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**COMMUNICATION OF THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**Co-operation with ACP Countries
Involved in Armed Conflicts**

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Executive Summary

*** Armed conflicts cause immense human suffering, destroy the efforts of human and economic development, undermine the solidarity among ACP countries, which is the basis of the Lomé partnership, and have an impact on European political, economic and security interests.**

*** Following the escalation of the Congo crisis into a regional armed conflict involving a number of countries from Central, Eastern and Southern Africa, the Commission announced a review of co-operation with countries at war, to avoid the misuse of funds for military purposes and to underscore the EU's appeal for a peaceful settlement of this conflict. This review exercise applies to all ongoing conflicts and military interventions in ACP countries, notably in Africa where the number, scope and intensity of armed conflicts has been rising dramatically during the last years.**

*** In view of the close relationship established by the Lomé Convention, the EU has a special responsibility to assist ACP countries in finding peaceful solutions to conflicts among them, but also the duty to ensure that any funds made available for ACP countries are used in accordance with the provisions of this Convention and consistently with the foreign policy objectives enshrined in the treaties of the European Union. This Communication describes various measures and policy options available within the existing institutional and legal framework, in order to enable the EU to react to various conflict situations. It sets out instruments and strategic proposals, which might be used in the shaping of decisions, to be taken on a case-by-case basis by the competent authorities. With this Communication the Commission does not seek to imply that this approach would be valid for other geographical areas since each geographical zone has its own characteristics and specificities.**

Measures within the Lomé Convention and Community framework:

*** The main purpose of the announced review is to ensure that Community funds are used in accordance with the principles and objectives of the Lomé Convention, and in particular to prevent a diversion of funds for belligerent purposes. In order to improve the existing control mechanisms, the Commission is introducing in all financing conventions concerning direct budgetary support, provisions to allow for disbursements of funds in instalments as well as periodic evaluations of the use of funds, requesting full budgetary transparency from beneficiary governments. These evaluations are carried out in close co-operation with the international financial institutions.**

*** A freezing, reduction or suspension of development aid as a reaction to the outbreak of armed conflict may occur under the following circumstances:**

1) Freezing or discontinuation of individual programmes if funds are, or can be, diverted to military activities or the provision of weapons or military equipment: If the use of Community funds by the beneficiary country remains doubtful, the Commission has to take appropriate steps to prevent them from being mis-used. These steps may include the freezing of implementation to allow for investigation, or

the discontinuation of certain programmes or projects, if there is evidence that funds allocated to these programmes or projects are diverted to belligerent purposes.

2) **Suspension of aid under the 366a procedure of the Lomé Convention**: In case of serious violations of human rights or of other essential elements referred to in Article 5 of the Lomé Convention as a consequence of armed conflicts, the European Community shall request consultations under the procedure referred to in Article 366a, and may decide to suspend development co-operation or other aspects of the Convention with a given country.

3) **Sanctions imposed by the UN Security Council**: A suspension of aid may also occur in compliance with sanctions imposed by the United Nations Security Council. In such cases, the relevant provisions of UNSC resolutions are translated into Community legislation.

* Freezing or suspension of aid with the objective of persuading governments to cease hostilities and to seek peaceful solutions to conflict, will have to take into account the following aspects: the degree of fungibility of funds, the political and social impact of suspension measures, and the administrative flexibility of freezing and resuming aid programmes. These aspects vary considerably among the various instruments (direct budgetary support, including in the framework of food aid programmes, STABEX/SYSMIN, programme support, project aid, or decentralised co-operation). There has to be a case-by-case assessment for each country and aid instrument, albeit within the overall context of the crisis in which the respective country is involved. Any measure involving the freezing or suspension of aid has to be applied in an even-handed and proportional manner, taking into account the scope of the security threat and the respective responsibility of all involved actors.

* Apart from the freezing or suspension of existing programmes, the Commission has to consider whether it is advisable to approve or implement **new programmes**, notably those concerning budgetary aid (structural adjustment support, food aid programmes, STABEX, SYSMIN), for countries involved in armed conflicts. The implications of such decisions will be brought by the Commission to the Council within the appropriate institutional framework, with a view to agreeing on a harmonised EU position for both Community and bilateral aid.

* Humanitarian aid should be extended wherever the need arises and where the required security conditions exist. It should not be subject to political objectives. Nonetheless, it has to be fully recognised that humanitarian aid may have unintended political effects, and that it can be exposed to political and even strategic manipulation. Its potential impact on the dynamics of conflict situations should therefore be carefully assessed.

Options for the Common Foreign and Security Policy:

* The review of co-operation with countries involved in armed conflicts should be part of a comprehensive strategy for conflict management and resolution within the CFSP framework. The policy response of the European Union has to be flexible and adapted to the actual situation in each crisis region. It has to take into account the

historical, social, economic and political reasons for the outbreak of hostilities as well as the motivations of all actors involved.

* General guidelines for a comprehensive EU policy approach towards armed conflicts, encompassing measures to be taken in the appropriate Community and CFSP instances, can be outlined for the following typical situations:

(a) Outbreak, escalation or extension of an armed conflict: The outbreak of hostilities leads in most cases to a partial or total discontinuation of development co-operation for security reasons in the countries or areas directly affected by armed conflict. The continuation of co-operation programmes, either on a partial basis with regards to countries directly affected by hostilities, or to countries involved in armed conflict abroad, involves the risk of a diversion of funds for belligerent purposes. This problem has to be addressed by appropriate Community measures referred to above. Within the CFSP framework, the European Union should make full use of available policy instruments (Presidency declarations, Common Positions, Joint Actions, Troika missions, the appointment of Special Envoys etc.) with the aim of persuading belligerents to seek negotiated solutions to their differences. Where armed conflicts are accompanied by violations of the essential elements of the Lomé Convention, a partial or total suspension of aid should be set in motion to encourage a cessation of hostilities and political dialogue. In order to ensure a coherent approach and maximum impact of the EU's policy, any decision to suspend Community aid should be accompanied by similar action by EU Member States with regard to their bilateral aid.

(b) Cessation of hostilities and negotiations: In the context of this scenario, the CFSP response should support dialogue and negotiations and, if required, peace-keeping initiatives, with the appropriate instruments (e.g. declarations, Troika missions, or missions of Special Envoys) and Community measures (e.g. financial support or technical assistance for mediation or political dialogue). The Commission, as well as EU member states through bilateral co-operation, can offer technical and financial assistance for post-conflict activities in the socio-economic field (e.g. reconciliation initiatives, demobilisation, reintegration of refugees and displaced people, rehabilitation). The European Union may also consider providing financial, technical, material or human resources for international peacekeeping operations. The acceptance of mediators or *fora* for negotiations by all parties concerned are crucial for a durable success of peace talks, and so is the achievement of compromises acceptable to all stakeholders, including local actors.

(c) Breakdown of state authority: The erosion of state authority and administrative capacity in many African countries has created a particular risk of a durable breakdown of state authority (e.g. Somalia, Southern Sudan). In such cases, normal economic and political relations are discontinued. In order to protect vulnerable population groups, the European Union can extend humanitarian aid and basic social sector assistance through UN agencies, international organisations and NGOs. In certain cases, the European Union may consider specific political and economic support to countries neighbouring "vanished states" which threaten regional security. Such support to "front line states" should be contingent on the readiness of the beneficiary governments to respect human rights and democratic principles, and to ensure full transparency of military expenditures.

*** In cases where the escalation of armed conflicts leads to humanitarian disasters or grave violations of human rights, notably "ethnic cleansing" or genocide, the provisions of Chapter VII of the UN Charter may be relevant.**

*** Both CFSP actions and Community measures taken in response to armed conflicts require close co-operation with other major actors, notably OAU, regional organisations, the United Nations and the Bretton Woods institutions.**

*** The policy response to armed conflicts has to be considered as an emergency reaction to situations where the prevention of conflict has failed. The urgency to react to political crises should not divert the attention of the European Union from the need to further strengthen efforts to contribute to the prevention of violent conflicts at an early stage by addressing their root causes in a targeted manner and with an adequate combination of all available Community and CFSP instruments.**

1 BACKGROUND AND MOTIVATION FOR A REVIEW OF RELATIONS WITH COUNTRIES INVOLVED IN ARMED CONFLICTS

Following the **escalation of the armed conflict in the Democratic Republic of Congo** into a regional war involving an increasing number of countries from Central, Eastern and Southern Africa, the Commission proposed that *"the EU should consider reviewing its co-operation with countries presently at war against each other"*. The message was launched on 5 September 1998 at a meeting of EU Foreign Ministers in Salzburg. It was also referred to during the sessions of the European Parliament on 17 September and of the EU-ACP Joint Assembly on 21 September.

The message was meant to be a *"mise en garde"*, and it focused initially on the Central African crisis. However, it is clear that the Commission and the European Union cannot turn their backs on other conflicts in or among ACP countries, some of which have escalated into major armed confrontations (notably **Ethiopia/Eritrea**); the EU also has to consider the political implications of military interventions by African states in the context of conflicts in neighbouring countries (**Senegal/Guinea/Guinea-Bissau** and **South Africa/Botswana/Lesotho**). Furthermore, the Commission's concern about the possible diversion of community funds does not only apply to armed confrontations between states, but also to **internal armed conflicts**, which can consume a considerable amount of resources, as well as to cases of **excessive military expenditure**. The distinction between internal conflicts and inter-state armed confrontations is often blurred, notably in Africa, where the OAU resolution concerning post-colonial boundaries¹ has spared the continent during almost three decades from a potentially devastating redrawing of national frontiers by military means. A number of internal

¹ OAU AHG/Resolution 16 (I), adopted in Cairo in 1964. This resolution did not totally prevent Africa from inter-state conflicts, but such conflicts have been rare (e.g. Libya-Chad, Senegal-Mauritania), taking into account the disparity between the geopolitical architecture of Africa on the one hand, and traditional socio-ethnic structures on the other.

conflicts have well-known cross-border ramifications and carry a daunting potential for an escalation of inter-state violence, as the Congo crisis has shown.

All armed conflicts, whether internal or external, are devastating. Apart from the direct victims of war, they are **destroying the efforts of decades of human and economic development**, which have been supported by the European Union with considerable financial resources. Interstate armed conflicts are also undermining the relationship among ACP countries, which is based on friendly relations and solidarity², and they are adversely affecting the EU-ACP relationship. Conflicts can also **threaten European political and commercial interests** and they may potentially threaten the security of European citizens. If a considerable part of Africa plunges into chaos and violence, present problems of refugees, drug and arms trade and other criminal activities, and possibly terrorist attacks, may become serious security concerns for Europe.

The European Union cannot remain indifferent to the increasing number and growing intensity of armed conflicts in Africa. Its response to these conflicts should be based on the general objectives of containment, protection, and conflict resolution³:

- (a) **Containment**: In the first place, the European Union should prevent fuelling conflicts through its assistance, directly or indirectly, and try to prevent them spreading to other countries; the European Union should apply an **even-handed approach** to all parties in a conflict, unless one side can be clearly designated as the aggressor; it should avoid getting drawn involuntarily into a conflict by supporting or sanctioning one side or the other through development assistance.
- (b) **Protection**: The European Union should try to protect **vulnerable population groups** by targeted and closely monitored humanitarian aid and social sector assistance; furthermore, it should be prepared to consider appropriate action, in co-ordination with the wider international community, to protect threatened population groups from genocide or large-scale "**ethnic cleansing**"; finally, the European Union should ensure the security of **European citizens** who may find themselves in countries or areas directly affected by hostilities, it should strive to protect the achievements of development co-operation, and safeguard European economic interests and investments in Africa.
- (c) **Conflict resolution**: Above all, the European Union should support any effort to seek **sustainable negotiated solutions** to all aspects of crises in and among ACP countries, at the international, regional and local levels.

² Ref. preamble and paragraph 1 of the Lomé Convention

³ This is to be distinguished from the conflict prevention initiative referred to in particular in the Communication of the Commission on "Peace-building and Conflict Prevention in Africa" of 6 March 1996, the Common Position and Council Conclusions on "Conflict Prevention and Resolution in Africa" of 2 June 1997, and the Council Conclusions on the "Role of Development Co-operation in Strengthening Peace-Building, Conflict Prevention and Resolution" of 30 November 1998. These policy documents elaborate on strategies to prevent the outbreak of conflicts, mainly by promoting stable and democratic political systems. Conflict prevention initiatives focus on activities during times of peace. While there are areas of overlap with these initiatives, it has to be stressed that the policy outlined in the present document is designed as a reaction of the European Union to already ongoing or escalating armed conflicts.

In view of the close relationship with ACP countries through the **Lomé Convention**, the European Community has a **particular responsibility** to react to the multiplication of armed conflicts and the increased trend towards foreign military intervention in Africa. It has to **develop clear strategic principles in order to react to various scenarios**, and elaborate ways for putting these strategies into practice. The European Community also has to **consider how it should react in the medium term to the possible scenario of protracted warfare in various regions in Africa** and on the impact of this on the **post-Lomé negotiations**. The Convention presently in force does not include specific provisions referring to the prevention, management and resolution of armed conflicts in Africa. The negotiating directives for a new partnership agreement with the ACP countries propose the inclusion of provisions for a strengthened EU-ACP political dialogue. This will provide a framework for addressing the concerns of the European Union with regards to violent conflicts and their impact on the EU-ACP relations. In addition to this, the inclusion in the new agreement of specific provisions concerning the impact of armed conflicts on the development and foreign policy relations between the EU and ACP countries, should be considered.

The purpose of the present Communication is:

- (a) to inform Member States of **measures taken by the Commission to enhance the control of community funds** made available to ACP countries in order to avoid their diversion for belligerent purposes and to **reduce the risks emanating from** the inherent **fungibility** of funds within a national budget;
- (b) to **outline policy options** available within the existing institutional and legal structures (Lomé Convention, CFSP, and international law) in order **to enable the EU to react to various conflict scenarios**. It is a set of instruments and strategies intended to assist in the shaping of decisions, not to prescribe solutions. Specific policy decisions have to be taken on a case-by-case basis by the competent authorities.

This Communication is intended to provide a framework for discussion. The document is limited to ACP countries but the Commission recognises the utility for the EU to seek over time to establish a coherent strategy extending to other geographical regions. **The Commission does not, however, seek to imply at this stage that the approach set out in this Communication would be valid for other geographical areas since each geographical zone has its own characteristics and specificities.**

2 MEASURES RELATED TO EU DEVELOPMENT CO-OPERATION

a) Initiatives Taken by the Commission to Reinforce the Control of Community Funds

The Lomé Convention's primary objective, as stated in Article 1, is "to promote and expedite the economic, cultural and social development of the ACP States and to consolidate and diversify their relations in a spirit of solidarity and mutual interest". While military activities of ACP countries are not necessarily in contradiction with these basic objectives, it is clear that the outbreak of an armed conflict among ACP countries represents *ipso facto* a breach of this "**spirit of solidarity**", and of the "friendly relations" referred to in the Preamble of the Convention. **It would therefore contrary to the**

objectives of the Convention to use development assistance for belligerent activities among ACP countries.

The Commission is monitoring the use of all funds provided under the different instruments of the Lomé Convention as a matter of routine. Nonetheless, the outbreak of violent conflict increases the risk of diversion of funds for military purposes, notably those funds that are directly **fungible** within an overall national budget.

The allocation of Community funds to projects or programmes in ACP countries is ruled by standard financing agreements negotiated between the EU and the ACP countries. The economic or budgetary sectors as well as the modalities of payment are, however, specified in technical and administrative annexes ("*dispositions techniques et administratives*") of financing conventions that are prepared for each programme individually. This allows the Commission to introduce enhanced control mechanisms, such as **payments in instalments** and provisions for **periodic evaluations of the use of community funds**, based on **full transparency of public expenditure, including long-term obligations**. In cases where budgetary transparency is not granted, these control mechanisms would allow the implementation of the programmes concerned to be frozen to allow for an investigation. If there is evidence of diversion or mis-use of funds, such programmes will be immediately terminated. As part of the aid review announced by the Commission, it has been ensured that such control mechanisms have been inserted in all new financing conventions with countries involved in armed conflicts (e.g. those referring to budgetary aid for Chad, Ethiopia and Rwanda).

At present, these control mechanisms apply only to new programmes of budgetary aid to countries involved in armed conflicts. The general application of the "control clauses" to all new budgetary aid in all countries would have the merit of avoiding discrimination, which could be contested by the countries concerned. On the other hand, the selective application of these measures ensures a political impact, a "message" the Community wants to send to countries involved in armed conflicts.

When releasing financial assistance to countries engaged in armed conflicts, the Commissioner responsible for the relations with ACP countries will also send **letters to the Heads of State or Government requesting written assurances that no funds are diverted for belligerent purposes**. Furthermore, the Commission is raising these concerns in meetings with the international finance institutions and other donors in order to ensure close co-ordination in the monitoring of development assistance and in particular budgetary aid.

The outbreak of armed conflicts may make it necessary to **temporarily freeze the implementation by withholding the conclusion of agreements and the disbursement of funds**, to allow for the introduction of the before-mentioned control mechanisms, or for an in-depth review of the use of funds. The Government of the beneficiary country concerned will be informed of this measure and has the occasion to explain the nature and objectives of its involvement in an armed conflict.

b) Situations which may Require the Suspension of Aid or other Sanctions

The enhanced control of the use of Community funds is part of the Commission's responsibilities for the implementation of the Lomé Convention. It is an indispensable measure to ensure that Community funds are used for the purposes stated in the provisions of the Convention and for the specific purposes defined in individual

financing agreements. It cannot, however, address the **problem of indirect fungibility**: Even if EU funds are allocated to specific economic or social sectors, they increase the availability of national resources for military purposes - and may thus fuel a war. This becomes particularly relevant if a conflict continues for a long time and consumes a considerable amount of the national resources of the countries involved.

The issue of indirect fungibility confronts the European Union with a number of problems. In cases of a recognised risk of indirect fungibility, i.e. when it appears clear that a given country would not be able to sustain a war effort without foreign assistance to ensure basic administrative and social services, there is a need to assess the legitimacy of the country's military involvement under existing international law. Countries will usually argue that they are acting within the framework of individual or collective self-defence referred to in Art. 51 of the UN Charter. The **UN Security Council** is the only universally recognised authority to assess - and possibly challenge - the legitimacy of a country's involvement in an armed conflict, and it may decide to impose **sanctions** such as those referred to under **Article 41 of the UN Charter**⁴. **A UNSC resolution imposing the interruption of economic relations to a given country may entail the suspension of development assistance to that country by the member states of the European Union⁵ and by the European Community.**

In cases where the UN Security Council has not decided upon sanctions, **the Lomé Convention in its present form does not include a legal base which would allow for a reduction or suspension of development aid only because of unjustified involvement in an armed conflict**. This would only be justified within the range of application of relevant rules of the Vienna Convention on the Law of Treaties of 1969, or general international law (notably *force majeure* in case of security risks, or *clausula rebus sic stantibus*, e.g. if the central state authority vanishes, as was the case in Somalia).⁶

⁴ There are rare cases of sanctions imposed by other institutions than the UN Security Council, e.g. the embargo imposed against Burundi by Cameroon (as acting OAU Presidency), Ethiopia, Kenya, Rwanda, Tanzania, Uganda and Zaire on 31st July 1996. The Burundi Government has persistently (albeit unsuccessfully) challenged the legitimacy of this embargo. It was suspended on 23 January 1999.

⁵ UNSC resolutions are binding for UN member states. In accordance with Article 103 of the Charter, such obligations overrule any other international agreement, including the Lomé Convention. An unresolved problem, however, is the question of legitimacy of military intervention by sub-regional organisations without a UNSC mandate, notably in cases where such interventions are not considered by the international community as a reaction to a security threat to the countries concerned, i.e. where Art. 51 of the UN Charter does not seem to be applicable. The principle of subsidiarity stipulated in Article 52 of the UN Charter explicitly recognises the competence of regional arrangements for security matters, but remains silent about the legitimacy of military intervention.

⁶ The EU can also adopt visa and residence restrictions, exclude certain countries of the participation in sport competitions, or prohibit the export of arms within the CFSP framework, provided that such sanctions lie outside the area of application of the Lomé Convention. In this context, it is worth recalling the ruling of the European Court of Justice on the case C 162/96, A Racke, of 16 June 1998 (IECR 1998, p. 3688-3709) regarding Council Regulation EEC 3300/91 suspending the trade concessions provided for by the Co-operation Agreement between the EEC and the Socialist Federal Republic of Yugoslavia.

At present, the **suspension procedure** referred to in **Article 366a, in relation with Article 5**, applies exclusively in cases where the specifically stated "essential elements" of the Lomé Convention, namely respect for **human rights, democratic principles**, and the **rule of law**, are violated. In many cases of recent or ongoing armed conflicts in Africa, this procedure would in fact be applicable in view of widespread and extensively documented human rights violations. **Neither Article 366a nor Article 5 limit the applicability of the procedure to human rights violations inside the geographical borders of the beneficiary state.** It is perfectly imaginable to launch the procedure if the army of a given state is committing human rights violations in another country.

With regard to **new programmes**, notably of budgetary aid where the risk of diversion of funds and fungibility is particularly high, the Commission has to consider whether it is advisable to grant such aid to countries involved in armed conflicts. The Commission will ensure that the **political dimension of such decisions is brought to the attention of the Council within the appropriate institutional framework.**

c) Political and Socio-Economic Considerations Related to the Freezing or Suspension of Aid

The **freezing or suspension of aid** is a measure *in extremis* which will not be applied unless all other instruments (control of the use of funds, political dialogue etc.) have been exhausted or proved inadequate. Where it is applied, it has to be carefully modulated and adapted in order to **put maximum pressure on all parties involved to cease hostilities and to seek negotiated solutions, while minimising the negative social effects of a reduction or suspension of aid.** This requires a **case-by-case analysis**, taking into account the following general considerations:

(a) Based on the simple **objective of avoiding use of development funds for military purposes**, the basic variable influencing the choice of options is the **degree of fungibility of funds**, i.e. the speed and ease with which funds can be deviated to military efforts. The main benchmarks on an abstract scale from "very high to very low" would generally be (i) direct budgetary support (including in the framework of food security programmes), (ii) STABEX/SYSMIN, (iii) sectoral assistance through ministerial departments, (iv) project aid, (v) decentralised co-operation, (vi) projects or programmes exclusively implemented by NGOs. Nonetheless, certain projects falling under the category (iv) can be considered highly fungible, either because they consist of quasi-budgetary aid or because they are substitutes for investments foreseen in the government budget.

(b) If the objective is larger, e.g. the **establishment of a general policy** not only addressed to countries already involved in armed conflicts, but also as a **deterrent for the future**, the main variable is the **degree of political significance**. For instance, already the announcement of an aid review can have an important political effect. The announcement to review structural adjustment support is likely to have a considerable impact on markets, foreign investor, and thus the economy of a given country. On the other hand, the rejection of a request for the financing of a large health project might be politically less effective than the freezing of aid that deals with core issues of domestic politics (e.g. land reform). The political significance is not directly related to the degree of fungibility or the size of a project; it has to be judged entirely on a case-by-case basis.

(c) The **effect on poverty alleviation efforts** has to be taken into account. Many programmes financed from Community funds are geared towards the social sectors, so a suspension is likely to undermine or jeopardise poverty alleviation efforts. The Commission should consider ways to mitigate such damage, if required by extending assistance through other channels than Government institutions (NGOs, community-based organisations). It may, however, be difficult to launch rapidly such measures of substitution, particularly in countries with a poorly developed civil society. It should also be noted that social hardship is not just a possible consequence of a reduction of aid to countries involved in armed conflicts, but in the first place a direct consequence of armed conflict itself. The most vulnerable population groups are the people who live in the areas where the fighting takes place; people in other countries may suffer from a reduction of aid, but they are not the primary victims of a conflict.

(d) A further consideration that needs to be taken into account if already ongoing projects or programmes are to be suspended, is the **ease of freezing and resumption of aid**. The freezing of disbursements of counterpart funds, for instance, is a measure which can be lifted easily and without any administrative delays. The suspension of large decentralised co-operation programmes might, on the contrary, put implementing NGOs in dire financial straits, and can, in certain cases, destroy years of work. Likewise, a suspension of projects involving technical assistance or procurement tenders could entail legal disputes that might not be solved long after the suspension has been revoked. There is a duty towards private sector implementation partners to ensure, as far as possible, that they are kept informed of developments, and that their claims for loss following suspension are promptly investigated and settled. In this context, there might be a need to take into account possible consequences for private sector participants in the technical and administrative annexes of financing agreements.

(e) In cases where a conflict affects or divides states of a regional group, **regional co-operation programmes** may be disrupted. The Commission may need to review the affected regional programmes to bring them in line with the EU policy with regards to individual countries or the whole of a regional group.

(f) Co-operation programmes vary greatly from one country to another, and a suspension of development aid under the 366a procedure can lead to imbalanced pressure on different countries. The **leverage of EU aid** therefore has to be taken into account in order to avoid distortions and unfair treatment ("**even-handedness**").

(g) An eventual suspension of aid to government institutions does not prevent the continuation of **assistance via non-governmental organisations**. Apart from **humanitarian aid** (including **food aid in the context of emergency assistance**), this may include aid for basic **social sectors** or **reconstruction**. It would be a mistake, however, to consider this form of assistance as "non-political"; even if its intentions are not to support any warring faction, **the impact of humanitarian aid and NGO assistance has to be carefully assessed**. Aid to areas controlled by War Lords in Somalia or Southern Sudan, or to refugee camps in Kivu which were entirely controlled by an extremist military group, are striking examples of the possibility of manipulating humanitarian assistance for political or military means.

* * *

As set out above, there are a number of measures to be taken by the Commission by virtue of its responsibility for the proper management and control of Community fund.

Where appropriate, the EDF Committee will be consulted. Nonetheless, **positions of the Member States, including those regarding their bilateral relations and bilateral aid, are relevant in order to ensure a consistent and coherent EU approach to conflict situations in ACP countries.**

3 SCENARIOS AND POLICY OPTIONS

The outbreak or escalation of armed conflict affects not only the co-operation relationship with the countries concerned, but all aspects of political and economic relations and in certain cases, the security for European citizens. The response to crisis situations in ACP countries is therefore a matter to which the Common Foreign and Security Policy of the European Union is highly relevant. The CFSP response to armed conflict should focus on aspects that are not covered by the Lomé framework, while a coherent approach between Community-related policy measures **and CFSP positions and actions** should be ensured.

Although strategic responses within the CFSP framework have to be designed individually for each crisis situation, it is possible to identify various **scenarios** and to identify **guidelines for strategic responses** by the European Union, in co-ordination with other actors of the international community, notably the **United Nations** and the **Organisation of African Unity**. For the purpose of outlining **comprehensive policy orientations across the "first" and "second pillars"**, the following considerations encompass both development co-operation and CFSP issues (certain measures described under chapter 2 are mentioned again in order to situate them within the CFSP context). The three conflict situations outlined below each represent a typical conjuncture in contemporary conflicts to which the international community needs to respond. A range of possible responses to each situation is discussed.

a) **Outbreak or Escalation of an Armed Conflict**

The escalation of a crisis in Kivu (eastern Congo) into a regional war with international connections has shown the **explosive potential of local conflicts** in Africa. An obscure network of regional alliances across (and sometimes beyond) sub-Saharan Africa has led to a situation which can potentially turn small local conflicts on the continent into regional wars.

Implications for development co-operation and EU policy options:

(i) As a direct result of any outbreak or escalation of hostilities, development co-operation gets usually severely curtailed and this leads to a **discontinuation of aid for security reasons**. For countries involved in armed conflicts, including states "outside the battlefield", but which are involved with troops in a conflict, the possibility of a diversion of scarce resources for belligerent purposes arises, and the Commission needs to take the appropriate steps outlined under chapter 2 above. Such steps may include a suspension of aid under the 366a procedure or a co-ordinated position of the Commission and EU member states to **abstain from granting new programmes of budgetary aid**. In such cases, **a coherent and consistent position of the EU is imperative and countries in a comparable situation shall be treated in an equal manner.**

(ii) In addition to the reduction or suspension of development aid, or the "freeze" of new budgetary aid, such measures may include **restrictions of arms exports, commercial relations, capital flows or investments, the refusal to grant visas or residence permits to representatives of governments or leaders of armed groups, the severance of communication links** (e.g. air embargoes, telecommunication restrictions), **the exclusion from the participation of sports competitions** etc. Trade restrictive measures may be taken pursuant to UN Security Council resolutions, in which case they are covered by the exceptions contained in WTO rules (e.g. Article XXI(c) of the GATT). Where such measures are not based on UNSC resolutions, they have to be compatible with international trade rules and other relevant international legislation. **Any interruption of economic or commercial relations, has to be formalised as Community legislation**⁷.

(iii) These measures may be accompanied, if appropriate, by a political message in the form of **Troika démarches** to the governments concerned, notably to ask them to explain the reasons for their involvement and, in case of a suspension of aid, to request information on military expenditures, if such information has not been disclosed earlier to the Commission.

(iv) The planning and implementation of **peacemaking efforts** within the escalation scenario is essentially the task of the Security Council, sometimes in consultation with regional organisations, notably OAU. The EU should however be involved from very early stages of planning, since in most cases, EU member states will be requested to provide financial or logistical assistance for such operations. **EU Special Envoys** may be instrumental in **ensuring co-ordination** of such UN and OAU efforts with EU policies.

(v) The "**escalation scenario**" could include, e.g. in the Great Lakes region, the **risk of genocide** or large-scale "**ethnic cleansing**". In such cases, the provisions of Chapter VII of the UN Charter may be relevant. Since it is extremely difficult to assess the risk of an escalation of ethnic violence and to plan a timely intervention, **contingency plans** should be drawn up early for geographical areas with a known potential for ethnic violence. In its political assessment, the European Union should be particularly attentive to the potential risk of "ethnic cleansing" and genocide.

(vi) The European Union is considering various **measures to enhance the control of arms flows** to countries involved in armed conflicts. In particular, full use should be made of existing EU initiatives in this field, including the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms, adopted by the Council on 26 July 1997, the EU Code of Conduct on Arms Exports, adopted on 8 June 1998, and the Joint Action on the EU's contribution to combating the destabilising accumulation and spread of small arms and light weapons, adopted on 17 December 1998. The latter, in particular, includes the encouragement of adopting similar measures in various international *fora*.

⁷ Whether this would include arms exports is a moot question. Arms are goods that in principle fall under the scope of Article 133 of the Treaty of the European Community. Article 296 is not a reservation of national competence, but an exception to the exclusive competence of the European Community in respect of the external commercial policy regarding goods. Furthermore, it should be noted that certain non-military goods might be used in military conflicts (e.g. confiscation of 4-wheel drive vehicles and communication equipment from humanitarian agencies in the Democratic Republic of Congo, in 1996 and 1998, by rebel forces).

(vii) The **Community's role** in the framework of the "escalation scenario" is in the first place related to the Commission's **assessment of the security situation** to evaluate **the feasibility of humanitarian aid and assistance to basic social sectors** and rehabilitation via NGOs. The Commission also has a responsibility to **assess the impact of such aid on the dynamics of conflict**.

b) Cessation of Hostilities and Negotiations

A cessation of hostilities and the initiation of negotiations represent usually a **crucial phase in the dynamics of conflict**. It can be a "window of opportunity" or the prelude for a renewed escalation.

Comprehensive crisis management and resolution under this scenario has to take into account the following aspects:

(i) Depending on the specific circumstances of each conflict, various **configurations** for the most appropriate framework for mediation and negotiation will have to be considered: **confidential bilateral talks or consultations among a small number of major players; national conferences; the use of a mediator; negotiations under a regional or international framework; transparent multinational dialogue under UN or OAU auspices etc.** A common obstacle to successful negotiations is the confusion between parties and mediators in peace negotiations, i.e. when countries which are objectively party to a conflict become part of a multinational "mediating framework" (e.g. IGAD/Sudan; SADC/D.R.Congo, ECOWAS/Guinea-Bissau), or when one party accuses either the mediator him/herself or a country taking part in a mediation, of involvement in the conflict (e.g. "Arusha group"/Burundi/Tanzania in 1996/7). The risk of this can be diminished if the negotiations are conducted in a transparent way under OAU or UN auspices - albeit often at the price of making the process "heavy" and more bureaucratic.

(ii) Before and during consultations or negotiations, **Special Envoys** can play a role as mediators, keep the EU institutions and member states informed, and assist in **harmonising diverging positions among EU member states** and in **developing EU strategies**. Within the geographical area of the ACP countries, the EU has only one Special Envoy for the Great Lakes region. The assignment of Special Envoys for other conflict areas, particularly West Africa, might be considered.

(iii) A general principle of any negotiated settlement of a conflict is the need to **achieve compromises acceptable to all major stakeholders**. If one of the major players is better off by rejecting an agreement or by failing to respect it, such an agreement will not hold. Peace is not necessarily the highest goal for all actors. To make peace more attractive, the international community, and notably the EU, should offer assistance to those working towards peace and threaten with sanctions those who reject or violate cease-fires or peace agreements. This policy may be combined with the organisation of regional conferences where political and security aspects are discussed in parallel with development programmes.

(iv) Due attention has to be given to include all actors, both at national and local levels. The Central African region is host to more than twenty **armed groups** with sometimes dubious political objectives. The ranks of these rebel groups are filled with a growing army of frustrated youths without viable economic or political perspectives. Their

capacity of destabilisation ("*pouvoir de nuisance*") should not be underestimated, and peace agreements have to address the underlying political and socio-economic problems, which are the bedrock of organised crime and political violence. Furthermore, there is often a need for **dialogue and reconciliation efforts at local level** (notably in Kivu, Rwanda, Sudan, Liberia, Sierra Leone etc.), to avoid that the root causes of the crisis are "papered over" by superficial agreements between governments.

(v) A particularly critical situation may arise **when negotiations break down** or if the conflicting parties use a temporary cease-fire for re-arming and the re-positioning of their troops. In this case, the international community should put the **utmost pressure on the parties to initiate or resume dialogue**, and the European Union, in co-ordination with the United Nations, should consider specific measures to that end (**arms, aid or trade embargoes, visa restrictions, freezing of assets of leaders who refuse to negotiate or do not abide by agreements etc.**). In such cases, all possible steps should be taken to prevent the flow of arms to the conflict region.

(vi) Peace agreements may require **independent monitoring of cease-fires**, or need to be consolidated through external security assistance (**peacekeeping operations**). Any intervention of this type, however, carries the risk of facing a new escalation of violence.

(vii) In recent years, the international community has been looking increasingly for African solutions in peacekeeping and crisis response. However, the various **initiatives to develop African peacekeeping capacities** by external training have had **ambiguous results**: On the one hand, there are indications in specific cases that these efforts have enhanced the respect for human rights of the trained soldiers. On the other hand, the fact that several armies benefiting from training under military training programmes for peacekeeping have been involved in armed conflicts or controversial military interventions cannot be overlooked.

(viii) The **Community's role** in the framework of the "negotiation scenario" could take various forms: **support for mediation efforts or negotiation processes; support for a political transition (technical assistance for constitutional reform, electoral assistance and monitoring); assistance for the reintegration of refugees and displaced people, for rehabilitation, and for demobilisation programmes etc.**

c) Breakdown of state Authority

If a conflict simmers on without being resolved, albeit at a level which makes it disappear from the headlines in the international media, it often becomes a **low intensity war zone** where normal state authority evaporates partly or completely. In a number of African countries, basic administrative, economic and social structures were kept alive essentially by NGOs and community-based organisations. Normal state administration has often retreated because of civil war or lack of resources, to the more easily accessible towns or provinces. It is only a small step from this situation to a total breakdown of state authority and the establishment of a system where various territories fall under the control of Warlords.

The breakdown of state authority can be limited to certain areas, which fall under the control of **Warlords** or become subject to **zones of influence** of neighbouring countries with remaining and active state authorities. Much of what has been outlined under the scenarios above would apply to countries involved in an ongoing internal conflict in a neighbouring country. In rare cases, an entire state can actually cease to exist

(e.g. Somalia) and its territory as well as adjacent areas in neighbouring countries can escape any government control. In most cases of state breakdown, the countries or areas concerned become major sources of instability.

(i) Normal development co-operation, just as normal diplomatic or economic relations, is interrupted in the case of a breakdown of state authority. **Humanitarian assistance**, can be extended where security conditions allow it. Rehabilitation can be supported in areas where a relative peace prevails ("**peace dividend approach**"), including "social rehabilitation" in the form of community initiatives for peace and reconciliation. The Commission's responsibility to assess the (**short, medium and long-term**) **impact of humanitarian aid** on the political and military situation will be of primary importance.

(ii) EU member states should do the utmost to **prevent the export of arms** into the conflict region.

(iii) The EU may consider **support to "frontline states"** to the extent that their governments remain receptive to the EU's concerns about **human rights and democratic principles**, and practice **full transparency concerning military expenditures**.

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These three scenarios are typical cases while reality usually lies somewhere in between. It is also possible - even probable - that the situation evolves or deteriorates from one scenario to another. The EU response has to be flexible enough to react in a modulated way to real developments on the ground.

4 FINAL REMARKS

The strategy proposals outlined in this Communication indicate ways to react to political emergency situations, which have tragically become all too frequent to be called exceptional. In his report on "**The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa**", the UN Secretary-General mentioned that 30 wars have been fought in Africa during the last three decades. Since 16 April 1998, when this report was circulated as a General Assembly document, fighting has broken out at the border of Ethiopia and Eritrea as well as in Guinea-Bissau and Sierra Leone, Botswana's and Southern African military forces have intervened in Lesotho, and the Congo crisis has escalated into a regional war of unprecedented dimension in post-colonial Africa. The Angolan peace process has broken down, leading to a full resumption of civil war. The armed conflicts in Southern Sudan, Northern and Western Uganda and Northwestern Rwanda carry on with varying intensity, causing recurrent humanitarian catastrophes. Somalia remains under the rule of Warlords. Many other countries are rife with tensions.

There is no doubt that **sub-Saharan Africa is undergoing major political upheavals** that carry a tremendous potential for violent conflict. The consequences of this transformation are quite unpredictable. The European Union has to find ways to assist its ACP partners in sub-Saharan Africa in this process and to manage the crises that accompany this transformation. First and foremost, the European Union should focus on the **prevention of conflicts** and implement the recommendations contained in the

Communication of the Commission submitted to the Council in March 1996, and the Common Position and Council Conclusions adopted on this subject. The Common Position concerning human rights, democratic principles, the rule of law and good governance in Africa, adopted 25 May 1998, is also an important CFSP instrument to assist African countries steering through the current political changes. The European Union should do its utmost in the framework of its co-operation and foreign policy relationship to **facilitate peaceful change towards stable and democratic systems**. But it also has to be ready to **manage, contain and resolve the crises that have turned violent**, and develop appropriate strategies to this end.