



Enabling partners to manage crises

From 'train and equip' to capacity-building

by Thierry Tardy

One important corollary of the Comprehensive Approach is the so-called 'security-development nexus', according to which security and development are two sides of the same coin. In any crisis situation, a decent level of security is a precondition to sustainable development, while development, in turn, allows for peace to endure.

Over the last two years, this nexus has led to fresh debates within the EU on how best to combine security activities – including CSDP operations – and the longer-term building of third states' and international organisations' capacity for crisis management. The African continent has been the primary focus of these discussions, mainly in the context of Mali and Somalia – where two EU training missions are deployed alongside a wide range of support activities – but also in the framework of EU support to the African Peace and Security Architecture (APSA).

In these different cases, the provision of military equipment has been given particular attention. Both the December 2013 European Council and the April 2014 EU-African Union (AU) summit stressed the importance of enhancing partner countries' capabilities through the supply of equipment, either as a complement to CSDP operations or as a separate measure.

The High Representative and the Commission were then tasked to further work on the issue and, on 28 April 2015, released a Joint Communication on 'Capacity-building in support of security and development – Enabling partners to prevent and manage crises'. The forthcoming European Council is expected to give further guidance on the way forward.

The existence of the Joint Communication is an achievement in itself and attests to real progress in the way the EEAS and the Commission approach capacity-building of third states and international organisations. In the meantime, its operationalisation is likely to face a number of challenges which are yet to be unpacked.

Structural constraints

Most CSDP operations and missions are about building the capacity of recipient states in one or several public policy areas. In the military domain, the two training missions have focused on the provision of training and advice to the Somali and Malian armed forces, respectively. In both cases though, shortages of equipment have hampered the effectiveness of training. Examples abound of units lacking the most basic where-withal (uniforms, boots, etc.), let alone weapons.

Arguably, this is not conducive to optimal training.

Hence the idea of providing equipment to partner countries and international organisations so as to enhance their own performance. Discussions started in 2013 around the German concept of 'Enable and Enhance', which was then taken up by the EEAS under the formula of 'Train and Equip'. At the heart of the debate is the issue of financing. From which budgets and according to what rules could (military) equipment be transferred to third states? In this context, the idea was also floated that the security sector might be able to draw on the EU budget (or development funds) to finance security-related activities. In any case, an underlying driver has been – from the start – to de-compartmentalise security- and development-related sources of funding.

Since then, at least four points of contention have emerged in the debate, especially around the issue of whether military equipment can be financed through 'non-CFSP instruments'.

First, resorting to development instruments requires that the activity to be financed has an established development goal. Whether military equipment can be considered as supportive of development is debatable and probably varies from one case to another. Yet the core idea behind the security-development nexus is that a more secure society facilitates economic development: therefore, strengthening the security/military apparatus may serve development goals. While this is the spirit of the security-development nexus, different institutional cultures inside the EU have made the debate quite difficult. Reform-minded and more conservative views have come to the fore in discussions, with arguments often going beyond technical or legal constraints.

Second, is the issue of compatibility between military expenses and what is called ODA (Official Development Assistance) eligibility. A set objective of the 2014-2020 Multiannual Financial Framework (MFF) is to ensure that 90% of the overall EU external assistance qualifies as ODA. As this generally excludes military expenses, it therefore creates disincentives to use EU development instruments as a means to finance military activities.

This, however, is a political rather than legal obstacle, as ODA criteria can be interpreted flexibly. For example, a small share of the activities funded by the African Peace Facility (APF) – 14% of the financing for the AU operation in Mali (AFISMA) and 5% for the AU operation in Somalia (AMISOM) – is considered to be 'ODA-eligible'. Moreover, although the Instrument contributing to Stability and Peace (IcSP) in practice largely meets the ODA eligibility requirements (it has been used to finance equipment for civilian security forces in Niger, Cameroun and Mali), it is not formally required to do so.

In these debates, the distinction between lethal and non-lethal equipment is key. While the supply of non-lethal equipment is, under certain conditions, legally and practically possible, providing lethal equipment raises fierce opposition. To avoid any ambiguity, the Joint Communication openly states that 'it does not address the provision of lethal weapons'

and that 'the EU will not provide such equipment'.

Third, some EU instruments include specific restrictions on the financing of military-related equipment or activities. For instance, the Development Cooperation Instrument (DCI) Regulation states that 'Union assistance under this Regulation shall not be used to finance the procurement of arms or ammunition, or operations having military or defence purposes' (Article 3.13).

Outside the EU budget framework, the European Development Fund-financed APF was established and has been used, in large part, to fund AU-led military operations. It has, however, never been used to pay for equipment. It also puts restrictions on its use by excluding 'ammunition, arms and specific military equipment, spare parts for arms and military equipment, salaries for soldiers and military training for soldiers' ('Three-year Action Programme for the APF, 2014-2016', Article 4.6). Presented in the Joint Communication as 'to date the most far-reaching instrument to address the security-development nexus', the APF is subject to limitations such as its regional focus, its sustainability, and the fact that it does not target states – only the AU and the Regional Economic Communities.

'...the distinction between lethal and non-lethal equipment is key. While the supply of non-lethal equipment is, under certain conditions, legally and practically possible, providing lethal equipment raises fierce opposition.'



Fourth, an oft-cited legal argument is that Treaty provisions do not allow ‘operations having military or defence implications’ (Article 41.2 TEU) to be funded through the EU budget. This argument was put forward in the context of the revision of the Athena decision and the debate over the management by the Mechanism of third party financial contributions, including from the Union budget. It assumes that the term ‘operations’ in Article 41.2 is to be understood in a broad sense as ‘activities’. Financing military equipment through the EU budget would thus not be possible as it would fall under the Article 41.2 exception.

However, if equipping third states’ military forces ultimately has a development-related aim, then arguably the legal basis of these activities should lie in the provisions dealing with development (Article 208/212 TFEU) rather than in the CFSP section of the TEU (where Article 41 is). The Joint Communication acknowledges that ‘the financing of capacity building in the security sector under Articles 209 and 212 TFEU’ is not excluded, irrespective of ‘the civilian or military nature of the beneficiary’, but requires a ‘case-by-case assessment’. And, obviously, the Article 41.2 exception would not apply to activities which do not fall within CFSP.

More specifically, if the financing of capacity-building were to be considered as a CFSP activity, then the Article 41.2 exception would still not apply on the basis that ‘operations having military or defence implications’ is to be narrowly understood as CSDP military operations. The whole point of the ‘Train and Equip’ programme is to provide equipment to third parties. The funds may be administered by a CSDP operation (as foreseen in the revised Athena decision), but the recipient would not be the CSDP operation itself but rather the armed forces of the host state.

Furthermore, the broad interpretation of ‘operations’ as ‘activities’, i.e. going beyond CSDP operations, is problematic when considering the many activities with ‘military implications’ that are already financed by the Union’s budget. Examples include the financing of certain EU agencies or UN programmes that arguably have defence implications. In the past, European Commission-funded rehabilitation programmes were implemented by the NATO operation in Bosnia and Herzegovina (SFOR), in a manner which gives an idea of what it could look like if implemented by a CSDP operation.

These examples seem to indicate that the exception defined in Article 41.2 applies *only* to CSDP

military operations, as was most likely the intention of the member states when drafting the provision.

While this overview reveals the inadequacy of the current system, it also shows that there are no insurmountable obstacles to the financing of military equipment through the EU budget.

Challenges ahead

In this context, the release of the Joint Communication marks real progress with regard to a mutual understanding of needs and challenges. The text eventually dropped the term ‘Train and Equip’ for the broader (and more consensual) ‘capacity-building’. It introduces the parameters of the debate, presents the needs and the work done so far around the two pilot cases of Mali and Somalia (interestingly, the third one on APSA is omitted in the Joint Communication but appears in the May 2015 Council Conclusions on CSDP), analyses the existing instruments and their comparative advantages/shortcomings, and ends with proposals for further action. In essence, it suggests that the system be reformed so as to get away from the current *ad hoc* arrangements and acknowledged limitations and move towards the institutionalisation of dedicated mechanisms for the financing of military equipment. Most importantly, it invites the member states and the European Parliament to consider the feasibility of three different actions: to ‘adapt the African Peace Facility to address its limitations’; to establish a ‘facility linking peace, security and development in the framework of one or more existing instruments’; and to create a ‘dedicated instrument’. The mid-term review of the 2014-2020 MFF may provide an opportunity for possible changes to the current system.

Interestingly, member states have so far largely agreed on the necessity to revisit the issue. In this process, however, as well as in the operationalisation of whatever measures are taken, a number of challenges will need to be addressed.

To start with, any EU-funded programme entailing the transfer of military equipment to a third state will have to be carried out on the basis of an in-depth political analysis of the potential associated risks. The current restrictions on EU funding of military activities were designed partly to prevent any unintended and indirect role in undesired military actions. The exclusion of lethal equipment from what the EU could possibly finance offers some protection, yet a wide range of non-lethal military (not to mention dual-use)

equipment can be ‘misused’ from an international humanitarian law perspective. In extreme cases, the EU could also face scenarios of transferred equipment being used by unfriendly actors, e.g. governments that have changed through elections or *coups*, or armed groups which have seized the equipment.

The Joint Communication stresses the need to use ‘context analysis to prevent offer-driven capacity-building support’, as well as to develop a ‘risk management methodology on EU support to the security sector of partner countries or organisations.’ In parallel, it proposes an ‘EU-wide strategic framework for Security Sector Reform’ shared by CSDP and development cooperation policy so as to embed any transfer of equipment into a broader context. This said, iron-clad guarantees on the ‘benevolent’ use of equipment will always be difficult to secure.

Alongside risk analysis, there is an issue concerning the monitoring, security and maintenance of transferred equipment, the bodies to ensure such control, and the related implications in terms of human and financial resources. The Joint Communication makes ‘ownership of the partner country’ one of the key principles of capacity-building, with local administrations indeed identified as the primary stakeholders. In the meantime, any programme that entails a certain volume of equipment will require a semi-permanent monitoring entity, both in Brussels and *in situ*, in order to ensure sustainability and impact. CSDP operations may play this role where they exist (Mali and Somalia offer theoretical examples), and the debate over the revision of Athena was largely about this possibility.

EU Delegations are also likely to be involved, especially in locations where the EU does not have a CSDP presence. This can entail extra costs and will probably raise once again the question of the need for security/military experts within EU Delegations, which for the time being do not have the capacity to monitor such programmes. Member states might then prove less inclined to support the project or sustain the effort over time. In any case, the balance between locally-owned and EU-monitored projects needs to be correctly calibrated.

The bottom lines

If any of the three actions to be considered by the Commission and the HR/VP lead to a practical decision, this would constitute a major breakthrough. The process of establishing a

dedicated instrument is inevitably uncertain and open-ended, and conditioned by the MFF time-frame. It would probably be possible only within a constant budget, thus *de facto* raising the issue of which existing budget lines would be erased to allow for the creation of a new instrument. Meanwhile, therefore, adapting the APF and the IcSP is probably the best short-term option. The APF would need to be reformed so that it can target states and provide equipment. The Communication also emphasises that the idea to ‘budgetise the EDF’, i.e. integrate the European Development Fund into the EU budget, ‘needs to be taken into account with regard to this debate’.

As for the IcSP, the provision of military equipment would need to be explicitly allowed in its regulations. The Joint Communication recalls that when – back in 2004 – the Commission first proposed the Instrument for Stability (the precursor of the IcSP), it was the co-legislators – namely the member states and the European Parliament – which refused to include a mandate for capacity-building in the field of military peace support operations.

Finally, Athena could also be reviewed (as called for in the Joint Communication) so as to include capacity building in partner countries.

At any rate, institutional and cultural sensitivities will have to be taken into account. The Joint Communication, as well as the provision in the new Athena decision that regulates the administrative management of third party financial contributions – including from the Union (Council Decision, 2015/528, 27 March 2015, Article 30) – attest to an evolution in mindset in various EU corners. Yet the operationalisation of these capacity-building programmes will still bring to the fore institutional resistance and suspicion over the use of community instruments for defence purposes.

Therefore, the first projects to benefit from such funding will have to be carefully chosen, limited in scope and with a tangible development goal, so as to begin with a success story upon which all stakeholders will then be able to build. In the end, however, it will be up to the member states to decide how they want to translate the comprehensive approach into action, and to design the financing mechanisms accordingly.

Thierry Tardy is a Senior Analyst at the EUISS.

