

**CAPACITY AND ACTOR BUILDING:
WHICH INSTRUMENTS AND INSTITUTIONS DOES THE EU NEED
TO ENHANCE ITS CAPACITY TO ACT WITH REGARD
TO ITS TRADE, ECONOMIC COOPERATION AND
FOREIGN, SECURITY AND DEFENCE POLICY?**

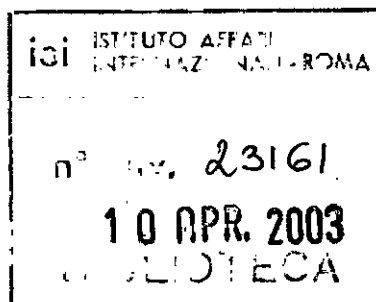
ConvEU 30 Project (Seminar 3)

Istituto affari internazionali (IAI)

Commissione europea

Roma, 4-5/IV/2003

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Istituto Affari Internazionali

CONVEU 30 PROJECT (SEMINAR 3)

Seminar on

“Capacity and Actor building: Which Instruments and Institutions does the EU need to enhance its Capacity to act with regard to its Trade, economic Cooperation and foreign, Security and defence Policy?”

Sponsored by the EUROPEAN COMMISSION

Joint seminar of :

- ◆ Istituto Affari Internazionali (IAI), Rome
- ◆ Royal Institute of International Affairs (RIIA), London
- ◆ Stiftung Wissenschaft und Politik (SWP), Berlin

With the support of:

*Compagnia di San Paolo, Turin
Bertelsmann Stiftung, Gütersloh
Friedrich Ebert Stiftung, Rome Office*

Rome, 4-5 April 2003

*Istituto Affari Internazionali, Meeting Room
Via Angelo Brunetti, 9*

PROGRAMME

Friday, 4 April

- 14:30-15:00* Welcome address
Stefano Silvestri, Istituto Affari Internazionali, Rome
- Introduction
Ettore Greco, Istituto Affari Internazionali, Rome
- 15:00-16:00* First session
Evaluating the EU's performance as an international actor: effectiveness and consistency
Chair: *Stefano Silvestri*, Istituto Affari Internazionali, Rome
- Introductory speaker: *Alvaro Vasconcelos*, Instituto de Estudios Estrategicos e Internacionais, Lisbon
- Discussants: *Yves Boyer*, Fondation pour la Recherche Stratégique, Paris
Atis Lejins, Latvian Institute for International Affairs, Riga
Jan Zielonka, European University Institute, Florence
- 16:00-16:15* *Coffee-break*
- 16:15-17:45* Second session
CFSP decision-making and institutional instruments
Chair: *Reinhardt Rummel*, Stiftung Wissenschaft und Politik, Berlin
- Introductory speakers: *Antonio Missiroli*, European Institute for Security Studies, Paris (paper-giver)
Mathias Jopp, Institut für Europäische Politik (IEP), Berlin (paper-giver)
- Discussants: *Franco Algieri*, Centre for Applied Policy Research, University of Munich
Stefano Silvestri, Istituto Affari Internazionali, Rome
- 17:45-19:15* Third session
The EU's system of external representation
Chair: *Gianluigi Tosato*, University of Rome
- Introductory speaker: *Elfriede Regelsberger*, Institut für Europäische Politik, Berlin (paper-giver)
- Discussants: *Ferdinando Nelli Feroci*, Italian Ministry of Foreign Affairs, Rome
Janis Emmanouilidis, Centre for Applied Policy Research, University of Munich
Cesare Pinelli, University of Macerata

Saturday, 5 April

- 09:00-10:15* Fourth session
Relationship between CFSP and other external policies
Chair: Timothy Garden, Royal Institute of International Affairs, London
- Introductory speakers: *Alessandra Lang*, University of Milan (paper-giver)
Reinhardt Rummel, Stiftung Wissenschaft und Politik, Berlin (paper-giver)
Ferruccio Pastore, Centro Studi di Politica Internazionale, Rome
- Discussants: *Rosa Balfour*, Centro Studi di Politica Internazionale, Rome
Tuomas Forsberg, George C. Marshall European Centre for Security Studies, Garmisch
- 10:15-10:30* *Coffee-break*
- 10:30-12:35* Fifth session
The future of ESDP
Chair: *Ettore Greco*, Istituto Affari Internazionali, Rome
- Introductory speakers: *Paul Cornish*, King's College, Centre for Defence Studies, London (paper-giver)
Timothy Garden, Royal Institute of International Affairs, London (paper-giver)
- Discussants: *Giovanni Gasparini*, Istituto Affari Internazionali, Rome
Thomas Bauer, Center for Applied Policy Research, University of Munich
- 12:30-13:00* Wrap-up and concluding remarks
- 13:00* *Buffet-lunch*



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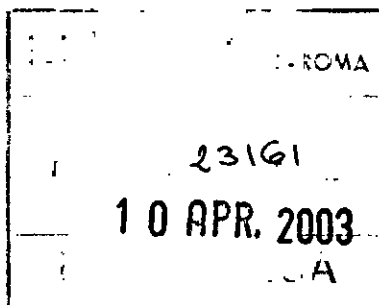
SEMINAR

“Capacity and Actor building: Which Instruments and Institutions does the EU need to enhance its Capacity to act with regard to its Trade, economic Cooperation and foreign, Security and defence Policy?”

ROME, 4-5 APRIL 2003

List of Participants

Franco ALGIERI	Senior Research-Fellow, Centre for Applied Policy Research (CAP), Ludwig-Maximilians-University, Munich
Rosa BALFOUR	Research-Fellow, Centro Studi di Politica Internazionale (CESPI), Rome
Thomas BAUER	Consultant, Center for Applied Policy Research (CAP), Ludwig-Maximilians-University, Munich
Yves BOYER	Deputy Director, Fondation pour la Recherche Stratégique, Paris
Michael BRAUN	Director, Friedrich Ebert Stiftung, Rome Office
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Atis LEJINS	Director, Latvian Institute of Foreign Affairs (LAI), Riga
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Ferdinando NELLI FEROCI	Deputy Director General, European Integration Department, Italian Ministry of Foreign Affairs, Rome
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Peter SLOMINSKI	Research Unit for Institutional Change and European Integration (ICE), Austrian Academy of Sciences, Vienna
Gianluigi TOSATO	Professor of International Law, University of Rome
Alvaro VASCONCELOS	Director, Instituto de Estudos Estratégicos e Internacionais (IEEI), Lisbon
Stefani WEISS	Project Manager, Bertelsmann Stiftung, Gütersloh
Jan ZIELONKA	Professor of Political Science, European University Institute (EUI), Florence



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CONVEU 30 PROJECT (SEMINAR 3)

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Rome, 4-5 April 2003

PAPER BY

**Antonio Missiroli
“CAPACITY AND ACTOR-BUILDING”**

[Speaking Notes/Draft Paper]

The main points of reference for this paper are the Final Reports of Working Groups VII (External Action) and VIII (Defence) of the European Convention, as seen also in the light of the latest international developments. However, special emphasis will be devoted to the fact that CFSP will have to work at 25 already from next month (informally) and next year (formally).

With this in mind, two main approaches seem to deserve attention:

- One that stresses the need for streamlining not only decision-making but also policy implementation by introducing QMV for CFSP, ‘consent’ (rather than ‘consensus’) for ESDP, and more restricted formations of the willing and able for defence-related policies (“Eurozone of defence”, specialised agencies, reformed enhanced cooperation);
- Another one that insists on the need for preserving and even strengthening institutional and policy coherence for CFSP at large (civilian vs. military, Relex vs. crisis management etc.) and between CFSP proper and other EU policies (trade, aid, JHA etc.).

The two approaches are not necessarily incompatible and, in effect, some convergence has already been achieved – at least at a preliminary stage – on the idea of ‘double-hatting’ Solana & Patten and of ‘pooling’ (though not ‘merging’) at least bits of the relevant services of Council and Commission. The precise details will matter – starting with his/her role in chairing the GAC - but it seems to be a proposal capable of being backed by an overwhelming majority of the Convention (and the ensuing IGC). The same is not true of the idea of appointing a ‘President’ of the Council: at any rate, the ‘job description’ is likely to be crucial – the weaker his/her attributes and powers, the more acceptable it will be (and compatible with the ‘double-hatted’ HR). More generally, given the old and new divisions over CFSP, the proposal of a “European Foreign Ministry” looks likely to be opposed as such: it could be wiser to aim at a “*EU Security Council*” consisting of a strengthened PSC-like structure backed by a mix of dedicated Relex staff and officials from both the Council (DG-E, Policy Unit, HR’s cabinet) and

the national MFAs (5-year detachments). Such a solution would presumably tame bureaucratic opposition from national foreign ministries and significantly reduce complexity and in-fighting inside the current EU bodies (between Council and Commission as well as within the Council itself). At the same time, it would provide a *single* body to run the administrative and operational side of CFSP. Within such a framework, some flexibility and specialisation are desirable: the system of appointing “*special envoys*” to crisis areas could be made more systematic – with appropriate endowments in terms of human and financial resources – while “*special representatives*” could be appointed to oversee functional areas and policies, including specialised agencies (armaments cooperation, intelligence gathering, strategic analysis and policy planning).

Finally, bigger *budgetary resources* should be devoted to the operational dimension of CFSP: the B-8 line in the EU budget amounted to a ludicrous 30 million EUR in 2002 and has been raised to 47 this year only as a consequence of the Police Mission in Bosnia-Herzegovina, that started in January 2003. For reasons of both transparency and legitimacy it would be advisable that a specific procedure is found in order to mobilise common resources for common operations, thus partially relieving those member States who contribute most and also preventing any intra-EU argument over burden-sharing or free-riding. For instance, the EU budget could cover not only the so-called “common costs” as defined in Seville in June 2002 but also a fraction of the *per diem* of the national personnel (civilian as well as military) engaged in ESDP operations: either a pre-established share thereof or (given the variety of staff provisions across the EU) a *somme forfaitaire* to be reimbursed afterwards – as the UN already does.

The issue of the *rotational presidency* is more delicate in that it involves the role of the *troika* and the chair of CFSP-related meetings. While there is some consensus on the need for simplifying the system and speaking with one voice, some member States hesitate before giving green light to solutions that could have an impact on the whole EU structure by making it ‘inevitable’ to scrap the presidency. This is also why, while the ‘double-hatted’ HR is considered acceptable, the appointed President is not, or only on certain conditions. This said, the recurrent idea of countries ‘*teaming up*’ – while conceivable for the EU system at large (thematic Councils, even the distribution of posts in a reduced Commission) – hardly meets the functional needs of CFSP and ESDP.

Especially after what has happened over the past weeks, the issue of *introducing QMV* for CFSP decisions - as floated in the Dehaene Report - has become extremely delicate. In fact, today virtually no EU country is sure of being part of any qualified majority on any given subject. The EU is split at least in two separate political camps: while, say, one year ago the main cleavage seemed to be between big and small, now big and small countries are to be found in each and every camp. The outcome of votes is highly unpredictable. In principle, this could be an additional reason to introduce QMV. More realistically, however, member States may be all the more cautious now. Furthermore, CFSP proper – especially its diplomatic and policy formulation dimension – is not necessarily apt to being decided with parliamentary methods: it does legislate, it does not rely on an established *acquis*, and it has to create incentives on producing external actions. On top of that, consensus is all the more necessary if CFSP is to be supported by all and credible internationally: defection by one or more partners (if and when put in a minority) could result in policy failure. This is only to say that resorting to QMV should perhaps be the exception rather than the rule: in other words, the Council presidency (hopefully the ‘double-hatted’ HR) should force a vote based on QMV – but the Nice rules are extremely complicated .. – only when a) a decision is needed, if the Union is to be credible, b) there is a clear majority clinging to a decision, and a small and obstructive minority. More generally, the veto power by one country only should be made impossible or only temporary (as a time-buying device with a view to a later deal). Finally, especially on decisions with operational implications, “constructive abstention” should be made easier – in particular in a Union of 25 with many small countries with limited interests and resources.

Finally, the issue of *enhanced cooperation*, that brings us back to the initial distinction between two different approaches to the complexities of an enlarged Union. The current Treaty allows ‘enhanced cooperation’ in the second pillar, but with two important provisos: 1) it is limited to CFSP joint actions and common positions, and 2) it excludes both common strategies and all “matters having defence or military implications” (art.27 TEU). On the one hand, therefore, it is of little utility: what is the point, in fact, of having enhanced cooperation for common *positions*? On the other hand, it is not applicable to the one policy field, namely ESDP, where it could make sense, given the great diversity and imbalance of capabilities across the EU 15/25. In order to give added value to CFSP and to come to represent an effective policy instrument, therefore, ‘enhanced cooperation’ as laid down in art.27 has to broaden its scope. First, it could well apply to the implementation of ‘common strategies’: insofar as

they have a specific geographic/country scope, in fact, they could be decided at 15/25 and then implemented by the Commission in conjunction with those partners who are most interested in it: such 'joint' character may also have budgetary spin-offs ('matching' funds, joint ventures etc.). Secondly, there are policy areas in which a selective implementation of commonly agreed policies by the willing and able could be a positive-sum game: the Union would incorporate initiatives that presently lie outside of its institutional framework and enrich its 'portfolio' of options and capabilities, while the participating States could resort to the EU's institutional, human and financial resources. This may well be the case with armaments cooperation, space activities and, perhaps, the development of new strategic capabilities (investment, training, acquisition). Needless to say, the Commission should be adequately involved – both as the 'guardian of the Treaties' and, when relevant and useful (single market, research), as an executive body – and appropriate administrative and managerial 'formats' be adopted. As for the 'entry' requirements, a balance should be found between the interests of the willing and able (who might otherwise prefer to resort to "closer cooperation" outside of the Treaty, as from art.17.4) and those of the potential acceding countries (who might otherwise vote down such initiatives) and the Union itself and its policies, whose overall coherence may be jeopardised. At any rate, some Treaty revision is necessary anyway, and might well include also the general provisions enshrined in artt.43-44 TEU, where at least 8 members must participate in the launch of 'enhanced cooperation' schemes. If the goal is to help create, in particular, a "Eurozone of defence", the threshold might have to be either lowered (OCCAR is at 4, the LoI at 6) or just waived.

Finally, 'enhanced cooperation' is intended here as a new tool for policy implementation and not – as sometimes happens in the political and academic debate – as: a) a procedural device, a sort of institutional deterrent (not unlike QMV) to force consensus, as it was partially used by the Belgian EU presidency in October 2001 over the issue of the common European arrest warrant; or b) as a metaphor for 'avant-garde' or 'pioneer group', namely a restricted group capable of fostering and deepening integration among its members. The former can be achieved by other means, but will never entirely compensate for fundamental disagreements over policy, especially foreign and defence policy. The latter can be pursued through other means, too, primarily bi- or multilaterally - as the Benelux example shows - provided it does not affect the *acquis*. More generally, institutional and procedural reforms may help remove impediments, traps and, arguably, alibis from the decision-making path. They may also help facilitate consensus-shaping and policy implementation. Setting the right incentives at the

right stage is crucial, and the current CFSP provisions still lack them. But there are limits to their ability to forge a common approach and to mould 25-plus countries into one single actor.

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Rome, 4-5 April 2003

PAPER BY

Mathias Jopp

**“CFSP DECISION-MAKING AND PROCEDURES
FOR ENHANCED COOPERATION”**

1. Introduction

This is a rather conventional, some may say technical, paper. It does not analyse the extent to which the present and future EU is split between the “old” and the “new” Europe and whether a real Common Foreign and Security Policy might only be in sight in the event of a consensus among the member states.

The paper is based on the assumption that Europeans are not living at a time (after Monetary Union) where they can wait and see whether their interests coincide or not and then decide (or not) which institutions should be used for what purpose or action. Rather, institutions and modes of decision-making seem to be terribly necessary for shaping national interests (which are not static at all), for establishing trust and transparency among the member states and for helping to build a consensus.

Perhaps we would need to differentiate between high and low politics. An issue of high politics would then only be decided by consensus; for all other issues various types of decision-making might be used. The big difficulty is to define what is high and what is low politics (war-fighting, peace-keeping, recognition, sending observers or special envoys)?

Finally, no decision-mechanism should be designed to bulldoze others in. But decision-making can also not be designed in a way that one vote would be sufficient to block the whole EU from taking action. The art of decision-making will therefore lie with modalities allowing for a certain degree of flexibility should not all member states want to move into a specific direction, and modalities which aim at promoting consensus among the member states wherever possible.

2. CFSP decision-making (from Maastricht to Nice)

Since the negotiations on the Maastricht Treaty there had been a struggle between those in favour of QMV on foreign policy issues and others insisting on unanimity for reasons of national sovereignty in decisions on international affairs. The proponents of QMV lost the battle several times. At Maastricht, QMV was introduced into Title V only for follow-up decisions in implementing what had been agreed before by unanimity or consensus – a possibility which had never been used in practice. The Treaty of Amsterdam provided for

QMV for implementing common positions or joint actions on the basis of a common strategy defined before in the European Council acting by consensus. This was a compromise – which still holds for the Treaty of Nice – worked out by the French and the Germans and then agreed upon by all member states since it combined two different strands of thinking, the communitarian and the intergovernmental philosophy. But even that did not work well in practice since some sort of a Luxembourg compromise had been introduced into the Treaty: a member state, for important reasons of national interests, can object the use of the QMV-procedure, a problem which the Council (by using QMV) can bring to the attention of the European Council which will decide on the issue by unanimity. In effect, QMV has not been used and the Council, usually, decides by unanimity or consensus with constructive abstention according to Article 23, first sentence of the Nice Treaty.

3. Proposals for facilitating CFSP decision-making

The uneasiness on part of Germany and other more integration-friendly member states as well as the meagre and slow output of European Foreign and Security Policy led to intensive debates about reforming CFSP decision-making in the framework of the European Convention.

The European Convention's **working group on external action** makes the following recommendations in its final report:

- “The Working Group underlines that, in order to avoid CFSP inertia and encourage a pro-active CFSP, maximum use should be made of existing provisions for the use of QMV, and of provisions allowing for some form of flexibility, such as constructive abstention.” (p. 7)
- “In addition, the Working Group recommends that a new provision be inserted in the Treaty, which would provide for the possibility of the European Council agreeing by unanimity to extend the use of QMV in the field of CFSP.” (p. 7)
- “The Group discussed the possibility [...] of introducing a new type of initiative. A joint initiative which would present an approach integrating foreign policy aspects and external relations instruments could be put forward by the European External Representative (or the HR) and the Commission.” (p. 25). Several members consider that the Council could approve such “joint initiatives” by QMV (p. 7).

The proposals in the **"Franco-German contribution to the European Convention concerning the Union's institutional architecture"** of January 15, 2003 (p. 6) go beyond the working group recommendation. They stress that: "Decisions in the field of CFSP are generally taken by using QMV." Furthermore:

- "If a member state claims a national interest against the taking of a decision, the "European Foreign Minister" is engaged with the aim of finding an amicable solution with the member state; if this is not successful, the president of the European Council tries to find an amicable solution. If no solution is found, the European Council deals with the question by using QMV."
- Decisions referring to military or defence policy (ESDP) are taken by unanimity, respectively consensus with constructive abstention.

As far as the relevance of the Franco-German proposals is concerned it is worth noting that France has accepted, for the first time, QMV in CFSP affairs in the Council and the European Council, albeit in combination with a hierarchical "filter" through the new European Foreign Minister and the elected fulltime President/Chairman of the European Council. This compromise might be attractive also for others thinking in categories of intergovernmentalism and sovereignty. But it means that the introduction of a general QMV-provision is linked to the future existence of a "European President" and a "European Foreign Minister" (with an own right of initiative). Whether both would be acceptable for smaller member states is still an open question.

4. CFSP and Closer/Enhanced Cooperation from Amsterdam to Nice

At the IGC which led to the conclusion of the **Treaty of Amsterdam**, concerning the 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 the 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.).

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.

In the run-up to the **IGC 2000**, the discussion about closer cooperation gained new dynamics, and this time, models of flexibility were discussed also for the second pillar.

The **Treaty of Nice** has 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: a majority of member states as foreseen in the Treaty of Amsterdam is no longer required, but a minimum of 8 countries wanting to cooperate closer (Art. 43 TEU). This still constitutes a majority in the present EU, but not so in an enlarged Union. On the other hand, the veto option remains in the second pillar whereby it had been dropped in the first and third pillar. This still threatens to ‘kill’ enhanced cooperation even before it can be initiated.

The **enabling clause** introduced in the 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 encouraging the countries interested in enhanced cooperation in their

ambitions. 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 the conduct of a joint action or the implementation of a common position**. It will furthermore **not relate to matters having military or defence implications**.

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 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 become a victim of different national priorities and the high amount of political attention and energy absorbed by the fight about seats and weighted votes in key institutions.

5. Proposals concerning Enhanced Cooperation

The final report of the **Convention working group on external action** made the following statement:

"Some members considered that forms of operational cooperation between a limited number of Member States, as a 'coalition of the willing' to take forward specific operational actions in the framework of implementation of Council decisions, could contribute to enhancing CFSP." (p. 26)

The final report for the **Convention working group on defence**, which was chaired by Commissioner Michel Barnier, 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). Instead, a high level of dispute seemed to be prevailing in this sensitive field. Some members of the group pleaded for flexible constellations like the creation of a "defence Euro-zone" including countries ready to accept the introduction of defence criteria and 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). Others were strictly opposed to the use of enhanced cooperation in the defence field (Ibid.). No clear picture emerged from the debate in the working group, so that the Convention, so far, has not presented a unique proposal, but a menu of possible solutions.

The **"Joint Franco-German proposals for the European Convention in the field of European security and defence policy"** of November 22, 2002 (p. 3) argue in favour of enhanced cooperation in the field of the ESDP to be included into the Treaty. Enhanced cooperation should be applied for:

- setting up multinational force elements with integrated command structures,
- joint armaments projects,
- the management of human resources and training and
- the formulation of joint doctrines.

Concerning enhanced cooperation proper modalities would have to be determined:

- decision of establishing such a cooperation by qualified majority
- securing rapid decision making procedures (amongst other things review of Art. 27 c TEU-Nice)
- lowering of the threshold for the required number of participants [perhaps down to 5].

Apart from this, according to the Franco-German paper, the use of other instruments of flexibility within the Treaty for the ESDP should also be examined. Special rules should apply to the use of instruments of flexibility as to the initiation and implementation of military operations. Here, the requirement of unanimity should still apply, with the possibility of constructive abstention.

Finally it is suggested that those member states, who wish to do so, could transfer their obligations under the WEU Treaty to the European Union by using enhanced cooperation, which would include the possibility of introducing a mutual assistance clause into the EU framework.

6. Conclusions

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Rome, 4-5 April 2003

PAPER BY

Elfriede Regelsberger

“THE EU’S SYSTEM OF EXTERNAL REPRESENTATION”

I. To start with - more questions than answers as to the potential for reform

1. The **divergences of views of the Fifteen over Iraq** and the way in which the issue was treated (“letter of Eight”) have produced a considerable setback for the CFSP. Some commentators have gone as far as to predict **the end of the whole “undertaking”** while others – rightly – argue that despite the undeniable, however, understandable rifts over such a key question, i.e. on peace or war – the CFSP continues to exist and produces remarkable results like the most recent crisis management operations in Bosnia (EUPM) and Macedonia. Sceptics argue that this negative experience will massively reduce the potential for CFSP reform – and the postponement of drafting the relevant articles in the skeleton treaty in the European Convention might confirm this trend; others, on the contrary, see **increased synergetic effects** to achieve substantial progress.
2. After signature of the Accession Treaty, i.e. from mid-April onwards, the **future ten member states** will have full access to all CFSP levels as observers and later on “participate fully” in the intergovernmental conference. Though it is generally assumed that the “newcomers” already widely **share the acquis politique of CFSP** their rather newly gained national sovereignty might prevent them from favouring far-reaching reform proposals like the one on majority voting in CFSP thus **not necessarily facilitating compromises**. Depending on how the representatives of the new countries will perform in the daily CFSP business and familiarise with the procedures in particular the debate on **institutional reform** in the second pillar **might be further accelerated**, e.g. with regard to the system of rotating presidencies.
3. The debate on the EU’s external representation and the potential of reform there cannot be isolated from the rest of the reform agenda, i.e. **the final outcome** will be the **product of larger package-deals** among those favouring more **integrationist or intergovernmental approaches** and will not necessarily follow the criteria of more visibility, continuity, greater efficiency and more consistency of Europe’s profile in matters of foreign and security policy.
4. **Current proposals focus** very much on the idea of how to improve **external representation at the political level** while the administrative dimension seems to find less attention. Both dimensions leave the outside observer increasingly blurred the more he/ she tries to identify the elements in greater detail and how the new constructions might work..

II. Where do we come from – a proliferation of functions and actors

The system of the EU’s external representation is a complex one. This is due to

- the distribution of competences, - exclusive, mixed and national – in the various policy fields which per se have an external dimension like trade, economy, development cooperation, CFSP, fisheries, agriculture, enlargement etc. which “produce” a number of different actors in international for a like WTO, IMF, G 8 etc. (“bicephalous” presidency or Commission alone)
- increased external dimensions of traditionally internal policies like on environmental issues, justice and home affairs, monetary issues etc.

- the **growth in CFSP**, including ESDP, most obvious in
 - **permanent presence of CFSP presidency all around the world at both political and administrative level**
 - normal business to inform third countries about CFSP output (e.g. almost 200 declarations and over 400 demarches a year) either by the Presidency Foreign Minister or even Prime Minister, the Troika, presidency embassy in third countries
 - fact finding and mediation in crises regions like the Middle East, the Balkans
 - regular political dialogues (at present over 300 meetings a year with different formats)
 - **High Representative for the CFSP**
 - **Special envoys** (at present eight, including the Head of the EUPM and the Operation Commander for Macedonia)

Since the relationship between CFSP and other external policies will be dealt with elsewhere during the seminar the focus of this paper will be on the external representation of the EU through the CFSP framework.

It is more than obvious with regard to treatment or better non-treatment of the then Belgian Presidency by the US Administration after 11 September 2001 and the forthcoming enlargement that **the external credibility of the CFSP is affected to the extent small EU countries have to carry out the role of the CFSP spokesman**. This is not to say that small countries are per definitionem unable to manage the CFSP business. They have done so quite successfully since their interests in a given problem are minor compared to the bigger partners thus easing the task to find a compromise. But the political weight of their representatives in the international arena might count less and also among their EU partners similar concerns have been issued more than once. In contrast the **profile of the Fifteen** has been considerably **improved by the post of the High Representative for the CFSP** which, however, has a lot to do with the impressive skills of the person who holds the post until 2004 at least, former Spanish Foreign Minister and Nato Secretary General, Solana. At the same time **structural rivalries** between the post of the High Representative and that of the **Commissioner in charge of the CFSP** have become obvious especially in the area of civil crisis management.

The nomination of **special envoys** for regions/ countries which have been defined as particularly relevant for the Fifteen has added to giving the CFSP a clearer and more permanent “face” and “voice” though increased financial resources and a clearer definition of their relationship with other CFSP actors and in particular the High Representative seem to be necessary.

III. Requirements for reform – some comments on current proposals

1. **Among the ideas presently under debate the up-grade of the post of the High Representative for the CFSP towards a European Foreign Minister¹ (Secretary of the Union² or European Representative for External Affairs)³ receives most**

¹ Term used in the Franco-German proposals for the Convention.

² As suggested in the Communication of the Commission KOM(2002) 728

attention. He is supposed to act as the key spokesman towards the outside instead of the rotating presidency and Troika at ministerial level at least. He should receive the right of initiative along the one the member states dispose of in CFSP and be better staffed both in terms of personnel and finances.

Though the principle seems to be widely accepted (also among the smaller EU member states)⁴ not surprisingly the proposals differ with regard to the details and pose **numerous questions:**

- **Can one single person over a period of five years carry the already heavy burden to speak in the name of the EU internationally** (in 2001 93 meetings at ministerial level were held with third countries in the framework of the regular political dialogues - not to mention the other travelling activities of the Presidency and/ or the High Representative e.g. to the Middle East and the Balkans), plus to actively contribute to the internal forming of the *acquis politique* through his right of initiative and to act as the mediator of an enlarged CFSP group since he is to chair the meetings of the Council in its format of external relations⁵? If the future European Foreign Minister is to become at the same time Commissioner for external relations or act in the “double-hat” version the workload would even grow. While some may emphasise the physical resilience linked to just a demanding post others may fear a too big concentration of power in the hands of one single actor.

- **Questions in relation to the President of the European Council**

Will a strengthened High Representative not immediately run into **rivalry** with an elected President of the European Council who is supposed to carry out a representative function in foreign affairs as well? Is it a realistic scenario that such a President will limit himself to a mere conduct of the political dialogues at the level of heads of government (at present in total 12 meetings a year, i.e. with Russia, the United States, China, Ukraine, Japan, Canada, India) at summit level in the CFSP framework and informing the outside world about the CFSP decisions of the four meetings (normal frequency of European Council plus eventually one or two special ones) while the High Representative will do the daily business also and in particular when it comes to an international crisis? Does the fact that the future European Foreign Minister will be nominated by the Heads of State and Government not automatically imply a somewhat subordinate position towards the President of the European Council?

It is more likely than not that the President of the European Council will also claim a permanent foreign policy service to conduct his functions, i.e. he will take recourse to the staff of the European Foreign Minister or create a bureaucracy of his own which will require additional coordination efforts.

- **Questions in relation to the future role of the Commission in CFSP**

Will the up-grade of the High Representative imply a **downgrade of the Commission's role** in CFSP (arts. 18, 22 and 27 TEU) and in the longer term even a

³ This term was preferred by the majority in the working group VII of the Convention CONV 459/02.

⁴ See also the Benelux-Memorandum of 4 December 2002.

⁵ Which include also external trade, development cooperation and ESDP according to the Conclusions of the European Council of Sevilla, 21/22 June 2002. Annex II.

shift in the institutional triangle ? The “double hat” approach favoured by many at the moment obviously means that there will be only one person, i.e. the European Foreign Minister, and no longer a separate Commissioner at the negotiation table and the Troika will automatically disappear, i.e. the High Representative will exert the former right of initiative of the Commission, he will obviously have a special status inside the Commission College and will be nominated in a different way than the other members of the Commission, i.e. with qualified majority by the European Council and in consultation with the President of the Commission (obviously no participation of the European Parliament).

In a **less ambitious though more practicable option** (as suggested e.g. jointly by Spain and the United Kingdom)⁶, i.e. a less integrationist model and oriented towards the intergovernmental approach, the separation of competences would remain and the future European Foreign Minister would take only part as some sort of observer in the CFSP related meetings of the Commission **leaving the latter’s right of initiative and the Commission participation at all CFSP levels untouched**. Whether this would also imply continued external presence in CFSP with a strengthened High Representative needs further clarification.

In order to achieve greater consistency of the EU’s international profile joint initiatives of the European Foreign Minister and the External Affairs Commissioner could be envisaged. Assuming that they would reflect in a particular way the common interests of the Union in a given subject decisions in the Council on these matter might be taken by qualified majority.

- The **need for a deputy /deputies**, i.e. who will chair the Council in case the European Foreign Minister is absent and represent him in the Commission framework.

The German proposal submitted to the Convention working group VII suggests that **the European Foreign Minister himself should nominate two of them**: one **chairing the COPS**⁷ and – in exceptional cases – **the Council**, the other one **representing him inside the Commission**. The deputies should be confirmed both by a majority vote in the Council and by the President of the Commission. Though not explicitly said the deputy Council chair would also act as spokesman towards third countries in case the European Foreign Minister could or would not do so at ministerial level. Besides, he would be responsible for the EU’s external representation at the level of senior officials (COPS) where regular political dialogue meetings already mounted up to 66 meetings in 2001 not to mention ad hoc consultations with third countries.

- Requirement for **administrative support**

For reason of greater efficiency it is necessary to **end the separation of the CFSP bureaucracy inside the Council Secretariat and to integrate both DG E and the Policy Unit into one** which would form the basis of a future European Foreign Ministry/ European Diplomatic Service. This new “creature” would be **additionally staffed by diplomats from all the EU member states** – e.g. the Policy Unit suggests five officials from each country – in order to meet the enlarged challenges of CFSP policy formulation and implementation. Compared to the old presidency

⁶ Contribution of the Convention members Palacio and Hain on the Union institutions, 28 February 2003, CONTRIB 264.

⁷ So far the High Representative has not exerted the chair in the meetings of the Political and Security Committee which is explicitly foreseen for crises situations.

formula member states and particularly the smaller ones might find it an attractive alternative to send their diplomats to this new “institution” in Brussels where they might take over responsibility for certain CFSP issues on a much more permanent basis than doing so for six months once in 12,5 years.

For the sake of greater consistency a **direct link with the Commission services** and in particular with the DG External Relation has to be established. Whether this will go beyond intensified contacts between the officials e.g. towards a delegation of additional Commission personnel to the European Foreign Minister or even as far towards a more general right of the latter to take recourse to the Commission staff or even to integrate the Commission DG into the new body⁸ will depend on the final construction of the “double hat” approach or any other model.

As a logic consequence to achieve greater visibility and continuity in CFSP the EU Foreign Minister’ s staff would also be responsible for the daily diplomatic business towards the outside, i.e. **to conduct the political dialogue (in 2001, 140 meetings) at expert level, fact finding missions etc.**

Whether such a complete shift of responsibilities from the former CFSP Presidency system to a Brussels-based permanent unit will find the support of all the member states remains to be seen. I t may well be that the advocates of the rotating presidency and those who fear a new source of power emerging from the post of a European Foreign Minister and his bureaucracy might opt for a **system which preserves some functions for the member states**. They might claim to have **chairmen at the CFSP working group level** (at present 31 groups) who would either **follow the existing rotation**, or – going a step further as has been done already with the EU Military Committee – to **elect their presidents from their own groups for one or more years**.

Another possibility might be to translate the idea of **team presidencies** as suggested in the British-Spanish text⁹ to the CFSP working level though immediately the question arises as to the composition of the teams and the distribution of the “portfolios” among them (according to special expertise, historical ties, regional proximity...? Furthermore, any such mixed system would also require a clarification of who is going to be responsible for CFSP external representation at administrative level and make intense coordination between Brussels and the responsible diplomats in the capitals urgent.

2. **As a logical consequence of the up-grade of the High Representative towards the “double-hat” model and of the introduction of an “institutional presidency” in the Council of External Relations CFSP external representation in third countries should be organised accordingly, i.e. the already existing Commission Delegations should be staffed with personnel from the European Diplomatic Service (see above) and would both act as the EU spokesman towards the host country (instead of the diplomatic mission of the former EU Presidency country) and chair the regular CFSP related meetings of the diplomats from the EU member states at place.**

⁸ This can be read from point 5 of the Chirac-Schröder contribution on the institutional architecture of the EU, 15 January 2003. [Http://www.bundestkanzler.de](http://www.bundestkanzler.de)

⁹ Contribution of the Convention members Palacio and Hain on the Union institutions, 28 February 2003, CONTRIB 264.

Complaints have been numerous about who speaks in the name of whom particularly at places where not all EU member states have diplomatic missions and where the system of the rotating presidency caused additional irritation. The fact¹⁰ that only four of the present EU member states have diplomatic missions in more than 100 out of the existing 190 countries in the world and two thirds of the Fifteen are represented in less than 90 countries while the Commission delegations amount up to 128 give some indications where the limits and the potential for the EU's "voice" might be.

Since the responsibilities of the Commission representations have mostly been in the sphere of economic assistance, humanitarian aid etc. their staff would need some professionalization towards CFSP issues. This could be done by special training in an European Diplomatic Academy (to be created yet) which should also be offered to the services of the European Foreign Minister and the diplomats from the EU member states as well.

In order to make such a solution of **future EU Delegations**, which requires also the legal personality of the EU, acceptable to the member states a **secondment from national diplomats** should be envisaged. They could – preferably - come from the services of the future European Foreign Minister, from the diplomatic missions of the member states at place or the foreign services in the capitals. More

far-reaching ideas towards integrating parts, i.e. those related to political and economic issues, of the national embassies already into the EU missions seems to remain a too conflictive issue.

The new profile of the EU delegations would also solve recent tensions and competition between the Commission Delegations and other EU actors in third countries namely the offices of the special envoys and some sort of Council "offices" which do political observation and concertation in order to support Solana's mediation services e.g. in the Balkans. To unit these various speakers under one common "roof" could add to the EU's credibility and homogeneity as an international actor.

3. **CFSP external representation at international organisations, i.e. the United Nations and the OSCE in particular, through "one single face and voice" should almost "naturally" belong to the duties of the future European Foreign Minister and his diplomatic service though such an approach might presently meet with certain reservations among the member states at least as far as the UN Security Council is concerned. More ambitious ideas towards one single EU seat therein seem to be less timely at the moment.**

To present the EU's position in the annual **UN General Assembly** as well as in the **OSCE ministerial meetings**¹¹ would belong to the normal business of the future European Minister of Foreign Affairs which was previously carried out by the respective Presidency Foreign Minister. Besides, the future CFSP spokesman might profit from a practice introduced in 2001 which enables the High Representative for the CFSP to speak in the **UN Security Council**. However, this "right" has been limited to one appearance a year so far and has been confined to policy substance which has been formulated already in CFSP as the *acquis politique*. Against the background of recent experience of member states' behaviour in New York national interests play a dominant

¹⁰ For greater detail see: Simon W. Duke: Preparing for European Diplomacy? In: Journal of Common Market Studies 5 (2002), pp.849-870.

¹¹ While EU representation at the OSCE summits would be secured by the President of the European Council and the President of the Commission.

role there and the obligation to consult the other EU partners and to emphasise the common EU viewpoints¹² seems to be easily forgotten. An **enhanced role for a strengthened High Representative looks therefore rather unlikely** at the moment.

Concerning **CFSP representation at the numerous administrative levels** of the UN-system, e.g. the Committees, doubts may be justified as to whether a joint EU delegation composed of the existing missions of the Commission and the permanent offices of the Council (in New York and Geneva) will be the appropriate spokesman. The fact that the definition of the member states' positions on the UN agenda remains a national competence for foreign policy issues seems to work in favour of continuing with a system which would **leave the main coordination and external representation tasks in the hands of the diplomatic missions of the member states**. Similar to the above-mentioned division of labour at CFSP working group level in Brussels diplomats from the EU member states which are all present at the sites of the UN and OSCE might take over specific tasks according to subjects and to the special skills of the personalities involved. These would include both to chair the internal CFSP coordination meetings at place and to speak on the EU's behalf in the respective international committee sessions.

¹² As defined in articles 11 and 9 TEU.

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CONVEU 30 PROJECT (SEMINAR 3)

Seminar on

“Capacity and Actor building: Which Instruments and Institutions does the EU need to enhance its Capacity to act with regard to its Trade, economic Cooperation and foreign, Security and defence Policy?”

Sponsored by the EUROPEAN COMMISSION

Rome, 4-5 April 2003

PAPER BY

Alessandra Lang

**“COHERENCE BETWEEN EU DEVELOPMENT POLICY
AND OTHER EXTERNAL POLICIES”**

1. The EU development policy has always been a policy in search of coherence.

The Commission has highlighted the need of coherence since its first Memorandum on development cooperation. This subject has a multilevel dimension and should be dealt with considering this specific approach. The European Treaties offer some tools in order to tackle with this subject.

i) Coherence between development policy and other internal competences (such as common agricultural policy) should be achieved through implementation of article 178 TEC («The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries»).

ii) Coherence between national actions and Community actions in the field of development policy, should be achieved through implementation of article 180 TEC («The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1»).

iii) Coherence between development policy and other external Community actions should be assured by the Council and the Commission (according to article 3, paragraph 2, TEU: «The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.»).

iv) Coherence among different development measures (sectoral and regional) is currently much more difficult to achieve.

The Convention has now the opportunity to satisfy the broadly shared need of coherence. In almost all the documents submitted to the Convention, we find the word “coherence” as well as the will to enhance it. Time has come to work on how this coherence should be enhanced.

2. In the preamble of the EC treaty we read that the High Contracting Parties intend «to confirm the solidarity which binds Europe and the overseas countries» and desire «to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations». As well known, the EC enjoys only those powers conferred by the Treaties. They are listed in article 3 and specified in detail elsewhere in the Treaty. Letter r), introduced by the Maastricht Treaty, refers to

«a policy in the sphere of development cooperation», as defined in articles 177 to 181; letter s) refers to «the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development», specified in part IV of the Treaty.

Development policy is part of the foreign policy. It can be defined as all those measures aimed at improving the economic and social development of developing countries. These measures can be commercial in character (i.e. the General System of Preferences), unilateral or bilateral (i.e. association agreements). The special legal basis introduced by the Maastricht Treaty does not supersede the other legal basis currently used, but it allows the EU institutions to adopt special development oriented measures.

3. The preliminary draft of the European Constitution, known as “skeleton”, contains one single chapter in part II entitled “External Action”. Up to now, we only know the “label of the box”, not the content. Grouping all the legal basis for external actions is a first step to assure a greater degree of coherence.

Article 3 states the objectives of the Union. They shall be pursued both in the Union internal order, and internationally. In present article 3 we find no express reference to development policy. Paragraph 4 states: «In defending Europe’s independence and interest, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children’s rights, strict observance of internationally accepted legal commitments, and peace between States».

The values of the Union are listed in article 2 and a particular importance is given to the respect of human rights and democracy, always considered as a basic element of European Union development policy. Paragraph 4 contains an implicit acknowledgement of the development policy being part of foreign policy. Sustainable development of the earth can only be achieved if the efforts are focused on human development. Eradication of poverty is now widely recognized as the primary aim of development policy. But the Union should bear greater responsibility toward developing countries than the one stated in paragraph 4. As some of the amendments propose, and the Working Group on External Action recommends, it would be better to add a reference to «the durable economic and social development of developing country» and/or to «the integration of all countries into the world economy». Another option could be envisaged: to insert a sentence like «to create an environment which is conducive to development and to the eradication of poverty», like the one included in the United Nations Millennium Declaration.

We find an express reference to development policy in article 12. Article 12 is devoted to “Shared competences” and its paragraph 6 reads as follows: «In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.»

According to the conclusions reached by Working Group V on “Complementary competencies”, when the Union can adopt supporting measures, it cannot take legislative acts (in other words, in these subject matters the Union does not enjoy any legislative competence). On the contrary, the category of shared competences is residual in character, as it comprises matters which are neither of exclusive competence, nor supporting measures. In case of shared competence, both the Union and Member States enjoy legislative competence. The Working Group considers development coordination as a shared competence, instead of a field of supporting action, because in this matter the Union is empowered with legislative competence. But the Group recognizes that «development cooperation has special features because Union activities in this field would never prevent the competence of the Member States to maintain their own national development policy».

The Group’s reasoning is mirrored in draft article 12, paragraph 6, which recognizes the peculiarity of development policy, but leaves unresolved the issue of coherence between States’ and Union’s actions. It should be useful to insert in part II of the Constitution a compatibility clause, i.e. like the one we can find in article 176 TEC («Such measures must be compatible with this Treaty»); moreover, it is reasonable to foresee that actual article 180 will be reproduced.

Some amendments to article 12 suggest either to consider development policy as either a shared competence by all means, denying its special character; or to add economic, financial and technical cooperation (in order to mirror the Nice treaty amendment); or to qualify development policy as a field for supporting measures.

I would personally prefer part I to include only general definitions of different categories of competences and part II to specify the various fields of actions.

4. The Working Group VII “External action” attached special consideration to development policy. In its final report, the Group presents some recommendations to the Plenary, some of which devoted to this policy, in view of achieving more coherence.

Firstly, the Group recommends to simplify the administrative and legal instruments currently used for managing EU development programs, and to enhance them. Too many regional and sectoral regulations undermine the coherence of the EU policy, resulting in a contradictory policy. They

should be reduced in number and better organized on a strategic programming, in order to maximize common efforts. The main aim of the development policy is the fight against poverty and all the development instruments should be organized around this primary objective.

Secondly, the Group recommends integrating the European Development Fund into the EU general budget. As it is well known, the Treaty of Rome provided for the EDF, the main instrument for Community aid to development cooperation in the ACP countries and in the Overseas Countries and Territories. Even if a heading of the EU budget is reserved to the Fund, it does not come under the EU general budget. It is funded by the Member States, covered by its own financial rules and managed by a specific committee. About every five years, the Representatives of Member States, meeting within the Council, set the EDF budget, by way of agreements that are subsequently ratified by the national parliament of each Member State. The Community institutions, and especially the European Commission, are associated with the administration of the Fund. This set of things was endorsed by the European Court of Justice: the European Parliament challenged this arrangement on the ground of its illegality according to the Treaty, but its application was dismissed by the Court as unfounded (Case C-316/91, *Parliament v. Council*, ECR, 1994, I-625).

At the same time, according to the proposal, the management of the Fund should be improved in order to achieve a greater degree of effectiveness and reduce cases of misadministration. It should be focused on fight against poverty, the main objective of EU development policy in general (not only on ACP States assistance), but not at the detriment of the level of assistance now granted to ACP countries.

Thirdly, the Group recommends ensuring coherence between development cooperation and the other EU external actions. As it states, «development assistance should be considered as an element of the global strategy of the Union vis-à-vis third countries». How to achieve this coherence is part of the general problem of improving coherence of the EU external action.

The Group presents some recommendations aimed at enhancing coherence through a better organization of services. A single person (the “European External Representative”) should perform the role of both the High Representative for Common Foreign and Security Policy and the Commissioner responsible for external relations. The Council should seat in the specific External Action Council. The Vice-President of the Commission should coordinate all external issues dealt with by the Commission. A joint service should be created, called European External Action Service and composed of officials from the Commission, the Council Secretariat and national diplomatic services.

5. Not all the Working Group's recommendations are constitutional in character. Some of them are rather administrative issues and could be implemented following the entry into force of the Constitutional Treaty, or even before.

As coherence is a multilevel question, it should be achieved through multilevel reforms.

Administrative reforms of Commission services and a better coordination among all actors of development policy (EU institutions and Member States) are essential in order to achieve a satisfactory degree of coherence.

The general objectives of EU action, as stated in article 3 of the draft Constitutional Treaty, should be specified in part II, in relation to external action in general and development policy in particular.

A strategic programming (annual or multiannual) should constitute the framework of both Union and Member States actions. This document should contain the definition of objectives and interests in relation to a specific region, country, situation or theme, the assessment of the impact of internal actions on development policy, the evaluation according to the subsidiarity principle, in order to ensure that Community action adds value to national actions.

A specific mechanism should be created, in order to oversee and monitor the implementation of the strategic program. To introduce an open method of coordination into the Union's development policy could be a good solution.

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CONVEU 30 PROJECT (SEMINAR 3)

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Sponsored by the EUROPEAN COMMISSION

Rome, 4-5 April 2003

PAPER BY

Reinhardt Rummel

“CONFLICT PREVENTION AND POST-CONFLICT RECONSTRUCTION”

I. The nature of conflict prevention and post-conflict reconstruction

The European Convention is about to design new contractual provisions for EU external action and defence. These provisions in the new constitutional treaty should cover, in addition to crisis management, the two other components of the cycle of violent conflict: *prevention* and *post-war reconstruction*. Crisis management addresses the peak of a conflict often characterised by local war and external military intervention. Concerning its projection of power, the EU's comparative advantage is with prevention of armed conflict and post-war reconstruction rather than with military crisis management.

In the future, the EU is likely to be engaged in an ever wider range of tasks in the field of conflict prevention and post-conflict reconstruction. Currently, relevant regions of EU involvement are the Western Balkans, Central Asia, the Middle East, various regions in Africa and South East Asia. The EU will also be confronted with a growing number of horizontal issues such as the proliferation of weapons, illicit trade, transnational terrorism, shortage of resources (water, food) and the new risks (cyber war) all of which are either root causes or aggravating factors of violent conflict. The EU will have to continue to take on responsibilities for dealing with these global factors and local situations.

Most situations of prevention as well as those of reconstruction need to be addressed by both military and non-military assets. While today's CFSP and its High Representative (HR) do dispose of some policy instruments, they are lacking a smooth and swift access to more substantial measures of pre-war and post-war intervention. A future "European Foreign Minister" will need to be able to draw on the existing Community policies and on the future assets of the European Security and Defence Policy (ESDP) including the access to certain NATO capabilities. The EU's most promising potential to meet the challenges of conflict prevention and post-conflict reconstruction are neither its military nor its non-military assets alone but the skilful combination of the two.

II. Ambitions of the European Convention

Both conflict prevention and post-conflict reconstruction are not (prominently) mentioned in the deliberations and documents of the European Convention – at least not with regard to external action and defence.¹ Instead, the contributors in the Convention talk about the "independence of

¹ In the draft Article 31 ("area of freedom, security and justice") the provisions seem to be more advanced or more sophisticated than in Article 14 (CFSP) as the Praesidium proposes a section on "Crime prevention": "The European

Europe,” the “European destiny,” the “European weight”, etc. This is done in connection with suggestions on CFSP and ESDP. In some cases, where crisis management is mentioned, it may be assumed that the term includes conflict prevention policy and post-war reconstruction efforts.

Most of the propositions from within the Convention, without expressing it in these terms, tend to support treaty language that opts for a strong EU engagement in international conflict. This could be seen as an encouragement to develop a distinct quality for the Union via its policy of prevention and reconstruction, thus, adding a further element to the EU’s strategic standing in the world. If, in fact, this were to be the goal, then the ambitions of the Convention should come to the fore at various levels specifically regarding:

- a description of the objectives,
- the requests for capabilities,
- the provisions for the actors of and procedures for prevention and reconstruction policies,
- the co-operation with international partners.

1. Objectives

Concerning the *objectives* it is important that the Union and, within it, particularly the Member States adopt the tasks of prevention and reconstruction as a central concept for external action and defence. These guiding principles need to be moved on to the foreground of EU external activity. The need for conflict prevention and reconstruction are self-evident but they need constant attention to become sustainable and to remain on track.²

A reference point in this regard could be established within TITLE I by Article 3 (The Union’s objectives), but in its present shape the respective paragraph 4 does not serve the purpose because it remains far too general: The Union shall contribute ... “to peace between States.”³

2. Capabilities

Regarding its *capabilities* the EU is well endowed with all the necessary types of measures, military and non-military, but their availability is as deficient as their quantities are disproportionate. In

Parliament and the Council, in accordance with the legislative procedure, may adopt laws and framework laws to promote and support the action of Member States in the field of crime prevention, ...” (The European Convention, The Secretariat, CONV 614/03, Brussels, 14 March 2003, p. 26).

² The term „conflict prevention“ used in this context would not extend all the way to „preemption“ as coined by the Bush Administration: „To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.“ See The White House, The National Security Strategy of the United States of America, September 2002, p. 15.

particular, the Union's military capabilities are much too poor to team up with the continuum of civil measures ranging from development aid to police forces. Moreover, beyond the investment in the build-up of its military and civil capacities the EU's policy operations need an adequate budget. Prevention and reconstruction can be quite costly and quite risky.

Which are the assets and which is the budget line that are needed for the activities of prevention and reconstruction? Partly, the same measures can be used for pre and post war interventions. In the debate of the Convention the suggestion has been made to integrate CFSP into the community budget, but for the time being this seems to be a minority view. Neither the build-up nor the costs of operating the EU-owned arsenals for prevention and reconstruction purposes are a subject of discussion in the Convention. If things remain as they are at present, then short term prevention and urgent measures of reconstruction can be based on an (increased) Rapid Reaction Mechanism. The deployment of stabilisation forces would be assured under a mixed regime such as the one applied for the EU Police Mission in Bosnia-Herzegovina and for the military mission Concordia in FYROM. The long term measures will be drawn from geographical programmes such as the TACIS or the EURO-Med or from functional programmes such as democracy aid and human rights funds. This would then match with the provisions in the Draft preliminary Constitutional Treaty.⁴

3. Actors and procedures

Prevention and reconstruction are horizontal tasks by nature. They ask for the orchestration of various *actors* inside the EU to design, decide and implement comprehensive and consistent policies. Given the widely scattered competencies and capacities within the EU, the mechanisms of co-ordination, monitoring and control need to be well advanced. Different tasks of prevention and post-war stabilisation ask for specific packages of actors and instruments.

A crucial question in this regard is whether or not the pillar structure will be overcome or whether, as the Preliminary draft Constitutional Treaty seems to suggest, the CFSP becomes part of the "External Action" section while "Defence" is becoming a section of its own.⁵ Such separation

³ Draft of Articles 1 to 16 of the Constitutional Treaty, CONV 528/03, 6 February 2003, p. 3.

⁴ Title I, Article 3 of the Draft preliminary Constitutional Treaty mentions as an EU objective among others the „development of a common foreign and security policy, and a common defence policy, to defend and promote the Union's values in the wider world“ and then specifies: „These objectives shall be pursued by appropriate means, depending on whether competences are allocated wholly or partly to the Union, or exercised jointly by the Member States.“ See Preliminary draft Constitutional Treaty, CONV 369/02, 28 October 2002, p. 9.

⁵ See Preliminary draft Constitutional Treaty, CONV 369/02, 28 October 2002, p. 6 and 7. Unlike CFSP, Defence is not mentioned in Part One, Title III: The Union's competences. See Draft of Articles 1 to 16 of the Constitutional Treaty, CONV 528/03, 6 February 2003, p. 9.

seems to define “defence” as territorial defence, representing more or less WEU Treaty Art.V. Certainly, “defence” is not equivalent to ESDP and vice versa. In the documents of the Convention the relationship between ESDP and “Defence” remains unclear: Is the civil component of ESDP part of “Defence”? Do all types of use of military assets come under “Defence”? Will enhanced co-operation apply to the chapter “Defence” only or will it also be the *modus operandi* for “Crisis management” as compared to “Foreign policy”?⁶

Concerning the decision-making process, the Convention is moving towards a proposal for qualified majority voting in the Council on foreign policy matters. Defence, however, will have to continue to require unanimity, corrected by allowing constructive abstention or enhanced co-operation.⁷ The debate within the Convention on the instruments of the Union (Article 24 et seq.) has only begun. The specific features of the legislative procedures in the area of Articles 29, 30 and 31 for which the Praesidium so far has proposed only the headings and which are intended to cover CSFP, defence, and the current third pillar will have to be agreed upon later. Some Convention members felt that specific provisions were not appropriate in these areas, while others considered that the decision to eliminate the pillar structure was subject to the maintenance of certain specific procedural features in these areas.⁸

The institutional arrangements in the Convention, though still in the making, are most relevant where they touch on the relations between CFSP and other policies of the EU: the president of the European Council, the European Foreign Minister, the Foreign Affairs Council, etc. For both pre and post war initiatives it is important that the European Foreign Minister disposes of the right of initiative in addition to others and that the Foreign Affairs Council is chaired by him. He needs to be able to combine short term with long term measures, development policy and diplomatic activities, military and non-military means.

4. Partners

Prevention and reconstruction programmes ask for a multilateral setting. Not all of the local and the international actors are used to a multilateral approach. The EU needs to co-opt international as well

⁶ The distinction between Foreign Policy and Crisis management under the common heading of CFSP is made in the Preliminary draft Constitutional Treaty, CONV 369/02, 28 October 2002, p. 7.

⁷ See Iamberto Dini, Contribution on ‘European Defence’, in: Jean-Yves Haine, From Laeken to Copenhagen. European Defence: core documents, February 2003, p. 204.

⁸ Summary Report on the Plenary Session, Brussels 17 and 18 March 2003, CONV 630/03, p. 3 and 5.

as local *partners* to join in with the principle of prevention and the priorities of post-war reconstruction. The EU needs to be well prepared for such a leadership role.

The proposed legal personality and the provisions for the external representation of the EU in the draft Constitutional Treaty are quite relevant for the EU's ability to be active in conflict prevention and post-war reconstruction. The EU diplomatic service is important in this context.

III. Checklist for the draft constitutional treaty

The Convention and the IGC should be aware of the present chance (as well as urgent need) to organise a capacity for a distinctive influence of the Union on violent conflicts. This chance is greatest during those stages of the cycle of conflict where no major military actions are under way, respectively before and after a dispute has escalated to armed conflict. The EU should be able to fully use those periods in order to enhance the European influence on the local parties to a conflict as well as on external actors (including the United States) involved. The members of the EU25 will most likely agree more easily on activities of pre and post war stabilisation than on military intervention at the peak a conflict.

If conflict prevention and post-conflict reconstruction are supposed to become a - if not *the* - trademark of the future EU's intervention policy then it ought to be a constituent element of the external action and defence sectors of the Union. In this perspective the following questions will have to be checked with any draft constitutional treaty which is to flow from the Convention and will be debated within the subsequent Intergovernmental Conference:

1. Did the drafters mention conflict prevention and post-conflict reconstruction in the list of goals for the EU's external action and defence: in the preamble, among the objectives of the Union, among the aims of community policies, as part of the goals of CFSP and ESDP?
2. How closely connected are the functions and the services of the HR of CFSP on the one hand and those of the Commissioner for external relations ("European Foreign Minister") on the other hand? Does the President of the "European Council" play a role in this context?
3. Is "Prevention and Reconstruction Policy" explicitly located in the appropriate section of union policies? Is it treated as a sectoral and/or a horizontal subject matter? Is it interconnected with EU crisis management?
4. Does the constitutional treaty enable the Union to act forcefully during all stages of the cycle of conflict: early warning, right action, efficient monitoring, reliable impact assessment? Is this particularly true for policy initiatives which encompass civil and military means?

5. Do the financial arrangements in the draft Constitutional Treaty allow for a clearly assigned budget for prevention and reconstruction?
6. Can the European Parliament and the national parliaments stimulate proactive policies? Is parliamentary control of all activities of prevention and reconstruction of the Union guaranteed?

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CONVEU 30 PROJECT (SEMINAR 3)

Seminar on

“Capacity and Actor building: Which Instruments and Institutions does the EU need to enhance its Capacity to act with regard to its Trade, economic Cooperation and foreign, Security and defence Policy?”

Sponsored by the EUROPEAN COMMISSION

Rome, 4-5 April 2003

PAPER BY

Paul Cornish

“AFTER IRAQ: WHAT FUTURE FOR NATO AND ESDP?”

Introduction

How will NATO and the EU be reconstructed after the hugely divisive Iraq conflict, and how will they interrelate? It is far too early to say whether and when these divisions will be bridged, and impossible to predict how or whether NATO and the ESDP will develop. Consequently, the best use for this short paper is to review the evolution of NATO and the ESDP, and the crucial relationship between them, during 2002 and into early 2003. My intention, in other words, is to show what is at stake, in terms of European security institutions, if disagreements over Iraq persist.

NATO

In spite, or perhaps because of deepening US-European tensions and disagreements early in the year, NATO set out in 2002 to meet its Secretary General George Robertson's challenge of 'modernisation or marginalisation'.¹ NATO's 'transformation' agenda would touch upon all aspects of the Alliance: its membership; its relations with Russia; its functional and geographical role and competences; its operational capabilities; and, of course, its relations with the EU.

Having decided in 1999 that its next enlargement would be agreed no later than 2002, NATO found itself with a shortlist of ten applicants. What, then, could each of the candidates bring to NATO's pool of military capability? Some, such as the three Baltic republics, could bring very little, but what they had was NATO- and intervention-oriented (having built their national forces from scratch). Others, such as Bulgaria and Romania, brought very large armed forces still undergoing post-Cold War restructuring, and certainly too much for NATO to digest in their current form. Slovakia had similar problems militarily, but was generally more affluent and economically stable than Bulgaria and Romania. Slovenia, with its small armed forces, could present few problems if admitted. Albania was still considered politically eccentric and an economic liability, and Croatia and Macedonia geopolitically too unpredictable. The '9/11' attacks and their aftermath generated a new criterion for selection; what could the applicants bring to NATO's support for the United States in the 'war against terrorism'? In this respect, Bulgaria and Romania became beneficiaries of the September 2001 crisis. Admission of these two could give NATO a coherent and geostrategically significant 'southern dimension', connecting Hungary through the Balkans to Greece and Turkey. Not often in agreement on matters of national and regional security, Greece and Turkey shared the view that Bulgaria and

¹ 'Presiding over a revolution to finally bring Russia in from the Cold', *The Independent*, 27th May 2002.

Romania should be admitted. Seizing the moment, and exploiting the high level of public support for NATO membership, Romania was energetic in making its military infrastructure useful: two military airports were made available for transit use by friendly foreign expeditionary forces; and the Black Sea port of Constanta was made available as a staging point for US troops en route to operations in Kosovo.

All was decided at NATO's November summit meeting in Prague. Estonia, Latvia, Lithuania, Slovakia, Slovenia, Bulgaria and Romania – were all invited to join, in the Alliance's biggest ever single enlargement. By May 2004, when the current accession process is expected to be complete, NATO's membership will stand at 26, with several applications pending. The enlargement raised some familiar questions. In political, bureaucratic and military terms, will a NATO of 26 members be efficient and effective? And will enlargement make it more or less likely that European NATO members – however many – will keep pace with their US ally in defence spending and military capability? Or was enlargement all about transforming NATO from a military alliance to a more loosely organised, 'soft' political body, albeit with the capacity for ad hoc collective military action when required? The pessimists saw the Prague enlargement not as testimony to NATO's vitality and relevance, but as proof that it no longer mattered much. Given improving relations between the US and Russia, and given that the US had progressively been losing faith in its European allies as collective military partners, was the US now willing to see NATO slip into military obsolescence? The improved relationship with Russia was high on NATO's transformation agenda during 2002. The long-awaited NATO-Russia Council – described by Robertson as 'historic and even revolutionary'² – was inaugurated in May, offering Russia an executive, rather than merely consultative role in NATO's deliberations. Russia would henceforth be involved in the development of joint policy in many areas, including counter-terrorism, arms control and non-proliferation, missile defence, crisis management and peacekeeping, and search and rescue operations.

Definition of a clear strategic mission, with the operational capabilities to match, was another major preoccupation for NATO in 2002. NATO had been sidelined by the United States in Afghanistan, largely because the Alliance did not have sufficient medium-scale, integrated and deployable forces available at short notice. At Prague, NATO's leaders responded by establishing a new NATO Response Force (NRF). Following Bush's visit to Europe in May 2002, when he spoke of the case for

² 'The new alliance' (leader), *The Times*, 15th May 2002.

NATO to have a central role in the 'war against terrorism', NATO also began to examine and improve its capacity for counter-terrorism. And late in the year, the US Administration's request to NATO for help in the event of military operations against Iraq, seemed finally to lay the ghost of the US lack of interest in NATO in the days immediately following 11th September 2001. The Prague summit also, finally, gave a boost to the ambitious and by now flagging NATO Defence Capabilities Initiative launched in 1999, with the agreement to focus on fewer, but strategically critical capabilities.

European Security and Defence Policy

2002 saw further progress towards the Helsinki goal of a 60,000-strong 'European Rapid Reaction Force' able to conduct, simultaneously, a 'heavy' operation such as the prevention of a conflict or the separation of belligerent forces, and a 'light' operation such as the evacuation in a crisis of an embassy's civilian staff. Following the extraordinary meeting of the European Council on 21st September 2001, EU governments were also examining ways to use the EU in the global fight against terrorism. But for the EU force to be effective in any situation – 'heavy', 'light', or counter-terrorism – it had long been recognised that deficiencies in critical military equipments would have to be addressed.³ In an effort to invigorate the development of these key capabilities, the EU established its own initiative – the European Capabilities Action Plan (ECAP) – in late 2001. Rather than produce an ambitious and overwhelming list of capability deficiencies, ECAP took a more subtle approach; seeking to identify 'bottom-up', multinational projects which had a reasonable prospect of being delivered. ECAP development panels were established, but for some sceptics the initiative made too little progress during 2002.

As well as capabilities, another scarce commodity was practical experience of crisis management and decision-making. Addressing this deficiency, the EU organised its first crisis management exercise in May 2002, testing political-military structures and procedures at an early stage of a crisis. Another important step was taken at the Seville European Council in June, when it was agreed that the EU's first crisis management operation would begin in January 2003, in the form of the deployment of a 500-strong EU Police Mission to Bosnia. It was ironic that after so much ambitious talk of a large and deployable military capability, the EU's first mission would be a small policing operation. Furthermore, from NATO's perspective it was feared that whatever the political significance for the

³ Particularly suppression of enemy air defences; precision-guided weapons; un-manned aerial vehicles; reconnaissance, intelligence, surveillance and target acquisition; combat search and rescue; air-to-air refuelling; and strategic transport.

EU, in practical terms the EU mission would be less helpful than it appeared; the 500-strong EU contingent would replace the 1,500-strong International Police Task Force in Bosnia, thereby increasing the workload for NATO's military forces in Bosnia.⁴

The Helsinki timetable saw the ERF reaching full operational capability by the end of 2003. In spite of rumours of deep scepticism in London,⁵ the March 2002 Barcelona European Council insisted that the EU was indeed ready to take over from NATO's 700-strong 'Task Force Fox' in Macedonia, when that commitment concluded in October 2002. It was acknowledged, however, that the EU operation could not take place without agreement with NATO on sharing military and planning assets. Within months, EU planning for the Macedonia commitment (to be renamed 'Operation Allied Harmony'⁶) was blocked by a dispute between Greece and Turkey over EU access to NATO equipment and planning procedures. This long-standing disagreement appeared to have been resolved in December 2001, when the so-called 'Ankara text' – worked out between Turkey, the United States and the United Kingdom – made concessions to Turkey in return for its endorsement of the December 2000 Nice provisions giving EU the access it needed to NATO planning and military assets. But when Greece assumed the European Council Presidency for ESDP matters in July 2002, it objected to what it saw as Turkish oversight on EU operations.⁷ Although some commentators despaired of resolving the disagreement while Greece held the presidency, the dispute was finally settled in mid-December 2002 with the long-awaited 'Berlin-Plus' arrangement, hailed by George Robertson as the completion of the 'great jigsaw' of European defence. 'Berlin-Plus' gave the EU 'assured access' to NATO planning capabilities, and provided for NATO support to EU-led operations in which the Atlantic Alliance as a whole was not engaged militarily.⁸

The scarcity of deployable military capability in Europe severely limited the practical capacity of ESDP, encouraging the argument that the best prospects for the EU project lay in areas of so-called 'soft security' such as post-conflict judicial reconstruction, policing and general conflict prevention. Hence, settlement of the 'Berlin-Plus' arrangement was an extremely significant milestone in the development of the ESDP; without a close, practical relationship with NATO, the Helsinki project

⁴ 'Capabilities Summit', *Armed Forces Journal International*, August 2002.

⁵ 'No EU rapid reaction force 'for a decade'', *Sunday Telegraph*, 13th January 2002. See also *Oxford Analytica Daily Brief*, III European Union: ESDP Progress, 28th June 2002.

⁶ By mid-March 2003 it had been agreed that Operation Allied Harmony would begin on 31st March 2003, under operational command of NATO's DSACEUR.

⁷ 'Dispute delays EU peacekeeping', *The Times*, 21st May 2002.

could never amount to much. Other achievements in 2002 included the first ever, formal meeting of EU defence ministers on 13th May, and broad agreement on the financing of EU missions.⁹ With all these agreements, 2002 was undoubtedly a good year for ESDP. That said, some important divisions remained. The UK had long resisted the idea of 'reinforced co-operation' in the context of ESDP, arguing that NATO was the most suitable organisation for military responses to armed attacks or threats against a member state.¹⁰ When the Spanish government and others argued that the ERF should be directed explicitly at counter-terrorism, the UK and some Nordic countries extended the earlier argument, claiming that such operations would best be undertaken by NATO.¹¹ Conflicting expectations of the ESDP were exposed most clearly in the last weeks of the year. A report by the defence working group of the Convention on the Future of Europe discussed, *inter alia*, the establishment of a joint military college, the expansion of the EU's operational agenda to include combating terrorism, the creation of a new defence industrial co-operation organisation, and even the inclusion of something close to a collective defence clause in the 2004 revision of the EU treaty. The last two proposals, in particular, were anathema to the British government, which argued again that defence industrial and procurement matters should not come under EU legal jurisdiction, and was adamant that defence guarantees should remain the preserve of NATO, which was the only organisation able to meet such guarantees.

Prospects

This brief review shows that the US and its European allies were at last finding ways both to promote NATO's transformation and to encourage the development of the ESDP. There were, certainly, some indications in late 2002 of mounting disagreement over the scope of the European Convention.¹² But a measured assessment of the achievements of 2002 – and up to as late as mid-March 2003¹³ – would be that these two ambitious projects were at last developing in tandem.

Yet for all these achievements, by early 2003 neither 'new NATO' nor ESDP had been tested politically or militarily. In the early stages of the Iraq war, both institutions (along with the UN

⁸ NATO Press Release (2002) 140, 13th December 2002.

⁹ *Oxford Analytica Daily Brief*, III European Union: ESDP Progress, 28th June 2002.

¹⁰ M. Annati, 'Shaping the requirements for the European Rapid Reaction Force', *NATO's Nations and Partners for Peace* (January 2002), p. 141.

¹¹ *Oxford Analytica Daily Brief*, III European Union: ESDP Progress, 28th June 2002.

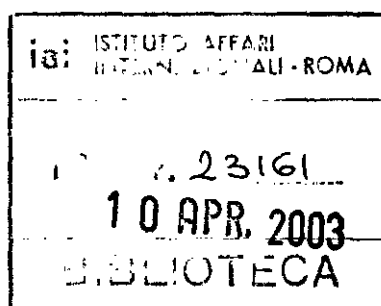
¹² 'EU defence crossfire', *Financial Times*, 2nd December 2002.

¹³ March 2003 saw the long-awaited agreement between NATO and the EU on information exchange protocols, without which 'Berlin-Plus' could not be effected.

Security Council and the US-Russia relationship) appeared to have failed these tests and to be in disarray. By late March 2003, divisions between and among US and European allies were so deep that 'Berlin Plus' appeared irrelevant and the bases for future political-military co-operation in either NATO or ESDP hard to identify. Talk of the EU gradually acquiring a 'strategic culture' now appeared something of an escape from reality,¹⁴ and the prospect of a meaningful EU common defence commitment merely wishful thinking. As far as the dynamics and institutions of US-European security co-operation are concerned, when the Iraq conflict does come to an end, three broad policy options will be open to US and European governments:

- **Reconstructed Multilateralism:** 'business as usual', with 'new NATO', ESDP and 'Berlin Plus' all being re-energised;
- **Separated Multilateralism:** governments choosing strategically between Atlanticism and Europeanism in defence and security matters, and between adapted versions of NRF and ERRF operationally;
- **Arrested Multilateralism:** the collapse of NATO as a political-military alliance, and the failure of ESDP to meet strategic or operational expectations.

¹⁴ See P.Cornish and G. Edwards, 'Beyond the EU/NATO dichotomy: the beginnings of a European strategic culture', *International Affairs* (Vol. 77, No. 3, July 2001).



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PAPER BY

Timothy Garden

“THE FUTURE OF ESDP – DEFENCE CAPABILITIES FOR EUROPE”

The Political Context

EU member states have agreed that they want to provide a serious military capability to support their common foreign and security policy. European members of NATO have agreed to address a range of shortcomings which have a 70% overlap¹ with the EU needs. Europe needs to be able to work with the USA in the security field; and Europe also needs to be able to look after its own interests when they do not align with those of the US. The institutions are developing within the EU to manage these aspirations, and the EU Convention may start to address some of the difficulties of the institutional barriers to coherent security policy. The good work in Justice and Home Affairs that followed 11 September has shown that sovereignty issues can be overcome when there is a pressing need.

However the splits that have been generated across Europe by the differing approaches to the Iraq crisis may have set back much of the recent work on European defence. Co-operation between France and the UK has been the engine of change for European approaches to defence, but relationships between these two countries are currently at an all time low. In particular a difference of view of relationships with the US is likely to cloud thinking on common European security issues.

While work may slow down, the need for a coherent approach to European defence remains. This paper addresses the route to more effective defence capabilities.

The case for European integrated capabilities

All proposals for more capable European forces will require serious investment. While European nations are to a greater or lesser extent restructuring their forces, there is little sign that new money will be made available for new capabilities. Defence budgets at best are held level in real terms, and this is insufficient to fund either major new capabilities, or maintain force levels over a period of time. Yet plans for specialist contributions, such as the NATO Response Force² proposal of 2002, will need early funding if they are to be achieved. In addition, there is a range of modern enabling capabilities which are needed throughout Europe and will remain unaffordable by individual nations.

¹ Assessment of overlap made in "Achieving the Helsinki Goals", a Centre for Defence Studies, King's College London, discussion paper dated November 2001 para 4.3.

² The NATO Response Force (NRF) is to be a European high readiness force of two brigades which would be fully interoperable with US forces. It was agreed at the Prague summit in 2002, and details are still to be worked through.

There are three complementary pressures on European nations to start taking forward pooling of some force elements. First, pooling offers the opportunity for lower overhead costs, and the resources released might then be used to fund new enabling capabilities including the proposed strike force. Second, pooling would make the new enabling capabilities more affordable on a shared basis. Thirdly, pooled forces would drive moves towards greater interoperability and common doctrine and equipment.

There is one other consideration which could increase the attractiveness of pooled capabilities to European governments. The experience of the Afghanistan campaign has increased doubts about the relevance of NATO to future high intensity campaigns. The only NATO contribution was its one joint owned joint operated (pooled) force: AWACs. All other contributions to the US operation in Afghanistan were arranged on a bilateral national basis. If Europe is to be seen as relevant as a region for future operations, it would benefit not only from fielding European capabilities which were able to operate alongside US forces, but also by fielding them as joint owned joint operated capabilities. This would mean that Europe would be in the loop over any decision to use such force elements.

Implementation

The smaller EU nations are moving down the path of integration already as they lose capabilities. The joint naval arrangement between the Dutch and the Belgians is a good illustration of what is possible. Of course shared capabilities are not new. There are many things which we have today which could be pooled. Air transport is a good example, and Germany has set up an organisation which could manage such an arrangement. To produce capability and cost benefits, it needs to be done with what is in place now, not on the back of some uncompetitive long term European procurement plan. Much of the equipment which could be pooled is American, because that is where common capabilities exist. Tactical transport using C130s³ exists in 10 EU countries. The F16 in all its guises is found across Europe⁴.

³ Some ten EU nations operate some 136 C130 Hercules tactical transport aircraft. (Belgium 11, Denmark 3, France 14, Greece 15, Italy 14, Netherlands 2, Portugal 6, Spain 12, UK 51, Sweden 8).

⁴ Belgium (110), Denmark (68), Greece (75), Netherlands (157) and Portugal (20) operate 430 F16s between them. Norway has a further 57.

One of the great missed opportunities, both from the military and commercial aspect, has been the failure of states to pool the Eurofighter force. With a pooled force the support costs would have been much less, and the aircraft configuration control could be maintained unlike the Tornado. It would also allow smaller European nations to buy a handful of Eurofighters to add to a much larger force. The cost benefits between such a Eurofighter buy, JSF or upgrades to F16 or F18s might work out very differently then. Failing to pool the Eurofighter means it will cost far more to operate and do far less than it could have done with a little more imagination. It will also sell to fewer European countries.

Even if the politics of such pooling of major combat capabilities are too difficult, there are opportunities for less contentious sharing of costly capabilities. In particular contracted out services or Public Private Partnership projects⁵ could be done on a European wide basis instead of nationally. Removing the EU competition exemption for defence contracts might help this process on its way. In any case, pork Barrel politics lead to many of the poor value for money equipment decisions throughout Europe.

EU Defence Budget

These examples suggest some practical areas where the development of European Force Elements and common support and logistic services could provide building blocks for the strengthening of European defence contributions. They would make more effective use of European national defence budgets through the removal of the cost overhang of separate support systems. Valuable as such individual initiatives would be, they would not by themselves represent a coherent new security contribution by Europe. They would however illustrate how significant improvements in effectiveness could be achieved through merging particular national capabilities and sharing common services.

For this approach to become coherent, it would be necessary to develop a planning and budgetary system at the European level. Eventually there would be a requirement for a European Defence Budget. If such an accounting system were managed by the EU, members would provide either defence capability or money as their contribution. This would have a number of beneficial effects:

⁵ "Achieving the Helsinki Headline Goals", op. cit. Annex C lists areas where contractorised support could be done on an EU basis.

not only would the free ride be stopped, but nations would probably prefer to improve their military capabilities rather than to contribute money to the employment and industries of other nations.

Peer pressure, as well as legally binding commitments to a given level of defence expenditure, might come to seem markedly more compelling to the participants than the distinctly low key incentives that have characterised co-operation in the past. A virtuous circle of improved military capability and effective European defence could be established. There would be many problems in assessing the true worth of each contribution, but the process would also make the planning and audit at the European level more effective. There would need to be a full audit system to value and assess contributions.

EU Procurement

There is often confusion between the provision of European military capabilities and the procurement of European military equipment. Politicians are always enthused by the thought of procurement, particularly if it might bring jobs to their region. In practice, this focus on European procurement has been a drag on reform of European defence. The special pleading for defence industries ensures that poor value for money is the norm. There is no lack of players in the defence market: Europe is over-provided with shipyards, defence manufacturers and national defence companies.

The EU should remove the exemption for competition for the defence sector. No attempt should be made to promote a preferred European defence industrial base. The companies will re-organise to meet this challenge and might dispose of costly unnecessary infrastructure. In time as pooled equipments lead naturally to harmonised future requirements, we can expect a new European industrial focus to emerge of its own accord.

In the defence research area, there would be far more benefit to acting as a single European entity rather than dividing the resources between member nations. This could ensure a research infrastructure which was not duplicated and could focus on EU defence needs.

Convergence Criteria

It is often suggested that European defence could be advanced by agreement on convergence criteria for defence spending or hardware contributions. This may be true one day when there is much greater agreement on common foreign policy, and much less worry about sovereignty issues.

However for the present, the development of such criteria would absorb much diplomatic effort for no benefit in capability. The bottom up approach suggested in this paper, coupled with an agreed audit system would allow rapid development of such criteria once the political will was there in the future.

The Future for European Defence

The military security dimension is important for Europe in its future relations with the US. To be cast in the role of sweeper up after America is not an enticing prospect. Without addressing the shortfalls in military capability, EU member states will find themselves less and less able to operate individually or collectively to support their common interests. Nor will they have a strong voice in where and how future operations are conducted.

The national politics of much greater defence capability integration are difficult. But there are opportunities which would produce more capability for lower cost with no effect on sovereignty. Those benefits must be used to grow the missing European enabling capabilities, and that will need the EU to control funds and audit capability.

The particular difficulties that have been thrown up by Iraq have certainly weakened the EU and NATO. For NATO this may be a fatal blow. The EU will continue, given its essential role in a much broader set of relationships. However, the opportunity exists to advance in the defence policy area, based on the experience of recent months. Rebuilding EU defence relationships is now vital. An agenda to generate new capabilities through greater integration could be one way. Member states might start this process by allocating a proportion (say 5%) of their defence budgets to a common fund to start producing useful capabilities on a supranational basis.

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STRATEGY PAPER BY

Michele Comelli

Introduction

The shortcomings of EU foreign policy¹ are constantly emphasised in the political debate. The ongoing war in Iraq and the strongly divisive debate that preceded it have shown the deep divisions in foreign policies among EU countries. It seems that 10 years after the start of the Common Foreign and Security Policy (CFSP) no real progress has been made: EU countries are divided over their stance on US foreign policy and on the case for war in Iraq. A common position on Iraq was found at the EU General Affairs Council on 17 February, but what emerged out of the meeting was nothing but the lowest common denominator. In fact, the rift between those EU states that backed or understood US foreign policy on Iraq and those that strongly opposed resorting to military means to solve the issue remained strong. EU Member States have different priorities and interests, different histories and perceptions and find it very difficult to speak with one voice. However, an institutional reform of CFSP and more in general of the EU's external action would enhance the coherence and effectiveness of EU foreign policy.

The problems concerning CFSP and, more generally, EU foreign policies are manifold. First of all, EU foreign policy is generally the result of complex negotiations among Member States. In this way, it is mostly based on compromises rather than on a clear strategy. Indeed, Member States find it difficult to establish political objectives

However, the Commission has often been successful in pursuing an external action focused on the long term and carried out essentially by economic means. This has since the beginning constituted the added value in the Union's foreign policy. On the other hand, the areas where results have been remarkably modest have been diplomatic action focused on the short-term. Whenever there has been a crisis on the horizon, the EU has been unable to tackle, let alone prevent it. In the event of an international crisis, as in Iraq, the Member States have taken back their prerogative to manage their political and diplomatic tools themselves. In these situations, foreign counterparts tend to dialogue with the EU Member States on a bilateral basis.

In addition, EU foreign policy is carried out through a plethora of different political, diplomatic and economic means and a number of different institutions. The variety of institutions and actors responsible for EU external action results in an overall incoherence and inconsistency.

Problems and proposals for reform

External action

The EU lacks an overall strategy for its foreign policy and thus tends to be reactive, rather than proactive, to events taking place in the international arena.

Within the European Convention, it was Working Group VII on External Action (WG VII) that dealt with the shortcomings of EU external action and made suggestions to make it work in a more coherent and effective way. The WG VII's final report, submitted on 16 December 2002, was discussed a few days later during a plenary session of the Convention. It proposed that the EU clearly define its strategic objectives and interests, as well as the strategies to pursue them. The European Council is to define these objectives and the parameters guiding the EU's and Member States' action. Their implementation would be up to the External Action Council. The European

¹ By EU foreign policy we mean CFSP, ESDP and the Community actions undertaken within the framework of the first pillar.

Council would then also be responsible for a periodic examination of the extent to which the objectives have been achieved.

Competences and legal personality

The EU does not have legal personality, so either the Council or the Commission currently conclude agreements on its behalf. Granting the EU legal personality, as proposed by Working Group III on Legal Personality (WG III), would allow the Union to conclude agreements in the field of its competences. WG VII agreed that the Treaty should indicate that the Union is competent to conclude agreements dealing with issues falling under its internal competences, under the same voting procedure within the Council as the one applied for internal legislative action (normally QMV). Granting the EU legal personality will make it easier to conclude so-called “cross-pillar mixed agreements”, which fall partly within the first pillar and partly within the second or third.

External representation

It has been proposed that the EU replace the Troika system with a single External Representative. According to the Franco-German contribution to the EU’s institutional architecture, this role should be attributed to a permanent and elected President of the European Council. However, daily management of the EU’s external action would be attributed to the so-called “EU Minister of Foreign Affairs”.

Other proposals envisage the creation of an EU External Representative, who would exercise the roles of both the High Representative (HR) for Common Foreign and Security Policy (CFSP) and the Commissioner for External Relations (see below).

It is evident that the EU finds it extremely difficult to speak with one voice not only when it comes to international crises where national political positions and national interests are often divergent, but even in “normal” matters, that is, where the Member States’ co-operation is progressing well. For example, the EU does not have a single seat in international economic and financial organisations, such as the IMF and World Bank. Its role would be strongly increased if it had a single representation in these bodies. This could be achieved for at least the Member States that have adopted the single currency.

Some members of WG VII went so far as to propose a single seat for the EU on the UN Security Council. As this proposal appears too ambitious at the moment, the Working Group made a more modest recommendation: in the case of an agreed EU position, the EU should have a single spokesperson in international fora.

Giscard D’Estaing commented that a provision for an EU common position in international fora was already set down in the Maastricht Treaty and that the Member States had breached it with their divisive attitudes at the UN Security Council. He also proposed a clause that would provide sanctions for those Member States that do not find a common position in international fora; the Court of Justice should be given competence in this field.

Institutional set-up

The EU carries out its external policies through two institutions (Commission, Council) and a wide range of instruments, such as programmes for technical and economic cooperation with third countries, funds for humanitarian assistance and development co-operation programmes, arrangements to agree upon and undertake joint diplomatic action, actions by the Presidency and the HR, tools aimed at conflict prevention, dispositions to conclude different types of bilateral and multilateral agreements, etc. The EU sometimes uses different institutional and legal procedures

even in the same field (for example, conflict prevention falls under both Commission and Council competences). Therefore, it can be difficult to make EU foreign policy coherent and efficient.

The WG VII put forward various proposals aimed at allowing a more coordinated use of the different instruments. A large number of members were of the view that the External Action Council to be created should be chaired by the High Representative (HR) for Common Foreign and Security Policy (CFSP), who would then no longer exercise of the function of Secretary General of the Council.

The most debated issue concerning relations between institutions and actors was certainly the one focusing on the roles of the HR for CFSP and the Commissioner responsible for External Relations. The proposals put forward were essentially four:

1. to further strengthen the role of the High Representative and reinforce the synergy between the functions of the High Representative and those of the Commissioner for External Relations, while keeping the two functions separate. The HR would in this case be granted some additional powers, such as:
 - the right of proposal (alongside the right of proposal by the Presidency, Member States and the Commission)
 - participation in all meetings of the Commission regarding external action
 - adequate means to implement tasks
2. to fully merge the functions of the High Representative into the Commission. In this way, the Union would be endowed with a single centre for policy preparation in the external relations' field, including CFSP. Policy initiation and implementation in the field of external relations would be in the hands of the Commission, which would also hold the EU external representation. The Community method would then be extended to CFSP, but the merger would not cover ESDP-related issues. This option is generally preferred by small Member States, which advocate a stronger role for the Commission and an extension of its competences.
3. creation of a "European External Representative" who would exercise the roles of both the High Representative for CFSP and the Commissioner for External Relations. He/she would be appointed by the European Council, meeting at the level of Heads of State or Government, by qualified majority, with the approval of the President of the Commission and endorsement by the European Parliament. The "European External Representative" would be accountable to the Council for CFSP issues, but at the same time would sit in the Commission, preferably as Vice President. The "European External Representative" in the capacity of High Representative would have the formal, but not exclusive, right of initiative in the Council. When exercising this right in the CFSP field, the Commission should refrain from taking a similar initiative. The European External Representatives' initiatives in this field would not be subject to prior approval by the College of Commissioners. As for issues which falls under the Community competence, the "European External Representative", in the capacity of Relex Commissioner, would put forward proposals to the College and participate in the decisions of the College.

Finally, the EU External Representative would be responsible for the external representation of the EU instead of the current Troika.

Some members argued that the EU External Representative should be assisted by two deputies, one for CFSP issues and one for Community's external actions.

4. creation of a “EU Minister for Foreign Affairs”, who would exercise the functions of both the High Representative and the Commissioner for External Relations, chair the External Action Council and be placed under the authority of the President of the European Council. A strong case for the creation of a “EU Minister for Foreign Affairs” is made in the Franco-German contribution to the European Convention on the Institutional Architecture of Europe (15 February 2003). According to the Franco-German proposal, the “EU Minister for Foreign Affairs” would also have a right of initiative in CFSP matters. In this case, the external representation of the EU would be the competence of a permanent and elected President of the Council. The Joint Statement presented by Tony Blair of the UK and Jose María Aznar on 28 February 2003 also endorsed the creation of a EU Minister of Foreign Affairs

Coherence

One of the sectors most affected by the problem of coherence is development co-operation policy, which feels this lack both in relation to the development co-operation policies of the Member States and in relation to other EU external policies. For this reason the simplification of the administrative and legal instruments for managing EC/EU development programmes was suggested. Poverty eradication was proposed as the central aim of the EU’s development policy and the EC/EU programmes should be refocused to reflect these objectives. Consequently, the decisions concerning resource allocations need to reflect a long-term strategic approach based on objective criteria for the promotion of development. Following this logic of simplification, it was suggested that the European Development Fund (EDF) be integrated into the Community budget.

Decision-making procedures

The current unanimity voting system for CFSP issues constitutes a problem for an effective European foreign policy, which would result in more “CFSP inertia”. The situation is likely to worsen in an enlarged UE.

This is why some think the EU should resort increasingly to the qualified majority voting system in CFSP. In its communication on the new institutional structure of the EU presented to the Convention last December, the Commission called for the abolition of the unanimity voting system for CFSP. The request for QMV for CFSP issues, with the exclusion of military and defence issues, was also contained in the Franco-German contribution to the Convention. This document, however, specified that a Member State could claim national interests to oppose a decision, with the issue then being referred up to the European Council, which would vote by qualified majority.

The proposals of the Working Group on External Action were comparatively modest. The conclusions stated that what is required is “maximum use of existing provisions”. The conclusions also mentioned the importance of provisions allowing for some form of flexibility, such as constructive abstention and the possibility for closer co-operation among Member States. Finally, a proposal was put forward that a provision be inserted in the Treaty to make it possible for the European Council to agree by unanimity to extend the use of QMV in the CFSP field.

However, there was broad support in the WG VII for the proposal to extend use of QMV to all areas of commercial policy, including services and intellectual property.

European diplomatic service

The incoherence and ineffectiveness of European foreign policy are also caused by a lack of adequate organisational resources. In practice, the EU does not have an adequate structure to

support and implement its policies. Within the Working Group on External Action, a consensus was formed on the creation of a joint diplomatic service, composed of DG Relex, Council Secretariat officials and staff seconded from Member States diplomatic services. The Commission delegations would be transformed into EU embassies. They would depend on the HR for CFSP-related issues, and on the Commissioner for External Relations for other aspects of EU external action. The creation of an EU diplomatic academy was also endorsed.

Financing CFSP

The modest results of the EU's external actions also have to do with the scarcity of the means at the EU's disposal. In particular, the budget devoted to CFSP is ridiculous. An increase in the CFSP budget and more budget flexibility have been proposed because it takes adequate funds to tackle unexpected crises or new political priorities on the international scene. For example, a greater margin of unallocated expenditure (5-10%) would be required in main assistance programmes. It was also proposed that the HR should be granted a certain degree of autonomy in financing activities necessary for his tasks. Some members of WG VII suggested that he should be given autonomy over a specified, limited part of the CFSP budget.

European Parliament

The role of the European Parliament in CFSP is extremely limited and this raises the issue of the accountability of European foreign policy. The Working Group recommended that an annual debate on CFSP priorities be convened in the Parliament. It also requested that the HR appear more often before the European Parliament to inform on developments in CFSP. Greater involvement of the European Parliament has also been called for in commercial policy.

Defence

The EU has been progressively shifting the focus from a supranational institution focused on economic co-operation to a supranational political identity. Thus, a military dimension is needed to protect the Union from external threats as well as to support its external action through conflict prevention, peace keeping, peace enforcing, etc.

Moreover, the 11 September events have had a strong impact on the EU and have helped make governments aware of the need to co-operate in a deeper way against the proliferation of terrorism.

Solidarity clause

Within the European Convention, the report of the Working Group III on Defence (WG III) was presented on 16 December 2002 and discussed a few days later in the plenary session. WG III proposed the inclusion of a solidarity clause in the Treaty, which would call for the use of all EU instruments (military resources, police and judicial co-operation, civil protection, etc.) for the protection of its civilian population and democratic institutions in the case of a terrorist attack. This proposal gained consensus. On the other hand, the proposal to insert a solidarity clause for collective defence, endorsed by the Franco-German contribution to the Convention on defence, gained very little support.

Petersberg tasks

The latest changes in the international scenario and the terrorist threat require new kinds of responses. WG III thus recommended expanding the Petersberg tasks to include conflict prevention, joint disarmament operations, military advice and assistance, post-conflict stabilisation, and support for a third country's authorities, at their request, to combat terrorism.

Decision-making process

The voting system on defence and military issues is and will remain unanimity. For this reason it is highly important that some devices be worked out to prevent reluctant Member States from blocking further co-operation in the field or even the launching of an operation in which they do not want to take part. The Working Group on defence, as well as the Franco-German contribution on defence, suggested creating enhanced co-operation among the States that would like to go further in defence co-operation. If a majority of Member States were in favour of launching an EU military operation, they could go ahead, even though some Members abstained. Member States that decided to abstain would not take part in decisions on implementation, but would be free to join at a later stage. In this way, a sort of "Euro defence zone" would be created.

Another suggestion was that decisions should be taken by assent and not unanimity.

Finally, it was proposed that the HR should have the right of initiative in crisis management matters.

Capabilities

Defence issues essentially remain in the hands of national governments and they are not very willing to give up competencies in this field, which lies at the heart of sovereignty. In addition, the EU lacks adequate capabilities for a credible security and defence policy and the European defence market is fragmented.

Most of the members of the Working Group on Defence supported the establishment of a European Arms and Strategic Research Agency charged with ensuring that operational requirements were met by promoting a harmonised procurement policy among Member States and backing research into defence technologies. The Agency would also monitor the implementation of capabilities commitment.

The report of the Working Group on Defence identified some convergence criteria that should be used as parameters to gauge the Member States' performance in improving their military capabilities. An example is military spending as a proportion of GDP. However, the problem lies with the quality, as well as with the quantity of military spending and capabilities.

Financing

The Seville Council (June 2002) decided that only a small fraction of EU military operations, that is the so-called "common cost", is financed through the Community budget. Most of the costs, such as logistics and personnel, are normally financed by Member States participating in the operations.

On 25 March 2003, the Foreign Affairs Committee of the European Parliament approved the Morillon report on the New architecture for EU security and defence. It proposed that Article 28 TEU should be modified and that all costs of EU military operations should be financed through the Community budget.

