermines the effectiveness of the Mission. In some ways, it obviously does. However, it could be argued that with the resources the Mission has it is doing what it can in the West Bank and it would need additional resources were it to operate in Gaza. There is therefore some justification for its continuing operation in the West Bank, especially as its mandate, unlike that of the EUBAM Rafah Mission, is not primarily or solely related to Gaza.

It is interesting to note that whereas there was reference in some of the documents relating to EUBAM Rafah to the effect that the personnel currently located in Ashkelon assist the EUPOL COPPS Mission whilst they cannot do the job they are there to do, there is no such reference in any of the documentation relating to EUPOL COPPS.

Political Impact of EUPOL COPPS

Beyond the practical work done by the Mission, there is the question of what the work of the Mission and its existence in the West Bank means politically. There is some reference in some of the material on the Council of the European Union website that some of the training has been done jointly between Palestinian and Israeli police personnel. This is likely to have some beneficial impact at least on the individuals participating in such joint training.

EUPOL COPPS has contributed the following:

- Radios, channel boxes, battery conditioners, maintenance for communications equipment and an IT network
- 3600 m² of tarmac at the Jericho Training Centre
- 900 boxes of A4 papers, 44 computers, 25 photocopiers, and scanners
- Reflective jackets, waterproof coats, handcuffs, torches, shields, binoculars, mattresses, blankets, digital cameras and other equipment

- 100 crowd control barriers
- Patrol cars, other vehicles, repairs to vehicles and a maintenance programme for vehicles donated by Spain²⁶

The apparent focus of the Mission on generating funding for the provision of the most basic facilities for the Palestinian Police (some of which at least are lacking because they were destroyed by the Israeli Defence Force attacking the infrastructure) should give pause for thought. The lack of vehicles, computers, and basic administrative supplies also highlights the economic effect of the occupation which prevents the Palestinian economy from supporting its own essential services.

These are political questions which cannot be skated over by a relatively small mission such as EUPOL COPPS. Rather, we should ask why the European Union and its Member States are paying for the replacement of such infrastructure and equipment without ever asking for compensation for the infrastructure and material that has been destroyed. And we should be asking why the European Union, committed to supporting the Palestinian Authority and a peace in the region which allows both populations to live safely and securely (and that includes having a viable economy), does not find it possible to take bolder steps. There needs to be immediate assistance to make the worst aspects of the situation better; but this can only be justifiable if it goes along with hard political steps to address the root causes of the problems.

Conclusions

It is clear from the analysis of the two missions that the European Union is committed to making a positive contribution to the situation in the occupied Palestinian Territories. The commitment to two missions, costing the EU a total of nearly € 50 million over six years is a very tangible indication of this.

Yet it can be seen that one of the missions is in no position to achieve its objectives at all and the other is a rather small scale response to a much bigger problem.

When asked about their reaction to the EUBAM Rafah Mission, NGOs (both at EU level and in the region) and others have very different reactions: some argue that it should be closed because it is not achieving its mission and therefore its continued existence shows the EU as either weak or willing to be instrumentalised by Israeli government policy or both; others want it re-opened because it did do some good when it operated and because opening it would signal an end to the blockade of Gaza; yet others think that the status quo must be maintained because - if the Mission closed completely and left - it would never be allowed back and the good it could do if it were allowed to operate outweighs the drawbacks of its current inaction.

This shows how difficult it is to propose any coherent policy recommendations in relation to the two CSDP missions without looking at the wider picture of the situation in Israel and the occupied Palestinian Territories. The Missions are but a small speck in the overall picture and decisions relating to these Missions might have implications for the situation as a whole which far outweigh the impact of the Missions.

With regard to the Rafah Mission, the key point is that 20 EU personnel are based in Israel and unable to operate to the mandate with which they were sent there; that means that 20 EU personnel are using EU taxpayers' money and spending it in Israel, contributing to the Israeli economy without contributing to peace.

²⁶ EUPOL COPPS, Information brochure, June 2009, accessed 26 May 2010, available at: <http://www.consilium.europa.eu/showPage.aspx?id=1017&lang=en>

Recommendations

EUBAM Rafah

Whilst we understand that there are those who feel that leaving the mission in place in its current form until such time as it can assist in fully open border between Gaza and Egypt in Rafah or until it can be deployed effectively on other border crossing points into and out of Gaza, and whilst we would support any serious and effective contribution the EU could make to this and to the improvement of the situation of the people of Gaza, we have come to the conclusion that given the history of this mission and the current situation we can only make the following recommendations:

- In light of the serious concerns regarding the legal basis of the mission under current circumstances (and under the circumstances which applied since June 2007) we would recommend that the EU closes the mission and recalls all mission staff immediately.
- The EU should take immediate steps to discuss with the parties how the money saved by closing the mission could contribute to peace in Palestine and Israel more effectively.

EUPOL COPPS

As for the EUPOL COPPS, there would appear good reasons to keep it going; however, it should be much more visible than it is (both locally and at EU level) so that EU, Palestinian and Israeli citizens can understand

- what the Mission does and how it contributes to stable structures in the West Bank;
- the extent to which assistance from outside is necessary to make the Palestinian Civil Police able to function in a way any one of us would expect from the police in whatever country in the EU we live;
- the fact that the Palestinian Civil Police has to operate without the most basic of equipment is not 'just one of those things' but the result of the political and economic situation that affects all Palestinians and one which we cannot and should not ignore.

Finally, the EU should assess the amount of money it has spent in assisting the Palestinian Authority to rebuild essential infrastructure which has had to be rebuilt because it had been destroyed by Israeli military action. Such sums should, in the medium to long term, be recovered from the Government of Israel.