



CENTRO MILITARE DI STUDI STRATEGICI



a cura di Gianni Bonvicini e Giovanni Gasparini

LE COOPERAZIONI RAFFORZATE PER LA RISTRUTTURAZIONE DELL'INDUSTRIA EUROPEA DEGLI ARMAMENTI

ISBN 88-88391-29-0

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ARTISTIC & PUBLISHING COMPANY

Via Faustina 22 - 04024 Gaeta (LT)

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Centro Militare di Studi Strategici
Piazza della Rovere, 83 - 00165 Roma (RM)
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Stampato dalla Graficart s.n.c. - Formia (LT)

2002

**LE COOPERAZIONI
RAFFORZATE PER LA
RISTRUTTURAZIONE
DELL'INDUSTRIA EUROPEA
DEGLI ARMAMENTI**

A cura di

Gianni Bonvicini e Giovanni Gasparini

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Introduzione

Il varo della Politica Europea di Difesa (Pesd) è ormai avvenuto nei fatti con le successive decisioni di costituire una forza di rapido intervento che diverrà pienamente operativa dal 2003.

E' difficile pensare che un passo in questa direzione non sia seguito da decisioni altrettanto importanti in campo della politica industriale della difesa. Dovrà, in altre parole, essere affrontato il futuro dell'OCCAR, i rapporti tra LOI e UE. E ciò sarebbe, fra il resto, in linea con l'art. 17.1 del Trattato che prevede la cooperazione nel campo degli armamenti.

Tuttavia rimane profondamente dubbia la procedura da seguire in una tale eventualità. Il recente Trattato di Nizza non ha aiutato a sgombrare il campo dagli equivoci che ancora circondano la politica di difesa dell'Unione. Non solo la Pesd rimane essenzialmente intergovernativa, ma è stata soprattutto esclusa la possibilità di applicare alla difesa il meccanismo delle "cooperazioni rafforzate" (art. 27B).

Ciò è in evidente contrasto con le esperienze fatte in questi ultimi anni, con i meccanismi concreti di cooperazioni in atto e con l'andamento della crisi in Afghanistan nel dopo conflitto. Un tale livello di contraddizione esige un ripensamento.

Sia la guerra nel Golfo che le crisi e guerre nei Balcani sono state gestite da coalizioni di paesi che avevano la capacità e la volontà di intervenire (able and willing), utilizzando a volte le istituzioni internazionali (come la Nato), ma prendendo le decisioni strategiche essenziali su base strettamente nazionale o ad hoc (come il Gruppo di contatto).

Nello stesso tempo, sul piano operativo, una serie di accordi bilaterali ha creato alcune realtà come Eurocorpo, Eurofor, Euro-marfor, il Gruppo Aereo Europeo di Francia e Gran Bretagna, la

Commissione congiunta Franco Britannica sulla politica e la dottrina nucleari, il Corpo d'armata tedesco e olandese, eccetera, che solo successivamente ed in modo parziale, sono stati riconosciuti come "europei" e "atlantici".

Sul piano industriale, l'integrazione delle industrie europee della difesa sta procedendo su linee privatistiche, coinvolgendo sempre meno le decisioni europee, che comunque restano sempre più nazionali che comuni. Al contrario, mentre stenta a delinearsi una politica comune dell'Unione per questo settore industriale (anche per l'irrisolto problema connesso all'art.296), si delineano accordi come quelli sopra ricordati per la creazione di OCCAR e quelli che mirano a regolare il rapporto tra gli stati e le nuove imprese transnazionali nel settore della difesa (LOI).

Come risolvere quindi il problema di una maggiore trasparenza ed efficacia decisionale in mancanza sia di meccanismi di cooperazione rafforzata sia di voto a maggioranza qualificata come succede per gran parte delle materie comunitarie? In ambito industriale e per quel che riguarda le capacità militari, è stata anche proposta la costituzione di una serie di agenzie specialistiche per la gestione di determinate capacità o missioni, anch'esse più ristrette rispetto alla membership UE. Altri infine sottolineano come sarebbe ingiusto e/o inopportuno richiedere ai piccoli stati e in particolare a tutti gli stati candidati, di impegnarsi in prima linea in politiche ad alto costo e di forte assunzione di responsabilità internazionale.

E' un dibattito molto difficile che ruota attorno al senso che si vuole dare alla formula, sopra ricordata e sempre più spesso usata nel campo della difesa e della sicurezza, dei paesi "able and willing". In altri termini, è legittimo che i paesi che non siano "able" abbiano il diritto di determinare o bloccare le decisioni di questi ultimi? Ovvero è possibile immaginare che solo i paesi "able" possano anche definirsi "willing" e quindi prendere parte alle decisioni? Di converso, è possibile immaginare delle forme politiche ed istituzionali che consentano ad un gruppo di paesi "able and willing" di agire in nome dell'UE (e utilizzando eventualmente anche sue risorse) senza che gli altri possano bloccar-

li, e anche se gli altri decidessero di non partecipare o di non appoggiarli esplicitamente?

Di fronte a queste domande e alla vigilia di una ulteriore revisione del Trattato da varare entro il 2004 è opportuno approfondire il tema di una possibile estensione di un meccanismo ad hoc di cooperazione rafforzata anche al campo della politica degli armamenti.

Il Rapporto di Ricerca dibatte approfonditamente questi temi, avvalendosi della collaborazione di tre esperti stranieri della materia, che con il loro contributo di pensiero hanno delineato le linee entro cui va inquadrata la problematica e offerto delle possibili soluzioni.

La struttura del Rapporto, concordata con il committente, è studiata in modo da permettere una lettura più agevole da parte dei possibili diversi destinatari dello stesso, siano essi decisori politici, accademici ed esperti della materia.

Il capitolo iniziale in italiano rappresenta allo stesso tempo una sintesi dei successivi paper in inglese e una definizione originale della possibili opzioni che si presentano al decisore politico, in particolare in vista del semestre di presidenza italiana dell'Unione. A seguire, sono allegati i background papers che costituiscono il necessario ed indispensabile riferimento per le considerazioni presentate dal team di ricerca italiano.

Le cooperazioni rafforzate in ambito difesa e le problematiche industriali: alcune proposte

(Gianni Bonvicini e Giovanni Gasparini) *

1. LE COOPERAZIONI RAFFORZATE IN AMBITO DIFESA

Il punto di partenza di questo rapporto è la constatazione che il concetto di “cooperazione rafforzata”, come previsto negli articoli 11 e seguenti, 27 e seguenti, 40 e seguenti, nonché 43 e 44 del Trattato dell’Unione Europea (TEU), non si applica al settore della difesa, sia essa relativa al campo delle politiche (di difesa) che a quello della cooperazione nell’industria degli armamenti.

Il fatto è in sé paradossale, dal momento che il principio delle “cooperazioni rafforzate” nasce all’inizio degli anni ’80 con una diversa definizione, quella, come già ricordato dei paesi “willing and able”, proprio per operazioni di carattere militare da condurre “out of area”, intendendo con ciò, come è noto, al di fuori della zona di influenza del Trattato del Nord Atlantico. Sono infatti le prime operazioni di intervento nel Mediterraneo (guerra in Libano), nel Mar Rosso e nel Golfo Persico a rendere necessario il ricorso a coalizioni di stati che al di fuori della Nato si impegnano a riportare la pace in zone di conflitto.

Se questa è l’origine storica del concetto di cooperazione rafforzata per le politiche di difesa, vi è da dire che le “cooperazioni rafforzate” sono di gran lunga anteriori, anche in termini di applicazione, per quanto riguarda le questioni comunitarie. Si comincia infatti fin dal 1957 con il meccanismo delle “deroghe” accordate all’Italia e al Belgio per quanto riguarda l’attuazione di determinati articoli del Trattato di Roma, prassi che verrà poi adottata per tutti i successivi ampliamenti della Comunità e dell’Unione, particolarmente nei confronti dei paesi

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più deboli e arretrati dal punto di vista delle regole di mercato.

Con il sistema delle deroghe alle regole comuni si ottengono due risultati principali: da una parte si riesce a mantenere l'unità del Trattato, mentre dall'altra si permette ai paesi "non in grado" (unable) di stare al passo con i più progrediti, di seguire e ricollegarsi, dopo un periodo di tempo predeterminato, al gruppo di testa. Per ottenere questo risultato sono indispensabili alcune caratteristiche insite nella deroga: un lasso di tempo certo, un regime di aiuti diretti o indiretti, una non esclusione dai meccanismi istituzionali di governo. Si tratta quindi di una "flessibilità" molto limitata e di scarso rilievo sul piano politico generale.

Più interessante è stata l'esperienza di "cooperazioni rafforzate" nel campo monetario. Esse sono già iniziate nei primi anni '70 con il piano Werner e con la nascita del "serpente" monetario; anche in questo caso erano previste deroghe speciali ai paesi economicamente e finanziariamente più deboli, che si riassumevano nella concessione di limiti più ampi di fluttuazione rispetto alla parità monetaria di riferimento. In questo caso tuttavia le caratteristiche di "flessibilità" sono diverse da quelle delle deroghe al trattato. Non si fissa un tempo preciso per la "normalizzazione" del paese deviante, non si prevedono aiuti di sorta, non è esclusa l'uscita (cosa che succederà all'Italia) e non vi sono regole per il rientro. Per di più la collaborazione monetaria avviene fuori dalla cornice del Trattato e non valgono quindi le regole decisionali comunitarie.

Una esperienza analoga verrà portata avanti dopo il 1978 con la sostituzione del Sistema monetario europeo (Sme) al vecchio "serpente": ma con due differenze fondamentali. La prima è che questa esperienza extra-comunitaria sarà introdotta nel Trattato di Maastricht nel 1991, di fatto "comunitarizzandola"; il secondo è che con il passaggio alla terza fase dell'Euro ad Amsterdam nel 1996 si crea all'interno del Trattato una vera e propria "cooperazione rafforzata" predefinita (in base al rispetto dei criteri di convergenza) e, quindi, istituzionalizzata (cioè ammessa dal Trattato).

Simile anche l'esperienza di Schengen, che nasce fuori dal Trattato, ma che a differenza dello Sme si trasforma da Accordo in Trattato prima di essere introdotto ad Amsterdam nella corni-

ce del TEU e quindi iniziare un graduale processo di “comunitarizzazione” (ancora in corso, nel campo delle politiche del cosiddetto Terzo Pilastro: giustizia e affari interni).

Queste diverse esperienze e la prospettiva di una radicale trasformazione dell’Unione a causa dell’allargamento ad est hanno spinto i governi dei Quindici ad affrontare di petto il problema della flessibilità, introducendo nel Trattato di Amsterdam una prima formulazione di “cooperazione rafforzata”. L’obiettivo dichiarato è quello di permettere a un gruppo di paesi “willing and able” di progredire più velocemente di altri sulla strada dell’integrazione e di permettere che ciò avvenga all’interno dell’Unione e non per linee esterne, come sperimentato nel passato. In altre parole, evitare il rischio di “direttori” e di “nuclei duri” al di fuori del Trattato, come da più parti si era ventilato alla vigilia di Amsterdam (basti qui ricordare il rapporto Schauble/Lammers del 1994 sulla “Kerne Europa”). Naturalmente, quando si parlava di “Kerne Europa” si avevano in testa progressi nel campo politico, vero punto di debolezza nel processo di integrazione europea. Ed era anche ovvio che l’integrazione politica significava essenzialmente politica estera e di sicurezza (Pesc). Ritornava in auge il concetto di “willing and able” degli anni ’80, mai messo realmente in pratica. Ma, contrariamente alle previsioni, ad Amsterdam i capi di stato e di governo accettavano che il principio delle “cooperazioni rafforzate” si applicasse unicamente agli affari comunitari e a quelli interni e di giustizia. Solo a Nizza nel 2000, sotto la pressione degli eventi nei Balcani che dimostravano quotidianamente la difficoltà degli europei a muoversi a Quindici nel portare avanti posizioni e azioni comuni, si estendeva infine alla Pesc il meccanismo delle cooperazioni rafforzate, ma ancora una volta impedendone l’applicazione anche alle azioni militari e alla politica di difesa.

In realtà, non erano mancati nel passato tentativi concreti di avviare cooperazioni di tale tipo anche nel campo della difesa. Nel 1996 italiani e tedeschi, alla vigilia di Amsterdam, avevano predisposto un piano per l’assorbimento dell’Ueo all’interno dell’Ue, ma poi avevano dovuto arrendersi di fronte alle reticenze inglesi. L’unico vero successo delle pressioni dei due

paesi era stata la menzione, nell'allora art. 17 J, dell'avvio della cooperazione nel campo degli armamenti, ma solo a condizione di raccogliere l'unanimità di tutti e 15 i paesi ed, in ogni caso, senza potere ricorrere a "coalitions of willing" nel quadro del Trattato. Analoga pressione era stata esercitata dai due paesi nel 2000 alla vigilia di Nizza, auspicando una qualche forma di cooperazione rafforzata nei settori della difesa e della politica degli armamenti; ma ancora una volta era prevalso il veto inglese che ne escludeva la sua applicazione per la difesa.

Questi brevi cenni ci aiutano a comprendere come quello della difesa sia:

- un campo di dominio intergovernativo, in cui vale l'unanimità, anche per gli aspetti disciplinati dal Trattato (missioni Petersberg, ecc);
- un'attività in larga parte svolta al di fuori del quadro del Trattato, sia in sede multilaterale Nato che nell'ambito di iniziative ad hoc che vedono la partecipazione di un numero limitato e variabile di paesi ad accordi intergovernativi (Bosnia, missioneAlba, ecc.),
- una cooperazione senza disciplina comune di mercato nel settore dell'industria della difesa, ove al di là della frammentazione ancora piuttosto diffusa (malgrado le recenti concentrazioni) si opera ancora sulla base di regole nazionali.

Se, quindi, da un lato non è emersa una efficiente Pesd che applichi i meccanismi delle altre politiche (voto a maggioranza, astensione costruttiva, cooperazioni rafforzate), al lato opposto non è neppure nata una politica europea nel settore industriale della difesa. La comunicazione della Commissione del 1997 e la recentissima proposta della presidenza spagnola nel 2002 sono rimaste lettera morta e hanno dimostrato come oggi sia particolarmente difficile sperare in una politica degli armamenti comune.

Il cammino da percorrere nell'affrontare le revisioni del Trattato in materia di cooperazioni rafforzate per la Pesd e industria della difesa (come illustrato nel primo capitolo di questo studio)

è quindi quello tracciato dalle esperienze comunitarie che abbiamo sopra ricordato, avviando cooperazioni rafforzate esterne al Trattato ma con il chiaro obiettivo strategico di portarle progressivamente all'interno della casa comune. Ma ciò potrà avvenire se il Trattato oggi in elaborazione all'interno della Convenzione europea prevedrà esso stesso meccanismi di cooperazioni rafforzate istituzionalizzate che trasferiscano la flessibilità esterna in ambito comunitario.

A farci pensare che questa sarà la strada da percorrere è anche la proposta de Villepin-Fischer presentata alla Convenzione il 22 novembre 2002 e riguardante la politica europea in materia di sicurezza e difesa. Il fatto è altamente significativo, sia perché la proposta viene da due paesi chiave dell'Unione sia perché essa tratta apertamente, al di là della Pesd, anche i temi dello sviluppo di una politica europea degli armamenti. Sul fronte della Pesd i due ministri propongono una più grande flessibilità nei meccanismi decisionali. Il campo della difesa, infatti, è uno di quelli in cui vale appieno il vecchio principio dei paesi "willing", decisi quindi a dare il loro contributo, e di quelli "able", cioè in grado di partecipare. Il sistema decisionale deve quindi prevedere il ricorso (facile) alla cooperazione rafforzata. In particolare essa si applicherà alla costituzione di forze multinazionali e allo sviluppo di capacità militari e di politica comune degli armamenti. Per le operazioni più propriamente di intervento militare, invece, ci si dovrà attenere all'unanimità, pur attenuata dall'astensione costruttiva.

Ma quello che più interessa è la richiesta dei due ministri di una semplificazione del processo di ricorso a cooperazioni rafforzate (oggi particolarmente laborioso): avviandolo con un voto a maggioranza, diminuendo il numero dei paesi partecipanti (oggi 8) e garantendo una grande rapidità per la sua adozione, tutte caratteristiche rilevanti nel campo della politica di difesa.

Infine si ripropone la vecchia idea di assorbire gli impegni Ueo (compreso l'art. 5) nel quadro dell'Unione, anche qui usando il meccanismo della cooperazione rafforzata.

Non vi è dubbio quindi che, anche a causa dei mutamenti internazionali in atto, il quadro della Pesd sia in profondo muta-

mento e che la Convenzione dovrà tenerne conto sia nel gruppo del lavoro ad hoc, in cui si ritrovano, anche se in maniera meno netta, alcuni dei suggerimenti contenuti nella proposta franco-tedesca sia in sede di redazione del nuovo Trattato (anche se i primi articoli relativi alla parte generale non si discostano molto dal timido fraseggio di Maastricht a Amsterdam).

Per parte nostra, la domanda che ci poniamo in questo rapporto è come ottenere che forme di cooperazione flessibile esistenti al di fuori del Trattato, sia in ambito più generale Pesd che in quello subordinato della cooperazione nel campo dell'industria degli armamenti, possano essere o più strettamente legate ad un percorso di progressivo inserimento nei Trattati o venirvi direttamente inserite.

E' questa la distinzione illustrata nel primo capitolo di questa ricerca:

- da una parte una clausola generale di cooperazione rafforzata all'interno del Trattato che possa essere attivata in tutti i casi in cui la si reputi necessaria;
- dall'altra un'opzione di cooperazione rafforzata predeterminata che fissi chiaramente i contorni della cooperazione esterna da riportare all'interno del Trattato.

Per quest'ultima l'esempio più calzante è quello dell'inserimento dei residui impegni Ueo nel Trattato; nel primo caso invece gli esempi sono quelli della costituzione di forze multinazionali.

Discorso analogo vale per l'industria della difesa, ove tuttavia l'opzione predeterminata è meno ovvia. In questo caso la flessibilità esterna oggi esistente deve essere ancora orientata a predisporre ad una collaborazione più istituzionalizzata per poi inserirsi nell'ambito del Trattato. Inoltre è essenziale una parallela riforma delle politiche comunitarie e delle regole di mercato del I° pilastro per risolvere la questione della frammentazione nazionale prima di accedere a cooperazioni rafforzate all'interno del nuovo Trattato.

Più in generale, nel settore della Pesd, ancora poco “maturo” rispetto agli altri aspetti della cooperazione comunitaria e della politica estera che da molti più anni rientrano nelle competenze dell’Unione, l’approccio verso una cooperazione rafforzata pre-determinata è sicuramente più problematico (tranne forse nel caso dell’Ueo): definire con precisione le aree di collaborazione, i criteri di “convergenza”, le procedure dettagliate e gli obiettivi temporali è molto più difficile di quanto non lo sia stato nei casi dello Sme o di Schengen. A maggiore ragione questo discorso può valere per l’industria della difesa dove i progetti di collaborazione extra-trattato sono ancora molto imprecisi negli obiettivi e nell’operatività. E’ bene che queste esperienze maturino fuori dal Trattato ma a una condizione: che si pongano la finalità di predisporre ad entrare nel trattato.

E’ quindi auspicabile una clausola generale di cooperazione rafforzata che valga per Pesd e industria della difesa e che faciliti al massimo l’assorbimento delle cooperazioni esterne all’interno del futuro Trattato; le regole per farle rientrare nel quadro istituzionale comune devono essere semplici, generiche e rapide. Paradossalmente, ma non troppo data la natura dei problemi, il meccanismo di cooperazione rafforzata nel campo della difesa deve essere più essenziale e facile da attivare di quello previsto oggi negli altri pilastri e nella stessa Pesc, dove vige ancora una sorta di diritto di veto (voluto ancora una volta dagli inglesi), attraverso la richiesta di un singolo paese di rinvio della decisione al Consiglio europeo.

La clausola di flessibilità è essenziale per Pesd e industria della difesa, poiché in sua assenza l’unica soluzione rimane quella di cooperazioni al di fuori del Trattato, senza nessuna tutela di stabilità e di maggiore efficienza. Ed in questo settore, più che negli altri, a dettare le regole sono gli stati più grandi: se non verrà favorita la cooperazione rafforzata all’interno del trattato assisteremo davvero alla nascita di direttori e ad un ulteriore frammentazione di un quadro di cooperazione che è cruciale per il futuro dell’Unione e dei nostri singoli paesi.

2. LE PROBLEMATICHE INDUSTRIALI

La riforma della struttura istituzionale e legale di riferimento per la politica estera, di sicurezza e di difesa dell'Unione Europea è la condizione necessaria ma non sufficiente per determinare il superamento delle attuali difficoltà riscontrate nell'ambito della riorganizzazione dell'industria della difesa. La riorganizzazione delle istituzioni e delle regole che governano il lato della domanda si pone come un fattore essenziale per lo sviluppo di un pilastro industriale che supporti le politiche europee coerentemente con gli obiettivi della Pesc e della Pesd.

Non è infatti possibile né augurabile il mantenimento dell'attuale differenza di velocità con cui i due lati del mercato si stanno muovendo, ormai da alcuni anni; si deve intervenire prima che il divario cumulato abbia degli effetti dirompenti sull'equilibrio complessivo, il cui esito potrebbe essere difficilmente reversibile.

Alla integrazione e globalizzazione progressiva dell'offerta, legata essenzialmente a logiche di ritorno economico e vantaggio produttivo e rappresentata dall'affermarsi delle Transnational Defence Company (Tdc), non può non far fronte un analogo mutamento della domanda.

La centralità del problema delle risorse finanziarie disponibili per lo sviluppo delle politiche di procurement non può più essere elusa, ma essa non costituisce l'oggetto di questo studio.

L'analisi è infatti concentrata sullo stato attuale delle cooperazioni e della legislazione in Europa e dei loro limiti; si può ritenere che il superamento di detti limiti sia una condizione necessaria per il successo della politica europea, al pari dell'auspicato incremento delle risorse. In effetti, buona parte dei provvedimenti che si sottopongono all'attenzione dei decisori politici si traducono infatti in consistenti guadagni di efficienza e in un più elevato ritorno della spesa pubblica per la difesa e sono pertanto assimilabili in parte a misure di incremento dei fondi.

Al di là dell'aspetto economico, non deve sfuggire la logica politica che sottostà a questa sempre più sentita esigenza di riforma: il mercato della difesa è parte integrante di una più ampia

strategia europea di definizione di una politica estera e di sicurezza coerente con il suo ruolo mondiale.

Non si devono nascondere le difficoltà e le opposizioni da parte di taluni paesi e forze politiche di fronte a determinate prospettive di condivisione della sovranità in ambito delle politiche di difesa, ma lo stimolo a proseguire nell'opera di riforma deve superare queste obiezioni tramite un percorso necessariamente progressivo ma non per questo inefficace.

I governi rivestono ancora un ruolo primario (talora al limite della esclusività) nella gestione della politica industriale della difesa; talora le loro competenze vengono co-gestite a livello intergovernativo tramite strutture e organizzazioni specifiche, che possono riguardare un singolo programma (consorzi) o, come nel caso dell'Occar e della Weag, una molteplicità di programmi.

Negli ultimi anni si è venuta a formare in ambito governativo un sostanziale favore rispetto a determinati tentativi di riforma, legato alla crescente coscienza che un tale processo è vitale per una serie di ragioni: il crescente scollamento fra offerta globale e domanda nazionale, la crescita dei costi, la concorrenza soprattutto da parte americana, la perdita di competitività delle esportazioni, l'elevato livello di duplicazioni e sprechi organizzativi, la frammentazioni dei mercati, la dispersione nazionale della spesa per procurement e ricerca e sviluppo.

Questa situazione ha spinto i governi e alcune autorità supranazionali verso una serie di iniziative, talora coronate da parziali successi e non sempre fra loro coerenti. Le autorità europee sono intervenute, anche su sollecitazione delle industrie del settore, formulando diverse proposte.

In particolare, la Commissione Europea ha definito un "Action Plan" per l'adozione di regole comuni relative al procurement, all'export, all'applicazione delle regole della concorrenza previste per gli altri mercati e con un piano per la ricerca e sviluppo.

Da parte industriale, il gruppo "Star 21" ha sostenuto queste richieste, ponendo l'enfasi sull'armonizzazione dei requisiti operativi e sulla necessità di razionalizzare ed incrementare la disponibilità dei fondi per il procurement e la ricerca e sviluppo.

Più recentemente, il Gruppo di Lavoro Difesa alla Convenzione per il futuro dell'Europa ha proposto di favorire la costituzione di un mercato europeo vero e proprio, mettendo a fattore comune la regolamentazione, i requisiti, le procedure di acquisizione e le politiche di procurement e di R&S.

La creazione di una Agenzia Europea degli Armamenti è funzionale a questa logica.

Il realtà, esistono già due iniziative di rilievo che potrebbero essere prese come punto di partenza per le evoluzioni future: l'Occar e la Weag.

Come evidenziato dal contributo di Andrew James, i risultati della Weag non sono soddisfacenti, a causa della procedura consensuale richiesta e dell'assenza di una vera e propria guida politica. Proprio le carenze riscontrate in ambito Weag hanno condotto un gruppo ristretto ma significativo di membri a costituire una diversa Organizzazione, la Occar.

Se in questo foro i risultati e le prospettive di sviluppo paiono migliori, anche grazie all'adozione di alcuni principi di efficacia, competitività, apertura ad altri potenziali membri, armonizzazione e soprattutto rinuncia al "juste retour" in senso classico, il carattere intergovernamentale delle politiche dell'Occar, unito alla totale dipendenza dalle decisioni nazionali, ha sinora frustrato le aspirazioni di questa organizzazione di porsi come nucleo della tanto auspicata Agenzia Europea degli Armamenti.

La disamina del panorama istituzionale relativo alla difesa in Europa spinge a sottolineare l'incoerenza di una situazione in cui esistono delle istituzioni militari europee, nonché la prospettiva di una politica di sicurezza e difesa comune, non competenti circa i mezzi necessari per garantire l'efficacia del loro operato.

E' vero, si sono sviluppate delle iniziative al di fuori del quadro comunitario da parte di alcuni paesi "willing and able", ma paradossalmente queste, se da un lato ben esprimono una esigenza reale di riforma, dall'altro si pongono al di fuori del contesto istituzionale di riferimento e potrebbero anzi cristallizzare una situazione di regimi differenziati fra paesi europei potenzialmente insanabile e foriera di ulteriori inefficienze.

Urge quindi l'avvio di un processo di riforma il cui orizzonte temporale deve risultare compatibile con il passo dell'integrazione del lato dell'offerta.

Si propongono diverse opzioni:

- L'allargamento e l'approfondimento delle istituzioni già in essere (Occar e Weag), in coordinamento con le decisioni regolamentari favorite dalla Loi.

Tale approccio non sarebbe pienamente compatibile con l'ambito dell'Ue e risulterebbe sostanzialmente privo di una guida politica chiara nonché di un collegamento diretto e necessario con la Pesd. Il suo ambito di applicazione sarebbe inoltre limitato.

- L'allargamento delle competenze dell'Unione, con un sostanziale maggior coinvolgimento della autorità della Commissione, sfruttando gli spazi già offerti dell'attuale Trattato.

Il raccordo fra l'autorità del Consiglio e quella della Commissione risulterebbe il fattore decisivo per il successo di tale approccio.

- Lo sviluppo di cooperazioni rafforzate, definite secondo i criteri dell'Unione, che permettano ad un gruppo di paesi guida di farsi carico dello sviluppo di una politica europea degli armamenti, dapprima applicabile ad un gruppo ristretto e quindi agli altri membri.

Accanto alle evoluzioni istituzionali, è in corso un processo di riforma della regolamentazione relativa all'offerta, rappresentato dall'iniziativa nota come Loi – Accordo Quadro e dalle (pur limitate) discussioni intorno alla riforma dell'Articolo 296 del Trattato dell'Unione.

Potenzialmente, l'armonizzazione parziale delle regolamentazioni dei principali paesi produttori di armamenti potrebbe essere la premessa per un simile passo in ambito europea; in realtà, il forte legame con le politiche nazionali, l'assenza di un chiaro quadro politico ed istituzione di riferimento (la Loi non dà infatti luogo ad una organizzazione) e la sostanziale “esclusività” del “club” dei paesi membri potrebbero rappresentare non uno sti-

molo ma un ostacolo ad una azione di riorganizzazione a livello comunitario.

I lavori in ambito Loi sono ancora lontani dalla conclusione e paiono comunque limitati nello scopo e non sembrano mettere in sostanziale discussione l'autorità nazionale in favore di una condivisione di potere a livello europeo.

D'altra parte, il coinvolgimento delle Organismi dell'Unione (e segnatamente della Commissione) nel processo di regolamentazione del mercato della difesa è reso assai difficile dalla presenza nei Trattati di un articolo, il 296, che sancisce la possibilità da parte dei governi di esentare questo importante settore dalle regole altrimenti vigenti nel mercato europeo.

Il ruolo della Commissione è stato quindi essenzialmente limitato all'ambito dei beni duali, mentre gli sforzi del Consiglio hanno portato all'adozione di un Codice di Condotta relativo al solo export degli armamenti e legalmente non vincolante.

Se si desidera permettere alle istituzioni europee di svolgere un potenzialmente benefico ruolo di riforma del mercato della difesa, si deve poter intervenire sull'Articolo 296.

Le proposte in tal senso possono essere:

- L'abolizione dell'articolo (in sede di revisione dei Trattati)
 - La riduzione dell'ambito di applicazione dello stesso
 - L'astensione dall'invocare l'applicazione da parte dei governi nazionali
- In definitiva, la necessità di riformare il mercato della difesa in Europa ha spinto verso l'adozione di diverse soluzioni intergovernative e plurilaterali spesso non coerenti fra di loro e di dubbia efficacia, rispetto agli alti obiettivi posti dello sviluppo della Pesd.

E' compito dei governi europei favorire l'adozione di azioni specifiche che permettano il recupero di queste iniziative, positive ma insufficienti, nell'ambito del più vasto progetto dell'Unione Europea, al fine di permettere quell'efficacia che sarebbe altrimenti negata dal perpetuarsi di una situazione di frammentazione a livello nazionale.

3. ALCUNE PROPOSTE

In sintesi, la discussione in ambito europeo circa l'avvenire della Politica Europea di Sicurezza e Difesa sottopone all'attenzione dei decisori politici alcune opzioni istituzionali così riassumibili:

- Estendere anche alla Pesd la clausola della “cooperazione rafforzata” nella sua accezione più generale (non necessariamente predeterminata, ad esempio nei criteri e nelle modalità di convergenza);
- Semplificare al massimo il ricorso a tale clausola, sia riducendo il numero minimo dei paesi che possono parteciparvi sia eliminando il diritto di veto;
- Prevedere un meccanismo semplificato di “opting in” per i paesi che desiderino aderire in un secondo momento;
- Adottare questo meccanismo sia per le operazioni militari che per le collaborazioni nel campo degli armamenti;
- Assorbire, quindi, all'interno del Trattato le cooperazioni militari e industriali oggi esistenti;
- Prevedere una cooperazione rafforzata, in questo caso predeterminata ai paesi oggi membri, per l'inclusione dell'art. 5 dell'Ueo nel Trattato, eventualmente in un protocollo allegato;
- Chiedere al nostro governo di premere affinché tali riforme vengano adottate con il nuovo Trattato, seguendo in ciò la linea indicata dai ministri degli esteri francese e tedesco (rapporto de Villepin-Fischer).

In particolare, nel settore dell'industria della difesa, il superamento delle attuali problematiche di regolamentazione ed istituzionalizzazione del mercato della difesa richiedono:

- L'adozione di misure di cooperazione rafforzata, secondo quanto prescritto dai Trattati, in ogni ambito di interesse dell'industria degli armamenti (armonizzazione dei requisiti, delle regolamentazioni, dell'export, delle politiche di ricerca e sviluppo,...).
- La promozione di una Agenzia dell'Unione Europea che governi questo processo e la cui membership, potenzialmente onnicomprensiva, sia definita da criteri di adesione precisi.

- L'Agenzia dovrebbe porsi come luogo istituzionale di assorbimento delle attuali iniziative intergovernamentali in essere.
- La costituzione di un Fondo comune Europeo per il procurement e la ricerca e sviluppo da finanziare su base volontaria, i cui contributi non siano conteggiati ai fini del rispetto dei criteri di Maastricht. Si dovrebbe demandare all'Agenzia la gestione di tale fondo, secondo i principi definiti da un comitato dei paesi membri.
 - La revisione critica dell'Articolo 296 del Trattato, giungendo possibilmente ad una sua eliminazione. Tale opzione richiede l'attuazione di una procedura di revisione del Trattato potenzialmente problematica.
 - In subordine, qualora non fosse possibile eliminare o modificare sostanzialmente tale articolo, l'adozione di un percorso certo (nei modi e nei tempi) per la sostanziale progressiva diminuzione del suo ambito di applicazione (intervenendo sulla lista collegata).

The application of the concept of enhanced cooperation to CFSP/ESDP and arms industry

(Mathias Jopp and Udo Diedrichs) *

1. FLEXIBILITY, DIFFERENTIATION, ENHANCED COOPERATION – LINES OF ARGUMENTATION

The debate about forms of flexibility and multi-speed integration in the EU is much older than the latest discussions and the Treaty reforms of Amsterdam and Nice seem to make believe (Schoutheete 2001: 150ff.; Wessels and Jantz 1997: 345). Since the early seventies the political discourse in the European Communities contained thoughts and reflections about a more flexible organisation of the integration process – particularly in the light of the 1973 enlargement and in the wake of discussions about monetary union. The Tindemans Report of 1975 pointed at the need of making progress in economic and monetary policy by a certain number of states only, possibly not including the whole range of EC membership (Wessels 1998b).

After 1989 new impetus was injected to this discussion as it became clear that the wish for accession by the central and eastern European countries would turn the familiar west European community into a broader pan-European organisation in which the old rules and procedures for policy-making could not be easily applied. The introduction of certain forms of differentiation became increasingly part of the political discourse, but also found its way into ‘real’ decision-making. The first considerable experience with differentiation came with the project of economic and monetary union (EMU) negotiated at the IGC 1991 and sealed by the Treaty of Maastricht (Tsoukalis 2000). The second round of debate on flexibility and differentiation began in the mid-nineties in view of the

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growing awareness of the enlargement process and the future size of a Union of twenty-seven or more member states. In order to maintain the EU's capability for decision making and taking action, even if not all member states participated in the execution of the decisions, a number of clauses for "enhanced cooperation" were included into the Amsterdam Treaty of 1996 and amended to make them better work through the Nice Treaty of February 2001.

The debate on flexibility in defence policy gained momentum already in 1996 when in the run-up to the Amsterdam summit six nations suggested – with little success – an establishment of an EU defence policy by absorbing the WEU through the EU and by including parts of the WEU Treaty into the EU Treaty (notably the mutual assistance clause) in the form of a protocol signed only by the willing member states (Missiroli 2000: 19f.). Since the final break-through towards an EU defence policy at the Franco-British summit in Saint Malo and the successive EU summits in Cologne, Helsinki, Feira and Nice, the debate about flexibility has not disappeared. On the contrary, it has become even more obvious that concepts of flexibility and enhanced cooperation need to be expanded to the defence field; otherwise, due to the varieties in security status of the member states, differences in capabilities of big and small states and of interests between interventionist and non-interventionist countries (Jopp 2002), it will be difficult to find agreement on developing armaments cooperation and taking military action even at the lowest level of the Petersberg tasks for crisis management.

The changes of the Nice Treaty on the provisions about enhanced cooperation underline the ongoing search of an improved formula for ensuring flexibility in the Treaties. After Nice, the discussion continues, in particular within the European Convention and the debate about the future of the Union. These developments have to be taken into account.

This paper evaluates in a first step existing models of (in particular EMU, Schengen, closer/enhanced cooperation since Amsterdam and Nice) as well as contributions to the ongoing political discussion and in a second step tries to draw conclusions in order to present viable and manageable ways of organising flexibility in the EU.

So far, no crisis management operation has been carried out by the EU, nor has there been a major step towards an EU armaments policy including joint procurement projects. It will therefore be crucial to reflect about the limits and possibilities of such steps for the future.

To sum up, the main initial assumptions of this paper are:

- A variety of divergences and differences exist between the EU countries in terms of status, resources, capabilities, national interests and traditions which make it hard to conceive a uniform and 'single' policy in CFSP, ESDP or defence industry.
- Forms of flexibility are indispensable for the further development of CFSP/ESDP in general, but in particular of defence industrial cooperation, in order to assure that the EU will become an efficient and effective actor in the international scene. The perspective of enlargement even further stresses this point.
- In particular, cooperation in the field of defence industrial policy is of crucial importance for the whole development of ESDP as capabilities represent one of the major actual challenges to the project.
- Without increasing efforts in the pooling and bundling of resources and decision-making capacities among the European countries there will be a considerable waste of financial and technological assets.
- Inspirations for flexibility in CFSP/ESDP and defence industrial cooperation can be gained from different examples and models already in place (like EMU, Schengen, clauses for enhanced cooperation in the Treaties), but still there has to be a genuine reflection about the appropriateness of these mechanisms for the sector of defence industrial cooperation.

2. MODELS OF FLEXIBLE INTEGRATION: EMU AND SCHENGEN

As a starting point, we will take a closer look at mechanisms for flexibility which have already been established inside and outside the Treaties. These will be discussed primarily along their own institutional logics. Conclusions for CFSP/ESDP and

defence industry will then be drawn in the second part of the paper.

Among the most prominent cases of flexibility, the EMU and the Schengen system have to be mentioned. The programme for the establishment of EMU contained several key elements (Hix 1999: 284ff.). First, it defined clear and fixed criteria for the accession to monetary union, the convergence criteria (whose economic rationale could nevertheless be criticised) (Tsoukalis 2000: 163ff.). Second, it created a time schedule in several phases defining the way towards EMU and determining the latest date of realisation of monetary Union, the 1st of January 1999. Third, it describes institutional and procedural arrangements for decision-making in EMU, and fourth, it provides for the latecomers – those who fail to enter at the first date – to become members of monetary union. This already contained an important element of differentiation (Giering and Janning 2002: 676): It was not clear – or at the time rather improbable – that all EU member states would be able or willing to fulfil the convergence criteria. This implied that monetary union would start with only a part of the EU countries – not even a majority was needed (Tsoukalis 2000: 163).

Apart from the described set-up, certain further elements of differentiation were included. Britain reached an opt-out at Maastricht enabling the country not to participate in the third stage of EMU; additionally, Denmark obtained an opt-out after the negative outcome of the referendum on the Treaty of Maastricht in June 1992; de facto, also Sweden is using an opt-out as the country does not participate in the third stage of EMU (as a non-participant in the ERM II it would formally not be obliged to enter the third stage of EMU). While the UK and Sweden do not participate in the ERM II, Denmark does.

After 1999, Greece was the only EU country which was not able to enter EMU as the country did not fulfil the convergence criteria. So, from 1999 until 2001, differentiation was even more complex.

The picture in EMU remains ‘fuzzy’. Today 12 countries form

the 'euro zone', while three remain outside. Nevertheless, EMU's functioning is perceived as sufficiently smooth and seems to exert an influence on the 'outsiders'. In Denmark and Sweden, recent Eurobarometer polls show that a majority of the population seems to be in favour of the single currency now, while in the UK the number remains low, albeit growing in the last months (Eurobarometer 57, Spring 2002).

Convergence criteria served as a means to arrive at the third stage of EMU – the introduction of the single currency. The overall objective was "getting the euro". On the other hand, they reflected an approximation of key economic indicators among the participating countries which should be obeyed even after the attainment of EMU within the Stability and Growth Pact (Allsopp and Vines 1998). It should also not be forgotten that in this context, certain measures of EU-wide solidarity had been introduced enabling the structurally weaker countries to catch up with the more developed economies. The cohesion fund was set up in 1992 in order to transfer considerable financial means within the Union; convergence was accompanied by solidarity.

Therefore, when dealing with convergence criteria, the question arises: Will they be regarded as an end in itself, is approximation the main task they should fulfil, or will there be an objective going beyond this, in the way of a common project which could serve as the 'true' incentive for achieving the criteria? Further, in EMU the third stage was the deadline for the single currency including the loss of national sovereignty in monetary policy and the transfer of considerable powers to an independent institution – the European Central Bank (ECB). This loss appeared as justifiable in the light of the economic advantages of a single currency.

Applied to the sector of defence industrial policy, this means that the existence of an identifiable and highly appreciated *political project*, to which convergence will path the way, and which can serve as ignition and engine for ensuring that convergence will be achieved after all (Missiroli 2000: 33). Defining convergence as the end in itself, on the contrary, could meet considerable resistance due to the lack of further incentives. A crucial issue

then is: what could such a *project* be about? Is the definition of a common defence policy including sufficient resources in budgetary and operational terms, even the establishment of European armed forces a feasible and manageable project in the medium or long run? Certain doubts will remain about the political possibilities.

A second thought should be devoted to the nature of the convergence criteria. Some of them were based upon concrete figures (3% of public deficit and 60% of public debt as limits to national fiscal policy), while others were based upon 'best practice', i.e. relative to the member states achieving the most successful results (inflation within 1,5% of the average rate of the three best performing countries, long-term interest rates within 2% of the three countries' average with least inflation). The problem with the 'absolute' figures is: which ones could be seen 'neutral' standards prescribing the common objective? The example of EMU has shown that even with concrete figures, there was still leeway for interpretation and flexibility, as the achievement of 60% of public debt was not taken rigorously but could be applied in cases where countries had made considerable efforts to come *close* to that figure. As to the relative method: which countries (in- or outside the EU) should be taken as a point of reference?

But EMU is not the only example of differentiation. At Maastricht, the UK also obtained an opt-out in the protocol on social policy; this situation lasted until 1997 when the new labour government decided to bring Britain fully into the social policy chapter.

A second case where flexibility was of importance started as an extra-Treaty exercise: the Schengen process. In a small Luxembourg location five countries - France, Germany, Belgium, Luxembourg and Netherlands - by signing the Schengen Agreement decided in 1985 to facilitate the free movement of persons without border controls, to be accompanied by other complementary measures. In 1990 the Schengen Implementing Convention (SIC) was concluded providing a legally binding text for concrete implementing

measures to be taken in the next years; the process covered an increasingly broad range of issues like visa, asylum, immigration, police and judicial cooperation. This effort was organised outside the Treaties as an intergovernmental agreement, not including the EU institutions; on the other hand, the intention of the participating countries from the outset was to hold the Schengen process compatible with the EU in order to make a future incorporation into the Union possible without major frictions. So, e.g. the visa mark was not labelled as a Schengen visa, but as a European one.

Under the Schengen process, a number of decisions and actions were concluded which became part of what has been called the 'Schengen acquis'. It is important to keep in mind that there was a dynamics characterised by the growth in legally relevant output as well as in policy fields covered by the countries involved. A third expansion concerned new members. Since the signing of the SIC, Italy, Spain, Portugal, Greece, Austria, Finland, Sweden and Denmark became participants in the process (den Boer and Wallace 2000: 498). Until Amsterdam, except the UK and Ireland, all EU countries were members of the Schengen area. As the British were not willing to finally join the undertaking, flexibility was chosen for managing the incorporation of Schengen into the EU. Apart from the British issue, there were further problems. Traditionally, several common travel areas had already existed in Europe: Benelux, UK-Ireland and the Nordic Area (den Boer and Wallace 2000: 498), in which border controls had been lifted. While Benelux did not pose a problem, as all three countries were part of the SIC, for Ireland the adhesion to Schengen would have meant putting at risk the free travel area with the UK; for countries like Norway and Iceland, on the other hand, without additional adjustments free borders with their Scandinavian neighbours would have been questioned. The result was that even before 1997/1999, but in particular with the inclusion of Schengen into the EU Treaty, forms of flexibility came into existence which preserved specific conditions for a certain number of countries inside and outside the EU (Gimbal 1998).

The inclusion of the Schengen acquis was a matter of heavy dispute among the member states at the IGC 1996-1997; although a majority of member states agreed on the transfer of certain policies like external frontier issues into the EC, there was no such clear majority for the whole Schengen legal corpus (den Boer and Wallace 2000: 513). In particular the Dutch Presidency pushed for the issue, finally with success and to the surprise of many.

The Treaty of Amsterdam provided for the integration of the Schengen acquis into the framework of the Union through a (legally binding) Protocol annexed to the TEU (Gimbal 1998: 146). The Schengen institutional system was taken over by the EU, with the Council being responsible for the duties of the former executive committee, and the administrative staff becoming part of the Council General secretariat. This was a complex process, as in the context of the EU competencies had been shifted between the first and the third pillar. The newly created area of freedom, security and justice was composed of EC policies (visa, asylum, immigration, and other policies related to the free movement of persons) as well Third Pillar cooperation (police and judicial cooperation in criminal matters). The Council had to decide into which sphere the different acts of the Schengen acquis were to be incorporated (Gimbal 1998: 147).

In this process, differentiation was introduced or rather confirmed. Britain and Ireland obtained an opt-out clause enabling them not to take part in the Schengen framework, while Denmark was granted a special status as to the legal character of the Schengen agreement. Britain and Ireland were able to decide on a case-to case basis if they wished either to participate in the adoption of a legal act under Title IV of the EC Treaty, or to take over certain legal acts adopted by the other EU countries, thus opting into some provisions of the EU-transformed Schengen acquis (Gimbal 1998: 149); Denmark (which had been member of the Schengen system before) kept the Schengen acquis as part of an international agreement, but did not take over the EC provisions from the start.

Here, the situation is: acts under the EC Treaty (Title IV) will not be valid for the country as EC law, while acts under the EU Treaty (Title VI, third pillar) will have the same quality as for the other Schengen countries (Gimbal 1998: 149). Denmark is still able – within 6 months - to adopt measures taken under the EC Treaty (Title IV) as part of an international agreement with the other member states (Art. 5, Protocol (N° 5) on the position of Denmark annexed to the Treaty on European Union). Norway and Iceland, which had been associated to the Schengen process, kept their status so that free movement of persons in the Nordic area was preserved.

The result is an extremely complex set up, whose details are difficult to grasp for outsiders. Even after the incorporation of the Schengen acquis into the EU, the situation has not dramatically improved. On the other hand, exactly these special provisions enabled steps which under a classic and orthodox approach would not have been possible with all EU countries.

3. CLOSER COOPERATION FROM AMSTERDAM TO NICE

3.1. The debate on closer cooperation at the IGC 1996/97

Although with EMU and Schengen some models for flexibility have been created, this did not satisfy the demand for a more institutionalised form of closer/enhanced cooperation in the Treaties. The crucial question was: Should the Treaties include a clause for enabling the member states to more closely work together in policy fields of their choice?

The discussion about flexibility gained a new dynamic at the IGC 1996 which led to the conclusion of the Treaty of Amsterdam. Several motives - which still are of importance today when dealing with closer cooperation - lay behind this debate (Schoutheete 2001: 154).

- There was a will to find solutions for an enlarged EU in which decision-making with a growing number of member states would become ever more difficult and could even slow down the integration process.
- Further, it should be avoided that one or few member coun-

tries were able to block decision-making in a field considered important by others; this hinted to a certain extent at the British position in the EU.

- Another argument concerned EMU where flexible patterns of participation have already been inbuilt and might require adjusted modes of policy-making for those countries to join the euro zone.
- Finally, the emergence of forms of flexible cooperation outside the Treaties should be avoided - such as Schengen - leaving the institutional framework and the *acquis* at the margins.

These arguments, however, have not been shared by all member states in the same way; the strongest advocates have been France and Germany, the Benelux countries, Italy, Finland and Austria (Schoutete 2001: 153). Nevertheless, proposals for some kind of closer or enhanced cooperation were submitted by practically all delegations. The joint letter by Chancellor Kohl and President Chirac from 6 December 1995 particularly stressed that no single member should be allowed to block the integration process, while the Benelux memorandum of March 1996 emphasized the challenge of enlargement. The reflection group under Carlos Westendorp in its report from December 1995 summed up options and conditions for flexible forms of integration (Missiroli 2000: 6f.), and in October 1996 France and Germany submitted a proposal on flexibility including more specific details. In particular they stressed that no member country should have the right to veto the use of enhanced cooperation, while Italy in a memorandum wished to preserve consensus among the WEU member states if such a clause should be used for defence policy (Missiroli 2000: 9).

The hot phase of the negotiations started in the second half of 1996. Still, the exact scope and mechanisms for flexibility were not clear, which caused considerable discussions and tensions among the participants. Under the Irish Presidency, different forms of flexible cooperation were identified and classified which helped to structure the discussion and which provide a useful tool also for analytical purpose (Schoutete 2001: 159).

The following models can be distinguished:

- case-by-case flexibility (e.g. in the form of constructive abstention)
- flexibility in a pre-determined policy area; here the distinction can be made between flexibility inside (EMU) and outside (Schengen until Amsterdam) the Treaties;
- a general approach including enabling clauses in the Treaties.

While the first and second models already existed in reality, it was the third option which caused discussions and frictions between the member countries. In the weeks up to the Amsterdam European Council, it was particularly the scope and the mechanism which came under heavy discussion. Concerning CFSP, a remarkable move could be observed over time. In the run-up to the negotiations there was a widespread conviction that closer cooperation should also be used in the second pillar; particularly the German and Italian governments supported such a step (Hall 2000: 13). By the end of the negotiations, however, the climate had changed; a majority of delegations – with the United Kingdom at the centre - did not consider closer or enhanced cooperation as a viable and wishful instrument in CFSP (Giering and Janning 2002: 680). Instead, constructive abstention was chosen. Missiroli sums up the key rationale for this decision: “(...) in the end, no European government was in reality in favour of a specific flexibility clause for the CFSP proper: the smaller countries, in general, for fear of being outvoted, Italy and Spain for fear of being excluded, Britain for reasons of principle and tradition. Yet even Germany and France did not insist on that point (...)” (Missiroli 2000: 9f.).

3.2. The decisions taken at Amsterdam: a general review

The final decision taken at the IGC provided for a selective application of flexibility in the Treaties. The following core elements were introduced:

- Closer cooperation will only be included in the first and the third pillars.

- In the second pillar the possibility of constructive abstention (Art. 23 (1) TEU) was foreseen.
- Closer cooperation was provided for by a general clause (Art. 43-45 TEU).
- Specific provisions were found for the EC (Art. 11 TEC) and the third pillar (Art. 40 TEU).

Constructive abstention (Art. 23 (1) TEU) has been regarded as a kind of compensation for the failure of introducing closer cooperation proper into the CFSP Title of the Treaty. However, a clear distinction must be made. Constructive abstention is rather a decision-making procedure than a method of ‘organising’ integration, and - most important – it tries to make *consensus* possible rather than facilitating flexible solutions. Art. 23 TEU stipulates that any member state is allowed to make a formal declaration when abstaining, which means that it will not have to apply a decision, but accepts that the Union as such is bound by it. The respective member state is also called not to take any action in conflict with the decision or to impede its application (Art. 23 (1) TEU). If the member states resorting to constructive abstention gather more than one third of the weighted votes, a decision will not be taken; this underlines that the mechanism is not intended in the first place as a way of flexibility, but rather as an instrument for facilitating consensus; it will not be possible that a minority of member countries can use constructive abstention.

Closer cooperation, instead, is based on a different logic. The general clause of Article 43 TEU lists up a number of conditions for closer cooperation. First of all, it is stated that those member countries wishing to resort to closer cooperation may make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the cooperation (Art. 43 TEU):

- is aimed at furthering the objectives of the Union and at protecting and serving its interests;
- respects the principles of the Treaties and the single institutional framework;
- is used only as a last resort;

- concerns at least a majority of member states;
- does not affect the *acquis communautaire*;
- does not affect the competences, rights and obligations as well as interests of the non-participating member countries;
- is open to all member states and allows them to become member at any time, provided that they comply with the decisions already taken;
- complies with the specific additional criteria laid down in Art. 11 TEC (for the EC) and Art. 40 TEU (for the third pillar).

Finally, it is stated that the member states shall apply the acts and decisions adopted for the implementation of the cooperation in which they participate, and that those member states not taking part shall not impede the implementation of closer cooperation.

Article 44 TEU states that for the adoption of the acts and decisions necessary for the implementation of closer cooperation, the relevant institutional provisions of the Treaties apply (Art. 44 TEU). While all members of the Council are allowed to attend the deliberations, only those Member States participating in closer cooperation will take part in the adoption of decisions. The qualified majority is defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the TEC. Unanimity will be constituted by only those Council members concerned.

Expenditure resulting from implementation of the cooperation, other than administrative costs entailed for the institutions, has to be borne by the participating Member States, unless the Council, acting unanimously, decides otherwise.

In Article 45 TEU the Council and the Commission are called to regularly inform the European Parliament of the development of closer cooperation.

This list of conditions and accompanying statements imposes a rather high threshold on the establishment of closer cooperation; the fathers of the Treaty seem to have feared that flexible forms of decision-making might impinge on the legal and constitutional heritage of the Union and menace its consistency. The conditions defined can be divided into (Wessels 1998a: 197):

- provisions concerning the compatibility with the Treaties and
- provisions concerning the rights and options for non-participating member states.

There is a clear priority given to solutions within the institutional framework of the Treaties among all member countries (closer cooperation as a last resort); this is underlined by the strict and detailed list of requirements; therefore the following key questions arise:

- are the conditions and criteria laid down applicable in a sufficiently precise manner and in due time?
- Are there 'objective' methods to assess and evaluate the key conditions?

This question becomes even more virulent in the light of further conditions for the first and the third pillar. Here more specific criteria are listed up as well as the relevant procedural rules.

3.3. Closer cooperation in the first and third pillars

In the first pillar, the following additional conditions are to be met (Art. 11 TEC). Member States which intend to establish closer cooperation may be authorised, provided that the cooperation:

- does not concern areas which fall within the exclusive competence of the Community;
- does not affect Community policies, actions or programmes;
- does not concern the citizenship of the Union or discriminate between nationals of Member States;
- remains within the limits of the powers conferred upon the Community by this Treaty; and
- does not constitute a discrimination or a restriction of trade between Member States and
- does not distort the conditions of competition between the latter.

Article 11 TEC also defines the procedure for the establishment of closer cooperation. Member States wishing to establish closer cooperation may address a request to the Commission,

which can submit a proposal to the Council to that effect. The authorisation is granted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. If the Commission does not make a proposal, it has to inform the Member States concerned about the reasons. This means that the Commission in the EC-related fields of closer cooperation has a key role to play; it acts as the guardian who is able to open the door or keep it shut. However, also the member states were granted a right of last resort if they considered a case of closer cooperation as detrimental to their interests.

This safety net was shaped as a veto option. If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote will not be taken. The Council then still is able, acting by a qualified majority, to refer the matter to the Council, meeting in the composition of the Heads of State or Government, which will decide on the issue by unanimity (Art. 11 (2) subparagraph 2 TEC).

Member States who wish to join a closer cooperation already existing must notify their intention to the Council and to the Commission; the latter gives an opinion to the Council within three months after receiving that notification. Within four months of the notification, the Commission will be able to take a decision, which could include specific arrangements if necessary (Art. 11 (3) TEC). Again, the Commission's role as a guardian is emphasised by these provisions.

For the third pillar, the provisions are different (Art. 40 TEU): Member States which intend to establish closer cooperation may make use of the institutions, procedures and mechanisms laid down by the Treaties under the condition that enhanced cooperation

- respects the powers of the European Community, and the objectives laid down by this Title;
- has the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice.

The authorisation will be provided by the Council, acting by a qualified majority at the request of the Member States concer-

ned; the Commission is invited to present an opinion, while the request is also passed to the European Parliament. Here, the Commission is not able to act as a 'filter' for enhanced cooperation, but the Council takes the key decision.

Similar to the first pillar, for important and stated reasons of national policy, a decision can be blocked.

Any Member State which wishes to take part in closer cooperation has to notify its intention to the Council and to the Commission, which then gives an opinion to the Council within three months after receiving that notification, possibly accompanied by a recommendation for specific arrangements. Within four months of the date of that notification, the Council decides on the request as well as on those arrangements. The decision will be regarded as taken unless the Council, acting by a qualified majority, decides to hold it in abeyance; in this case, the Council is called state the reasons for its decision and set a deadline for re-examining it.

The provisions introduced at Amsterdam can be regarded as a breakthrough for the future use of enhanced cooperation, but at the same time they were far too cumbersome and overloaded as to be applicable in real life (Janning 1997). The conditions set up were numerous and often difficult to define with sufficient precision; so they rather served as an impediment than as an incentive. It was not at all clear what certain stipulations mean, e.g.

- the use of closer cooperation as a *last resort* left open exact terms of the criteria for defining the moment when all other means had been exhausted.
- The provision that closer cooperation shall not *affect* the *acquis communautaire* did not spell out in which way this was the *acquis* would be affected or possibly damaged; it provided a rather broad range of arguments.
- The demand that closer cooperation should neither affect the competencies, rights, obligations or interests of non-participating members lacked a precise content. Who would define when a member states' *interest* would be *affected*?

Finally, the veto option was regarded as inconclusive as closer

cooperation was explicitly based on the assumption that not all member states would have to agree on a certain policy. Giving the outsiders a means of blocking the process because of certain reasons of national policy could make it hostage by certain countries.

The impression prevailed that the provisions on closer cooperation in the Amsterdam Treaty were rather meant to discourage the use of this instrument. It seems that the 'bad conscience' of the 'Treaty fathers' had finally prevailed making them regret having allowed closer cooperation to become part of the Treaties.

Very soon critics emerged and called for a revision of the stipulations on closer cooperation, thus lowering the threshold for initiating the procedure and limiting the provisos that could impede its use. In general, the provisions had to become leaner and more flexible themselves. Otherwise it was feared that a kind of 'inflexible flexibility' would be the result.

4. ENHANCED COOPERATION IN THE TREATY OF NICE

After the conclusion of the Amsterdam Treaty, the discussion about closer cooperation did not come to an end. On the contrary, it gained new dynamics in the run-up to the IGC 2000 in which models of flexibility were discussed also for the second pillar. The dissatisfaction with the Amsterdam results nourished a fresh debate about improvements and corrections on closer/enhanced cooperation.

A German-Italian initiative took the lead by presenting a proposal in October 2000; both governments came to the conclusion that under the Amsterdam Treaty "the present conditions for the application of enhanced cooperation (...) practically prevent the use of this instrument."¹ Therefore they recommended to expand the procedure to the second pillar, and to reduce the minimum number of countries needed to eight or respectively one third of all EU members, being even lower in cases of implementation of a common strategy, joint action or common position. The veto

¹ See IGC 2000: Enhanced cooperation, position paper from Germany and Italy, 4 October 2000, CONFER 4783/00.

option should generally be lifted, as it was not designed to further the use of enhanced cooperation. There were two main reasons for the German-Italian initiative: on the one hand, blockades in the implementation of a common strategy were to be avoided, on the other hand 'coalitions of the willing' in defence policy and armaments cooperation should be made possible (Regelsberger 2001: 159). Belgium also made similar suggestions, pleading for the High Representative to play a decisive role in the process (Agence Europe, 11.10.2000).

Also Spain had called for the extension of enhanced cooperation to CFSP (Hall 2000: 12), but preferred unanimity instead of qualified majority in the Council for enabling the procedure, and doubted on its use in case of implementing CFSP decisions. The British government, in contrast, clearly rejected this idea (supported by Sweden, Denmark and Ireland), making it difficult to reach an agreement; also other smaller countries were unsure about the number member states needed to initiate enhanced cooperation (Regelsberger 2001: 159f.). The picture remained fuzzy until the Nice summit, where British opposition carried a victory over the advocates of enhanced cooperation by submitting the procedure to a veto option and excluding the defence and military field from its application.

The Treaty of Nice has nevertheless changed the relevant provisions on closer cooperation now renamed 'enhanced cooperation'. Some of the new provisions helped to facilitate the use of the procedure in the future; thus it required not a majority of member states as in the Treaty of Amsterdam, but only eight countries to initiate enhanced cooperation (Art. 43 TEU). This still constitutes a majority in the present EU, but not so in an enlarged Union. In the first and third pillar, the veto option was lifted, making it now impossible for a member country to block a decision on enhanced cooperation on grounds of a stated and important reason of national policy. Instead, a member of the Council may request that the matter be referred to the European Council. After this has happened, the Council is able to follow the procedure initiated.

This is not the case in the second pillar. Here, the veto option is kept and thus menaces to ‘kill’ enhanced cooperation even before it can be initiated. Member countries interested would most probably be aware at an early stage if other partners show opposition to their intentions and would, therefore, refrain from using enhanced cooperation.

The enabling clause introduced in CFSP stipulates that enhanced cooperation shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene (Art. 27a). It has to respect:

- the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy;
- the powers of the European Community, and
- consistency between all the Union’s policies and its external activities.

These conditions must be seen in conjunction with the general criteria for enhanced cooperation as defined in Art. 43 TEU. The threshold still can be considered as rather high, thus not inviting those countries interested in enhanced cooperation. It remains to be seen if the provisions will ever be applied under these heavy restraints.

An important limitation is defined in Art. 27b TEU which states that enhanced cooperation in CFSP will only relate to implementation of a joint action or a common position. It will furthermore *not* relate to matters having military or defence implications. This makes it impossible to use the relevant articles for defence industry.

In Article 27c TEU the procedure is defined. Member States which intend to establish enhanced cooperation between themselves address a request to the Council to that effect. The request will be forwarded to the Commission and to the European Parliament for information.

The Commission is called to give its opinion particularly on

whether the enhanced cooperation proposed is consistent with Union policies. Authorisation is granted by the Council, acting by a reinforced qualified majority, i.e. requiring at present 62 out of 87 weighted votes and 10 out of 15 member states. Without prejudice to the powers of the Presidency or of the Commission, the Secretary-General of the Council, High Representative for the common foreign and security policy, shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.

Any Member State which wishes to participate in enhanced cooperation notifies its intention to the Council and inform the Commission. The Commission then will give an opinion to the Council within three months after receiving that notification. Within four months of the date of receipt of that notification, the Council will have to take a decision and on specific arrangements regarded as necessary. The decision will be regarded as taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.

The result of Nice was in a way putting upside down the whole discussion of the previous months and came as an unpleasant surprise to many observers (Regelsberger 2001; Missiroli 2002). Exactly the field where flexibility was most intensively discussed, was finally excluded in the Treaty, i.e. defence policy and in particular armaments industrial cooperation. In the end, British resistance, accompanied by the lacking commitment of France and Germany in the final stage of the Nice negotiations, contributed to the 'strange' outcome. The discussion on flexibility had apparently fallen victim to different national priorities and the high amount of political attention and energy absorbed by the quarrels over the distribution of votes and seats in key institutions.

5. THE DISCUSSION ABOUT FLEXIBILITY AFTER NICE

After the conclusion of the Nice Treaty, the reform impetus in CFSP and ESDP did not come to a standstill, on the contrary – it acquired new strength in the wake of the Convention and the expected IGC 2004 (Jopp, Reckmann and Regelsberger 2002). A number of proposals is being discussed aimed at rendering ESDP and defence cooperation more efficient, effective and democratically accountable. Also a revision of the provisions concerning enhanced cooperation (Art. 27 a-e TEU) is being debated in order to make it more operational in the future (Jopp, Reckmann and Regelsberger 2002: 232). In particular, the limitation of the clause to issues without military or defence implications should be lifted, and the application should be extended beyond the mere implementation of joint actions or common positions, thereby allowing more medium- and long-term approaches (Ibid.). The danger exists that without a manageable clause for enhanced cooperation certain member states will prefer to organise ad-hoc coalitions outside the Treaties, with the further effect of weakening the EU framework and rendering the institutional landscape even more opaque and complex. The Convention itself decided to set up a working group on defence chaired by Commissioner Michel Barnier in order to reflect reforms in this field. The mandate of the working group contains a number of highly interesting elements many of which are related to flexible arrangements.² Among the tasks of the working group the following are of special relevance:

- The group is called to discuss the issue of including in the Treaties (or in a Protocol) an *undertaking of collective defence*, possibly with an ‘opting-in’-clause for those member countries joining at a later stage (Mandate Working Group on defence, item 4).
- The possibility of establishing *convergence criteria* similar to the EMU is also mentioned as a means for improving com-

² The European Convention, Secretariat, Mandate for the Working Group on Defence, Brussels, 10 September 2002 (11.09), CONV 246/02 WG VIII1.

mitments for military capabilities (mandate Working Group on Defence, item 7). These criteria should serve as a condition for taking part in the EU's defence policy; a 'pact' would ensure that these criteria will be respected over a longer time. Again, certain countries not willing or able to join would be free to do so later if they meet the criteria.

- In the case of *crisis management*, forms of *enhanced cooperation* should be considered (Mandate Working Group on Defence, item 9). The mandate sketches the option of undertaking an operation by some member states with the implicit support by others or through constructive abstention; additionally, concerning cases of mutual assistance and military capabilities, mechanisms should be found which enable some member states able and willing to do so to *intensify their commitments*.
- In the field of *armaments*, the inclusion of *forms of cooperation* – possibly in flexible constellation- will be discussed; also the setting up of an armaments agency should be on the agenda (Mandate Working Group on Defence, item 17).

This overview reflects the key role which models of flexibility have gained in the debate on institutional reforms in the field of defence policy. Our assumption is that flexibility might not be needed in all cases mentioned above; nevertheless some areas are of high importance. It is less in mutual assistance but in crisis management where flexible solutions are relevant because it is here where ESDP will have to become operational. Further Treaty changes should facilitate EU missions of a group of member states to in cases where all members are not able or willing to take action.

The final report for the working group on defence reflects the central role played by considerations on flexibility, although it became clear that no overall consensus had been found (Working Group on Defence 2002) – on the contrary, a high level of dispute seems to prevail in this sensitive field. While some members of the group pleaded for flexible constellations like the creation of a "defence Euro-zone" including those countries willing to make pre-identified forces as well as control and command capabilities

available, and to participate in multi-national forces with integrated command structures (Working Group on Defence 2002: 19), other members were strictly opposed to the use of enhanced cooperation in the defence field (Ibid.). No clear picture emerges from these statements, so that the Convention so far has not presented a workable proposal, but a menu of possible solutions.

6. EFFECTS OF POSSIBLE EXTENSION OF FLEXIBILITY AND ENHANCED COOPERATION TO CFSP/ESDP AND THE FIELD OF DEFENCE INDUSTRY

The following chapter will be dedicated to the options of flexibility in the field of CFSP/ESDP and defence industrial cooperation; starting with an analysis of the situation and the initiatives taken so far by European countries to improve cooperation, the impact of possible options for flexibility will be assessed.

6.1. Flexible forms of cooperation in CFSP and ESDP: recent developments

Flexible constellations have always been a feature of the European security architecture. Membership of NATO, WEU and the EU are not congruent, leading to different circles and spheres of decision-making and action. This basic assessment has become even more complex as within these organisations forms of flexibility emerged, and also the inter-linkage among them has produced sometimes complex situations.

From 1998 onwards, process has been triggered off which led to the takeover by the EU of the WEU's military functions in crisis management according to the Petersberg tasks, opening the possibility of streamlining the institutional architecture. However, the decision by the Laeken European Council in December 2001 to declare ESDP operational was not followed by action in this field so far. Until that time, the WEU had managed a couple of operations at the request of the EU, namely international police operations to assist Albanian authorities in 1998/99, demining in Croatia in 1998, as well as monitoring the situation in Kosovo by using the WEU Satellite Centre in 1998; in addition,

the police operation in Mostar between 1994 and 1998 was carried out by the WEU based upon a memorandum of understanding with the EU (Missiroli 2000: 18).

In the case of operation ALBA (from April to August 1997), Italy took the lead in police assistance in Albania and was supported by France, Greece, Romania, Spain and Turkey, with additional contributions by other smaller countries; this took place even outside the official WEU or EU framework, as decision-making in these organisations had not produced tangible results. Here, a case of ad-hoc flexible arrangement was established in order to cope with an international crisis by a number of countries inside and outside the EU and WEU.

Further, multi-national force structures like Eurocorps (created in 1992 and actually including Germany, France, Belgium, Luxembourg and Spain), the German-Dutch Corps (created in 1995), Eurofor and Euromarfor (created in 1995 and including France, Italy, Spain and Portugal) have been set up among a number of states, which are intended to be deployed in crisis-management operations (Bono 2002: 19).

In the political field, forms of variable cooperation emerged in the wake of the Yugoslav conflict through the contact groups for Bosnia (Including the US, Russia, France, Britain and Germany) and later for the Kosovo (the latter countries plus Italy); here the big EU states were committed to an extra-EU forum in which they interacted with other 'great powers' (Keukeleire 2001), which was labelled as a way of "flexibility without rules" (Hall 2000: 13).

However, the contact group was regarded as a sign of lacking solidarity and frail consistency within the EU framework, in particular perceived so by the smaller countries. A similar situation emerged in the aftermath of 11 September when France, Britain and Germany coordinated their efforts in support of the US military operation in Afghanistan at the margins of the European Council meetings at Ghent and later at the London 'mini-summit' (Diedrichs and Wessels 2002; Howorth 2001). All these developments increased the fear of smaller EU countries that the

big ones could go their own way without considering the interests and benefits of their European partners. As a consequence, proposals for closer or enhanced cooperation have been regarded in particular by the smaller countries as a way of avoiding the emergence of ad hoc coalitions outside the Union or of institutionalised directories or ‘security councils’ within the EU (Jopp, Reckmann and Regelsberger 2002), in particular in CFSP, which due to its intergovernmental character might offer more incentives for such a choice.

The development of ESDP after St. Malo (1998) and Cologne (1999) including the setting up of an institutional structure - in particular through COPS, the EU Military Committee and the Military Staff – have so far created a landscape which leaves major questions regarding efficiency, effectiveness and accountability open and has been described as an “institutional overstretch” (Howorth 2001). The Treaty reform of Nice finally ratified some key elements (particularly the COPS) by inserting them into the TEU and by eliminating a reference to the WEU (Regelsberger 2001a; 2001b), while more precise definitions on the newly established bodies (EUMC, EUMS) and their relation with NATO stayed outside the Treaties due to the resistance maintained by some countries (Regelsberger 2001a: 248). This fact reveals that there are major divergences about the degree of EU-institutionalisation of ESDP which could make it difficult to insert full-fledged provisions on defence policy into the Treaties.

Additionally, in the field of crisis management operation, problems exist. While the EU prepares to take over such operations in the future, the WEU (or what is left from its functions) still contains a mutual assistance clause in Art. 5, and also provides a framework for defence industrial cooperation. As regards military capabilities, the EU will heavily rely on NATO for more substantial actions to be carried out at the high end of the Petersberg tasks. However, a formal NATO-EU agreement is still blocked by a Turkish-Greek dispute over Ankara’s involvement in EU decision-making on future crisis management operations. Some partners, however, favour the takeover of the NATO Amber Fox mis-

sion in Macedonia by the EU in 2003 even without a formal EU-NATO arrangement; a number of options are actually being discussed, including a 'coalition of the willing'.

The implementation of crisis management operations will produce flexibility as outside-EU countries will be allowed to participate in a committee of contributors and NATO assets can be made available. According to Antonio Missiroli, the formula for these operations will be: " $15 - x + y + n$, where x represents the non-participating EU members, y the participating nonmembers, and n the added value of acting together" (Missiroli 2002: 138f.), the variable n also including a possible link with NATO (Ibid.).

Flexibility therefore is already part of the scenery and of the discussions within the EU in political as well as in operational terms. A fundamental question is in which way these realities can be structured, streamlined and formalised as to render them more visible and efficient. In the Treaty reform debate it will be necessary to touch these issues in a systematic way.

6.2. The case of defence industry: demand for european solutions

Within the particular field of defence industry, a distinct set of developments has to be taken into account; this refers on the one hand to the evolution in the industrial sector, and on the other to political initiatives in this field.

The defence industrial sector in the EU has undergone significant changes in recent years, following developments which had already become visible in the US (Küchle 2001). The results of these changes pose a number of constraints and demands on defence industrial cooperation for which flexible solutions can provide an answer. Compared to the US, the European market still appears as highly fragmented and dominated by national systems of regulation. However, the late nineties have seen a remarkable restructuring of defence industrial corporations in Europe, leading to trends of growing concentration and rationalisation (Nones 2000: 28ff.).

The idea of creating a European Aerospace and Defence Com-

pany (EADC) among British, French, German, Spanish, Italian and Swedish partners (Küchle 2001: 29ff.) came up, but this project failed in early 1999 after the acquisition by British Aerospace of Marconi Electronic Systems to form BAE Systems (Nones 2000: 30). Still, DASA, Aerospatale-Matra and Casa formed in 2000 the European Aeronautics, Defence and Space System Company (EADS). Two European champions emerged therefore from the process which could catch up with a number of relevant US companies and compete on a global scale (Lundmark 2001: 2).

The repercussion of these processes on the EU countries is deemed considerable: “The creation of transnational defence companies will have a long-term impact on European defence procurement and on the influence of national states over strategically important defence industry resources” (Lundmark 2001: 2). The formation of multinational corporations on the European arena competing internationally requires a different market structure than traditionally described by national borders; neatly separated systems of regulation, procurement or technological development become more and more outdated (Küchle 2001: 21f.). Major challenges in particular arise in terms of pooling resources for major procurement projects facilitating economies of scale for the companies involved, bridging the technological gap especially with a view to the US, as well as fostering conditions for facing global competition (Nones 2000: 33; Küchle 21f.).

Despite the described tendencies in rationalisation and concentration of the European defence *industrial* sector, major difficulties exist. Over-capacity in some areas, duplication and lack of efficiency continue to pose considerable problems, in particular in the field of helicopter, aircraft, missile, and armoured vehicles manufacturing. While the European NATO members run 125 armament programmes for different categories of weapon systems in the mid-nineties, the US could make do with only 53 (Küchler 2001: 24). European spending on defence is far less efficient compared to US figures. With 60% of US defence budget, the EU countries are only achieving 10 % of US military capacity (Heisbourg 1999; Agence Europe, 25.01.2002; European Report, 13.03.2002).

At the same time, the EU countries identified major gaps in military capabilities prohibiting or at least limiting the EU's ability to implement the full range of Petersberg tasks, especially in control, command, communications and computers as well as in intelligence, surveillance and reconnaissance (C4ISR); the Capabilities Improvement Conference in December 2001 and the European Capabilities Action Plan highlighted the need for more progress in this field (Geipel 2002: 53). The deficiencies are further aggravated by the fact that defence budgets have been shrinking in most European countries during the last decade, increasing the gap compared to American capacities. Estimations indicate that European defence spending has been decreasing at a rate of 5% per year since the mid-nineties (spending for research and technological development falling by 2% in the same period) (Becher 2000: 11). Although some countries like Britain and France have boosted their defence budgets in recent months, Germany stays at the low end of the scale with only 1,5% of GNP.

Apart from these figures, the degree of modernisation of EU forces is highly disparate (Huber 2002: 48f.). Measured by investment in research, development and procurement, there is a wide gap between Britain as the leading European power, and Germany, which belongs to the countries with rather poor results, France being located in between (Huber 2002: 46f.).

Given the continuation of the present armed forces structures as well as the levels of modernisation, the European ground forces would in the long run only reach 15% of the level of equipment compared to the US (Huber 2002: 47). Diverging trends in this key sector reflect not only transatlantic, but also inner-European imbalances, and might have considerable impact on future military operations. The formation of "coalitions of the willing" will require a minimum of interoperability (Baumgartner 2002: 37). This will lead to a differentiation among the European countries as to their capacities of implementing certain tasks; it is especially Germany which – compared to Britain and France – is lagging behind and might not live up to its responsibility as a big country.

Modernisation and rationalisation processes on a European scale could lead to substantial savings (Huber 2002: 49). Given these figures, it will be necessary for the EU countries to increase efficiency by common standards, division of labour and joint procurement, accompanied by a steady growth in defence spending. Estimations indicate that through synergy effects of this kind savings of about 25% in military spending can be achieved (Seidelmann 2002: 214).

As Gary Geipel puts it, “If Europe is to improve the quality and quantity of its armed forces without dramatically increasing national defense spending, then it must develop the efficiencies of large-scale joint procurement and it must encourage the continued consolidation of the European defense industry” (Geipel 2002: 52). However, it is not to be expected that all EU states will considerably boost their military budgets or commit themselves to the same degree of higher defence spending.

To this end, *flexible solutions* can provide opportunities in particular where divergences among the EU countries exist which may prohibit common approaches. It must become possible for some countries in the future to promote an active coordination in the field of defence industry for preserving the interests of European companies (Küchler 2001, Huber 2002, Seidelmann 2002). It is in particular the main suppliers of defence industrial products which play a special role given their economic and political weight (Baumgartner 2002: 39f). They could finance key capabilities to be made available for “coalitions of the willing” (Ibid.: 40). In recent years, EU countries have increasingly tried to respond to these challenges by fostering cooperation among themselves.

6.3. Defence industrial cooperation: fragmentation and need for efficiency

Models for flexibility in the defence industrial sector can only be discussed adequately if they are measured against the background of actual initiatives and patterns of cooperation in the field of defence industry.

Attempts for introducing an EU defence industrial policy have so far not shown success. The Commission made the suggestion in its 1997 communication on implementing a European Union strategy on defence-related industries (COM (97) 583 final) to define a common position by the Council on drawing up a European armaments policy. This initiative did not lead to major legal or political actions; in early 2002, the Spanish Presidency tried to revive the process of designing a European Armaments Policy including the setting up of an Armaments Agency (Agence Europe, 13.03.2002); the idea met with considerable resistance by some member countries, in particular non-aligned states like Sweden and Ireland; it became clear that drafting an EU armaments policy could hardly count on the participation of all member countries.

Meanwhile, major initiatives have already developed outside the EU framework (Missiroli 2000: 38; Cornu 2001: 72ff.):

- The Western Armaments Group (WEAG) in the framework of WEU brings together 19 countries in and outside the European Union with an aim to cooperate in questions of defence cooperation; in this context, the creation of the Western European Armaments Organisation (WEAO) was a further step to increase cooperation in multilateral defence R&D projects; however, this form of cooperation has so far been regarded as producing rather poor results.
- Six countries (France, Germany, Italy, Sweden, Spain and Britain) signed a Letter of Intent in 1998 and a subsequent Framework Agreement (2000) trying to coordinate more closely their defence industrial policies outside the EU.
- The creation of OCCAR (Organisation Conjointe de Coopération en matière d'Armement) created in 1996 including France, Germany, Italy and the UK could be regarded as a forerunner to a European armaments agency, but still has some limitations regarding its capacity for action.

The WEAG grew out of the Independent European Armaments Group (IEPG) set up in 1976 among European NATO countries;

in 1993 it became part of the WEU structures, with the WEAO serving as a possible future armaments agency. In the declaration to the Treaty of Amsterdam, mention was made of the WEAG as a forum of armaments cooperation, while afterwards no decisive step was taken to further develop this goal and to strengthen relations between the EU and the WEAG (Nones 2000: 27f.).

Certain contributions see the WEAG in a division of labour with OCCAR and the WEAO as a possible future model of defence industrial policy cooperation. The WEAO would serve as the 'EU's technical expert', while OCCAR could be in charge of managing large-scale programmes, and the WEAO responsible for R&D projects (Nones 2000: 27). However, there is actually no hint at concrete plans for this kind of arrangement, which would in any case contribute to a certain – nevertheless structured – institutional fragmentation within and around the EU.

In December 1997, the French, German and British heads of government stated that a restructuring of the European defence industry was urgently needed (Nones 2000). Shortly later, Italy and Spain joined the declaration. This set a clear signal for action to be taken in the field, but initiatives took some time to materialise. It was with the letter of Intent (LoI) signed in 1998 between France, Britain, Germany, Italy, Spain and Sweden, that cooperation took shape and defined certain fields which should be more closely coordinated among the participating countries (Bauer 2000). The LoI process led to the conclusion of a Framework Agreement in 2000 defining cooperation in the fields of

- security of supply,
- export provisions,
- security of information,
- research and technology,
- treatment of technical information and
- harmonisation of military requirements.

These efforts continue in an intergovernmental way. In particular the arrangements on export control will affect pre-existing national legislation, including hitherto restrictive export guidelines (as is the case in Germany and Sweden). The LoI/FA process

reveals importance not least due to the fact that the participating countries make up for around 90% of the European defence industrial base.

Still, France, Britain, Germany and Italy endorsed a more effective cooperation by setting up the Organisation for Joint Armaments Cooperation (Organisation Conjointe de Coopération en matière d'Armement, OCCAR). OCCAR was established in 1996 by an administrative agreement and was designed to provide the management of armaments programmes more efficiently and effectively. The OCCAR Convention endowing the organisation with legal status entered into force in January 2001.³ OCCAR's task was specifically defined as to control, coordinate and implement armaments programmes assigned to it by the member states, as well as to promote joint activities for the future (OCCAR Convention Art. 7).

OCCAR consists of two key institutions: the Body of Supervisors (BoS) representing the member states and acting as the central decision-making level (Art. 10 OCCAR Convention), and the Executive Administration (EA), charged with running the organisation under the directives of the BoS. Decisions in the BoS are taken by unanimity (Art. 18.1 OCCAR Convention), but exceptions exist for qualified majority voting in certain cases (ANNEX IV, OCCAR Convention). In case that the BoS decides on programmes in which not all OCCAR members are involved, only the participating countries will vote (Art. 15.2 OCCAR Convention). OCCAR is able to conclude agreements with international institutions and organisations, as well as with governments, institutions or organisations of non-member countries (Art. 37 OCCAR Convention); in particular the participation of non-member states or international organisations in programmes is possible (Art. 38 OCCAR Convention).

So, OCCAR itself enables forms of flexible cooperation by allowing a limited number of member states to run programmes,

³ Convention on the Establishment of the Organisation for Joint Armament Cooperation (Organisation Conjointe de Coopération en matière de Défense) OCCAR, Farnborough, 9 September 1998.

and by leaving the door open for the cooperation with non-members. So, in the actual development of the Multi-Role Armoured Vehicle (MRAV) coordinated by OCCAR it is Germany, Britain and the Netherlands which participate. Delivery is planned for 2006.⁴ The most prominent programme managed by OCCAR is the acquisition of the A400M tactical and strategic airlifter in which Germany, France, Britain, Spain, Turkey, Belgium, Luxembourg and Portugal take part.

Both the MRAV and the A400M reveal an additional feature which is of importance for ESDP. They meet the European Staff Requirements and are designed to be made operational for EU Petersberg missions. The MRAV will be able to provide improved protection as well as operational and tactical mobility in conflict, rapid reaction missions as well as humanitarian operations, while the A400M will offer increased capacity for deploying troops or freight between or within theatres of operation.

Here the connection between defence industrial issues and ESDP missions in the range of the Petersberg tasks becomes evident. In the medium and long run, those countries cooperating in major procurement programmes will be better able to jointly implement crisis management operations as they rely on common military systems and capabilities. This could provide a more coherent structure to flexible forms of cooperation within the EU. In addition, the possibility of participating in OCCAR programmes for outsiders would dissipate fears of being excluded from these initiatives, opening the way for a kind of ‘open and ad hoc flexibility’ in the future.

The described structures, however, are only part of the whole picture; beneath, there are various bi- and multilateral initiatives bringing together the European countries in multiple constellations, described by one observer as an “alphabet soup that is hard to comprehend and perhaps to digest” (Lundmark 2001: 3). This complex landscape must be considered when dealing with the possibilities of enhanced cooperation or any other form of flexibility in the future.

⁴ See for more information <http://www.occar-ea.org/C1256B0E0052F1AC/vwContentFrame/N254SN2 P546SLEREN>.

By analysing major trends in defence industrial cooperation, it has become clear that flexibility and variable geometry does already exist *outside* the EU framework. The crucial question is in how far those structures could be either brought *into* the EU framework or at least become *more closely linked* to it. It was also made visible that existing structures like OCCAR already provide points of reference for a possible use by the EU in a *flexible* manner. These opportunities should be taken up and brought into the discussion about the reform of the EU. It is hardly possible to envisage one single model of a future development towards flexible forms of cooperation in this field; rather, we prefer to present a range of three options which could be assessed and discussed.

6.4. Options for reforming the treaties

Taking up the abovementioned analysis of existing forms of flexibility - be they in the shape of EMU or Schengen, by the clause for enhanced cooperation in the Treaties, or by extra-EU forms of cooperation - several options will now be developed which use the insights gained so far and make them available for considering future options for flexibility in CFSP/ESDP and in particular in the field of defence industrial cooperation.

These options are not always meant to be mutually excluding, but could sometimes even be combined with one another.

6.4.1. Flexibility outside the treaties: ad-hoc coalitions and core Europe?

Under this general option, flexible cooperation schemes for CFSP/ESDP and defence industrial cooperation would take place outside the Treaties as a way of intergovernmental cooperation. This option could prove to be the only feasible way of organising closer or enhanced forms of interaction given the considerable resistance by some member countries to accept intra-EU solutions. Therefore it should not be discarded from the start as a non-option.

- Flexible solutions outside the treaties: marginalizing the European Union?

This model of flexibility relates to forms of cooperation among EU member states which have developed outside the EU in multiple constellations and composition, taking the shape of 'clubs' or forms of 'mini-lateralism' inside or outside international institutions (Missiroli 2000: 29). There is no overarching framework or blueprint for these undertakings, although a certain dominance by big EU countries in most of these forms cannot be denied. Flexible arrangements can take different forms and methods; in particular as regards their legal quality (institutionalised or informal), their purpose (political coordination or military operational issues), or their time-frame (based upon constant and mid-term collaboration or as an ad-hoc mechanism).

A group of the 'big' countries in an extra-EU 'directoire' would represent a political challenge to the Union as - in the eyes of the other partners - it counteracts the idea of solidarity and would petrify power asymmetries between the countries (Keukeleire 2001; Allen 1996). However, the emergence of such models is more than mere speculation. In case that workable modes of flexibility will not be generated within the Union, member states could direct their attention to other ways of managing international politics. The example of the Contact Group and the events after 11 September have at least led to a high degree of suspicion among some EU states (Howorth 2002). The United States have shown a clear preference in dealing with single governments instead of searching contacts to organisations, reinforcing the tendency of devaluating the EU's role after 11 September 2001.

Another element is of interest: If forms of cooperation are preferred outside the EU when dealing with certain foreign policy issues, the impact could very well affect the Union itself and limit its room for manoeuvre. If a number of selected EU countries prefers to manage an international crisis primarily in a context distinct from the EU setting, it could prevent the Union

from taking action itself,⁵ while on the other hand, exactly those actions and decisions taken outside could be imposed upon the European member states as the only viable and feasible solution. The example of the Bosnia Contact Group even reveals that in certain crucial issues solutions can be endorsed which run counter to initiatives backed so far by the EC/EU (Keukeleire 2001: 78). Further, external actors like the US were able to shape the behaviour of the EU countries. As Washington was not inclined to deal with the EC/EU as such, it preferred the bigger European states as partners and interlocutors (Keukeleire 2001: 79); this was repeated in a similar way after September 11, 2001 (Diedrichs and Wessels 2002).

Another idea relates to the creation of a *core Europe model* of countries establishing a 'security and defence union' (Seidelmann 2002: 203) as an independent actor, which would be *linked* to the EU. This could include the original six founding states of the European Communities (Ibid.). Basic arguments in favour of this concept would hint at traditions of cooperation among the countries involved, and at a comparatively high degree of homogeneity which could create a pole of attraction for outsiders.

On the other hand, a core group model based upon the founding states would inevitably clash with other governments' interests which are traditionally reluctant towards these ideas. In particular Southern European countries like Spain have shown resistance against establishing such a concept, which could relegate them to a second class Europe and lead to a growing distance between the core and the periphery. A further objection would lie in the frail compatibility of the "Original Six " approach with other forms like LoI/FA, or OCCAR, and finally in the ex ante exclusion of Britain from this initiative.

- **Defence industrial cooperation: Schengen as a model?**

In the field of defence industry, existing patterns of coopera-

⁵ Keukeleire (2001: 78) hints at the fact that the Contact Group appeared attractive to the larger member states *because of* the lacking consensus within the EU. It provided therefore a possibility for reaching results in a more efficient way.

tion could be further developed and deepened, leaving open the option of a future insertion into the EU similar to the Schengen model (Missiroli 2000: 37).

The Letter of Intent of July 1998 and the subsequent 'Framework Agreement Concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry' concluded between Germany, France, Italy, Spain, Sweden and the UK in July 2000 could be regarded as such a group of countries able and willing to coordinate their policies. At different points links to EU policies could be established, e.g. between exports provisions and the EU Code of Conduct on Arms Exports, so that mutually compatible solutions can be found.

This cooperation would be open to other EU countries which could be invited to join. Before becoming an EU policy, however, coordination among the participating countries should be deepened, as well as relations to other groups and initiatives like the WEAG and OCCAR (which could become the nucleus of a European Armaments Agency). The key argument for this option is that before inserting these activities into the EU they should be better coordinated and streamlined among themselves. This constitutes an ambitious objective, as this model does not prescribe the mere continuation of existing forms of cooperation, but rather an approach of better relating them to each other. If this could be done under a common institutional framework – outside the Treaties – depends very much upon the political will and capacities of the participating countries; different profiles in membership can be regarded as a major problem. It could be conceived to establish the WEAG could serve as an 'umbrella organisation' for consultation and expertise in defence industrial matters, while the WEAO and OCCAR serve as different 'circles' of armaments coordination, with OCCAR representing the more compact core of a future European Armament Agency (Nones 2000).

There can even be "double flexibility" in the shape of organisations like OCCAR being maintained by (at present) four countries, but allowing for the participation of outsiders in specific

programmes. This model facilitates the link to further partners without putting into question the commitment by the original member states. Again, the big countries also play a special role in this model. It is France, Germany, Britain and Italy who are present in all major three for a (WEAG/WEAO, LoI/FA and OCCAR) accounting for more than 80% of the EU defence capabilities. Nevertheless, as these would cooperate outside the TEU framework, they would form *informal groups of countries* without relying on a single legal and institutional framework.

In the long run, this could lead to a weakening of the EU institutional framework. In order to counter these tendencies, the 'lesson' from the Schengen process would prescribe an open, EU-compatible approach; this includes decisions which could be easily taken over by the EU at a later stage, or points of reference to EU activities, e.g. by establishing inter-organisational links. An *OCCAR-EU agreement* on cooperation could serve as a step in this direction, or a dialogue between the LoI-partners and the EU concerning constant consultations on defence industrial policy issues like market regulation and guidelines for export policy.

6.4.2. Flexibility inside the treaties: core groups or multi-tier Europe?

6.4.2.1. CFSP/ESDP and defence industrial cooperation as a case of pre-determined flexibility inside the treaties

In a broad sense, the idea of intra-EU directories, clubs or core Europe models has been introduced by a number of concepts and blueprints speaking generally of an avant-garde, or pioneer group, or coalitions of the able and willing. In institutional and procedural terms, these concepts could materialise in different ways of enshrining flexibility into the Treaties.

- Pre-determined flexibility in CFSP and ESDP: core Europe or directoires within the EU

The idea of pre-determined enhanced cooperation regards deeper integration as a task which some countries could take over before all others will follow. In CFSP and ESDP, it could

combine several elements like a mutual assistance clause, the adoption of convergence criteria, and/or binding commitments in a number of relevant areas. It is crucial that a clear policy field is defined where cooperation should take place, and that it is inserted into the Treaties.

The insertion of a mutual assistance clause into the TEU is actually on the reform agenda (Herolf and Huldt 2002; Missiroli 2002: 143), e.g. in the framework of the debate about the future of Europe. In Summer 2002, Belgian Prime Minister Verhoefstadt, in a letter to the French President and the British Prime Minister, endorsed this idea, which later gained support from the governments in Paris and Berlin.

The Franco-German proposals on ESDP from 22 November 2002 include a suggestion that the Member states who wish to do so should be allowed under enhanced cooperation to transfer their obligations arising under the WEU to the EU, which would also include the mutual assistance clause of Art. 5 (Franco-German proposals on ESDP 2002: 4). This procedure would combine enhanced cooperation with a pre-determined field of application. Thus the number of member countries subscribing to this clause could grow over time. What seems to be difficult, however, is the link to the single institutional framework. What role should the Council, the Commission and the EP play in this regard?

Under the present conditions it would be clear that in the first place such a decision would bear political rather than military significance. No EU country is willing - or even able - at the moment to give up or replace the fundamental NATO commitment for collective defence (Herolf and Huldt 2002). Nevertheless, some regard it as an expression of the ongoing integration process and of stronger solidarity among the Europeans.

Such a measure could come under a flexible arrangements as not all EU countries would feel inclined to back it. On the one hand, Atlanticist countries like Britain have always regarded NATO as the prime organisation for collective defence, making an EU pledge unnecessary, while non-aligned countries like Sweden or Finland would decline to join an alliance by subscribing to

such a clause (Herolf and Huldts 2002: 74ff.), although their notion of non-alignment has been undergoing changes in recent years. Furthermore, they regard crisis-management and conflict-prevention as much more imminent issues to be addressed.

As a pragmatic solution, a revision of Art. 11 TEU could be envisaged, stipulating that the “Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations” (Art. 11 TEU). A provision could be added which extends solidarity to the field of security and possibly defence policy where the Member States are called to mutually support each other in case of need. This solution comes close to what France and Germany have proposed in November 2002 when calling for a passage to be included in the Treaties on solidarity and common security, accompanied by a corresponding declaration annexed to the Treaty (Franco-German proposals on ESDP 2002: 1).

If such a commitment were backed only by a number of EU countries - for which France and Germany would be politically indispensable, dramatic practical implications should not be expected. The operational relevance of such a clause would be quite limited. Therefore the EU countries should not make it a question of faith.

Apart from the issue of mutual assistance, the actual discussion about ESDP reflects a demand for a more efficient use of resources and more convergence of national defence policy in terms of quality and quantity of military spending (Andréani, Bertram and Grant 2001; Baumgartner 2002: 36f.; Huber 2002; Heisbourg 1999). Elements could even be taken from EU methods of coordination: “peer pressure and best practice (...) may foster and speed up such convergence, so that (...) the eventual membership of the new ‘club’ may turn out to be much larger than initially imagined or expected” (Missiroli 2000: 37).

Heisbourg (1999) submits proposals on the definition of such criteria; they could include rates for the share of procurement and R&D spending, taking as a benchmark the British figure (40% of the UK defence budget are in procurement and R&D); further, he proposes to decrease the level of military manpower to the UK average; and not to reduce defence spending per person (Heisbourg 1999). Andréani, Bertram and Grant propose a share of 2% of GDP to be defined as common objective for defence spending among the EU countries, of which one quarter at least should be devoted to research, development and procurement of arms systems (Andréani, Bertram and Grant 2001: 2). A European group dynamics would make hard measures acceptable for the citizens.

France and Germany proposed to annex a protocol to the Treaty which contains a commitment by in terms of improving military capabilities, but also harmonising planning of military requirements as well as the distribution of tasks and resources (Franco-German proposals on ESDP 2002: 4). This commitment could be taken over by those member states who are willing to do so.

The elaboration of convergence criteria is linked to a *differentiation* process between those countries to meet the criteria at a certain time and those which don't. This poses the problem of political and institutional provisions for dealing with this differentiation. The definition of convergence criteria related to the defence sector draws much of its attraction from the successful model of EMU. But caution should prevail; analogies could be misleading.

As already mentioned, convergence criteria in the field of EMU had a clear goal: the achievement of the third stage of monetary union. This served as the key incentive for most EU countries to consolidate their budgets and cut public spending; in defence policy this concrete and attractive final achievement is much more difficult to identify, while it will be hard to mobilize the public in favour of increased spending for defence. So, what would be needed is the definition of a common goal for the EU countries in the field of defence policy serving as a reward for respecting certain convergence criteria. Would there be a time-

frame for this? Further, the EMU was located inside the Treaties, particularly the EC Treaty, using its institutions and procedures.

A mechanism for the surveillance must be established, including the possibility of sanctions against the countries having fulfilled the criteria at the start, but then failing to maintain them over a longer period of time, in analogy to the excessive deficit procedure as defined in Art. 104 TEC and embedded in the Stability and Growth Pact.

Finally, the model of EMU is telling as it reveals that even with convergence criteria, there has been a political dimension to the process meaning that certain countries were regarded as 'indispensable' for entering the third stage of EMU (Germany and France); similar, it appears rather unavoidable that at least a number of 'big' EU countries participate in flexible constellations of EU defence policy due to their overall capacities, political weight and military resources, even if convergence criteria try to draw the line between insiders and outsiders. Would it be feasible e.g. to have Germany excluded from the core group because its defence budget (measured as share of GNP) is considered as too low compared to France or Britain? Further, the question arises if there will be measures in favour of weaker countries intended to enable them to meet the criteria, in the shape of additional financial support. The proposal to exclude defence expenditure from the Maastricht criteria in EMU could be regarded as one step in this direction, but it does not explicitly differentiate between weaker and stronger countries.

The concept of convergence criteria therefore has to be thoroughly reflected; our perception is that some critical questions have to be resolved before such criteria can be applied; however, the crucial issue is that beyond convergence, there must be a political project for CFSP and ESDP to which participating countries could subscribe.

A pre-determined form of cooperation within the Treaties would have to name and define such a policy. It could include closer political consultations, the generation of a strategic concept, and even a commitment to military planning and more inte-

grated armed forces, as well as structures possibly linked to defence industrial cooperation. In this sense, the Franco-German proposals on ESDP stipulate that in a number of fields (multinational forces endowed with integrated command capacities, armaments and capabilities, management of human resources, training and development of common doctrines) enhanced cooperation should become possible by qualified majority with a reduced number of participating countries and a special provision for rapid decision-making procedures (Franco-German proposals on ESDP 2002: 3). However, the Franco-German contribution pleads for using constructive abstention instead of enhanced cooperation when the launching and implementation of military operations are concerned (Ibid.).

Also an option could be to integrate existing initiatives like Eurocorps, EUROFOR and EUROMARFOR into the European Union as proposed by members of the Convention (Dini 2002: 4). The relationship to the existing institutional set-up (COPS, EUMC and EUMS) would have to be cleared up and structured in an efficient way.

In any case, the first immediate effect would be the emergence of a *multi-tier process* which could either lead to a dynamics attracting ever more countries to take part, or it could – in the longer run – also petrify the divergences already in place by increasing the gap between insiders and outsiders. In that case, a *core group model* would become the most probable scenario.

Apart from the abovementioned scenario, another – actually relevant - option for pre-defined flexibility in the EU should be addressed, which is less linked to *policy*, but to *status*. It can be found in the idea of a *directoire* where the ‘big’ powers in the EU would take over a leadership role (Keukeleire 2001; Frisch 2002: 7f.)). In early 2002, the proposal for creating an EU directorate or super council including France, Britain and Germany, has been launched unofficially by some larger countries’ governments, asking for an institutionalisation of their increased responsibility and political weight in the Union (The Economist, 23.03.2002). The emergence of an “avantgarde” could in the

eyes of some experts mean that the three big countries, in a “triangle” (Frisch 2002: 8), would act as an “engine” of ESDP, but also take the positions of the other members into account (Ibid.). A crucial issues relates to the institutional formalisation of such a proposal, for which there are so far no concrete concepts. On the other hand, it is argued that even without such arrangements, there would be an *informal club* or *directoire* in which the big countries are able to predefine the course of European foreign policy.

The reaction to such proposals by smaller countries is clear and unambiguous. Finnish Prime minister Lipponen complained about the already exceeding power of the bigger countries and pleaded instead for democratic mechanisms of decision-making including all member states (Agence France Press, 25.02.2002). The establishment of such a body would cause tensions among the EU countries and put solidarity and joint action at risk. In the end, arguments against the *directoire* within the EU are similar to those directed against ‘outside’ cooperation by the big countries (Keukeleire 2001: 86ff.), as finally the smaller member states were excluded from decisions and run the risk of becoming politically marginalized.

- Pre-determined enhanced cooperation in defence industrial cooperation

Pre-determined flexibility in the TEU could define specific arrangements for enhanced cooperation in the field of defence industrial cooperation (Missiroli 2002: 142). This would include a Treaty article stipulating concrete provisions to this end, while further arrangements and documents could be annexed in a Protocol, e.g. relating to the statute of an armaments agency, or to procedures for enhanced cooperation in certain fields of defence industrial matters. Such a solution could be combined with the establishment of *convergence* criteria, but not necessarily so. In the actual discussions about flexibility and defence, proposals about a kind of pre-determined form of enhanced cooperation often remain rather vague, lacking in concrete formula which could provide a more visible impression of what is meant.

In our view, the concept should imply a concrete definition of the material scope, the institutional set-up and the procedural provisions of the kind of cooperation intended to facilitate. As a starting point, Art. 17, paragraph 1, subparagraph 3, TEU (Nice version) could be used: “The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armament.” However, further qualifications are needed to render it applicable. In a first step, it could be stressed that this cooperation shall take place *under the EU Treaty*. Then, the issue of scope should be addressed. What matters would find their way into this pre-defined cooperation? Here, the prominent cases of extra-EU cooperation like supply provisions, export control, information security, research and technology, technical information and harmonisation of military requirements could be mentioned.

Another crucial issue is how to organise participation; will there be a multi-stage process including deadlines for the fulfilment of convergence criteria, or will the countries participating be named from the start (making also clear who stays outside), or will it be left to a specific open procedure to define the willing and capable? In any case there must be a concrete outlook at a rather early stage of the process.

A matter of high relevance refers to the relation between such a pre-determined form of enhanced cooperation and EC policy. It could be argued that the links between the second and first pillars must be strengthened, in particular by allowing the Community to extend the internal market competence to the field of defence industry (Rhode 2002: 161). Here, fresh activities especially by the Commission are required.

The issue could become even more complex by opening the possibility of using enhanced cooperation also in the EC Treaty for defence industrial matters, concerning questions like market regulation, technical norms and standards, export control, or research and development policy. For this purpose, a revision of Art. 296 TEC must be considered. This modification could ena-

ble a limited number of countries to use the possibility of subparagraph 2 for making changes to the list of products excluded from the rules of the common market - instead of resorting to unanimity (Art. 296 (2) TEC). The result could become a “mini-single market” for arms (Hall 2000: 14).

Pre-existing structures could – as in the case of Schengen – be inserted into the Treaties. The possibility of bringing the LoI-process or the OCCAR under an pre-determined enhanced cooperation would be one option given the fact that the participating countries are all EU members. However, with possible resistance and opposition from some of the non-aligned countries (like Sweden and Ireland) to an EU armaments agency, and due to British rejection of such clauses in general, it is unsure if such a solution can be achieved within the Treaties. The Franco-German proposals suggest the conclusion of a protocol to which a number of countries could subscribe under enhanced cooperation and which would make reference to projects like OCCAR or the LoI-process (Franco-German proposals 2002: 4).

If this option proves to be impossible to achieve, there could be either the possibility of keeping flexibility outside the Treaties (first option), or to include a general enabling clause which would open the way for enhanced cooperation at a later time (next option). The pre-determined flexibility option would be the most ambitious model of enhanced cooperation from an integrationist point of view; however, the political and institutional impact is hard to assess. At least two of the big countries should be part of it, for reasons of credibility and legitimacy. As with the former option, either a multi-tier process could emerge, or a stable differentiation in the shape of a core Europe concept.

6.4.2.2. *Cooperation in CFSP/ESDP and defence industry based upon a general enabling clause in the treaties*

A highly ‘tricky issue’ is in how far a general clause for enhanced cooperation in the TEU could be applied to CFSP/ESDP and the defence industrial sector. It is clear that

under the present Treaty provisions, such a step would be hard to imagine. Therefore the rules would have to be modified in several ways:

The restriction of enhanced cooperation to issues not relating to military and defence matters (Art. 27b TEU Nice version) should be lifted, and the list of conditions in the general clause and the specific provisions in the TEU be streamlined and cut down to the necessary amount; at the moment, they serve rather as an impediment than an incentive. Further, the veto option must be seriously considered when dealing with enhanced cooperation in ESDP matters as it could lead countries not to initiate this procedure if they assume that one single partner could oppose it. This idea can be found in the Franco-German proposals on ESDP (Franco-German proposals on ESDP 2002).

Also, the link between enhanced cooperation and the implementation of a joint action or a common position should be reconsidered as this might restrict actions to a much too limited field and suffer from the need for unanimity at an earlier stage of the decision-making process. At the moment, a joint action can be adopted by majority for implementing a common strategy defined by the European Council acting by consensus; in the other cases a joint action requires unanimity, while implementing decisions can be taken by majority. This means that in the decision-making chain, before using majority, there must be a consensus. Adopting joint actions or common positions by enhanced cooperation would lift this requirement and pave the way for more efficient decision-making.

The wording of the enhanced cooperation clause should be sufficiently broad as to allow for forms of cooperation of different nature and time range. This includes *CFSP instruments*, in particular *crisis management operations* according to the Peterberg tasks, as well as enhanced cooperation in *defence industrial matters* among the EU countries.

So far, proposals on enhanced cooperation try rather to restrict enhanced cooperation to certain policy fields within CFSP and ESDP, and not to resort to a general enabling clause. The report

by the working group on defence is telling as it includes proposals concerning enhanced cooperation with special provisions for mutual assistance, defence industrial cooperation, convergence criteria, multi-national forces, integrated command structures or the implementation of military operations; in a similar way, the Franco-German proposals include differentiated provisions for enhanced cooperation depending on different cases. It should, however, not be neglected that by introducing many peculiar specific provisions on enhanced cooperation, the transparency and simplicity of the Treaties might get lost. For the sake of having a clear and brief wording of the Treaties, the introduction of a general clause which is sufficiently broad as to cover as many special fields of application as possible, could be an asset.

- Enhanced cooperation in CFSP and ESDP

A general enabling clause for enhanced cooperation could be used in various ways within the Second Pillar. It could cover joint actions and common positions; this means that in the future tasks like election monitoring in third countries, diplomatic initiatives in certain world regions of interest for a number of EU states, or even crisis management operations could fall under flexible constellations. All EU members would allow a group of willing and capable partners to go ahead and take concrete initiatives of this kind. Proposals so far seem to restrict the application of a clause of enhanced cooperation to certain fields within CFSP and ESDP (Franco-German proposals 2002), which could serve as a compromise that might be attractive for those countries still reluctant to accept its inclusion as a general clause.

Crisis management under flexible constellations would rather be an ad hoc instrument, and – depending on the case – limited in duration. A certain number of EU states should be able to form a ‘coalition of the willing’ and carry out such missions without having to wait for consensus; on the other hand, they could also reach out beyond the EU as either candidate countries, European NATO-member states, as well as third countries like Russia, Ukraine or Canada, could take part (Missiroli 2002: 138). Further, the distinction between political decisions on a crisis management

operation (which would rely on the EU) and the operational ones (which would include a committee of contributors including all countries delivering significant forces to an operation) could be managed in a more cohesive and flexible manner by using enhanced cooperation within the Union (Missiroli 2002: 142).

With a view to the role of NATO, a an enhanced cooperation clause could make it easier for the EU to handle the complex relationship resulting from different spheres of military and political decision-making and to provide space for the management of operations. In cases where the EU relies on NATO assets, there will be a differentiated set of actors and procedures which already includes elements of flexibility.

Flexible solutions in ESDP could also be attractive as they offer possibilities for certain countries to specialise in specific fields of diplomatic, political or military activities (Missiroli 2002: 144; Hall 2000: 14). Some might be more interested in conflict-prevention rather than crisis management proper, which itself could offer different options as regards civil and military aspects; and even within the military field, countries may take over different roles according to their capabilities (Hall 2000: 14). A clause for enhanced cooperation would be sufficiently broad and open as to allow a case-by-case assessment on the adequate means, timeframe, and participants. Additionally, constructive abstention could be a parallel option which – before using enhanced cooperation – would try to exploit all possibilities to include as many member states as possible for EU actions.

Regarding the military dimension, several suggestions are being made as to a differentiation and even specialisation of EU countries (Missiroli 2002; Lindley-French 2002: 97f.). The larger EU states could offer the broadest range of capabilities, supported by the smaller ones in specific niches (Lindley-French 2002: 97). Also among the bigger countries a certain degree of specialisation can be observed (Ibid.). Regarding the key fields where capabilities are needed for the EU to implement a crisis management operation, there is an uneven distribution of resources and capacities. Bigger countries (France, Britain and Ger-

many, to a lesser extent Italy) would offer operation headquarters and forces headquarters as well as satellite systems for communication, control and command tasks (Baumgartner 2002: 25ff.), although there are still deficiencies in terms of sufficient and deployable assets. Also multinational force headquarters exist, but only some of them can be used for EU-led military operations (Lindley-French 2002: 111). Independent analysis, surveillance and reconnaissance capabilities as well as intelligence are only slowly being stepped up. Here France and Britain are better equipped than the rest, but still not in a satisfactory way (Lindley-French 2002: 101).

Concerning power projection and effective engagement of European troops, there is a need for increasing capacities; the British, French, Italians and Spanish dispose of aircraft carriers, which however, do not reach US dimensions and suffer from overstretch already; with new British and French acquisitions there could be a credible capability in the next decade (Lindsey-French 2002: 101). The NH-90 Eurotiger helicopter will only be available with delays; clear gaps are also identifiable in precision-guided munitions or suppression of enemy air-defences capabilities (Lindley-French 2002: 103).

Deployability and mobility as well as logistical support also represent major drawbacks, to be remedied possibly through projects like the A-400M for strategic air-lift (where France, Germany, Britain, Belgium and Spain are engaged), while strategic sea-lift represents an even weaker point, with only Britain having ordered roll-on roll-off ships to become operational in 2005 (Baumgartner 2002: 27). Under the European Amphibious Initiative, France, Britain, Netherlands, Spain, Italy, with support by Germany, Greece and Portugal, are trying to built up the core of a European force urgently needed (Baumgartner 2002: 31). In the field of tactical air mobility, the situation looks better as the Eurotiger NH-90 is intended to be available from 2003/2004 onwards for France, Germany, Italy and Netherlands. tactical ground mobility can be assured by the MRAV, which becomes operational in 2004 for France, Germany, Britain and the Netherlands.

The picture offers some major conclusions. Europe still suffers from considerable gaps in capabilities for carrying out military operations in crisis-management, while on the other hand major attempts and initiatives for coping with this challenge are being undertaken by a limited number of member states, including in most cases Britain and France as well Germany and Italy, and to a lesser extent the Netherlands. This will probably have an impact on the political decision-making within the EU. Flexible forms of cooperation will allow for a differentiated approach making it possible for each country to offer and contribute capabilities and resources available without being present in all kinds of actions by the Union. In particular those countries with less military capacities could concentrate on civil crisis-management and preventive diplomacy; still we assume that in these cases the bigger states will also have to take over their share of responsibility.

- **Enhanced cooperation in defence industrial cooperation**

In the case of defence industry, an enabling clause would be applicable although it does actually not appear as the preferred model for many observers (favouring instead a pre-defined case of enhanced cooperation). Nevertheless, it would leave concrete decisions for the member states, implying more openness as to the possible fields of application and to future members, as well as to the time-frame.

It could be used in different ways. If enhanced cooperation were connected to the establishment of a joint action, the door would be open for *institutional* as well as *policy-related* decisions. In analogy to the WEU Satellite Centre or the WEU Institute for Security Studies, which were incorporated into the EU as autonomous agencies by joint actions in July 2001 (coming into force in January 2002), an EU armaments agency could be set up by the Council relying on enhanced cooperation. The statute of this agency would be agreed upon by the participating states, including voting rights and mechanisms for project management. Third countries inside as well as outside the EU could be invited to participate without fully being members of the agency. In the

future, other EU countries could join the agency once they were able and willing to accept the statute, as well as the established basic decisions.

In addition to the setting up of an agency, enhanced cooperation in CFSP/ESDP matters could facilitate a durable form of cooperation allowing joint efforts in key fields like export strategies, procurement, joint management of defence programmes, or research and technological collaboration.

We identify a medium and long term relationship between implementation of crisis management operations and defence industrial cooperation. Countries coordinating their efforts in the latter would be better prepared to undertake military missions.

As in the option of pre-determined enhanced cooperation (see above), an important issue to be tackled is the relation between CFSP matters and EC policies, as highlighted e.g. by the Commission 1997 communication. If an integral approach to defence policy requires both arenas for action, then a coordinated endeavour on enhanced cooperation including as well second as first pillar provisions. These efforts could be accompanied by reinforced activities of the EC concerning the establishment of common rules for a defence industrial market (e.g. in standardisation, export policy, research and technology), where points of reference already exist. This would increase complexity and lack of transparency, but could on the other hand increase efficiency.

6.4.3. Managing flexibility in CFSP/ESDP and defence industry

After presenting the abovementioned options for flexible solutions in CFSP/ESDP and defence industrial cooperation, some assessment is added which enables us to identify major advantages and setbacks. In the first place, as has already become clear, the options presented can be related to each other without being mutually excluding.

- The most coherent approach under flexibility would be to establish a pre-determined enhanced cooperation within the TEU, defining certain areas within CFSP/ESDP and defence

industrial cooperation as a major field of application and describing concrete procedures for an effective and efficient mechanism.

- We are sceptical for several reasons about using convergence criteria because we are convinced that the broader political implications should be kept in mind.
- The adoption of a collective defence clause does not constitute a priority in our view, and would not have concrete and immediate repercussions on the EU. It would be rather a political signal, a symbol of solidarity. Given the hesitation by some member countries, it is not safe whether it will come true at all.
- In the field of defence industry, we plead for relying on existing structures like the LoI/FA process and OCCAR for bringing them under the Treaty roof. Here, successful cooperation could be taken as a starting point. A number of countries with France, Germany, Italy, Britain (and possibly Sweden) could become the core group of EU defence industrial cooperation, with Spain and the Netherlands as possible candidates.
- However, a strengthening of these mechanisms must also be envisioned. OCCAR should become more than a technical body for coordinating national activities. It should rely on a budget determined by its member states and be able to make procurement decisions through its bodies even under majority voting; where the weighted voting should be determined by the contribution to the organisation. Its statute could be inserted in a Protocol annexed to the Treaties and become part of a defence industrial policy acquis.
- If the option for pre-determined flexibility proves not to be viable, a general clause for enhanced cooperation could be envisioned which would be sufficiently broad as to facilitate *defence industrial cooperation* as well as *crisis management operations*. Here, the member states would not rely on a fixed and established set of rules from the outset, but would be able to initiate a procedure in the future; for this purpose, however, the present wording of the Treaties should be amended and

modified; under the Nice version, enhanced cooperation is practically rather improbable to be used in CFSP, while the military and defence field is excluded; this limitation must be lifted, the veto option be abolished, and the number of conditions be clarified and boiled down. In particular the clause must offer the possibility of quick reaction and swift decision-making in case of urgency, without long debates in the institutions about the pros and cons of action. The deployment of troops and military equipment should not be halted by institutional quarrels.

- The last resort would be to streamline and rationalise existing mechanisms for flexibility outside the Treaties. The emergence of an outside-EU core Europe or directorate however poses serious problems in coherence and solidarity among the member states. As regards defence industrial cooperation, the LoI/FA process, OCCAR and the WEAG/WEAO could be more closely interconnected and related to each other. A formal agreement between OCCAR and the EU, even between WEAO and the EU, could be envisioned. What is crucial is that this option leaves open a future possibility for being inserted into the EU Treaties, like in the Schengen case.

In whatever shape, flexibility seems to be indispensable for the future evolution of CFSP/ESDP and defence industrial cooperation. A problem could arise in making different forms of enhanced cooperation compatible with each other, thereby *managing flexibility* in the EU. If several cases of flexibility will be enshrined in the Treaties and also be used in the future, this could mean that a limited number of countries might undertake a crisis management operation different from those cooperating more closely in the defence industrial sector, or from those adopting convergence criteria for military capabilities and resources. This does not have to be a danger as such, but it might increase complexity and perhaps also confusion. Although, on the other hand, the concept of flexibility permits and even promotes a more variable approach, it should be discussed if in combination with those arrangements, a certain group of '*core countries*' is

needed for ensuring consistency and continuity. Without neglecting the value of solidarity, we assume that the bigger countries disposing of more substantial capabilities and military assets would be necessary in political and military terms for ensuring durable success of flexibility. They would be able to commit sufficient resources to military operations, enjoy political weight in and outside the EU for taking over international responsibilities, and rely on substantial defence industrial structures. This concept could reconcile the demands for flexibility with those for consistency.

In any way, we assume that in the medium and long term, those countries working more closely together in the field of defence industry, will have a comparative advantage also for crisis management, in terms of common equipment and standards, as well as inter-operability of troops and weapons. Therefore, we assume a link between different forms of flexible cooperation.

Crisis management as well as defence industrial cooperation even under flexibility require the commitment of the big countries for reasons of capability, credibility and continuity. Countries like France, Germany and Britain would prove to be crucial for the successful implementation of defence policy.

Bibliography

- Action Plan for European Defence Industries, European Commission 1997.
- Allsopp, C. , and D. Vines, 1998: The Assessment: Macroeconomic Policy after EMU, in: Oxford Review of Economic Policy, Vol. 14, N° 3, pp. 1-23.
- Andréani, Gilles, et al. 2001: Europe's Military Revolution, London : Centre for European Reform.
- Bauer, Sibylle, 2000: Defence Industry Restructuring: negotiations continue, in: European Security Review, N°1, pp. 4-5
- Bauer, Sibylle, 2001: Can European Defence Industrial Co-operation be made Accountable?, in: European Security Review, N° 7, pp. 2-3.
- Baumgartner, Manfred, 2002: Eine Streitmacht für mancherlei Zwecke - Können die Europäer das Headline Goal erfüllen?, in: Erich Reiter, Reinhard Rummel and Peter Schmidt (eds.), Europas ferne Streitmacht, Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP, Hamburg, Berlin, Bonn, Forschungen zur Sicherheitspolitik, Vol. 6, pp. 11-42.
- Becher, Klaus, 2001: EU Defence Policy: Evolution, Prospects and Implications, Madeleine Feher Annual European Scholar Series, N°5, The Begin and Sadat Center for Strategic Studies, Bar Ilan University.
- Bono, Giovanna, 2002: European security and Defence Policy: theoretical approaches, the Nice Summit and hot issues, paper for the Research and Training Network: Bridging the Accountability Gap in European Security and Defence Policy (ESDP)/ ESDP and Democracy, February 2002.
- Cornu, Christophe, 2001: Chapter Two, Fortress Europe: real or virtual?, in: Burkard Schmitt (Ed.), Between Cooperation and Competition: The Transatlantic Defence Market, Chaillot Papers 44, January 2001 (with contributions by Gordon Adams, Christophe Cornu, Andrew D. James), pp. 51-92.
- Council of the European Union, 2001: Draft Presidency Report on European security and defence policy, Brussels, 11 December, 15193/01 LIMITE.
- Council of the European Union, 2002: Presidency Report on European Security and Defence Policy, Brussels, 22 June 2002, 10160/02 REV 2.
- Den Boer, Monica and William Wallace, 2000: Justice and Home Affairs, Integration through Incrementalism?, in: Helen and William Wallace (eds.),

Policy-making in the European union, 4th ed., Oxford, pp. 494-519.

Dini, Lamberto, 2002: Contribution from Mr Lamberto Dini, member of the Convention, European Defence, Brussels, 26 September 2002, CONV 301/02.

Franco-German proposals on ESDP, 2002: Contribution by Mr Dominique de Villepin and Mr Joschka Fischer, members of the Convention, presenting joint Franco-German proposals for the European Convention in the field of European security and defence policy, Brussels, 22 November 2002, CONV 422/02.

Geipel, Gary L., 2002: ESDP and NATO: Challenges and Requirements through 2010, in: Erich Reiter, Reinhard Rummel and Peter Schmidt (eds.), Europas ferne Streitmacht, Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP, Hamburg, Berlin, Bonn, Forschungen zur Sicherheitspolitik, Vol. 6, pp. 43-59.

Giering, Claus and Josef Janning, Flexibilität als Katalysator der Finalität? Die Gestaltungskraft der verstärkten Zusammenarbeit nach Nizza, in: Integration, Sonderheft zu Nizza.

Giering, Claus and Josef Janning, Flexibilisierung als Option deutscher Europapolitik, in: Heinrich Schneider/Mathias Jopp/Uwe Schmalz (Hrsg.), Eine neue deutsche Europapolitik? Rahmenbedingungen – Problemfelder – Optionen, Bonn 2001, S. 667 – 693.

Gimbal, Anke, 1998: Die Innen- und Justizpolitik der EU nach Amsterdam, in: Werner Weidenfeld (ed.), Amsterdam in der Analyse, Gütersloh, pp. 121-162.

Grundlage für eine europäische Rüstungspolitik, Dokument der Rüstungsdirektoren der EU, 29. April 2002.

Hall, Ben, 2000: How flexible should Europe be?, Centre for European Reform, Working Paper.

Heisbourg, François, 1999: The EU needs defence Convergence Criteria, Centre for European Reform online, June/July, http://www.cer.org/uk/articles/n_6_1.html

Herolf, Gunilla and Bo Huldt, 2002: The European Union and the Inclusion of a Collective Defense Clause, in: Erich Reiter, Reinhard Rummel and Peter Schmidt (eds.), Europas ferne Streitmacht, Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP, Hamburg, Berlin, Bonn, Forschungen zur Sicherheitspolitik, Vol. 6, pp. 60-85.

Hix, Simon: 1999: the Political System of the European Union, New York.

Howorth, Jolyon, 2001: European defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately?, in: Journal of common Market Studies, Vol. 39, N° 4, pp. 765-789.

Howorth, Jolyon, 2002: CESDP after 11 September: From Short-Term Confusion to Long-Term Cohesion?, in: EUSA Review, Vol. 15, N° 1, pp. 3-4.

Huber, Reiner K., 2002: Standards und Konvergenzkriterien für die Weiterentwicklung der europäischen Streitkräfte, in: Europäische Sicherheit, Vol. 51, N° 4, pp. 45-50.

Janning, Josef, 1997: Dynamik in der Zwangsjacke – Flexibilität in der Europäischen Union nach Amsterdam, in: integration, N° 4, pp. 285-291.

Jopp, Mathias, 2002: Europäische Sicherheits- und Verteidigungspolitik, in: Werner Weidenfeld and Wolfgang Wessels (eds.), Jahrbuch der Europäischen Integration, Bonn 2002, forthcoming, pp. 217-226

Jopp, Mathias, Jan Reckmann and Elfriede Regelsberger, 2002: Ansatzpunkte und Optionen zur institutionellen Weiterentwicklung von GASP und ESVP, in: integration, N° 3, pp. 230-237.

Keukeleire, Stephan, Directorates in the CFSP/CESDP of the European Union: A plea for “restricted crisis management groups”, European Foreign Affairs Review, Vol. 6, Issue 1, Spring 2001, pp- 75-102.

Küchle, Hartmut, 2001: Rüstungsindustrie im Umbruch, Strategien deutscher Unternehmen und Ansätze einer europäischen Neuordnung, Baden-Baden.

Lindley-French, Julian, 2002: Combined and Joint? The Development of a Security and Operational Doctrine for the European Union, in: Erich Reiter, Reinhard Rummel and Peter Schmidt (eds.), Europas ferne Streitmacht, Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP, Hamburg, Berlin, Bonn, Forschungen zur Sicherheitspolitik, Vol. 6, pp. 86-118.

Lundmark, Martin, 2001: The Transatlantic defence industry market – future models of integration, paper presented at the 47th Atlantic Treaty Association General Assembly, 2 - 6 October 2001, Bled (Slovenia)

Missiroli, Antonio (ed.), 1999: Flexibility and Cooperation in European security Matters: Assets or Liabilities?, WEU Institute for security Studies, Occasional Paper 6.

Missiroli, Antonio, 2000: CFSP, defence and flexibility, Chaillot Papers 38, February.

Missiroli, Antonio, 2001: European Security Policy: The Challenge of Coherence, European Foreign Affairs Review, Vol. 6, Issue 2, pp. 177-198.

Missiroli, Antonio, 2002: Coherence, effectiveness, and flexibility for CFSP/ESDP, in: Erich Reiter, Reinhardt Rummel and Peter Schmidt (eds.): Europas ferne Streitmacht, Chance und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP, Hamburg, Berlin, Bonn, Forschungen zur Sicherheitspolitik, Vol. 6., pp. 119-148.

Nones, Michelle, 2000: A Test Bed for Enhanced Cooperation: the European Defence Industry, in: *The International Spectator*, Vol. XXXV, N°3, pp. 25-35.

Phillipart, Eric and Sie Dhian Ho, Monika, 2001: Flexibility after Amsterdam: Comparative Analysis and Prospective Impact, in: Jörg Monar and Wolfgang

Regelsberger, Elfriede, 2001a: Die Gemeinsame Außen- und Sicherheitspolitik nach „Nizza“ – begrenzter Reformeifer und außervertragliche Dynamik, in: *integration*, N°2, pp. 156-166.

Regelsberger, Elfriede, 2001b: Gemeinsame Außen- und Sicherheitspolitik, in: Werner Weidenfeld and Wolfgang Wessels (eds.), *Jahrbuch der Europäischen Integration 2000/2001*, Bonn, pp. 243-252.

Rohde, Joachim, 2002: Die ESVP als Instrument autonomen Handelns der EU, in: Erich Reiter, Reinhard Rummel and Peter Schmidt (eds.), *Europas ferne Streitmacht, Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP*, Hamburg, Berlin, Bonn, *Forschungen zur Sicherheitspolitik*, Vol. 6, pp. 149-164.

Seidelmann, Reimund, 2002: Perspektiven und Optionen für die Kompetenz- und Mittelverteilung zwischen EU, NATO und den Mitgliedstaaten, in: Erich Reiter, Reinhardt Rummel and Peter Schmidt (eds.): *Europas ferne Streitmacht, Chance und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP*, Hamburg, Berlin, Bonn, *Forschungen zur Sicherheitspolitik*, Vol. 6., pp. 195-221.

Wessels (eds.), *The European Union after the Treaty of Amsterdam*, London and New York, pp.167-203.

Schmitt, Burkard (Ed.), *Between Cooperation and Competition: The Transatlantic Defence Market*, Chaillot Papers 44, January 2001 (Mit Beiträgen von Gordon Adams, Christophe Cornu, Andrew D. James). Hieraus insbesondere Chapter II.

Schmitt, Burkard, *From cooperation to integration: defence and aerospace industries in Europe*, Chaillot Paper 40, Paris, July 2000.

Schoutete, Philippe de 2001: Closer Cooperation: Political Background and Issues in the Negotiation, in: Jörg Monar and Wolfgang Wessels (eds.), *The European Union after the Treaty of Amsterdam*, London and New York, pp. 150-166.

Tsoukalis, Loukas, 2000: Economic and Monetary Union, Political Conviction and Economic Uncertainty, in: Helen Wallace and William Wallace (eds.), *Policy-making in the European Union*, 4th ed., Oxford, pp. 149-178.

Wessels, Wolfgang and Birke Jantz, 1997: Flexibilisierung: Die Europäische Union vor einer neuen Grundsatzdebatte? *Grundmodelle unter der Lupe*,

in: Rudolf Hrbek (ed.), Die Reform der Europäischen Union, Positionen und Perspektiven anlässlich der Regierungskonferenz, Baden-Baden, pp. 345-368.

Wessels, Wolfgang, 1998a: Verstärkte Zusammenarbeit. Eine neue Variante flexibler Integration, in: Mathias Jopp, Andreas Maurer and Otto Schmuck (eds.), Die Europäische Union nach Amsterdam, Analysen und Stellungnahmen zum neuen EU-Vertrag, Bonn, pp. 187-218.

Wessels, Wolfgang, 1998b: Flexibility, differentiation and closer cooperation, the Amsterdam provisions in the light of the Tindemans report, in: Martin Westlake (ed.), The European union beyond Amsterdam, New concepts of European integration, London and New York, pp. 76-98.

Working Group on Defence, 2002: Final Report of Working Group VIII – Defence, Brussels 16 December 2002, CONV 461/102 WG VIII 22.

The current state of european cooperation in the field of armaments

(Andrew D. James) *

1. INTRODUCTION

With the consolidation of key elements of the European defence industry, attention has turned once again to the prospects for the creation of more efficient and effective institutions for the promotion of armaments cooperation and the creation of a true European defence market. These discussions have been given added impetus by the deliberations of the European Constitutional Convention and the prospects for a revised EU Treaty in 2004. The aim of this paper is to assess the current state of European cooperation in the armaments field and the prospects for reform.

In many respects, the European defence industry is finding that it has got ahead of its customers. The last decade has seen a dramatic consolidation of the European defence industry. The competitive threat posed by merger-driven consolidation in the United States, declining European defence budgets and the rising costs of developing new weapon systems have driven European companies towards mergers and joint ventures. However, whilst the supply side may be increasingly organised on a European scale, its customers remain primarily national in organisation. Thus, the defence industry remains largely governed by national policies reflecting the special characteristics of the sector.

This state of affairs has significant implications for the efficiency and effectiveness of the emerging transnational defence companies (TDCs) and government-to-government cooperative equipment programmes. In recognition of this fact, there has been

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a growth of ad hoc intergovernmental institutions to address certain issues. The many weaknesses of the WEAG has led the main arms producers to seek progress through smaller intergovernmental initiatives, not least the OCCAR and the LoI Framework Agreement. However, the current state of European cooperation in the field of armaments is far from satisfactory. Paradoxically, new military structures are being established within the European Union but these do not include a competence in armaments and there is a danger that the exclusiveness of the current arrangements may drive a wedge between a European armaments “hard core” and the other Member States of the Union at a time when defence policy is developing as an EU policy.

The paper observes that most attention has focused on reforms designed to enhance co-operation within TDCs and European equipment programmes (the central focus of WEAG, OCCAR and the LoI Framework Agreement). However, efforts to promote competition and market opening through the creation of a true European defence equipment market have been much more limited. In the eyes of many, Article 296 of the Treaty of European Union has long been viewed as a major obstacle to a unified European defence equipment market not least because some Member States have taken the view that Article 296 excludes arms production activities from the discipline of the first pillar of the EU treaty. This paper argues that more restrictive rulings from the European Court of Justice suggest that (with the support of the European Council) there is the possibility of the introduction of Single Market rules to the armaments sector without the need for a treaty change.

The paper proposes three potential options for reform. A first option would be to retain an institutional status quo allowing established institutional arrangements such as WEAG/WEAO, OCCAR and the Framework Agreement to broaden and deepen their activities along current trajectories. A second option would be to enhance the role of the European Union under established institutional arrangements and competences exploiting the possibilities offered by the rulings of the European Court of Justice. A

third option would be to develop a EU armaments policy and market using the principle of enhanced cooperation. Ultimately, future developments will be determined by the political will of European governments, the extent to which they continue to assert the intergovernmental principle and the ability of governments to reconcile the deep differences that exist between those countries with large defence industries and those that do not.

2. EUROPEAN SUPPLY-SIDE COLLABORATION AND CONSOLIDATION

The last decade has seen a dramatic consolidation of the European defence industry. The competitive threat posed by merger-driven consolidation in the United States, declining European defence budgets and the rising costs of developing new weapon systems have driven European companies towards mergers and joint ventures.

2.1. The growing importance of transnational defence companies (TDCs)

This merger-driven consolidation has gone beyond national boundaries to create a number of TDCs that can challenge their U.S. competitors in terms of size and breadth of products and technologies.

In 1999, Europe witnessed mergers creating the two largest defence companies within Europe, which now rank third and fifth worldwide. British Aerospace took over the defence activities of GEC-Marconi to become BAE Systems – a company with European industrial interests in Sweden (through a 35% stake in SAAB), Germany (through a 49% stake in STN ATLAS Elektronik) and Italy (through its Alenia Marconi Systems joint venture). In response, DASA, Aerospatiale-Matra, and CASA merged to form the European Aeronautic Defence and Space company (EADS) – a corporate entity that can be regarded as the first true pan-European defence company. At the same time, French defence electronics company Thales has established extensive industrial interests in the UK through its acquisition of RACAL Electronics

in 2000 and its acquisition of BAE Systems' stake in Thomson Marconi Sonar and other deals such that it is now the second largest defence contractor in the UK. Whilst the defence aerospace and electronics sectors have led the consolidation process, TDCs have also emerged in other sectors. In the land systems sector, the UK's Alvis owns Hägglunds Vehicles of Sweden and a 50% stake in Patria-Hägglunds of Finland. In the naval systems sector, HDW of Germany has acquired Kockums of Sweden and a 51% stake in Greece's Hellenic Shipyards as well as developing partnerships with Bazan of Spain and Fincantieri of Italy.⁷

2.2. Industrial joint ventures

Below the level of the major TDCs, a network of joint ventures, alliances and other forms of collaboration within the European defence related industries are gradually changing the shape of the industry. The missile manufacturer MBDA is jointly owned by BAE Systems (37.5%), EADS (37.5%) and Finmeccanica (25%). In the space sector, Astrium is a joint venture company owned by EADS (75%) and BAE Systems (25%). The helicopter prime contractor Agusta Westland is a joint venture between GKN Westland and Finmeccanica's Agusta.

2.3. Government-to-government equipment programmes

Equally, since the 1960s, European governments have pursued joint defence equipment programmes with the aims of realising economies of scale through longer production runs and sharing the costs and risks associated with the development of advanced weapons systems. Current European equipment programmes include:

- Eurofighter – joint development by Germany, Spain, Italy and the UK;
- A400M – strategic transport aircraft – Germany, Belgium,

⁷ Andrew James, "Comparing European responses to defense industry globalization", *Defense & Security Analysis*, Vol.18, No.2, pp.123-143, 2002. (In 2001, HDW was acquired by the US finance house One Equity Partners)

- Spain, France, Luxembourg, Portugal, the UK and Turkey;
- TIGER attack helicopter – France and Germany;
- EH101 helicopter – Italy and the UK;
- Counter battery Radar (COBRA) – Germany, France and the UK;
- MRAV GTK (Multi Role Armed Vehicle) – Germany, the Netherlands and the UK.

3. THE NEED FOR REFORM

3.1. Customer consolidation has lagged industrial consolidation

In many respects, the European defence industry is finding that it has got ahead of its customers. The supply side may be increasingly organised on a European scale but customers remain primarily national in organisation. The defence industry remains largely governed by national policies reflecting the special characteristics of the sector.⁸

Competition and procurement rules

In the field of competition, there is a difference between declared intentions and reality: European governments may declare a policy of openness of their national markets but in practice still continue to think in terms of national capabilities. In the UK in the period 1996-97, of 730 contracts awarded (56% of which were open invitations to tender) in the framework of the WEAG Coherent Policy Document, 95% were won by British companies. In Italy, of the 341 contracts, 74% were subject to limited competition (86% of which were won by Italian companies) and only 26% to open competition (68% of which were won by Italian companies). In France in 1997, 63% of contracts were subject to restricted invitation to tender or not open to competition.

⁸ This section draws on the excellent discussion by Christophe Cornu, “Fortress Europe – real or virtual?”, in Schmitt, B (ed) *Between Cooperation and Competition: the Transatlantic Defence Market*, Chaillot Paper No. 44, 2001, Western European Union Institute for Security Studies: Paris.

As such, national procurement systems remain manifestations of national industrial policy. They are the instruments by which each nation protects its security and economic interests in defence. Each system embodies national policy through specific funding approval and risk reduction stages, contractor selection criteria, risk sharing, contractual terms and management processes. This makes it extremely difficult to procure systems on anything other than a national basis. The national defence industries of Europe all enjoy some degree of protection from overseas competition either explicitly as favoured suppliers, or implicitly by possessing (usually through government investment) the technical capabilities that are matched to their home markets.

Export regulations

In the case of export regulations, each country has its own cumbersome legislation. This requires companies to obtain approval, either for a geographical area, for exploring external markets, for obtaining permission to export weapons systems at the time the equipment is exported (in the case of the UK) or at each phase of the export process (in the case of France, Germany and Spain). This multitude of heterogeneous regulations has prevented the free circulation of defence products within the European Union and has stirred up competition between European governments and companies in third markets. Equally, there are differing national approaches for tariff arrangements for imports for military or dual-use equipment and this generates unequal treatment of companies.

Restrictions on foreign investments

Christophe Cornu distinguishes between two separate groups of countries. In the first group, Germany does not impose any specific legal constraints on foreign acquisitions of national companies, and Italy has no special arrangements for controlling defence industrial agreements. The UK has no specific regulations. However, governments may still intervene. Thus, the Italian government can invoke the protection of secrets related to national security to prevent any takeover that is considered “unfriendly”. In

Germany, when British Aerospace sought to acquire STN Atlas in 1998, the authorities warned about the potential negative consequences regarding access to the German market – in response British Aerospace chose to take a minority stake.

A second group of countries employ a specific body of rules. French law requires prior authorisation and limits foreign investment to 20% of a company's capital (although dispensations are possible). In Sweden, government permission is necessary and in Spain the government must approve any foreign investment in a Spanish defence company.

3.2. Reform is necessary for the competitiveness of the european defence industry

These national differences have practical implications for TDCs and collaborative armaments programmes and make their operation difficult, costly and less efficient than they might otherwise be.

The implications for TDCs

At present, companies are financially integrated rather than operationally integrated and this leads to inefficiencies, duplication of activities and high overheads. The fragmented nature of national defence markets means that companies find it difficult to achieve the economies of scale enjoyed by their counterparts in the United States where a single market provides opportunities for longer production runs that drive economic efficiency. In contrast, national definition of future equipment requirements and national procurement means that European companies are hampered by small and fragmented markets.

Commercial logic would suggest that TDCs rationalise their production activities to restructure across national boundaries to eliminate duplication and create centres of excellence but this is made difficult by the particular characteristics of the defence industry. This has resulted in the duplication and fragmentation of industrial capabilities across Europe. The two main obstacles to industrial rationalisation are: (1) the desire of governments to

control sources of supply for national purposes during periods of crisis (2) national economic interest – defence companies represent sources of high technology employment and export sales. Rationalisation of TDCs will lead to changes in the location of activities meaning that some governments will become dependent upon imports from other European countries and thus require security of supply guarantees (or at least to be notified of changes that will affect them). No European government (unlike the US) has such a security of supply guarantee with industry.

Differences in national procedures relating to intra-Community transfers can be administratively burdensome, time consuming and costly to administer for TDCs. Consolidation of the European aerospace and defence industry is leading to growing transfers of products, components, intermediate goods and raw materials between customers and suppliers and within trans European defence companies. It is important to ensure that goods can circulate within the single market in such a way that the competitiveness of restructured companies is not compromised.⁹

Implications for collaborative programmes

National differences also have practical implications for inter-governmental equipment cooperation. Historically, such programmes have been limited and costly because – with a fragmented market and industrial base – disagreements arise from the need to compromise on military requirements or the desire to protect national industrial interests. These often offset potential cost savings and introduce delays. Delays can also be caused by the different political and administrative structures between countries. The funding priorities of national governments may differ and funding approvals take place at the speed of the slowest member.

At the same time, the latest generation of cooperative programmes are more complex than previous generations because

⁹ European Commission, *STAR 21 Strategic Aerospace Review for the 21st Century: Creating a Coherent Market and Policy Framework for a Vital European Industry*, Brussels (July 2002)

systems are more complex and contain many more components and sub-systems. Thus, comparing Eurofighter with Tornado, there are more cross-border transfers of components and sub-systems and this presents significant practical problems for such programmes not least because time and money are wasted in negotiating with national export bureaucracies. More efficient cooperative programmes require Europe to tackle the problem of cross-border transfers and free circulation of military sub-systems also requires managing the regulation of exports outside Europe. Without a common export procedure the free movement of goods within the European Union is hampered.

3.3. The need to increase customer purchasing power in the face of TDCs

National governments now face a few very large consolidated TDCs and it has been argued that this, more than any other consideration, may prompt member states to press for a European Armaments Agency, unifying government demand in the face of a handful of defence industrial giants.¹⁰

There would be other benefits if European states were able to organise themselves as homogeneous European customers for defence materiel, harmonising their military requirements so as to make possible sizeable and economic production runs.¹¹ A single European defence market where defence procurement took place at a European level rather than in fragmented national markets is generally accepted to have potential benefits for the defence industry, the armed forces and national governments. The potential benefits arise from the larger home market that European defence companies would be able to access. This should increase their investment levels and their ability to com-

¹⁰ Francois Heisbourg (ed.) *European Defence: Making it Work*, Chaillot Paper 42, September 2000, Institute for Security Studies of the WEU (Paris).

¹¹ Assembly of the Western European Union, *Armaments Cooperation in the Future Construction of Defence in Europe – Reply to the Annual Report of the Council*, Report submitted on behalf of the Technological and Aerospace Committee by Mr O'Hara, Rapporteur, 10 November 1999 (Paris).

pete on equal terms with US companies. European governments and taxpayers would obtain better value for money from a streamlined industry.¹²

3.4. Europe needs to make more efficient use of its defence spending

The current arrangements are expensive and inefficient, duplicating effort and raising costs at a time when budgets are squeezed. It is clear that a fragmented market denies Europe the economies of scale necessary to reduce costs, fund R&D and ensure the effective application of technology. Equally, traditional methods of cooperation within Europe do not provide best value for money. Where European governments have decided to pursue collaborative programmes, those programmes have had strict *juste retour* work share agreements to meet the need to satisfy national governments' needs to deliver local jobs in exchange for spending taxpayers' money on defence. At the same time, these collaborative programmes have often been dogged by problems because they have often been established after the national equipment requirements have become relatively firm and the collaborative programme has then been left to try to deliver a common solution to often-conflicting national requirements. The consequence has been a highly failure rate of such programmes and cost over-runs for those that have survived.

There is a growing recognition that Europe's defence ambitions will not be achieved if its members spend substantially less than the United States in terms of defence capital spending while at the same time allocating its scarce funding in a grossly inefficient manner. The transatlantic spending gap is well documented. The U.S. spends about 3% of its GNP on defence and this figure is rising. By contrast, NATO Europe spends only about 1.8% and this figure is more or less static. Furthermore, only

¹² Creating a European Defence Equipment Market as a Basis for a European Defence Technological and Industrial Base, European Defence Industries Group Contribution to the Convention on the Future of Europe for EDSP, 18 September 2002, Brussels.

Turkey and the U.K. are spending the same proportion of their defence budgets on research, development and procurement as does the U.S.¹³ Likewise the U.S. accounted for 62% of all NATO funds allocated to procurement in 2000. More than that, European defence spending is far less efficient than U.S. spending because Europe has no single defence market and because its many national defence establishments cannot exploit the level of integration enjoyed by the U.S. Consequently, Europe may spend 60% of what the U.S. spends but it generates nowhere near 60% of the capabilities. At the same time, future capability development in Europe is being hampered by limited European R&T expenditure. European spending on R&T remains about a quarter of that spent by the U.S. and, with U.S. R&T spending likely to increase over coming years, that gap will widen further. R&T spending has tended to be scattered and dispersed in national programmes and specific technological priorities in individual areas have traditionally been decided on a national basis.¹⁴

3.5. The CESDP requires closer armaments cooperation

It has been strongly argued that the development of common objectives in foreign policy and cooperation in security operations need to be matched by common objectives and cooperation in the armaments development and acquisition process.¹⁵ Indeed, there is a feeling that a real European defence and security policy cannot exist if it does not comprise a clearly defined armaments and equipment policy.

Equally, the development of the CESDP has the potential to push EU national markets together and reduce fragmentation because customers will have increasingly common strategic objectives.¹⁶ The setting up of multinational coalition

¹³ "Defence and security in an uncertain world", Keynote speech by NATO Secretary General, Lord Robertson, Forum Europe, Brussels, 17 May 2002.

¹⁴ Assembly of Western European Union, *op cit*, note 5.

¹⁵ STAR 21, *op cit*, note 3.

¹⁶ Assembly of the Western European Union, *op cit*, note 5.

forces will have the potential and will even necessitate the harmonisation of equipment at European level. At the same time, there is a growing belief that the ECAP/Headline Goals process will only succeed if it is linked in some way to the harmonisation of military requirements and procurement of defence equipment.

4. CALLS FOR REFORM

4.1. Calls for action at the european level

The 1990s saw a series of statements of intent at the European level. In 1991, the Declaration of WEU member states that is part of the Final Act of the Maastricht Treaty included an agreement on the need for “enhanced cooperation in the field of armaments with the aim of creating a European Armaments Agency”. Since Amsterdam, the Treaty on European Union (TEU) explicitly provides that “the progressive framing of a defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments”. In the 1999 Cologne Declaration on strengthening the common European policy on security and defence the European Council stated:

“we recognise the need to undertake sustained efforts to strengthen the defence industrial and technological base, which we want to be competitive and dynamic. We are determined to foster the restructuring of the European defence industries amongst those States involved. With industry we will therefore work towards closer and more efficient defence industry collaboration. We will seek further progress in the harmonisation of military requirements and the planning and procurement of arms, as Member States consider appropriate”.

The Helsinki Summit conclusions reaffirmed the commitment of Member States to harmonise military requirements and the planning and procurement of arms “as Member States consider appropriate”. The 2001 Laeken Summit recommended that work should accelerate on harmonising military requirements and the planning of arms procurement with the aim of developing a com-

prehensive armament policy at the EU level.

The Spanish Presidency of the European Union in the first half of 2002 sought to inject some urgency into the development of a European armaments policy expressing the view that cooperation in the field of armaments was a priority within the development of the Second Pillar of the European Union. The Spanish Presidency expressed the view that, in spite of the repeated Council mandates, from Cologne to Laeken, little progress had been made towards the formulation of a common armaments policy within the European Union. The Spanish Presidency presented a 10-point plan to set the basis for the establishment of a European Armament Policy but this received limited support from other Member States.

4.2. The European Commission Action Plan

These statements of intent by European governments have contained little by the way of detail as to the institutional form that closer cooperation should take nor the means by which it should be implemented. Thus, in 1997, the European Commission Communication *Implementing European Union Strategy on Defence-Related Industries* contained a draft common position on the wording of a European armaments policy along with an Action Plan intended to foster the emergence of a European defence and armaments market.¹⁷ The draft Common Position focused in particular on the need for action on intracommunity transfers of defence goods, public procurement and common customs arrangements. The Action Plan identified a list of areas in which the Commission considered that EU action was both necessary and urgent to ensure progress towards a true European market for defence products and included proposals for:

- The simplification of intra-community transfers of defence goods – the Commission proposed to put in place a simplified

¹⁷ Commission of the European Communities, *Implementing European Union Strategy on Defence-Related Industries*, COM(97) 583 final, 1997, Commission of the European Communities: Brussels.

licensing system applicable to shipment of defence-related products within the European Community. The system would comprise guarantees for exports and re-exports as well as mechanisms for control and surveillance.

- A concrete system of rules on public procurement of defence goods – the Commission noted that any framework should make provision for competitive tendering wherever feasible and it must favour the maintenance and development of the fundamental industrial capabilities and key technologies at the European level. In order to take account the specificities of the defence sector, and in particular the need for confidentiality and security of supply, the Commission envisaged an appropriate level of flexibility being included in the system.
- Actions to ensure that Community competition policy examines, in an appropriate way, all competition issues within the defence industry – the Commission noted that the emergence of a Community market for the defence industry, resulting from common programmes, from necessary restructuring and European alliances, and from common rules on public procurement required that the Community's competition policy examined in an appropriate way all competition issues within the defence industry (including State aids)
- The harmonisation of customs tariffs on defence goods – the Commission proposed legislative initiatives to harmonise tariff arrangements with a view to achieving equal treatment of operators throughout the Community and also proposed that its 1988 proposal for temporary suspension of import duties on certain weapons and military equipments should be reviewed and adopted.
- Rationalisation of the sets of standards used by defence ministries in Member States;
- Action on Technology Research and Development;
- The creation of a European Company Statute to facilitate the establishment and management of transEuropean defence companies;

- Actions to promote innovation, technology transfer and small and medium sized businesses.

The Council did not adopt the draft common position proposed by the Commission. Member States expressed different points of view and some doubted the advisability of adopting a European Union common position on armaments.¹⁸

4.3. The STAR 21 Report

Perhaps the most significant recent proposals for demand-side reform are set out in the *Strategic Aerospace Review for the 21st Century* (STAR 21) published in July 2002. The product of a high-level working group of European aerospace industry figures, European Commission officials and Members of the European Parliament, the STAR 21 report recommends the creation of a coherent market and policy framework for Europe's aerospace industry, and in particular:

- Ultimate goal: a European armaments policy to provide structure for European defence and security equipment markets, and to allow a sustainable and competitive technological and industrial base.
- Harmonisation of military requirements and planning of procurement budgets and of arms procurement.
- Increased resources, used more effectively, with encouragement for European collaborative programmes and more effective task sharing between Member States.
- More coherent defence research spending between Member States.
- Work towards establishment of a European defence equipment market and an armament agency responsible for a wide range of activities related to acquisition, common research and development, off-the-shelf procurement, etc.
- Promotion of EU-wide actions similar to the Framework Agreement for Defence Restructuring.

¹⁸ *Introductory Note by the Secretariat on Armaments*, Working Group VIII, The European Convention, Brussels.

The European Parliament has supported this approach. In April 2002 the European Parliament adopted a Resolution on European defence industries reiterating its view that a strong, efficient and viable European armaments industry and an effective procurement policy were vital to the development of the ESDP. It also reaffirmed its support for the Action Plan contained in the Commission's 1997 Communication on *Implementing European Union Strategy on Defence Related Industries*. In calling for an updated Action Plan to be submitted to the Council and Parliament as soon as possible, the European Parliament has asked the Commission to consider how far the common commercial policy and single market disciplines should be applied to defence industries, the possibility of developing a multi-institution and defence industry body to pool and co-ordinate research in the defence field and whether further measures were needed to facilitate the establishment of transnational companies and integrate the industries in the accession countries.

4.4. The European Constitutional Convention

These discussions have been given added impetus by the deliberations of the European Constitutional Convention. Under Commissioner Michel Barnier, The Mandate of the Working Group on Defence (Working Group VIII) notes that:

“The Group might consider whether forms of cooperation on armaments could be incorporated into the Treaty: cooperation between all Member States? Voluntary cooperation with accession criteria? It might also investigate the possibility of setting up an arms agency whose tasks (research, development, acquisitions) and operating methods would have to be studied in detail”.¹⁹

Submissions

Submissions to the Constitutional Convention have shown some support for enhancing competition and the creation of a

¹⁹ *Mandate of the Working Group on Defence*, The European Convention, CONV 246/02, Brussels.

European defence equipment market.²⁰ Member of the Convention Mr Lamberto Dini has called for a European arms agency established under the rules of enhanced cooperation and using OCCAR and the LoI as a starting point.²¹

The European Defence Industries Group (EDIG) provides the most significant and elaborate statement of the industry viewpoint. In its submission to the European Constitutional Convention, EDIG calls for the creation of a European Defence Equipment Market (EDEM) – a more transparent and open market within Europe to fulfil military material requirements.²² EDIG argues that an enlarged European Union (EU) should eliminate duplicative defence research between EU countries in the short term, pry open cross-border competition, and create a common armaments agency. In its submission, EDIG identifies four conditions to enable a single European defence equipment market to operate:

- A common, or at least substantially overlapping, foreign and security policy having regard to the harmonisation of military requirements on a far greater scale than at present and release the efficiencies to be had from longer production runs.
- A common armaments policy that defines, amongst other issues, an agreed mechanism for dismantling trade barriers and consolidating the industry based on mutual interdependency principles and together with a framework for the long-term development of a European defence industry.
- A common procurement policy that implements the industrial strategy through agreed harmonised procurement mechanisms for contractor selection, funding, risk sharing and technology transfer.
- A common R&D policy with common research objectives to

²⁰ See Working Document 2 submitted to Working Group VIII on Defence by Wim van Eekelen, 19 September 2002 and Working Document 4 submitted to the Working Group VIII on Defence by Mr Katiforis, 2 October 2002.

²¹ Contribution from Mr Lamberto Dini, member of the Convention “European Defence”, CONV 301/02, 26 September 2002 (Brussels).

²² EDIG, *op cit*, note 6.

optimise investment, via a willingness to increase the sharing of R&D results between nations.

A joint Franco-German proposal presented to Working Group VIII made clear that the two countries wished to see the establishment of a European Armaments Agency and the progressive creation a European armaments market within any future European treaty. The Franco-German proposals suggest that the Agency should be established on the basis of enhanced cooperation.²³ The proposals sparked a sharp response from the United Kingdom that rejected the idea of Europe-wide procurement on the grounds that a fortress-Europe approach could damage the UK's increasingly transatlantic defence industry. The UK argues that an Agency should focus on outputs not inputs and as such should concentrate on overseeing European capability commitments.²⁴

Final report of the Barnier Working Group

The final report of the Working Group on defence was published in December 2002 and includes a recommendation for:

“setting up a European Armaments and Strategic Research Agency to strengthen the industrial and technological base of the defence sector, allow member States to pursue different cooperation programmes among themselves and ensure fulfilment of capabilities commitments”.²⁵

More precisely, Paragraphs 64-65 of the final report note:

“64. ... the setting up on an intergovernmental basis of a European Armaments and Strategic Research Agency was supported by many in the Group. The Agency's initial tasks would be to ensure the fulfilment of operational requirements by promoting a policy of harmonised procurement by the Member Sta-

²³ *Propositions conjointes franco-allemandes pour la Convention europeenne dans le domaine de la politique europeenne de securite et de defense*, CONV 422/02, 22 November 2002, The European Convention, Brussels.

²⁴ Jean Eaglesham, “UK set to spurn plan for EU defence procurement”, FT.com, 9 December 2002.

²⁵ *Final Report of Working Group VIII – Defence*, CONV 461/02, 16 December 2002, The European Convention, Brussels.

tes, and to support research into defence technology, including military space systems. The Agency would incorporate, with a European label, closer forms of cooperation which already exist in the armaments field between certain Member States (OCCAR, LoI). The Agency should also be tasked with strengthening the industrial and technological base of the defence sector. It should also incorporate the appropriate elements of the cooperation that most Member States undertake within the WEAG.

“In this context, the following methods of participation are envisaged:

- all Member States which so wished could participate in the Agency, the composition of which would not be linked to other, limited forms of defence cooperation;
- certain Member States could constitute specific groups based on a commitment to carry out specific projects in the area of research, development and procurement, on the basis of the principles according to which current forms of cooperation operate, e.g. OCCAR;
- specific projects could also be opened up on ad hoc basis to countries which are not members of the European Union, in particular to non-Union members of the WEAG;
- the Head of the Agency might also make recommendations concerning the specific rules to apply to the armaments sector with a view to a European market which would strengthen the industrial base and optimise military spending, thereby enabling the scope of Article 296 TEC to be specified with due regard for experience acquired in Community matters”²⁶

The Anglo-French Summit at Le Touquet

The prospects for a European armaments agency were given a further boost at the Le Touquet Summit between British Prime Minister Tony Blair and French President Jacques Chirac in February 2003. The Le Touquet Declaration on Strengthening European Cooperation in Security and Defence, stated that to support European capabilities goals:

²⁶ *Ibid*, note 19, Para. 64 – 65, pp.22-23.

“an inter-governmental defence capabilities development and acquisition agency could be established in the EU. The intention would be to ensure that the capabilities required for current and future ESDP missions are defined accurately through the Capability Development Mechanism and introduced into service as efficiently and cost-effectively as possible. The objective of the agency would therefore be to promote a comprehensive approach to capability development across all EU nations.

To this end, the agency would have the following roles:-

- The identification of the qualitative and quantitative objectives set out above, and evaluation of capabilities against them;
- efficient procurement;
- co-ordination of defence research and technology;
- harmonisation of military requirements;
- promotion of multinational solutions to fill identified capability gaps;
- management of co-operative programmes on the basis of the development and progressive enlargement of OCCAR;
- strengthening of an internationally competitive defence industrial and technological base, drawing on procedures identified in the Letter of Intent Framework Agreement and through the provision of advice on the regulation of the armaments sector, e.g. adaptation of the Community Framework.

5. CURRENT ARRANGEMENTS FOR ARMAMENTS COOPERATION

Whilst there may be a growing consensus regarding the need for reforms to promote armaments cooperation and a European armaments market, whatever actions are proposed need to bear in mind the established institutional arrangements for armaments collaboration in Europe and their strengths and weaknesses.²⁷

²⁷ The role of NATO will not be discussed here beyond noting that armaments cooperation between NATO countries is the responsibility of the Conference of National Armaments Directors (CNAD) as the principal body responsible for cooperation, planning and standardisation of armaments within NATO. The CNAD directs its work

5.1. WEAG

The Western European Armaments Group (WEAG) has traditionally been seen as the principal forum for armaments collaboration in Europe. WEAG is a pan-European institution that was initiated by the original thirteen European NATO-members. Today, WEAG has 19 full members: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Turkey, United Kingdom.

Aims and objectives

The objectives of the WEAG are the following:

- More efficient use of resources through, inter alia, increased harmonisation of requirements;
- The opening up of national defence markets to cross-border competition;
- To strengthen the European defence technological and industrial base;
- Cooperation in research and development.

The WEAG is based on six basic principles, principal among which are:

- All member nations should be entitled to participate fully and with the same rights and responsibilities, in any European armaments cooperation forum.
- There should be a single European armaments cooperation forum.

towards key issues such as harmonisation of military requirements on an Alliance-wide basis, the pursuit of identified cooperative opportunities, the promotion of improved transatlantic cooperation and the development of critical defence technologies. NATO provides the principal frame of reference for defining interoperability and standardisation agreements. However, NATO's cooperative efforts have had mixed results – whilst programme management has been relatively successful, armaments planning and standardisation have not been a success, essentially because these subjects are still the responsibility of states. Christophe Cornu, "Fortress Europe – real or virtual?", in Schmitt, B (ed) *Between Cooperation and Competition: the Transatlantic Defence Market*, Chaillot Paper No. 44, 2001, Western European Union Institute for Security Studies: Paris.

- The National Armaments Directors of all the 19 nations, who will be accountable to the Ministers of Defence of those governments, should manage armaments cooperation in Europe.

The WEAG operates under the NADS, who meet twice a year to review the work of a staff group consisting of the Permanent Representatives of the NADS in Brussels. Three Panels undertake the day-to-day activities of the WEAG. The objective of Panel I is to promote cost-effective cooperative equipment programmes that fulfil WEAG nations' military requirements while improving European defence industrial capability and competitiveness. Panel I compares WEAG nations' armaments replacement schedules, which are collated and presented in an annual document. Panels II and III are tasked to handle Defence Research and Technological Acquisition issues and defence economics and armaments cooperation procedures respectively. Panel II has been responsible for overseeing the European Cooperative Long-term Initiative for Defence (EUCLID) programme and other research structures. Panel III has sought to encourage an open European defence market.

Strengths and weaknesses

The WEAG's results have been very modest not least because of its consensus-based decision making procedures and the conditions for collaboration whereby no member can be excluded from any collaboration.²⁸ National interests remain to the fore and the WEAG's industrial role has been affected by differing national views about the nature of the European defence market, the scope of EU competence in the field and the degree of importance to be attached to *juste retour*. At the same time, there has been an absence of high-profile political support and an apparent lack of interest in WEAG's activities on the part of national authorities.²⁹ Indeed, in the absence of agreement at the

²⁸ Stefan Tornqvist, "Spicing the European armaments alphabet soup", mimeo, FOI: Stockholm (2002).

²⁹ Assembly of the Western European Union, *op cit*, note 5.

highest political level, WEAG's work has inevitably been constrained by divergent national interests and procedures, and with technical and administrative matters that cause delay.

Thus, the WEAG has acted primarily as a discussion forum with limited concrete outcomes. Panel I has played a role in the development of a common approach to European weapons procurement and as a result of its activities, as well as other bilateral initiatives, European states regularly publish procurement opportunities so that foreign companies can submit proposals for national purchases of defence goods and services. Panel II has had some success because it has contracting powers with regard to defence R&T programmes. The EUROPA MoU may aid the WEAG/WEAO. Within WEAG, the LoI six have encouraged the setting up of a mechanism that enables them to share R&T plans, carry out R&T jointly and share results, both among themselves and more widely in WEAG. It ought to be emphasised that this a WEAG instrument rather than a LoI Framework Agreement instrument although the LoI six intend to use it for their own purposes as it is available and meets their objectives. The governing MoU (which is not yet operational) is called EUROPA and the associated European Research Grouping will allow the Framework Agreement countries to cooperate with other WEAG countries whilst still satisfying the Framework Agreement conditions. This is regarded as a highly flexible arrangement for R&T cooperation with few restrictions on what can be implemented under it.³⁰

European Armaments Agency

The WEAG also has responsibility for the planned European Armaments Agency (EAA). The WEU Maastricht Declaration spoke of the requirement to examine further "proposals for enhanced co-operation in the field of armaments with the aim of creating a European armaments agency". Nevertheless, although the European Armaments Agency (EAA) may have been conceived as the end goal of armaments integration for European

³⁰ Address by Graham Jordan, Director of Science & Technology, U.K. Ministry of Defence at *European Defence R&D: Funding the Future*, Brussels, 24 January 2002.

governments and agencies, it has made little progress not least because of fundamental disagreements between the key European governments on the aims and responsibilities of the EAA.

In March 1993, an Ad Hoc Study Group was created within WEAG in order to examine all matters related to the possible creation of an EAA. The Group concluded that although conditions did not yet exist for the creation of an agency conducting the full range of procurement activities on behalf of WEAG nations, there might be potential in individual areas for improvements in the conduct of cooperative business through a body having a legal personality. The work of the Ad Hoc Study Group led to an agreement by Ministers in 1996 to establish the Western European Armaments Organisation (WEAO) as a WEU subsidiary body. The WEAO shares the international legal personality of WEU and therefore provides the necessary legal framework for such cooperative armaments activities as WEAG Ministers assign to it and performs the task of managing executive functions in Research and Technology projects.

In November 1997, at their Erfurt meeting, WEAG Ministers discussed how progress could be made towards more effective European armaments cooperation using the aim of a European armaments agency as a means to better coordinate European efforts. They agreed that a plan, including a timetable, should be developed to guide further steps. The “Masterplan for the European Armaments Agency” was developed in 1998. At their meeting in Rome on 17 November 1998 Ministers agreed on the Masterplan as the basis for further development and actions towards the EAA and welcomed the establishment of a Group of National Experts for the performance of studies and further development of the Masterplan. The aim of the agreed Masterplan was to develop the necessary rules and regulations as well as the structure and working procedures for the EAA, so as to allow Ministers to decide in 2001 about the implementation of the European Armaments Agency. At their meeting in Rome on 16 May 2002, Ministers endorsed the concept of an evolutionary process, envisaging the establishment of an EAA as soon as all appropriate conditions are met and political

consensus is reached, and agreed that any outstanding work should continue under the direction of the NADS. Defence Ministers agreed to examine the assignment of additional functions to WEAO, to be determined after appropriate study based on the work already completed in the development of the Masterplan. In reality, national governments have shown rather little interest in the recommendations of the Masterplan for the EAA.

5.2. OCCAR

By the mid 1990s, the many weaknesses of the WEAG led the main arms producers to seek progress through smaller multilateral initiatives not least the establishment of the Organisation for Joint Armaments Cooperation (OCCAR). France, Germany, Italy and the UK signed the OCCAR Convention in September 1998. Ratification of the Convention was completed in late December 2000 and OCCAR attained legal status on 28 January 2001.³¹ These four countries represent some three-quarters of the EU's defence expenditure, and 80 per cent of its procurement and R&T spending.

Aims and objectives

The objective of OCCAR is to provide effective and efficient management of European collaborative defence equipment programmes and the organisation's work has been geared towards providing a viable and effective method for future collaborative programmes involving European nations. Article 8 of the OCCAR Charter states that "OCCAR shall fulfil the following tasks, and such other functions as the Member States may assign to it:

- (a) management of current and future cooperative programmes, which may include configuration control and in-service support, as well as research activities;
- (b) management of those national programmes of member Sta-

³¹ The initiators of OCCAR had tried to incorporate it within WEU, rather than going through the process of signing and ratifying a wholly new treaty. This attempt failed largely because of the divergence of interests between countries aiming for an economically driven procurement process (favouring those with a large, competitive defence industrial base) and those keen on work sharing based on geographical representation.

- tes that are assigned to it;
- (c) preparation of common technical specifications for the development and procurement of jointly defined equipment;
 - (d) coordination and planning of joint research activities as well as, in co-operation with appropriate military staffs, studies of technical solutions to meet future operational requirements;
 - (e) coordination of national decisions concerning the common industrial base and common technologies;
 - (f) coordination of both capital investments and the use of test facilities”.

Significantly, the preamble to the OCCAR Treaty sees the organisation as “a practical step towards the creation of a European Armaments Agency”.

The four members of OCCAR have drawn up the following five principles of cooperation:

- Cost effectiveness – obtain greater cost efficiency through new programme management methods, more efficient procedures for letting contracts and integrated project management;
- Harmonisation of requirements and technology – coordination of long-term needs under a joint policy for investment in technology;
- Competitive industrial base – improvement of the European defence industrial and technological base, bringing companies closer together, developing identical rules for competitive tendering;
- Renunciation of *juste retour* – abandoning an analytical calculation of industrial *juste retour* on a programme-by-programme basis and replacing it with the pursuit of an overall multi-programme/multi-year balance;
- Open to other countries – possible association of other European countries if all partners agree.

There is little doubt that the renunciation by OCCAR members of the principle of “*juste retour*” in favour of the concept of “global balance” is a key step. This moves away from the strict

application of “cost share equals work share” on a project-by-project basis, and allows work to be shared over a number of programmes and years. This principle allows greater freedom of supplier selection and helps OCCAR gain the maximum benefit from collaboration. Indeed, this is also the reason why it is difficult for some countries to sign up to the OCCAR scheme.

Current programmes managed by OCCAR include:

- Counter Battery Radar (COBRA) (UK/FR/GE);
- Multi Role Armoured Vehicle (GTK/MRAV) (UK/GE/NL);
- TIGER attack helicopter (FR/GE);
- HOT/MILAN anti-tank missiles (FR/GE);
- ROLAND anti-aircraft missile (FR/GE);
- Future Surface to Air missiles family (FSAF) (FR/IT).

Additional programmes currently under active consideration for integration into OCCAR are the A400M strategic transport aircraft and the Principal Anti-Air Missile System (PAAMS) and the TRIFOM missile programme. PAAMS would be a new programme for OCCAR but is an established programme based on the *juste retour* principle. Other projects will be placed under OCCAR management as and when the member nations agree to do so.

Strengths and weaknesses

One significant strength of OCCAR is that membership is open to other European nations, subject to their commitment to a major project involving at least one of the OCCAR partner nations and acceptance of all OCCAR’s principles, rules and procedures. An application to join from the Netherlands has been accepted by the OCCAR Board of Supervisors based on entry into the GTK/MRAV/PWV programme in February 2001, and ratification of the Convention is underway. Applications by Spain and Belgium have also been accepted in principle pending their commitment to a programme managed by OCCAR.³² In

³² “Organisation Conjointe de Cooperation en Matiere D’Armement (OCCAR)”, Annex 4, *Trans-Atlantic Defence Industrial Cooperation*, A report by the NATO Industrial Advisory Group to the Conference of National Armaments Directors, Spring 2002 (Brussels).

this regard the A400M is very important to OCCAR as it would substantially widen its membership to include Belgium, Luxembourg, Portugal, Spain and Turkey.

OCCAR also has very substantial potential to expand beyond its primary objective of managing European cooperative programmes. Article 8 of the OCCAR Convention makes clear that OCCAR could manage national programmes of member States, coordinate and plan joint research activities and coordinate national decisions regarding the common industrial base and common technologies. In addition, the signatories to the Convention foresee the possible integration of a range of other programmes and involvement in early phase activity (e.g. Technology Demonstrator programmes). It is up to national governments to enhance the position of OCCAR and – if they were to so choose – it has the potential to become the EAA.

Nevertheless, there are some practical and political challenges that have to be addressed. Thus, OCCAR remains a limited organisation at the moment because of the limited number of programmes that national governments have chosen to place under its administration. Equally, where certain countries only participate in one or a small number of programmes it is difficult to see how the principle of “global retour” could be operated. More fundamentally, OCCAR’s harmonization capacity will depend on whether all members agree to equip themselves with a certain system, within a fixed period and with common operational requirements. Without the three requisites it will be impossible for the Organization to set a programme in motion.

5.3. The LoI framework agreement

On 6 July 1998 the Defence Ministers of France, Germany, Italy, Spain, Sweden and the UK signed a Letter of Intent (LoI) designed to facilitate defence industry restructuring in Europe. The LoI set up six specialist Working Groups to examine the main areas where the governments were committed to identifying concrete proposals to remove some of the barriers to restructuring. The Framework Agreement signed in July 2000 represents a first step towards creating a political and legal framework for cross-

border industrial restructuring in Europe.³³ The LoI six represent the bulk – more than 90 per cent – of the EU's defence industrial capability and about 85% of defence R&T funded in Europe.

Aims and objectives

The Framework Agreement covers the following areas:

- Security of Supply. Parties are committed not to hinder unnecessarily the supply of defence material to the other Parties; to consult on any merger or acquisition of defence companies that may threaten security of supply; and work together on providing supplies from national stocks; priority and allocation of supplies; and reconstitution of supply facilities
- Exports Procedures. The Agreement commits participating nations to apply simplified export licensing arrangements to transfers made in the course of joint development and production programmes and to transfers for each others' national military requirements; and to develop lists of permitted export destinations for jointly produced military goods on a consensual, project-by-project basis. Export licensing decisions will continue to be taken according to the principles of the EU Code of Conduct on Arms Exports. The proposed arrangements will not abrogate existing national export controls.³⁴
- Security of Classified Information. New simplified security provisions will be introduced for exchanges of classified information between countries or their defence industries that do not undermine the security of that information.
- Treatment of Technical Information. The Agreement directs the Parties to harmonise their contracting processes for the disclosure, transfer, use and ownership of technical information to facilitate the restructuring and subsequent operation of the European defence industry.

³³ The full title is the Framework Agreement concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry.

³⁴ Most of what is contained in the transfer and export section comes from the EU Code of Conduct on Arms Exports in recognition that this would be the most effective way of trying to obtain some agreement on what are contentious issues for some states – not least Germany.

- Research and Technology. Co-ordination of joint research activities will be fostered to increase the advanced knowledge base and thus encourage technological development and innovation.
- Harmonisation of Military Requirements. Parties are committed to further work on improving harmonisation of military requirements - an essential prerequisite to better equipment co-operation. It is envisaged this will lead to starting the process earlier through co-operative equipment planning to identify and formulate common military requirements rather than attempt to harmonise already mature “national” requirements.

Implementation

It ought to be emphasised that the Framework Agreement is simply a first step and that there is still a great deal of work to do be done during the implementation phase to turn the intentions of the Agreement into practical measures. All the countries are committed to pursuing its agenda, but there have almost inevitably been differences in the pace at which individual governments have moved.³⁵ Most significantly, the Framework Agreement is still awaiting ratification by the Italian Parliament and – until that occurs – all programmes and companies involving Italian participation will be excluded from the provisions of the Framework Agreement. Italy is involved in ten major cooperative programmes (including Eurofighter) and three major transnational companies (including the Agusta Westland joint venture) – and none of these will be able to use key provisions of the Framework Agreement such as the global project licenses.

A quick review of some of the implementation arrangements shows the differing pace at which the Framework Agreement is being operationalised. Thus, the implementation arrangement for the Security of Supply provisions is waiting for the German government that asked for a pause of four months (until the end

³⁵ Burkard Schmitt *From Cooperation to Integration: Defence and Aerospace Industries in Europe*, Chaillot Paper No. 40, Western European Union Institute for Security Studies: Paris (2000).

of 2002) to gain an agreement between government and industry. It has proved difficult to get the German industry to accept a security of supply agreement that would mean that would have to consult interested governments on any changes that they were to make affecting supply of armaments – at the moment the German (and other European governments) can make such decisions without consulting governments first – in the UK, France and Italy different rules and procedures but there is a stronger relationship between government and industry that exists in Germany. With regard to the harmonisation of military requirements, the text of the implementation arrangement is being finalised and – when certain minor technical details have been agreed – the implementation arrangement could be signed by early 2003. In the case of Research and Technology, the implementation agreement is expected to be signed before the end of 2002. The agreement of the implementation arrangement has proved more straightforward than in the other areas because it was decided to use the EUROPA agreement as the basis for the programme management aspects of the agreement (through WEAG). There have been considerable efforts to ensure that EUROPA is fully compatible with the Framework Agreement.

Strengths and weaknesses

The Framework Agreement, if fully implemented, has considerable potential. The Agreement directly addresses many of the principle impediments to more efficient and effective armaments cooperation and could have significant benefits both for the operation of TDCs and cooperative equipment programmes. Perhaps the most significant provisions under the Framework Agreement are those related to Security of Supply and export procedures. These are key barriers to the effective operation of TDCs and it is the first time these problems have been addressed in Europe in a practical way.

Against these significant potential strengths there are also some weaknesses. The challenges of implementation remain real and the delay in ratification by the Italian Parliament is a major concern. Indeed, the fact that the Framework Agreement has no

permanent political body to oversee its implementation means that there is a danger that the political momentum generated by the signing of the LoI in 1998 may be lost as national interests and bureaucracy slows the process. Considerable concerns have been expressed about the exclusive nature of the LOI process. In contrast to the more pan-European nature of WEAG and the intention to expand the membership of OCCAR, there are few signs that the LOI-six in its current form is likely to grow any larger.³⁶

5.4. The European Union

In large part, armaments questions have been left out of the European integration process. Article 296 of the TEU (former Article 223) excludes military goods from the common market and allows governments to exempt defence firms from European Union rules on mergers, monopolies and procurement.

The Commission

The role of the Commission has been deliberately restricted by the member states and has depended on the balance of the Commission's relationships with the Council and the Parliament.³⁷ Paradoxically, although Article 296 provides that matters affecting national security can be excluded by the Member States from the field of application of community law, they have allowed the Commission to make rules that apply to certain activities related to armaments. Thus, as will be discussed in the next section, the Commission may intervene through competition regulations and in merger and acquisitions involving defence-related companies, the control of exports of dual-use goods and to some extent in Common Customs Tariff (CCT) questions.³⁸ Moreover, the Commission is fully involved in the management of programmes that may have consequences in the field of armaments, not least European space policy and the

³⁶ Tornqvist, *op cit*, note 22.

³⁷ Cornu, *op cit*, 2.

³⁸ Cornu, *op cit*, 2.

Galileo navigation satellite programme. Equally, the Commission has on several occasions tried to expand its role in the armaments field not least through its 1997 Action Plan. In other areas there has been some progress. Thus, in 1995, a Common Control Regime for Dual Use Exports entered into force. In addition, we should also not underestimate the Commission's role in defence R&T through the support for dual-use technologies under the Framework Programme for Science and Technology. An estimated one-third of the budget is devoted to dual-use technology programmes.

The Council

The Council remains the principal forum for the drawing up of a European armaments policy. The Ad Hoc European Armaments Policy Group (POLARM) was established in 1995 and has examined a variety of topics (intra-Community transfers, the specificity of the armaments sector, exports, security of supply and so forth). However, its overall results have been limited not least because for most of its life it has been deadlocked through a lack of consensus. After its establishment, there was a fundamental difference of approach between those who advocated retaining cooperation policy in its present form and those in favour of a gradual introduction of a European armaments policy.³⁹ There have been periodic attempts to restart POLARM but it remains deadlocked.

In 1998, after a study carried out by COARM (the Conventional Arms Exports Working Group), the EU Council adopted a Code of Conduct on Arms Exports although this is not legally binding.

Efforts related to the establishment of the ESDP and the Headline Goal process has increased the level of defence-related activity at the European level. Under the Spanish Presidency, for the first time an informal meeting of the EU National Armaments Directors was held in Madrid in April 2002 and EU Defence Ministers also got together for the first time as a EU group in the context of the General Affairs Committee to discuss military

³⁹ Assembly of Western European Union, *op cit*, note 5.

capabilities.⁴⁰ The European Capability Action Plan (ECAP) represents an important development.

A further Commission Communication

Given these developments, the Commission announced in November 2002 that it is now working on a further Communication or “Green Paper”. The Commission intends to take a fresh look at competition rules, research, intra-Community transfers and other related issues. Announcing the plan for a new Communication, Commissioner Patten explained:

“If, on the one hand, Europe agrees at the highest political levels that a bigger effort is needed for its defence, when the industry is keen and when there is little money available in the budget, clearly the only possible solution is to use the limited resources more effectively through rationalisation and cooperation between the Member States in the context of the Union, accompanied by a new coherent market and policy framework?”⁴¹

6. STRENGTHS AND WEAKNESSES OF CURRENT EUROPEAN COOPERATIVE ARRANGEMENTS

Following from the discussion of the principal institutions of European armaments cooperation, this section will consider the strengths and weaknesses of those current European efforts.

6.1. Strengths of current arrangements

The principle strength of the current ad hoc intergovernmental arrangements institutions represented by OCCAR and the LoI is that they represent coalitions of the willing. If one thing has been learnt from the history of European armaments cooperation it is that progress has been dependent upon small exclusive groups who have been willing to pool sovereignty in exchange for the prospect of more substantial and faster progress than that

⁴⁰ Francois Heisboug (ed.), *op cit*, note 4.

⁴¹ Speech by Commissioner Chris Patten to the First European Parliamentary meeting on “European Defence: building a common European arms policy”, 5 November 2002.

which might be obtained in more inclusive institutions such as WEAG. The countries involved represent the bulk of the EU's defence industrial activities and a very large proportion of European defence procurement and R&T expenditure.

The current arrangements have very considerable potential to improve armaments cooperation in Europe. At the same time, the legal treaty basis of the Framework Agreement and OCCAR and its membership holds out the potential for both institutions to be integrated into the European Union at some point in the future, if the participating governments should be minded to do so.

6.2. Weaknesses of current arrangements

Nevertheless, the current institutional arrangements exhibit considerable weaknesses.

The paradox is being noted that new military structures have been put in place within the European Union but there is still no competence on armaments. The European Capability Action Plan (ECAP) is seeking technical solutions to capability requirements and it would seem likely that some of the ECAP panels might well come to the conclusion that procurement solutions are needed to meet European capability requirements. However, the ESDP has no formal armaments role to follow through on any procurement requirements and the exclusiveness of current armaments cooperation arrangements mean that converting ECAP recommendations (at 15) into projects would require ad hoc arrangements. There is a need to use the European Union otherwise there is a danger of disconnection between armaments issues and the ESDP – and – between the main arms producing countries and the rest of the EU.

The exclusiveness of the current ad hoc arrangements means that there is a real danger that Europe will be divided into a defence industrial core of the OCCAR four or the LOI six to the exclusion of other members of the European Union. The fact that the rest of the EU does not participate in these arrangements will increasingly drive a wedge between these six states and the other Member States of the Union at a time when defence policy is developing as an EU policy.

The major initiatives have developed on an ad hoc basis and without real coordination, neither between the OCCAR and LOI initiatives nor with other relevant bodies. Most importantly, the developments have been outside the EU framework and this has limited the scope for formal cooperation with the EU. There is no real linkage between developments at the European level (ESDP and ECAP) and the ad hoc arrangements. In addition, there is a danger that the further deepening of existing arrangements will create rules that could be increasingly difficult to incorporate in future EU common rules for regulating defence markets and industries. At the same time, the main multilateral armaments cooperation structures have different formats and memberships. If existing armaments cooperation structures were, for instance, to be integrated under EU auspices, these differences in their shape and composition would have to be taken into account.⁴²

Equally, the current arrangements are limited in their scope. Thus, OCCAR focuses on the lower end of the procurement cycle and the LOI Framework Agreement focuses on regulatory issues pertaining to cooperative projects. OCCAR and LoI together do not constitute a European Armaments Agency, which was the WEU members' objective in the declaration appended to the Maastricht Treaty. However, it has been noted that OCCAR does hold out the potential to develop towards that aim.

A final and very important weakness of the current arrangements is that they focus primarily on enhancing cooperation within TDCs and cooperative armaments programmes not promoting competition and the opening-up of national markets. The current arrangements focus on projects (OCCAR and WEAG) or promoting the conditions for collaboration (TDCs or armaments collaboration). They do not address issues of market access and so forth that are at the heart of the creation of a European defence market. The working assumption appears to be that open markets will come through institutional means (common procurement) rather than addressing national procurement regulations.

⁴² Thus, it has already been noted that Turkey's membership of WEAG has acted as a barrier to previous efforts to promote closer WEAG-EU cooperation.

Only the European Commission has sought to address issues pertaining to the creation of a single European defence equipment market and its efforts have been constrained by Article 296 and the political will of the European Council.

7. THE PROSPECTS FOR THE REFORM OF ARTICLE 296 AND THE CREATION OF A SINGLE MARKET

There is little doubt that a single European defence equipment market could have substantial benefits for the European defence industry. Equally, there is little doubt that only the European Union can provide the framework for coherence and action in this area. Accordingly, this section will consider the potential benefits of a single market in defence goods and the examine the constraints on actions under Pillar One posed by Article 296 of the Treaty of European Union.

7.1. What would be the benefits of a common market?

The introduction of Single Market regulations would have implications for defence procurement, competition between defence companies, research and development, exports and imports of defence equipment and internal market aspects of defence trade and dual use goods that have civil and military applications.

The benefits could be considerable. In Europe, the defence industry does not benefit from the same conditions to adapt to economic changes compared to the civil area that operates in the single market. This paper has noted that Member States have maintained national controls resulting in the absence of a single European market for defence products. The consequence has been a fragmentation of markets and industries and a loss of competitiveness. The potential benefits of the introduction of Single Market rules to the defence market include enhanced competition and the creation of a larger “home” market that could be accessed by European companies. Larger production runs would allow companies to improve their efficiency and this could increase their investment levels in technology and their

ability to compete on more equal terms with the US industry. In turn, European armed forces would have access to more technologically advanced and cost-effective systems and European governments and taxpayers would obtain better value for money from a streamlined industry.⁴³ Indeed, studies carried out in the late 1980s by or for the Commission on the effects of the single European market concluded that substantial economies could be made in the short term by national administrations if competition were introduced. Competition would stimulate competitiveness and make it possible to achieve economies of scale, restructure industry and reduce duplication.

7.2. Article 296 and the constraints on Commission actions

In the eyes of many, Article 296 has long been viewed as a major obstacle to a unified European defence equipment market not least because some Member States have taken the view that Article 296 excludes arms production activities from the discipline of the first pillar of the EU treaty. The specific characteristics of the armaments sector, which have been acknowledged since the foundation of the European Community, are taken into account by the provisions of Article 296 of the Treaty. Article 296 states that:

1. The provisions of this Treaty shall not preclude the application of the following rules:
 - a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - b) Any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

⁴³ EDIG, *op cit*, note 6.

2. During the first years after the entry into force of this Treaty, the Council shall, acting unanimously, draw up a list of products to which the provisions of paragraph 1(b) shall apply.⁴⁴
3. The Council may, acting unanimously on a proposal from the Commission, make changes in this list.

Article 296 has practical consequences for Single Market disciplines. For instance, public procurement contracts can be exempted from the procedures for the award of contracts set out in the public procurement Directives where the contracts are covered by Article 296 of the EC Treaty or where they are declared secret or requiring certain security measures or when the protection of essential interests of the State are involved.⁴⁵ Equally, Article 296 has been used by Member States to exempt some defence industry mergers and joint ventures from EU competition rules. Thus, the UK government invoked it in the case of the British Aerospace-GEC Marconi merger and by the Italian and UK governments in the case of the Agusta Westland joint venture. In other defence-related cases, the European Commission has undertaken a merger review (for instance in the case of MBDA).

7.3. The prospects for reform of Article 296

Over the years, various proposals have been put forward for the reform of Article 296.

Abolition of Article 296

In 1990, the European Commission called for the abolition of Article 223 of the Treaty of Rome (now Article 296). The proposal put forward consisted in linking the introduction of competition into defence equipment contracts to accompanying measures in R&D, regional assistance and professional training. However, as Pierre de Vestel has noted, abolition of Article 296

⁴⁴ The Council determined that this list should remain confidential.

⁴⁵ Answer given by Mr Bolkestein on behalf of the Commission to a written question from Gary Titley MEP, 7 May 2001, Official Journal of the European Commission, 2001/C350 E/148).

would pose considerable technical, strategic and political challenges in the field of procurement policy. Technically, a competition policy would be difficult to manage because of the particular and complex characteristics of decision-making on the procurement of advanced weapons systems that are based on many factors besides cost. Strategically, issues arise as to whether the Single Market ought to be open to US companies. Politically, difficult questions of national sovereignty and the control of a single armaments market would arise. Indeed, this latter point is perhaps the most fundamental and it seems inconceivable that national governments would give up the right to invoke Article 296 in defence of their national security interests.

Reduce the scope of Article 296

An alternative approach is conceivable that might involve the limited repeal of Article 296 for non-sensitive military goods.⁴⁶ In 1991, the Dutch Presidency proposed changes to Article 223 (as it was then) that would stop Member States in general from using Article 223 to gain exemption from Community rules and instead proposed a very short list of highly sensitive technologies or programmes (nuclear weapons and systems, anti-toxic and radioactive agents, cryptographic equipment and space systems) that would remain exempt under the then Article 223.⁴⁷ Indeed, in its 1997 Action Plan, the Commission recognised the sensitivities of Member States to the abolition of Article 223/296 and proposed that – for the purpose of public procurement - materiel for the defence sector could be divided into three categories:

- Products intended for the armed forces but not for military use therefore not covered by Article 223/296 nor by Article 2 of the directive 93/96 (markets declared secret, protection of vital interests, national security, etc). As these products are already subject to the Community public procurement rules, the Commission will specify, where appropriate, in the most

⁴⁶ Burkard Schmitt, op cit, note 29.

⁴⁷ Wolfgang H. Reinicke, "European Community export controls beyond 1992", *Brookings Review*, Summer 1992, Vol.10, Issue 3, pp.22-5.

- suitable form the conditions for the application of these rules;
- Products intended for the armed forces and for military use, but not constituting “highly sensitive defence equipments”. The Commission could work out a fairly flexible set of rules, while respecting the principles of transparency and non-discrimination, inspired by the existing Community public procurement rules;
- Highly sensitive equipments covered by the scope of Article 223/296. These products could be exempted from the rules referred to above when safety or the protection of vital national interests of the country in question require. A notification mechanism for this purpose should be foreseen in order to ensure a degree of control and transparency.

Maintain the status quo

Significantly, the question of Article 296 appears to have declined in political saliency in recent years and no longer appears to be a matter of leading concern for the European Commission. In large part this may be due to a European Court of Justice ruling in 1999 that gave a restrictive interpretation of the use of Article 296 and stressed, for example, exclusive Community competence for trade in dual-use and military goods.⁴⁸ The Court confirmed that Article 296 allows Member States to derogate from EC rules and regulations only if they can demonstrate that compliance would affect their essential security interests. The Court of Justice considered that it is for the Member State, which wishes to invoke the exceptions of Article 296 to prove that the measures taken are necessary in order to protect essential interests of its security, and that compliance with Community law would have compromised those interests.⁴⁹

⁴⁸ The Court of Justice ruling was brought under Article 298 of the Treaty. The exception covered under Article 296 is covered by the provisions of Article 298 of the EC Treaty that lays down that the use of Article 296 may not distort the conditions of competition, and the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Article 296.

⁴⁹ Case 414/97, *Commission of the European Communities v. Kingdom of Spain*.

On that recently established basis, the Commission has made clear that it will take action to fully exploit the possibilities offered by the Court's rulings. This suggests that Single Market rules may be introduced without the need for reform of Article 296.

8. WHAT ARE THE OPTIONS FOR THE FUTURE?

This section considers three potential options for the future development of European armaments cooperation and a European defence market. In each case the implications for defence industrial cooperation and the creation of a European defence market are considered.

8.1. Institutional status quo

A first option would be to retain an institutional status quo allowing established institutional arrangements such as WEAG/WEAO, OCCAR and the Framework Agreement to broaden and deepen their activities along current trajectories. Thus, armaments cooperation would continue to develop on an ad hoc basis according to variable geometry. This option assumes that the European Council continues to choose to limit the role of the European Commission in armaments matters.

Institutional implications

One of the main strengths of such an approach would be that it would allow the coalition of the willing to broaden and deepen the roles of the established inter-governmental institutions rather than be distracted by a further round of institution building. The experience of institution building in the armaments field is that it can be time-consuming, politically sensitive and prolonged. This is evidenced by the time it has taken to establish the OCCAR Convention and the Framework Agreement and the protracted negotiations over the implementation of the Framework Agreement.

Thus, the LoI six could focus their energies on the implementation of the Framework Agreement and the putting into practice of the detail of the implementation agreements. At the same time, an institutional status quo does not mean that new initiatives could

not be pursued within established structures. ETAP (European Technology Acquisition Program), an initiative established in 2001 to mature European combat aircraft and UCAV capabilities, is an example of the kind of new initiatives that could be launched. Whilst technically ETAP is not a Framework Agreement project it is an example of what might develop in the future. Designed to lay the foundations for European combat air systems of the future. Future combat air systems may include manned aircraft (which may well be developments of existing aircraft such as Eurofighter, Gripen and Rafale), air and ground launched uninhabited air vehicles (UAVs) and uninhabited combat air vehicles (UCAVs), conventionally-armed long-range cruise missiles (CALCM), and command, control, communication, computing, and intelligence (C4I) systems to link all these together.⁵⁰

Equally, there is scope for considerable development within the OCCAR framework. There is the potential for its broadening through the expansion of its membership and this paper has already noted that OCCAR has substantial potential to expand beyond its primary objective of managing European collaborative programmes. Indeed, it could be foreseen that under this option – and with the necessary political will – the OCCAR could develop to the point where it emerges as the EAA. Equally, under the institutional status quo option, WEAG/WEAO might also be able to make a contribution – especially in the R&T field – where the EUROPA MoU offers the prospect of new initiatives. However, the WEAG’s consensus-based decision-making is likely to continue to hamper its effectiveness.

One weakness of such an approach is that it risks perpetuating the exclusiveness of the current arrangements and would threaten the creation of a “hard core” of European armaments cooperation. At the same time, the ad hoc arrangements would remain

⁵⁰ “European governments and industry to cooperate on future capabilities and technologies for combat air systems”, Press notice on behalf of the defence ministries of France, Germany, Italy, Spain, Sweden and the United Kingdom, 19th November 2001, Paris.

outside the European Union. Whilst there may be the potential to develop closer relationships the concern remains that these institutions will develop separately from the ESDP and the requirements of the ECAP. Equally, there would need to be much better coordination between the institutions to address areas where their responsibilities overlap or complement one another – for instance – harmonisation of requirements.

Implications for armaments cooperation

Under the institutional status quo there could be significant positive developments for armaments cooperation between the participating countries assuming the full implementation of the Framework Agreement and the continued development of OCCAR.

Development of the OCCAR could benefit equipment cooperation. It would enhance cost effectiveness by generating greater cost efficiency in the management of programmes, more efficient procedures for letting contracts and integrated project management. Multi-programme/multi-year “global retour” would also promote efficiency and effectiveness within cooperative equipment programmes, as would moves towards the harmonisation of requirements. Of course, such developments are only likely if participating governments give OCCAR broader functions, its internal mode of operation is modified and it is given new programmes to manage.

The full implementation of the Framework Agreement would also have significant benefits for equipment cooperation. The introduction of simplified export licensing arrangements for transfers made in the course of joint development and production programmes, global export licenses and so forth would contribute to reducing the costs and improving the effectiveness of cooperative equipment programmes. With regard to TDCs, implementation of the Framework Agreement would hold out the prospect of improved corporate efficiency and effectiveness. Rationalisation across national borders would be aided by the security of supply provisions, simplified transfer procedures and so forth.

Implications for the creation of a European defence market

However, the broadening and deepening of the institutional status quo would do little to develop a European defence market. Indeed, it has already been noted that the emphasis of European reform has been on enhancing co-operation within TDCs and cooperative armaments programmes not promoting competition and the opening-up of national markets. The current arrangements focus on projects (OCCAR and WEAG) or promoting the conditions for collaboration (TDCs or armaments collaboration). They do not address issues of market access and so forth that are at the heart of the creation of a European defence market. The working assumption appears to be that open markets will come through institutional means (common procurement) rather than addressing national procurement regulations.⁵¹ This would be unlikely to change under the institutional status quo.

8.2. An increased role for Pillar Two of the European Union under established institutional arrangements and competences

A second option would be to enhance the role of the European Union under established institutional arrangements and competences.

Institutional implications

This option begins from the position that the European Union does not need a treaty change to allow it to engage more closely with armaments matters. This paper has already noted that the 1999 European Court of Justice ruling gave a restrictive interpretation of Article 296 emphasising that Article 296 does not put armaments outside the scope of EU action. The Commission has made clear that it will take action to fully exploit the possibilities offered by the Court's rulings and it appears as if the Commission's forthcoming Communication will seek to place back on the agenda key elements of the 1997

⁵¹ WEAG has sought to promote market opening but with few practical outcomes.

Action Plan. Thus, Option Two represents a mixed Community and intergovernmental approach. Decisions concerning the main objectives and the overall strategy for implementing the policy might be taken at the intergovernmental level (the Union's second pillar). The first pillar, the European Commission, could be made responsible for its practical implication. Under this option the current variable geometry of European armaments cooperation would continue but – as Option One discussed – this could still lead to potentially significant developments albeit outside the EU framework.

The challenge is that it depends upon the commitment of all Member States and – despite the statements of intent that have emerged from the European Council in the last decade – it seems unlikely that intergovernmental action at the level of the 15 would make rapid progress. The logic of the various statements of the European Council may suggest closer cooperation at the European level (and a role for Pillar One) but time and again Member States have asserted the intergovernmental principle. In practice, the nation-states simply will not accept an out-of-the-blue supranational approach of the sort that has been occasionally contemplated in parts of the European Commission (notably the Action Plan of 1997). Equally, any head-on attempt to establish a European armaments policy as an all-Fifteen enterprise on an intergovernmental basis would likely be in vain, given the deep differences of interest between those countries which have a defence industry and those which do not (or those which have a nascent defence industry that they feel requires protection).⁵² Previous efforts – most recently – under the Spanish Presidency – have faced stiff resistance from certain Member States seeking to assert national sovereignty. Thus, although the 15 have agreed the aim of developing a comprehensive armaments policy at the EU level, not all of them agreed with the plans of the Spanish Presidency with particular opposition from Sweden and Ireland.

⁵² Francois Heisbourg (ed.), *op cit*, note 4.

Implications for armaments cooperation

In itself, the development of a EU role in armaments policy would likely have limited implications for the institutions of armaments cooperation. However, it is conceivable that the new environment heralded by support from the Council would allow more effective linkages between on-going initiatives under the ESDP Headline Goal process (and especially ECAP) and the institutions of European armaments cooperation. In addition, the Commission's Action Plan proposed a simplified licensing system for intra-community and the introduction of such a system at the level of the 15 and based on the Framework Agreement model could have significant practical benefits for equipment cooperation and TDCs where a partner is a non-Framework Agreement EU Member State.⁵³

Implications for the creation of a European defence market

Most significant would be the potential implications for the creation of a European defence market. Option Two would address the demands of the STAR 21 report for the creation of a coherent EU framework to shape an integrated European defence equipment market. A concrete system of rules on the public procurement of defence goods – with an appropriate level of flexibility to recognise the specificities of the sector – would begin the process of opening up national defence markets. Common rule son public procurement would necessitate the Community's competition policy examine in an appropriate way all competition issues in the sector (including state aids). The harmonisation of customs tariffs on defence goods could lead to the equal treatment of operators throughout the Community.

8.3. An E.U. armaments market and policy based on the principle of enhanced cooperation

A third option would be to develop a EU armaments policy

⁵³ The Netherlands is an important case in point. In addition, a company like Alvis that has industrial interests in Finland might also benefit.

and market using the principle of enhanced cooperation.⁵⁴

Institutional implications

Enhanced cooperation could allow a European armaments avant garde to make progress in the area, with other Member States opting-in as and when they deem appropriate. Thus, current institutional arrangements could evolve in a Schengen-like process. OCCAR is already framed in treaty form and, as in the case of the Schengen agreements, that accord could be incorporated into a future treaty of European Union. The same could apply to the LoI Framework Agreement.⁵⁵ Ultimately, this could lead to OCCAR, the LoI and WEAG combining together as a European Armaments Agency.⁵⁶ The established institutions could – as in the case of Schengen – be inserted into the Treaties. The Framework Agreement and OCCAR could be brought under enhanced cooperation given that all the members are European Union countries.

The fundamental challenge for this option is political. It assumes that Europe's emerging defence industrial "hard core" would all support the principle of enhance cooperation. However, that it is by no means certain. Sweden (a Framework Agreement signatory) showed its opposition to a European armaments policy during the Spanish Presidency. Equally, the UK (a signatory to both the Framework Agreement and the OCCAR and the largest European defence industry) has a long-standing opposition to the principle of enhanced cooperation.⁵⁷ Without the participation of Sweden and (especially) the UK, it is would be difficult to see how enhanced cooperation could be effective.

⁵⁴ The principle of enhanced cooperation is considered in detail by Matthias Jopp and Udo Diedrichs, "The application of the concept of enhanced cooperation to CFSP/DSDP and arms industry" (in this volume).

⁵⁵ Francois Heisbourg (ed.), *op cit*, note 4.

⁵⁶ Setting up an armaments structure within the European Union would raise the problem of who should belong to it and, in particular, the attitude that WEAG countries that are not EU members should adopt to it.

⁵⁷ Matthias Jopp and Udo Diedrichs, *op cit*, note 48.

Implications for armaments cooperation

Assuming the support of the six signatories of the LoI Framework Agreement (and de facto the four members of the OCCAR), the current variable geometry of European armaments cooperation would continue but would be brought under enhanced cooperation. The practical benefit for equipment cooperation would be that OCCAR could be more closely linked to the ECAP process allowing some synergy between identified capability needs and joint equipment programmes.

Implications for the creation of a european defence market

The result of enhanced cooperation might be the emergence of a “mini-single market” in which a common market exists between those Member States who are party to the arrangement. This would have considerable advantages for the participants, allowing the introduction of the Single Market disciplines discussed under Option Two.

9. CONCLUSIONS

This paper has sought to assess the current state of European co-operation in the armaments field and the prospects for reform. The paper has emphasised that, with the consolidation of key elements of the European defence industry, attention has turned once again to the prospects for the creation of more efficient and effective institutions for the promotion of armaments cooperation and the creation of a true European defence market. These discussions have been given added impetus by the deliberations of the European Constitutional Convention and the prospects for a revised EU Treaty in 2004.

The paper has stressed how the last decade has seen a dramatic consolidation of the European defence industry. The competitive threat posed by merger-driven consolidation in the United States, declining European defence budgets and the rising costs of developing new weapon systems have driven European companies towards mergers and joint ventures. However, in many respects, the European defence industry is finding that it has got ahead of its

customers. The supply side may be increasingly organised on a European scale but customers remain primarily national in organisation. Thus, the defence industry remains largely governed by national policies reflecting the special characteristics of the sector.

The paper has noted how this state of affairs has significant implications for the efficiency and effectiveness of the emerging TDCs and government-to-government cooperative equipment programmes. In recognition of this fact, there has been a growth of ad hoc intergovernmental institutions to address certain issues. The many weaknesses of the WEAG has led the main arms producers to seek progress through smaller intergovernmental initiatives, not least the OCCAR and the LoI Framework Agreement. However, the current state of European cooperation in the field of armaments is far from satisfactory. Paradoxically, new military structures are being established within the European Union but these do not include a competence in armaments and the exclusiveness of the current arrangements may increasingly drive a wedge between a European armaments “hard core” and the other Member States of the Union at a time when defence policy is developing as an EU policy.

The paper also observes that most attention has focused on reforms designed to enhance co-operation within TDCs and European equipment programmes (the central focus of WEAG, OCCAR and the LoI Framework Agreement). However, efforts to promote competition and market opening through the creation of a true European defence equipment market have been much more limited. In the eyes of many, Article 296 of the Treaty of European Union has long been viewed as a major obstacle to a unified European defence equipment market not least because some Member States have taken the view that Article 296 excludes arms production activities from the discipline of the first pillar of the EU treaty. This paper argues that more restrictive rulings from the European Court of Justice suggests that (with the support of the European Council) there is the possibility of the introduction of Single Market rules to the armaments sector without the need for a treaty change.

The paper proposes three potential options for reform. A first option would be to retain an institutional status quo allowing established institutional arrangements such as WEAG/WEAO, OCCAR and the Framework Agreement to broaden and deepen their activities along current trajectories. A second option would be to enhance the role of the European Union under established institutional arrangements and competences exploiting the possibilities offered by the rulings of the European Court of Justice. A third option would be to develop a EU armaments policy and market using the principle of enhanced cooperation. What factors will ultimately determine the shape of future developments? The political will of European governments will be critical. The logic of the various statements of the European Council may suggest closer cooperation at the European level (and a role for Pillar One) but time and again Member States have backed away from that logic in favour of ad hoc arrangements. Indeed, one dimension of this political will be the extent to which they continue to assert the intergovernmental principle with respect to these matters. Defence is still a sovereign responsibility of states, and all countries are sensitive about a loss of authority in this area - especially if there are broader economic and industrial consequences. Equally, the ability of governments to reconcile the deep differences that exist between those countries with large defence industries and those that do not will influence the future shape of European armaments cooperation. There is little doubt that whilst the larger countries fear US hegemony, their smaller partners have similar worries about the dangers of a comparable dominance by the “core” defence states in European security. There is a very real fear amongst smaller countries that national industrial assets will be threatened by the power and productivity of the larger states’ defence companies.

The deliberations of the European Constitutional Convention and the prospects for a revised EU Treaty in 2004 may have caused attention to turn once again to the prospects for the creation of more efficient and effective institutions for the promotion of armaments cooperation and the creation of a true European

defence market. Without doubt there are good economic, industrial and political reasons for further reform to promote armaments collaboration and the creation of a European defence equipment market. How European governments address these challenges will have profound implications for the competitiveness of the European defence industry and the capacity of the armaments sector to support the needs of the CESDP.

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Il recente Trattato di Nizza non ha aiutato a sgombrare il campo dagli equivoci che ancora circondano la politica di difesa dell'Unione. Non solo la Pesd rimane essenzialmente intergovernativa, ma è stata soprattutto esclusa la possibilità di applicare alla difesa il meccanismo delle "cooperazioni rafforzate" (art. 27B). Come risolvere quindi il problema di una maggiore trasparenza ed efficacia decisionale in mancanza sia di meccanismi di cooperazione rafforzata sia di voto a maggioranza qualificata come succede per gran parte delle materie comunitarie? È un dibattito molto difficile che ruota attorno al senso che si vuole dare alla formula dei paesi "able and willing".

Di fronte a queste domande e alla vigilia di una ulteriore revisione del Trattato da varare entro il 2004 è opportuno approfondire il tema di una possibile estensione di un meccanismo ad hoc di cooperazione rafforzata anche al campo della politica degli armamenti.

Questo libro dibatte approfonditamente questi temi, avvalendosi della collaborazione di tre esperti stranieri della materia, che con il loro contributo di pensiero hanno delineato le linee entro cui va inquadrata la problematica e offerto delle possibili soluzioni.

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Gianni Bonvicini, studioso di questioni europee e di politica estera, e direttore dell'Istituto Affari Internazionali (IAI) di Roma e Presidente dell'Istituto Trentino di Cultura (ITC) di Trento. Dirige la rivista trimestrale di relazioni internazionali "The International Spectator" ed è pubblicista.

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ISBN 88-88391-29-0



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