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The Potential and Limits of the EU's Promotion of Post-Conflict Transitional Justice:

A Research Note Based on the Analysis of the Aceh Monitoring Mission*

Kyoko CROSS**

Abstract

Despite the EU's contribution to peace-building, some of the ESDP missions dealing with justice issues have been seen as inconsistent with the EU's foreign policy objectives. Incorporation of transitional justice perspectives could fill this gap between post-conflict realities and the EU's core values. Focusing on the ESDP mission to Aceh, this paper examines what kind of impact could have been made with a strategic adoption of transitional justice. It identifies and discusses several measures that were available to enhance the aspects of transitional justice, despite the fact that the AMM's role in that sphere was limited.

Keywords : transitional justice, AMM, ESDP/CSDP, EU, crisis management

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Introduction

The European Union (EU) is a major contributor to development, crisis management and peace-building at the global level. Through the introduction of the Common Security and Defence Policy (CSDP), previously the European Security and Defence Policy (ESDP),¹⁾ the EU has been endowed with a new institutional tool offering significant operational capabilities in the area of peace-building.

However, its foreign policy objectives to promote its core values, democracy, the rule of law and human rights, have not been adequately translated into actual practice. In particular, the EU's operations dealing with justice issues in post-conflict societies often have met challenges in recovering the dignity of the victims and fulfilling the demand for justice whilst simultaneously maintaining a fragile peace. Transitional justice (TJ), which has emerged as a recognized concept and practice in the field of peace-building and conflict resolution, is not only a relevant approach in the area, but also shares some common purposes with the EU's ideals. The Union has upheld its support for international criminal justice, which is one of the vital elements of TJ; however, it has not so far incorporated TJ into its crisis management policies holistically as a framework concept to be considered.

This lack of TJ perspectives in the EU crisis management has been pointed out in recent studies.²⁾ They pointed out that, despite the fact the EU has increasingly implemented programs in the relevant area of TJ and in some cases referred to the concept explicitly in its policies, these attempts have been scattered and undertaken in an *ad hoc* fashion. The previous literature, however, has not discussed how the incorporation of TJ concepts could have improved their missions in accordance with their foreign policies objectives.

This article aims at identifying the features of the EU's actual operation in the field of TJ. Then it will analyse what could have been possible, or not possible, with a strategic adoption of the concept into its operation, by focusing on the ESDP operation to Aceh, the Aceh Monitoring Mission (AMM). TJ is not a special kind of justice dispensed through the establishment of an international criminal court or a truth commission; rather, it seeks a complementary and holistic approach. Therefore, peace-building operations merged with TJ framework could offer more comprehensive ways to redress human rights violations in post-conflict contexts where primary difficulty is holding those responsible for crimes accountable. The AMM mission is a suitable case to consider the EU's potential and limits to promote TJ in post-conflict societies by crisis management measures, since the AMM had mandates, albeit limited, to deal with justice issues.

This paper proceeds as follows. First, it defines TJ and explains its relationship to peace-building and crisis management. Then, after overviewing the current EU policies and programs in the area of TJ, it looks into

1) With the entry into force of the Lisbon Treaty on 1 December 2009, the ESDP was renamed the CSDP.

2) See, for example, Thomas Unger, "The European Union and Transitional Justice," CLEER Working Papers, Centre for the Law of EU External Relations (2010); Maria Avello, "European Efforts in Transitional Justice," FRIDE Working paper 58, (2008).

the case of the AMM operation, focusing on the fact that the AMM had managed to complete its mission, yet lacked strategic TJ perspectives. As a result, neither acknowledgement for victims' sufferings nor reconciliation, let alone justice, were achieved when the windows of opportunity to set up a human rights court (HRC) and a truth and reconciliation commission (TRC) had been closed. The reintegration program which strategically encompassed TJ approaches would have contributed to meet certain demands of the people who had sought justice and reparation in Aceh. In addition, I will argue that the EU could have made a difference in creating gender justice in the Aceh peace process.

1. Transitional justice and peace-building

Transitional justice seeks to address the legacy of systematic and grave human rights abuses, to recognize and acknowledge victims, and to contribute to the processes of peace-building and democratization in post-conflict societies. TJ mechanisms have been applied as components in a major political transition, from war to peace or from authoritarian rule to democracy, in order to establish and sustain peace. Established democratic societies, however, may apply TJ measures wishing to address systematic abuse in their past. Thus, the term 'transitional justice' does not merely refer to 'justice during transition'; rather, it defines a holistic response to widespread violations of human rights. In this respect, there is no exhaustive list of approaches in TJ initiatives, but the main measures include criminal prosecution, truth commissions, reparations, and institutional reforms.³⁾

In contrast, peace-building covers wider areas than TJ and fundamentally differs in its setting up of structures and institutions to sustain peace and stability. Although both TJ and peace-building share some of the same objectives, peace-building encompasses a wide range of political, developmental, humanitarian and human rights programs and mechanisms aimed at preventing the outbreak, recurrence or continuation of armed conflict.⁴⁾ These attempts are comprehensive and multifaceted, including sustainable development, the eradication of poverty and inequality, the establishment of accountable and transparent governance, the promotion of democracy and the respect of human rights and the rule of law.⁵⁾

Post-conflict attempts at TJ can be traced back as far as the Nuremberg and Tokyo war tribunals held after World War II. These trials were primarily international legal responses designed to address the question of accountability for individual violations of international criminal law. However, in response to the changing character of the conflicts in the late twentieth century, the concept and the measures of TJ have consequently been broadened. Whereas previously the dominant view was characterized by the dichotomy between pros-

3) The other mechanisms could include gender justice and memorialization efforts. See the website of the International Center for Transitional Justice: < <http://www.ictj.org> >.

4) UN Security Council, "Statement by the President of the Security Council," UN Doc. S/PRST/2001/5 (20 February 2001).

5) Ibid.

ecution and amnesty, today there is recognition of the wide range of tools and mechanisms available between the two extremes. Indeed, the question now is not to ask whether one should address the past or not, but how one can achieve diverse TJ goals.

In this way, the current scope of TJ involves the perspectives of strategic peace-building approaches.⁶⁾ It does not mean, however, the problematic relationship between TJ and peace-building have been solved. In fact, there are cases where such approaches do not seem to be incompatible or rather in conflict. In the situation of the aftermath of conflicts where peace is fragile or the perpetrators continue to maintain real power, establishing and sustaining peace requires maintaining a delicate balance between ending hostility and the demand from victims for accountability and justice to redress past abuses. Furthermore, limited resources may constrain the choices of priorities of what can be achieved to meet the realities. In many cases, inadequate or dysfunctional judiciary systems in immediate post-conflict situations cannot cope with the number of wrongdoers, which consequently creates *de facto* amnesties for many perpetrators. Nevertheless, the past experiences of many societies emerging from mass abuses have shown that prioritizing security to TJ did not necessarily guarantee a long-lasting peace.

On the contrary, the recent development of TJ mechanisms has reinforced the relationship between TJ and peace-building. For example, there is a growing recognition that TJ and disarmament, demobilization and reintegration (DDR) programs can not only coexist in the same framework but can also complement each other.⁷⁾ In many post-conflict societies, TJ mechanisms have assisted ex-combatants to become reintegrated into their local communities. Likewise, reforming or rebuilding public institutions such as security sector reform (SSR) can provide pre-conditions for TJ to succeed.⁸⁾ Therefore, a program which accommodates both peace-building and TJ approaches could aim to pursue two goals: the securing of peace and the achieving of justice and reconciliation.

2. The EU's crisis management policies and its perspectives on transitional justice

2.1. EU's crisis management policies

The crisis management policies under the EU's external relations are dealt within the framework of the Common Foreign and Security Policy (CFSP). Article 11.1 of the Treaty of European Union (TEU) defines one of the objectives of CFSP as establishing democracy, the rule of law, and respect for human rights and funda-

6) For a comprehensive overview and analysis of transitional justice concept and practices, see Ruti Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2000): 69-94; Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006).

7) United Nations Department of Peacekeeping Operation, *Integrated Disarmament, Demobilization and Reintegration Standards* (New York: DPKO, 2006). For a comprehensive overview and analysis of the relationship between transitional justice and DDR, see Ana Cutter Patel et al. (eds.), *Disarming the Past: Transitional Justice and Ex-Combatants* (New York: Social Science Research Council, 2009).

8) See, Laura Davis, "Transitional Justice and Security System Reform," Initiative for Peacebuilding, Security cluster (2009).

mental liberties. In order to accomplish these purposes, the EU has varieties of civilian instruments for crisis management, ranging from the forms of political co-ordination, including positive measures such as dialogue and negative measures such as sanctions, to financial assistance.⁹⁾ Article 17.2 of the TEU states that the CFSP missions involve Petersberg Tasks, which include humanitarian and rescue interventions, peacekeeping activities and the involvement of combat forces in crisis management.¹⁰⁾ However, the EU had not been equipped itself with an operational means to realize these CFSP goals by utilizing a military instrument.

The major development needed to wait until the Helsinki European Council in 1999, when the EU undertook to transform its status as a “global civilian power” into a “militarized civilian power” by institutionalizing the ESDP.¹¹⁾ The ESDP, later the CSDP, was adopted specifically to provide operational crisis prevention and management tools with tangible capabilities to the CFSP. The ESDP has been envisaged as a response to the EU's inability to end the ethnic conflicts in the Balkans in the late 1990s. As to capabilities for action, the Helsinki summit also reached an agreement on the high-priority goal of establishing of a rapid reaction force (RRF) to provide military support in emergencies.¹²⁾

One of the characteristics of the EU's military crisis management is its civil-military cooperation. The European Security Strategy (ESS), which was agreed in 2003, stated that today's conflicts required more integrated approaches and emphasized military efficiency as well as civilian capabilities.¹³⁾ Thus, the ESDP, which became operational through the first policing mission to Bosnia and Herzegovina in 2003, differentiated itself from the North Atlantic Treaty Organization (NATO). In fact, most of the crisis management operations under the ESDP are carried out by civilian missions.¹⁴⁾ In 2004, the EU strengthened this dimension by adopting a new Civilian Headline Goal 2008. It added the two further priorities of mission monitoring and support to EU special representatives to the four existing elements of civilian management (policing, the rule of law, civilian administration, and civil protection).¹⁵⁾ It also noted that the EU should be able to contribute to SSR and support DDR processes. These aspects of ESDP missions link closely with TJ processes.

2.2 The EU's perspectives on transitional justice and its implementation

TJ is already of great relevance to EU foreign and security policies and is explicitly or implicitly mentioned

9) For a comprehensive overview of the EU's non-military crisis management, see European Commission Conflict Prevention and Crisis Management Unit, “Civilian Instruments for EU Crisis Management” (2003).

10) Petersberg tasks were first created by the Western European Union in 1992. In 1997 the tasks were incorporated into the Amsterdam Treaty.

11) Stavridis argued that militarization of the Union is necessary for the EU to act as a real civilian power to promote democratic principles with force. Stelios Stavridis, “Why the ‘Militarising’ of the European Union is Strengthening the Concept of ‘Civilian Power Europe’,” EUI Working Papers (2001).

12) The RRF made it possible for 60,000 troops deployable within 60 days for at least one year.

13) Council of European Union, “A Secure Europe in a Better World, European Security Strategy” (12 December 2003).

14) Maria Raquel Freire, “The European Security and Defence Policy: History, Structures and Capabilities,” in Michael Merlingen and Rasa Ostrauskaitė (eds.), *European Security and Defence Policy: An Implementation Perspective*, (London: Routledge, 2008) 20.

15) Council of the European Union, “Civilian Headline Goal 2008,” 15863/04 (7 December 2004), para 3.

in the various documents and policies it has established.¹⁶⁾ The EU has upheld its strong support for the establishment of international criminal justice. Its reliance on formal judicial systems stems from the aspects of respecting human rights and the rule of law, some of the EU's core values. Both financially and politically the EU has devoted itself to the fight against impunity in cases of grave human rights violations.

As for political measures, the EU's strongest commitment to international criminal justice can be found in its enlargement policy.¹⁷⁾ For instance, cooperation with the International Tribunals for the Former Yugoslavia (ICTY) has become a condition for EU membership candidacy for the countries that used to comprise Yugoslavia. The EU also has shown strong support for the International Criminal Court (ICC), as the European Security Strategy 2008 report has made clear.¹⁸⁾ The Union has an agreement in the area of cooperation and assistance with the ICC, which describes the personnel and material contribution available from the EU.¹⁹⁾ In addition, as to the crisis management policies, the EU Special Representatives (EUSRs) are mandated in an area that is extremely relevant for TJ. The EUSR for Bosnia and Herzegovina and the EUSR for Sudan were mandated to cooperate with international courts.²⁰⁾ The EU has also provided extensive financial support to *ad hoc* and hybrid tribunals, including the ICTY, the International Tribunal for Rwanda (ICTR), the Extraordinary Chamber of the Courts of Cambodia, and the Special Court for Sierra Leone.

With regard to the EU's development and cooperation policy, the concept of TJ is included as an aspect of promoting human rights and democracy, as well as addressing global security and development challenges. TJ is perceived as being fundamentally necessary for stability and development.²¹⁾ Explicit reference to TJ is made to its funding aspects in the Development and Cooperation Policy.²²⁾

The importance of TJ is identified in the various policies of the Commission as well as in its funding instruments. For example, The Instrument for Stability (IfS) was created by the Commission in 2007, with a view to intensifying its work in the area of conflict prevention, crisis management and peace-building. Crisis response projects under the IfS explicitly refer to TJ.²³⁾ Its short-term crisis response and preparedness have financed a large number of programs regarding the use of mediation, the strengthening of the rule of law, the

16) The first document which referred to transitional justice was the EU Presidency statement regarding the UN Secretary-General's 2004 Report on transitional justice and the rule of law, EU Presidency Statement "The Rule of Law and Transitional Justice in Post-Conflict Societies" (6 October 2004).

17) Its conditionality includes stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and the protection of minorities. Presidency Conclusion, "European Council in Copenhagen 21-22 June 1993," SN 180/1/93, 13.

18) It states that "The International Criminal Court should grow further in effectiveness, alongside broader EU efforts to strengthen international justice and human rights." European Council, "Report on the Implementation of the European Security Strategy: Providing Security in a Changing World" December 2008, 12.

19) *Agreement between the International Criminal Court and the European Union on Cooperation and Assistance*, ICC-PRES/01-01-06 (28 April 2006).

20) The other mandates of EUSR include SSR actions for Afghanistan and DRC.

21) The EU's joint development policy states that its prime objective is to eradicate poverty in line with UN Millennium Goals. As for the principle relevant to transitional justice, it describes one of the common principles as "addressing state fragility." Council of the European Union, "The European Consensus on Development," 14820/05 (22 November 2005).

22) For example, see Commission of the European Communities, "Towards an EU response to Situations of Fragility: Engaging in Difficult Environments for Sustainable Development, Stability and Peace", COM (2007)643 final (25 October 2007), 9.

23) See, the web site of European Union External Action : < http://eeas.europa.eu/ifs/index_en.htm >.

building of confidence, the establishing of the interim administrations in order to prevent further conflict, and the supporting of post-conflict political stability.²⁴⁾ In addition, the Commission also gives direct financial support to truth commissions, such as Morocco's Fairness and Reconciliation Commission (IER).

As just described, while crisis management policies involving political and developmental aspects have integrated the concept of TJ into its programs and operations, the ESDP has not adopted it as a framework concept. However, as more civilian ESDP missions have been conducted, TJ has become more relevant to them. In short, although those missions did not make reference to TJ, they have covered the area where peace-building and TJ were mutually connected. For instances, the Georgia mission (EUJUST THEMIS) was a rule of law mission that dealt with judicial reforms, especially criminal justice systems. The Aceh mission covered monitoring of the amnesty proceedings and DDR (discussed later in the next section). The Kosovo mission (EULEX KOSOVO) and the Iraq mission (EUJUST-LEX) also became involved in judicial and police reforms.

Unlike the EU's effort to provide financial and political assistance, which tend to be long-term and continuing, these ESDP approaches are designed from the perspective of security issues and are aimed at achieving a relatively short-term and quick effect.²⁵⁾ There has been criticism from some quarters that the lack of a coordinated TJ framework has caused disorganized crisis management policies and programs within the EU institutions.²⁶⁾ Moreover, it has been pointed out that there is a "credibility gap" between its foreign policies to promote democracy, human rights and the rule of law and its actual practices on the ground.²⁷⁾

In the next section, I turn my attention to the Aceh Monitoring Mission, the first ESDP mission deployed to Asia, which lay beyond the EU's geopolitical sphere of interest, and was also mandated to deal with justice issues.

3. The Aceh Monitoring Mission in Indonesia

3.1. Brief history of the conflict and peace process

The Conflict in Aceh can be traced back to the 1950s, prior to the eruption of an armed insurgency in December 1976, when the Acehnese separatist group, the Free Aceh Movement (GAM²⁸⁾) unilaterally declared Acehnese independence. The fighting in the region between the Indonesian armed forces and the members of GAM intensified when the Indonesian government officially declared Aceh a Military Operation Area (DOM)

24) The IfS has two components: a short term component concerning crisis response and preparedness, and a long term component in the context of stable condition.

25) Xymena Kurowska, "The Role of ESDP Operations," in Michael Merlingen and Rasa Ostrauskaite (eds.), *European Security and Defence Policy: An Implementation Perspective* (London: Routledge, 2008), 30.

26) See, note 2.

27) Laura Davis, "The European Union and Transitional Justice," Initiative for Peacebuilding Democratisation and Transitional Justice Cluster (2010), 18.

28) *Gerakan Aceh Merdeka*, which was led by Hasan di Tiro.

in 1989. The Indonesian military launched numerous aggressive operations and counterinsurgency campaigns. During the period of DOM, which lasted until 1998, the Indonesian security forces perpetrated the most serious systematic human rights violations against the Acehnese population.²⁹⁾ During the years of the conflict at least 33,000 people were killed, and instances of rape and disappearance were widespread.³⁰⁾

A number of attempts to end the conflict were made, however, and the opening of political space for negotiation was created soon after the aftermath of the devastating tsunami of December 26 in 2004.³¹⁾ The Helsinki peace process started in January 2005 and was concluded successfully by the signing of the Memorandum of Understanding (MoU) between the government of Indonesia and GAM on 15 August the same year. The negotiations were facilitated by the former Finnish president Martti Ahtissari and the Finland-based NGO Conflict Management Initiatives.³²⁾ The EU became involved in the Helsinki negotiations upon the express request from Ahtisaari, who believed that the EU could contribute as a creditable neutral outside body to monitor the implementation of the peace process. Although there were political and diplomatic concerns expressed by some member states,³³⁾ the decision to deploy a joint mission in collaboration with the Association of Southeast Asian Nations (ASEAN) was made.³⁴⁾

3.2. The Aceh Monitoring Mission and its major activities

The AMM was an unarmed civilian ESDP mission.³⁵⁾ It comprised monitors from the EU, Norway and Switzerland as well as from five ASEAN countries: Thailand, Malaysia, Brunei, the Philippines and Singapore. The AMM's original mandate period was six months from 15 August 2005, after which it was extended three times, until 15 December 2006. The AMM's objective was to assist GAM and the Indonesian government with the implementation of the MoU. Its mandate was articulated in the MoU and included the following tasks³⁶⁾:

29) It should not be overlooked that GAM members also committed violations during this period. Human Rights Watch, "Indonesia: The War in Aceh," (2001), 8-23.

30) *Bandan Reintegrasi Damai Aceh* (BRA) data quoted in Edward Aspinall, "Peace without Justice? The Helsinki Peace Process in Aceh," Henry Dunant Centre for Humanitarian Dialogue Report (2008), 8.

31) Although some commentators explain that the peace process was not the direct result of the natural disaster. See, for example, Kirsten Schulze, "Mission Not So Impossible: The Aceh Monitoring Mission and Lessons Learned for the EU," *International Policy Analysis* (2007), 3.

32) In addition of the role played by Ahtissari, the participation of Juha Christensen, a fellow Finnish citizen, during the peace process worth noting. Katri Merikallio, *Heiwa kouchiku no Shigoto* (Tokyo: Akashi shoten, 2007) (Based on David Mitchell's English translation from the original, Katri Merikallio, *Making Peace: Ahtisaari and Aceh*, Helsinki: WSOY, 2006).

33) While many member states welcomed an opportunity to expand ESDP missions to Asia and demonstrate its capability as a global security player, others showed reluctance because of the political risks to the EU as well as the economic burdens. It was Javier Solana, the High Representative for the CFSP, who persuaded the member states and took the initiative to implement the mission. *Ibid.*, 101-161.

34) Behind the scenes, Indonesia would not accept the UN involvement because of the recent experience in East Timor. Members of the Indonesian government insisted that the inclusion of ASEAN would assure local components. Scott Cunliffe, et al., "Negotiating Peace in Indonesia: Prospects for Building Peace and Upholding Justice in Maluku and Aceh," Initiative for Peacebuilding Mediation Cluster (2009), 18.

35) The monitors from ASEAN were almost all assembled from their respective countries' armed forces. Although the staff from the EU, Norway and Switzerland consisted of both civilians staffs and serving or former military personnel, the mission structure remained predominantly civilian.

36) *Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, Helsinki, 17 July*

- to monitor the demobilization of GAM personnel and the decommissioning of its armaments,
- to monitor the relocation of non-organic³⁷⁾ military forces and non-organic police personnel,
- to monitor the reintegration of active GAM members into civil society,
- to monitor the human rights situation and provide assistance in this field,
- to monitor the process of legislative change and to rule on disputed amnesty cases,
- to investigate and rule on complaints and alleged violations of the MoU, and
- to establish and maintain liaison and cooperation with the various parties.

In addition to the list above, the head of the AMM mission had the authority to make binding rulings, after consultation with the ruling parties, to resolve the disputes among them related to the MoU.³⁸⁾ Furthermore, although the MoU did not specifically articulate its role, the AMM was mandated to monitor the creations of a human rights court (HRC) and a truth and reconciliation commission, since the establishment of these institutions was stipulated in the MoU.³⁹⁾ Among the above-mentioned tasks, the AMM focused in the early stage of their mission on the security issues, in particular, monitoring the amnesty for GAM prisoners, the decommissioning of GAM weapons, the redeployment of the Indonesian security forces, and the reintegration of former combatants.

In order to build GAM's confidence in the peace process, granting speedy amnesties to GAM prisoners was deemed necessary. The amnesty section in the MoU stated that those who had been imprisoned for their participation in supporting GAM would be granted amnesty and released within 15 days of the signing of the MoU.⁴⁰⁾ The AMM kept pressure on the Indonesian government to implement amnesty speedily and completely, and indeed by August 31 more than 1,400 prisoners had been released. Although there were some disputed cases concerning amnesty status,⁴¹⁾ the AMM was, on the whole, successful in this mission, since swiftly handled amnesty was believed to have served as a first step towards confidence building.

The next challenge was the demobilization, disarmament, and decommissioning of GAM fighters. The MoU stipulated that GAM would be required to demobilize all its 3,000 troops and decommission 840 fire-arms between 15 September and 31 December 2005. The Indonesian government, in turn, would be required to withdraw all its non-organic police and military forces from Aceh. The number of organic (locally recruited) forces to remain would be 14,700 military personnel and 9,100 police personnel.⁴²⁾

2005, article 5. Establishment of the Aceh Monitoring Mission.

37) Non-organic means basically opposed to locally recruited and deployed military and police forces.

38) If necessary, the head of the mission could refer disputes to Ahtisaari for a final ruling. Ibid., article 6. Dispute Settlement.

39) Ibid., article 2. Human Rights.

40) Ibid., article 3. Amnesty.

41) Amnesty was allowed to GAM prisoners who had committed acts of insurgency; it didn't include those who had been convicted on criminal charges. GAM insisted that the amnesty should apply to any crimes carried out on behalf of GAM. See the discussion in the section 3.3., and see also Aspinall, *op.cit.*, 19-21.

42) Memorandum, *op.cit.*, article 4. Security Arrangement.

The decommissioning of GAM's weapons was carried out in four stages. The process started on 15 September 2005 and was completed on 15 December. In parallel with the decommissioning of weapons, the Indonesian security forces in Aceh had to be reduced and relocated immediately after each stage had been verified by the AMM. Ensuring a successful decommissioning in the first phase was a challenge to the AMM, since the completion demonstrated GAM's commitment to the peace process, which would in turn ease the government's distrust to of GAM.⁴³⁾ Despite the severe time constraint, all the phases were successfully completed. The AMM's role in this parallel decommissioning and redeployment was one of the greatest successes achieved by the AMM. Moreover, this decommissioning process had a positive impact on the population of Aceh. For the first three months of the mission, the decommissioning activities provided public demonstrations of the destruction of weapons to show clearly that the peace process was moving forward. These events received a lot of attention from both the Acehnese and the media.⁴⁴⁾

The AMM was mandated to monitor but not to implement the actual reintegration programs. The MoU specified reintegration as follows: former prisoners, ex-combatants, and "civilians who suffered a demonstrable loss due to the conflict" would be guaranteed all political, economic and social rights, and their reintegration into society would be facilitated by allowing them to do such things as receiving farm land, finding employment and receiving adequate social security. GAM combatants also would have the right to seek employment in the organic police and military forces.⁴⁵⁾

These reintegration programs were carried out by international organizations, including the International Office of Migration (IOM), the local government, and the governmental agency *Bandan Reintegrasi Damai Aceh* (BRA). The reintegration packages to the ex-combatants were released through the local government and the regional ex-GAM commanders by means of three rounds of payments. They received Rp. 1 million per fighter, based on the number of GAM members in their districts that the regional commanders had estimated. Both the AMM and the Indonesian government showed dissatisfaction with regard to the way the packages were distributed. They wanted to know the names of the individuals to whom the packages were going to be delivered. However, the GAM refused to provide the list of names in case the Indonesian government used this information in attempts to arrest them. It was not clear whether the list included all the GAM members and supporters as well as female fighters. Moreover, there were concerns that the distributive system would cause favoritism and corruption, since it preserved its command structure from the time of the insurgency.⁴⁶⁾

43) The previous peace process (CoHA) collapsed when GAM fighters failed to give up their weapons according to the timetable of the CoHA. Ross Clarke, Galuh Wandita and Samsidar, "Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective," International Center for Transitional Justice Occasional Paper Series (2008), 10.

44) In all major towns in Aceh, public demonstration of decommissioning was carried out by the AMM. These events became celebratory gatherings with music, dance and theatre. Paul Kirwan, "From European to Global Security Actor: The Aceh Monitoring Mission in Indonesia," in Michael Merlingen and Rasa Ostrauskaitė (eds.), *European Security and Defence Policy: An Implementation Perspective*, (London: Routledge, 2008), 139; Merikallio, op.cit.210-219.

45) Memorandum, op.cit., article 3.2. Reintegration into Society.

46) The World Bank found that the GAM combatants received less than Rp 1 million, on average between Rp. 170,000 and 260,000. World Bank, *GAM Reintegration Needs Assessment: Enhancing Peace through Community-level Development Programming* (Jakarta: World

There was a complaint expressed from the GAM side as well that the reintegration process was proceeding too slowly. Indeed, BRA needed to wait until the decommissioning had been completed to launch the program.⁴⁷⁾ Although there was more criticism aimed at reintegration than amnesty and decommissioning, the AMM assured the Indonesian government of its commitment to provide the reintegration packages.

In summary, while the security issue was dealt with quickly and by and large resulted in success, the political issue was stalled and the issues of human rights and justice received less attention from the AMM. The next section will overview the TJ situation in Aceh and examines what role the AMM could have played.

3.3. Transitional justice and the AMM

Despite the agreement on TJ measures between the Indonesian government and GAM, justice has still not been delivered and the suffering of victims has continued to this day in Aceh.⁴⁸⁾ TJ tools applied in Aceh were limited to amnesty and reintegration packages, although it had been promised that a HRC and a TRC would be set up.

As mentioned above, amnesty was granted to the political prisoners of GAM. It did not include, however, those who had been convicted on criminal charges. In response to this decision, GAM insisted that the amnesty should be applied to any crimes carried out on behalf of GAM, by pointing out that in most cases there were political motives behind the crimes.⁴⁹⁾ The AMM, with authority to make binding rules on the disputed amnesty cases, however, preserved an advisory stance, since the amnesty issue was potentially controversial.⁵⁰⁾ Another troublesome issue regarding amnesty was that the MoU did not make it clear whether amnesty would be granted to the other GAM members who had not been arrested or imprisoned before the MoU but who may have committed serious crimes. In addition, the crimes committed by the Indonesian security forces were not mentioned at all in the MoU.⁵¹⁾ Moreover, while the Memorandum stipulated who would receive amnesty, but it avoided specifying how to deal with past abuses in general. The MoU simply promised that “a Human Rights Court will be established for Aceh”⁵²⁾ and that “a Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures”.⁵³⁾ Indeed, the Law on the Government of Aceh (LoGA), adopted in August 2006, set out the establishment of the HRC in Aceh as well as that of the TRC. The AMM was tasked to monitor the establishment of these two institutions; however, at the time of writing, they have

Bank, 2006), 29.

47) Schulze, op.cit., 7.

48) “Relatives demand justice for past human rights abuses in Aceh,” *The Jakarta Post*, Oct.17, 2009.

49) For example, robbery with an aim to give financial support to the GAM.

50) Kirwan, op.cit., 138.

51) In the MoU, amnesty was granted in a one-sided way and applied unequally to the warring parties. During the negotiations, Indonesia did not seek amnesty for its armed forces., Scott Cunliffe, et al., Ibid. 20.

52) Memorandum, op.cit., article 2.2.

53) Ibid., article 2.3.

still not been set up. For one thing, the LoGA limited the jurisdiction of the Aceh HRT to future cases, not retroactively to the violations committed during the conflict.⁵⁴⁾ This means that, even if the Aceh HRC were to be established, it would not be allowed to deal with the crimes carried out prior to 15 August 2005. For another, there has been little movement to try those responsible in the former military and police forces in the domestic courts, although other HRCs could have been used for this purpose.⁵⁵⁾ As for the establishment of a TRC, both the MoU and the LoGA stated that the Aceh TRC should be created within the framework of the national TRC law. However, the Indonesian Constitutional Court ruled out the decision to revoke this law in 2006. The Court found the provision of the national TRC law was in contradiction to Indonesia's 1945 Constitution.⁵⁶⁾ Consequently, past abuses, including serious crimes, would go largely unpunished and remain unaccountable. As a result, a large justice vacuum has been created, and serious crimes committed either by members of GAM or the Indonesian security forces which had not been addressed before the MoU have received *de facto* amnesty.

Furthermore, the lack of any judicial or truth-seeking mechanisms resulted in the marginalisation of the victims of the conflict from the reintegration processes. According to article 3.2 of the MoU, any "affected civilian" would be entitled to receive compensatory economic assistance in the form of land, employment, or social security for those unable to work. However, without a justice system or a truth commission, defining and identifying "affected civilians" has proved very difficult, and delivering payments to individual victims to meet their needs has consequently been problematic.⁵⁷⁾ Thus, the BRA has sought to integrate assistance to conflict victims with community-based development approaches rather than individual reparations.⁵⁸⁾ This has generated the feeling of injustice among the victims towards the former combatants who have received reintegration packages.⁵⁹⁾ In addition, the *diyat* payments, which were made by the government to the families of people who had been killed or disappeared during the conflict, caused other grievances.⁶⁰⁾ Whilst compensation is important, providing it without acknowledgment of the harm victims suffered runs the risk of turning it into 'blood money'.⁶¹⁾ In many cases, the victims have never had any chance to know the truth about what had happened to their loved ones. By the same token, reintegration benefits without criminal justice could

54) Clarke et al., op.cit., 13.

55) In theory, *ad hoc* HRCs can try serious human rights crimes prior 2000. At least serious crimes committed after 2000 can be tried in a regular HRC. One in Megan has a jurisdiction over Aceh, but so far they have not heard a single case about Aceh.

56) The Court took this decision since the law 27/2004 had room to provide amnesty for gross human rights abuses. Aspinall, op.cit., 29.

57) Ibid., 23.

58) The BRA has adapted the Kecamatan Development Program (KDP), which was developed by the World Bank. Individual villages were allocated different sums of money, depending on the size and the intensity of the conflict. However, there were some criticisms that the programs were not aimed directly at the conflict victims. Ibid., 23-24.

59) Clarke et al., op.cit., 23.

60) The government *diyat* program was initiated in late 2002. The deputy governor then in Aceh introduced *diyat* program which was derived both from classic Islamic legal sources and from the various practices of Middle Eastern countries. See, Aspinall, op.cit., 25-26.

61) In tradition, it was up to the family of the victims to decide whether to accept the *diyat* payment from the family of perpetrator instead of his or her execution. Thus, the government program interpreted that those who have accepted *diyat* have already forgiven perpetrators. However, it does not mean the government accepted responsibility. For criticisms towards the *diyat*, see, *ibid.*

mean that no individual or institution, including the state, takes ultimate responsibility.

Accordingly, while the AMM was a relative success in the context of accomplishing most of its mandates without delay, in terms of TJ the AMM's performance was not adequate at all. Behind this lay the reluctance of the Helsinki peace process to deal with the justice agenda. The peace agreement strategically avoided political issues, since doing so could have undermined the peace process all together.⁶²⁾ As a result, the references regarding justice in the MoU were expressed in vague terms. Thus the AMM, taking the MoU as its road map, maintained a narrow focus on security issues and did not comprehensively engage in the justice issue.⁶³⁾ In fact, justice and human rights were the most problematic areas of the AMM mission, since it needed to delve deeply into Indonesian domestic policies and legislation. Indonesia is neither a failed state nor a weak state which could submit to international intervention. In particular, at the time of the AMM's operation, Indonesia was quite sensitive about international intervention in the realm of domestic human rights issue because of its recent experiences in East Timor. Therefore, even if it had integrated the concept of TJ into its operation policy, what the AMM could have done to influence the government of Indonesia to bring justice to the former senior military and security officers would naturally have been severely limited. The AMM thus had little option other than to persuade the government by increasing dialogue on this matter, since its mandate was, after all, to monitor the government and GAM to implement the principles agreed upon in the MoU. The AMM played a small role in delivering justice; nevertheless, this does not necessarily mean there was nothing that the AMM could have done to contribute towards the establishment of TJ in Aceh. Transitional justice could be achieved in a comprehensive way when it is not possible to implement prime justice and accountability measures.

To begin with, the AMM did not respond to the voices of victims by linking reintegration to a truth-telling process. Reintegration programs are generally used to encourage the acceptance of returning ex-combatants to their local communities. However, in the context of the Aceh conflict, GAM fighters did not leave their villages completely; in reality, therefore, they did not need to be reintegrated.⁶⁴⁾ Instead, attention should have been paid more to the victims and to the people who were made most economically vulnerable by the conflict. In Aceh almost all the population was severely affected by the hostilities and the distinction between a combatant and a sympathizer was difficult to make. Thus, the AMM needed to persuade GAM to comply with the requirement to submit names of its ex-combatants so that the reintegration program could become more transparent and more inclusive. For this reason, cooperation between the AMM and the EU Commission in

62) The GAM delegates initially insisted on the accountability of the past crimes, but Ahtisaari encouraged them to focus on the future. Merikallio, *op.cit.*, 72-75.

63) In fact, some scholars point out that the AMM's success was partly brought precisely by its lack of focus on implementing human rights elements. Schulze, *op.cit.*

64) Patrick Barron, "Getting Reintegration Back on Track: Problems in Aceh and Priorities for Moving Forward," a paper presented at the conference "The Peace Process in Aceh: The Reminders of Violence and the Future Nanggroe Aceh Darussalam," at Harvard University, Oct. 24-27, 2007, 2-3.

order to foster a reintegration program with some truth-telling or fact-finding mechanism would be useful. The Commission, which has been funding reintegration in Aceh, could thus offer good expertise and information.⁶⁵⁾ The data collected might have been utilized in future prosecutions.

Secondly, the AMM failed to take gender justice into account by encouraging more women to participate in the peace process.⁶⁶⁾ Among the 3000 former GAM combatants to receive reintegration packages, it is believed that not a single woman has been included.⁶⁷⁾ In addition, various institutions have been established to facilitate the peace process since the sign of MoU, but they employed only a few women.⁶⁸⁾ For example, out of the 43 members of BRA, only three were women. Empowering women's participation would have enhanced the movement to address violations perpetrated towards women such as rape.⁶⁹⁾ This approach is required now by the gender-aware conflict resolution mandated by Security Council resolution 1325, which was implemented into ESDP missions in 2005.⁷⁰⁾

Lastly, the AMM could have spread the concept of TJ and technique by engaging more widely with local civil groups.⁷¹⁾ Ultimately, it was a local civil society that took the initiative to pursue justice after the AMM mission had completed. The creation of a discursive space for women and local civil societies to participate in the peace process as well as to work together with TJ experts was necessary. The AMM missed the chance to have greater impact on the future TJ by raising awareness of the Acehnese right for justice, truth and reparation.

Conclusion

This paper has attempted to identify the features of the ESDP operation in the field of TJ and to analyse what would be the EU's potential as well as its limits on promoting TJ, with a strategic adoption of the concept into its ESDP operation. As the analysis of the AMM mission has shown, whilst the AMM successfully oversaw the completion of its missions, it failed to fulfill the demand for justice and the protection of victims' human rights. However, this failure was not the direct result of any lack of TJ perspectives. In fact, as we have seen, the AMM was limited by the terms of the MoU to a very narrow role. Human rights was a very sensitive issue in Indonesia, and the AMM could not intervene directly in domestic issues, in case such action derailed the peace process altogether. TJ approaches, however, are interconnected with many crisis management policies,

65) The EU Commission funded 4 million Euros to the IOM for a reintegration program for amnestied prisoners and former combatants. See, European Union @ United Nations, http://www.europa-eu-un.org/articles/es/article_5008_es.htm

66) There was criticism of the disproportionately small participation of women in the peace process. See, Crisis Management Initiatives, "Aceh Peace Process: Involvement of Women," (Helsinki: CMI, 2006).

67) Suraiya Kamaruzzaman, "Agents for Change: the Roles of Women in Aceh's Peace Process," *Accord* 20 (2008), 71.

68) Ibid.

69) Rape was widely committed during the conflict but remain significantly under-reported in official document.

70) Council of European Union, "Implementation of UNSCR 1325 in the Context of ESDP," 11932/2/05 REV 2 (29 September 2005).

71) The AMM was criticized for not engaging more widely with civil groups. Patrick Barron and Adam Burke, *Supporting Peace in Aceh: Development Agencies and International Involvement* (Washington D.C.: East-West Center, 2008), 28-29.

and thus well-thought of crisis management programs could open windows to TJ when conventional justice mechanisms are not available. Hence, a crisis management approaches that integrates TJ into its programs could be very forward-looking in preparing future justice and reconciliation mechanisms.

In conclusion, it is fair to assert that in order to fulfill its foreign policy objectives, the EU needs in future to develop a strategic approach to the ESDP to accommodate both peace and justice. TJ can offer a new means to oversee its crisis management policies in a comprehensive and effective way to fill the gap between the post-conflict realities and the EU's core humanitarian values. The concept could add future strategies to help bridge the gap between its objectives in the framework of the CFSP and the actual realization of its remit on the ground. The EU's normative role would push it to play a greater security player in the globalized world.