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THE EVOLUTION AND DEMOCRATIC ACCOUNTABILITY OF CFSP INSTITUTIONS

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by Esther Barbé¹

The Laeken Declaration on the Future of the European Union stated that the EU faced “twin challenges at the same time, one within and the other beyond its borders”. Within the Union, the institutions had to be brought closer to its citizens, basically increasing transparency and democratic scrutiny. Beyond its borders, the new united EU would have to cope with a fresh leading role in the new world order, that of a “power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples”. This paper aims to review how these two guiding concerns –more democratic institutions and a more efficient, stronger foreign policy– have interplayed along EU reforms, with special attention given to the current period of constitutional drafting.

Since the CFSP came into force in 1993 this policy has embodied the intergovernmentalism versus federalism debate. The core question is whether the institutional setup has evolved towards a) a more integrated CFSP with tighter democratic control; or b) a more intergovernmental foreign policy with weaker democratic control.

The first possibility would be that of a CFSP increasingly enclosed in the Political Union, as envisaged by the federalists. *Grosso modo*, the federalist idea of “political union” stands for more integration in the sense of a much wider usage of majority voting, a smaller Commission, more powers to the European Parliament and a reshuffling of the weighted votes in the Council to produce a better balance between smaller and larger member states. In the case of the foreign policy, this would basically entail both an extension of the majority voting and an empowerment of the European Parliament. That is to say, the two criteria of efficiency and accountability are taken into account in the political union perspective.

The second option would imply to continue under the current situation of maintaining CFSP/ESDP isolated within the second pillar, where unanimity is the rule and, consequently, limited attributions are delegated to the supranational EU institutions. An intergovernmental foreign and defence policy in an ever larger and diverse Union -25, 27, 28, 30, etc.-, might also bring about further flexibility solutions in order to prevent the unanimity rule from turning into paralysis and maintaining at least the current levels of efficiency. We assume that a more intergovernmental and flexible orientation would be difficult to go together with a tighter democratic control, even if a system to correctly empower national parliaments was set up. That is because the evolution of CFSP/ESDP has already produced a “crosspillarization” of many security and defence aspects, which already makes difficult to state that CFSP/ESDP is a mere sum of 15 national security and defence policies. Similarly, the “mushrooming” of asymmetric security and defence

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institutions blurs the delimitation of democratic responsibilities on security and defence issues. So, a stronger foreign policy, from an intergovernmental perspective, would centre on the efficiency criteria, while putting accountability aside.

Asking whether the Union is going towards reinforced intergovernmentalism or towards European federalism is a crucial question at the present moment when the EU has finally reached the point where it has to choose one way to leave the “crossroads” mentioned in Laeken (Enlargement and Constitutional Treaty). The interplay of efficiency and accountability is also at the core of the current debate, now that new experiments of core leaderships or *Directoire* forms are taking place, precisely in the foreign policy field.

I. Evolving institutions: accountability doesn't matter

CFSP has been in a constant reform process since the TEU came into force in 1993. Fraser Cameron wrote in 1998, in relation with the Amsterdam reform, that “the proliferation of structures, actors and agents involved in foreign policy formulation and implementation is another area ripe for reform (...) the EU's dialogue partners around the world are bewildered by the EU's external representation. To overcome these problems the Union needs a political structure based on the principles of coherence, visibility and continuity”².

This paper argues that those very principles have been the *leitmotiv* of the consecutive reforms adopted, or being discussed (Constitution), in relation with the CFSP institutions along the years whereas accountability did not determine at all the innovations introduced concerning those institutions. Let's see how continuity, coherence and visibility underline the evolving institutions process.

Lack of continuity has been a main concern since EPC (European Political Cooperation) era. The fact that the rotating presidency is the responsible of implementation and external representation of the European “diplomatic dimension” creates a feeling of discontinuity every six months. The troika mechanism, launched in the 70's, and the EPC Secretariat, created in the 80's by the Single Act, were early responses to this problem. Even if the establishment of the High Representative by the Amsterdam Treaty, that can act “on behalf of the Council at the request of the Presidency” (art. 26), has created an atmosphere of successful continuity in some policy areas (Balkans, Middle East)³, the fact is that only the establishment of a permanent implementer can help to solve the discontinuity problem based mostly on the semester deadline of the rotating presidency mechanism. Finally, the Constitution project steps ahead in this sense, stating that the Minister of Foreign Affairs will be responsible of CFSP and ESDP implementation (art. 27), eliminating therefore the rotating presidency encumbrance.

² F. Cameron, “Building a common foreign policy: do institutions matter?”. In J. Peterson and H. Sjurgen, *A Common Foreign Policy for Europe? Competing Visions of CFSP*, London, Routledge, 1998, p. 68.

³ “Solana has generally been perceived to be a success, contributing to the Middle East peace process and a peaceful solution to conflict in the former Yugoslav Republic of Macedonia”, in K.E. Smith, *European Union Foreign Policy in a Changing World*, London, Polity, 2003, p. 45.

Lack of coherence is one of the most publicized “sins” of the external activity of the Union, linked to the pillars structure⁴. The Treaty of Amsterdam demonstrated an increased awareness of the need for coherence in external relations. Therefore, since the Amsterdam reform, the TEU (art. 3) foresees the duty of both the Council and the Commission to cooperate to ensure coherence. In spite of many difficulties, the tandem Patten-Solana has been quite successful in managing the sensitive dossiers. It could be this easiness in the rapport Council-Commission, or contrarily the fear of a difficult and blocking relation in future, that has facilitated the merging in the Constitution project of both figures, High Representative and External Relations Commissioner, in a Minister of Foreign Affairs. A double hatting Minister, being at the same time Vice-president of the Commission in charge of handling external relations as well as chair of the Council of Ministers of Foreign Affairs, is no doubt an important institutional step ahead in terms of providing more coherence to the European Union Foreign Policy.

Other than coherence, based on compatibility between measures adopted in different pillars, coherence in the very CFSP framework can be understood as consistent behaviour along the time. In this sense, the focus must be put on planning and formulation of policies, to leave behind the EU reputation of inconsistency and reactiveness. A declaration to the Final Act of the Treaty of Amsterdam provided for the creation of a Policy Planning and Early Warning Unit. The Policy Unit, staffed by officials of the Commission, the Council Secretariat, the WEU and the member states, is the minimal platform existing for planning CFSP medium and long term policies, through its tasks (identifying areas where CFSP could focus, providing early warning of crises, monitoring developments in areas relevant to the CFSP, producing policy papers).

The recent development of ESDP has been accompanied by the creation of new institutions and structures. The Political and Security Committee (PSC), established by the Nice Treaty, stands out in terms of giving coherence to CFSP in its formulation process (art. 25)⁵. Thus, the PSC, consisting of ambassadors from the member states, follows up the international situation in areas related with CFSP activity and facilitates the CFSP formulation providing policy papers. In other words, looking for institutional developments aiming to formulate more CFSP coherent policies along the time has impelled the successive TEU reforms.

The visibility principle, above mentioned, brings out the external representation issue. Who represents the Union in international fora? The answer, normally, creates confusion. Letting aside the first pillar policies, CFSP by itself can involve, depending on circumstances, the Presidency, the High Representative, Special Representatives, the Commission, the troika, the fifteen member states or *ad hoc* groupings (Contact Group for Bosnia). Providing a “single phone number” for third countries, recalling Kissinger

⁴ Regarding CFSP coherence see S. Nutall, “Consistency and the CFSP: a categorization and its consequences”, *LSE European Foreign Policy Unit Working Paper*, n. 2001/13. <<http://www.lse.ac.uk/Depts/intrel/EuroFPUnit>>

⁵ Karen Smith underlines the role played by the PSC in terms of “brusselization”, saying that the PSC “is building strong relations with other institutions in Brussels, the Commission, Coreper, High Representative and Policy Unit. This is contributing to the “Brusselization” of EU foreign policy: foreign policy issues are more and more discussed, and decided, in Brussels”, in K. Smith, *op. cit.*, p. 46. This change will reinforce the coherence dimension.

demand in the 70's, has been an aim of the successive reforms. However, the fact is that even if the High Representative phone number has certain salience it is one more among the others.

Two changes are on the way. First, the Constitution project foresees that the new Minister undertake the external representation of the Union in CFSP matters. This change is based on the large acceptance of the elimination of the EU rotating presidency. Furthermore, in the case of CFSP, the elimination of the rotating presidency will facilitate the relation with some third countries, basically the United States, in sensitive moments. In the past, the United States had already refused to have as interlocutor the presidency of the Union, when the presidency was occupied by a small country such as Luxembourg, and the agenda was highly political. Second, the changes in the international system after 9/11 have produced a new collaboration between the Three Big (France, Germany, United Kingdom) regarding diplomatic and security questions (Gant meeting, in 2002, in relation with military actions in Afghanistan; visit of the ministers of the Three Big to Teheran, in 2003, in relation with Iran's nuclear program). Are we in front of a *Directoire* formula for crisis situations? ⁶ In other words, at the same time that the Treaty seems to resume, finally, the external representation for CFSP matters in one phone number in Brussels, the political ongoing process seems to be introducing the *Directoire* formula (London, Paris, Berlin). In sum, the tension between Brusselization and intergovernmentalism is at the core of next steps in institutions evolving in CFSP.

II. Is the democratic deficit part of the game?

Since the inception of the so-called European Political Cooperation (EPC) in the 1970s, it has recurrently been said that Europe's foreign policy suffers from a democratic deficit. The European Parliament has keenly denounced such a deficit, even before it was constituted as a directly-elected body, claiming that the strictly intergovernmental and confidential nature of the EPC was leading to a "situation intolérable qui constitue un désaveu de la démocratie parlementaire"⁷. The democratic deficit problem --basically in terms of parliamentary accountability-- has not diminished since then; rather, it has aggravated with the creation of the Common Foreign and Security Policy (CFSP), as the progressive increase in the number of foreign policy functions performed by European institutions has led to a parallel decrease in national parliamentary control that has not been offset by substantial additional democratic controls at the European level. To what extent is the democratic deficit a real political concern, an unavoidable characteristic of European foreign policy or even an intended consequence?

Every time there has been a Treaty reform, the democratic deficit of the CFSP has been put on the agenda. The EP has used these windows of opportunity to make its proposals heard⁸. Nevertheless, national governments, which are in fact the crucial actors in the

⁶ See S. Keukeleire, "Directorates in the CFSP/CESDP of the European Union: a plea for a restricted crisis-management group". *European Foreign Affairs Review*, Vol. 6, num. 1, 2001, pp. 75-101.

⁷ Ph. Schoutheete (1986, 2^a Ed.) *La Coopération Politique Européenne*. Paris/Brussels: Fernand Nathan, Editions Labor. p. 56.

⁸ Since the Intergovernmental Conference of 1996, a delegation of the EP (2 MEPs and the President) has been able to participate in negotiations at Ministerial level to prepare the IGC, with right to present and discuss its proposals.

process of European institutional reform, have made no real attempts to tackle the problem. The current reform process to provide the EU with a Constitution has been another missed opportunity, although, in this case, the European Convention followed a new all-encompassing method that included the participation of 16 MEPs and 54 national parliamentarians among the 100 members in charge of preparing the draft Constitution. However, at the end of the day, national governments continue to have the final say in the intergovernmental conference, thus conditioning the debate and the extent of the reforms of the constitutional draft itself. Actually, although the parliamentary accountability was mentioned as one of the issues to be addressed in the Working Group on External Action and that of Defence, very few contributions made specific references to that subject, even those issued by the European Parliament's representatives⁹.

In the final draft Constitution, EP's prerogatives in the realm of CFSP –laid in Article III-205– remain largely the same than those laid in the article 21 of TEU, as the main part of this policy continues to escape the ordinary legislative process. The EP continues to possess the limited powers of being informed and consulted by both the Council and the Commission –as well as by the new Foreign Affairs Minister–, but neither does it have real power or control yet, nor any significant role in the formulation and implementation of CFSP. The EP maintains its right to debate foreign policy matters and issue declarations, reports and resolutions, make recommendations and ask questions to the Council and the Commission; but the draft text does not establish any formal obligation for the Council to take parliament stances into account, as it has been demanded time and again¹⁰. The same can be said of the EP's role in external relations because, although the requirement of parliamentary consult has been extended to the majority of commercial and trade agreements, some international agreements such as those dealing exclusively with political matters, still elude the EP's involvement. Furthermore, the Parliament's role in external agreements continues to be limited to *ex post* approval/rejection of the whole document, while having no say during the crucial stages when political and financial commitments are negotiated¹¹. Finally, the EP's budgetary power to control CFSP remain the same, that is to say, EP approve or reject all expenses that are charged to the Union Budget. The new established rapid mechanism for urgent financing of initiatives in the framework of the CFSP requires the previous consultation to the EP. The exception to the EP's budgetary control continues to be “such expenditure arising from operations having military or defence implications

⁹ For a detailed report of the proposals on Foreign Policy and European Constitution coming from the European Parliament see the section "Parliament, Foreign Policy and Future of Europe" in the special publication of “CFSP and the European Parliament”, managed by Anna Herranz, in the web page of the Observatory of European Foreign Policy <http://selene.uab.es/_cs_iuee/catala/obs/m_investigacion.html> For an extensive analysis of the proposals on parliamentary accountability made during the European Convention, see S. Stavridis and A. Vallianatou, “Parliamentary accountability in EU foreign and defence policy: a preliminary assessment of the Convention on the ‘Future of Europe’ debate” *LSE European Foreign Policy Unit Working Paper*, n. 2003/2. <<http://www.lse.ac.uk/Depts/intrel/EuroFPUnit>>

¹⁰ Elmar Brok and John Walls Cushman so demanded in the Working Document n° 70 of the Working Group on External Action. They demand that the European Foreign Minister should be “answerable in writing to the EP for the whole range of its responsibilities”. See also CONV 681/03 on "Requirements for the Constitutional Treaty for a European Union capable of Peace", submitted by Sylvia-Yvonne Kaufmann, 11 April 2003.

¹¹ See CONV 362/02 on “International Agreements of the EU. Proposals to reinforce parliamentary control” submitted by the Joachim Wuermeling, 23 October 2002.

and cases where the Council of Ministers decides otherwise” (Article 215-II of the Draft Constitution)¹².

The dismissal of the demands that push in the direction of attributing a formal role to the EP in the CFSP decision-making process might be, once again, an expression of the tension between the Brusselization and intergovernmental tendencies in CFSP. That is to say, while theoretically giving more powers to the Europarliament might be a logic step towards reducing the so-lamented EU democratic deficit, in practice, the majority of governments fear that this could go in detriment of the efficiency and coherence of foreign policy. This is somehow a reproduction of the traditional realist belief that the need for secrecy, speed, coherence and efficiency of foreign policy recommends little parliamentary involvement. Even some national representatives that presented their proposals to the Convention in favour of bringing CFSP closer to the communitarian method, thus giving substantial powers to the EP, insist that the involvement of the EP should not lead to any delay in the decision-making process¹³.

The tension between the communitarian and the intergovernmental models of CFSP is also noticeable in the different solutions that have been proposed to make CFSP democratically accountable, because they reflect different understandings of where the source of CFSP's democratic legitimacy lies¹⁴. The few references to CFSP's accountability contained in national representatives' proposals to the Convention have advocated for reinforcing national parliaments' capacity to debate and control the respective governments' decisions in CFSP. That means that most governments consider that, given the intergovernmental nature of CFSP, its source of legitimacy still resides in national sovereignty. However, the need for a better coordination between national parliaments is recognised, whether a loose coordination *à la* COSAC (Conference of the Community and European Affairs Committees), or some kind of interparliamentary assembly integrated by national parliamentarians (and eventually MEPs). On the contrary, the EP has sought its empowerment because, assuming that CFSP is more than the sum of national foreign policies, it is necessary to control the part -however limited it is- of foreign policy that member states have decided to pool at the EU level. This implies that the source of legitimacy is that of popular sovereignty at the state and EU levels. Furthermore, MEPs, acting as a college, might be better placed to identify European interests than the national parliamentarians, hijacked by pressures coming from their national constituencies as they are.

But it has also been suggested that the democratic deficit in foreign policy is not merely an unfortunate product of European integration, but actually one of its purposes because

¹² For more information on the financing of ESDP, see A. Missiroli “Ploughshares into swords? Euros for European Defence?” *European Foreign Affairs Review*, vol. 8, no.1, 2003, p. 5-33; and A.J.K. Bailes “The Institutional Reform of ESDP and Post-Prague NATO” *The International Spectator*, vol. 37, num. 4, 2002, pp. 31-46.

¹³ See, for example, Working Document n° 50 of the Working Group on External Action, submitted to the Convention by Gijs de Vries, the Dutch government representative to the Convention, 21 November 2002.

¹⁴ See B. Rittberger “The Creation and Empowerment of the European Parliament, *Journal of Common Market Studies*, vol. 41, 2, 2003, pp. 203-25.

of the “collusive delegation” hypothesis¹⁵. The logic of such an explanation starts from the assumption that governments have an a priori interest in expanding their autonomy with respect to society; so their incentive to delegate authority to a supranational organisation will be stronger if it helps them to elude domestic controls. So, CFSP reform towards democratisation faces a serious problem because those governments able to conduct foreign policy without stringent democratic controls normally oppose a genuinely supranational CFSP; and those governments that could support a supranational CFSP as a way to shield their foreign policy choices are rather unwilling to accept tight democratic controls at the EU level¹⁶.

Taking this explanation further, we argue that governments’ reluctance to empower the EP is due to their perception that the EP’s capacity and willingness to control foreign policy would be higher than those of national parliaments. Along the years the EP has developed an identity as the advocate par excellence of human rights, democratisation, foreign aid and development¹⁷. This has been the product, on the one hand, of the fact that the Parliament, as the only EU directly-elected institution, has always considered that its duty is closely linked to the defence of “European values”; on the other, its willingness to assume more power within the institutional framework has led the EP to play an active role in fostering democracy, protecting human rights, and fighting against poverty, whereby rendering them among the most remarkable topics of public intervention. The EP has increasingly become the institution that non-governmental organisations and representatives of third countries lobby to denounce violations of human rights and injustices. The EP’s limited formal powers notwithstanding, it has managed to maximize its influence through its budgetary and assent powers. Thanks to its use of the veto threat, the EP has even managed to influence the course of the negotiations and contents of international agreements, acquiring a room for manoeuvre that was not expected by governments. So the EP embodies the so-called “post-modern” values that are sometimes difficult to marry with national interest in foreign policy (basically economic and security/stability concerns) with regards to which both governments and parliaments share their views.

III. European Security and Defence Policy: the accountability issue rises again

In the Cologne European Council of June 1999, Heads of State paved the way to start constructing “L’Europe de la Défence”, declaring that “...the Union must have the capacity for an autonomous action, backed up by credible military forces, the means to decide to use them, and the readiness to do so”. Such a search for autonomy and credibility has geared the incremental development of a set of new ESDP institutions (Political and Security Committee, Military Committee, Military Staff, Civilian Crisis Management Committee) and a wide range of instruments and capabilities that have enabled the EU to take on, during 2003, its first three civil and military crisis management operations. But again, this process has involved scant, if any,

¹⁵ M. Koenig-Archibugi “The Democratic Deficit of EU Foreign and Security Policy” *The International Spectator*, Vol. 37, num. 4, 2002, pp. 61-74.

¹⁶ The theory of collusive delegation is only one of the factors to explain the decision of governments to delegate some powers to a supranational level. In this sense, there exist notorious exceptions to that theory, for example, the case of the Danish *Folketing*, allowing a great control to the national parliament, whereas Denmark has traditionally been a state reluctant to a further integration of CFSP.

¹⁷ See K. E. Smith, *European Union Foreign Policy in a Changing World*, Oxford, 2003.

parliamentary scrutiny, whether at national or EU level. Since the Convention started its works, the Union has launched an extraordinarily ambitious security agenda in a very short period of time. Two elements have been crucial to foster ESDP construction. On one hand, the works for the Constitutional Treaty have had a dynamising effect on institutionalising ESDP, not only by enshrining the already existing defence developments –now missing from the TEU- in a constitutional document, but also by establishing a set of new and innovative defence instruments and institutions. On the other hand, the recent events in the international arena (Iraq war, fight against terrorism) and the European environment (challenges of the new neighbourhood, Transatlantic division) have sped up the debate on “what is a European ‘common defence’ for?” that has given rise to the first European security strategy. Which has been the parliamentary role in such crucial developments?

Under the current provisions of the Treaty on European Union, the sole reference to the ESDP is the mention made in article 17 to the possibility of a progressive development towards common defence in the framework of the CFSP. So the ESDP has developed without the Council formally being put under the obligation to be accountable either to the European Parliament, the Interparliamentary European Security and Defence Assembly (WEU Assembly), or any other interparliamentary body at the European level. Being the ESDP part of the second pillar, national parliaments should be the primary bodies responsible for scrutinising this policy area. However, even in those Member States where constitutional structures are in place to allow for adequate scrutiny of the executive by the legislative, the problem remains that they have no mechanism to be informed about other countries’ positions, nor do they receive information from the High Representative for the CFSP or the Presidency, as the EP does. The only assembly where national parliaments meet to debate and scrutinise European security is the WEU Assembly, whose task is to follow all European intergovernmental activities in the areas of security and defence, including armaments cooperation. Following the transfer of WEU's operational activities to the EU, the Assembly also serves as the interparliamentary platform for ESDP. The WEU Assembly has also functioned as a forum for strategic reflection and debate on European security and defence issues by governments and parliaments of the 28 WEU nations. But again, the pillar structure makes it difficult for parliamentary accountability to exist, since not all areas developed by the ESDP are intergovernmental (i.e., the executive functions of civil management of crisis, the fight against terrorism or the development of the defence industry). Yet the confusing (and somehow competing) delimitation of their respective responsibility areas complicates, rather than strengthens, parliamentary accountability of Europe’s defence policy.

Under the Constitutional Treaty, the ESDP represents the hardest “hyperintergovernmentalist” core, as even the cautious provisions allowing for qualified majority voting in CFSP do not cover issues having military or defence implications¹⁸. In this sense, in the final report of the Defence Working Group of the Convention, it was recognised that the “Specific nature” of defence had to be taken into account when dealing with the proposals on the political scrutiny of this field¹⁹. Consequently, only

¹⁸ U. Diedrichs “The Provisions on ESDP in the Constitutional Treaty: No Revolution in Military Affairs” *Fornet CFSP Forum*, vol. 1, Issue 1, July 2003. <<http://fornet.info/>>

¹⁹ Final report of Working Group VIII – Defence, CONV 461/02, 16 December 2002.

two references to the parliamentary role in defence are made along the draft Treaty. The first is in article III-205 that extends the already mentioned EP's prerogatives in CFSP (those under former article 21 TEU) to defence issues. In practice, some of these rights are already exercised, for example, when the Defence Minister of the Presidency reports to the European Parliament, although in an informal way. The second reference, laid in the Protocol annexed to the Treaty about the role of national parliaments in the European Union, establish that the COSAC shall foster its cooperation with the EP and that it could organise interparliamentary conferences to debate foreign policy and defence issues (paragraph 10).

The European Parliament expressed its position on the role of parliaments in defence in the so-called "Morillon Report" of March 2003²⁰. Basically, the European Parliament recognises that the competence, as far as military expenditures, military procurement and the deployment of national armed forces are concerned, belongs to the national parliaments; however, it considers that the EP should be responsible for approving the mandate and objectives of any crisis management operation under the ESDP and would be responsible for the costs incurred by EU joint actions. Similarly, concerning the establishment of an Armament's and Research Agency, the EP advocates for the practical arrangements for the Agency's operation to be drawn up in consultation with itself, or even by co-decision. The EP has also demanded that information on the progress and decisions made under the ESDP given by the Presidency of the Council and the European External Representative be complemented by the obligation to present written reports to the EP when this is explicitly demanded. Finally, the EP has recognised the value of promoting its permanent contacts and exchange of information with the national parliaments and with NATO's Parliamentary Assembly.

For its part, the WEU Assembly has played an active role as an observer in the Convention. It has strongly advocated for "the organisation of European defence should not be confined to the EU framework, that is less of an institutional than a political and strategic matter and that the IGC should agree on a more inclusive formula allowing non-EU European NATO Member States to be involved"²¹. Starting from this intergovernmental source of legitimacy, the WEU Assembly proposal submitted to the Convention on "Guidelines for Parliamentary Scrutiny of the ESDP"²² defends that the COSAC model proposed in the Constitutional Treaty is not enough, nor does it imply an enhanced cooperation between national parliaments and the EP; rather, a kind of experience in the line of the interparliamentary assembly of the WEU, adequately empowered to act as a channel of information and consultation with European decision-makers, would be better. The WEU Assembly has also repeatedly demanded the further investment of organisational and financial means to perform an intensive public information campaign to convey a positive message explaining the need for a common security and defence policy²³.

²⁰ A5-0111/2003 "The new European security and defence architecture - priorities and deficiencies" reported by Philippe Morillon.

²¹ Assembly of the WEU Press Release "Assembly's contribution to the Intergovernmental Conference. President Glesener presents proposals to EU Council's President Frattini", 27 October 2003.

²² CONV 606/03, presented by Antonio Nazaré Pereira, Portuguese member of the Convention and Rapporteur of the Assembly of Western European Union, 11 March 2003.

²³ Resolution 116 of the Assembly of the WEU, 3 June 2003. <<http://www.assembly-weu.org>>.

This necessity to explain why Europeans need a common defence is not a minor aspect in the ESDP design. Rather, defining what are the objectives of a 'common' foreign and defence policy is crucial to establish, in turn, what kind of project the EU is. The EU division over the war against Iraq has somehow been a sharp shock to speed up such a strategic debate on the EU's security and defence objectives. At the European Council in Thessalonica on 20 June 2003, the High Representative for the CFSP, Javier Solana, presented a draft version of the first European Security Strategy. This draft was to be subject to public debate between then and the December European Council in Brussels, where it is due to be accepted in revised form. Although this document was not referred to national parliaments for scrutiny, some debate has taken place around it. Similarly, the EP also presented its stances in its last report on the progress of CFSP, explicitly demanding that all institutions were expected to take part in the revision on equal footing. Whether this equal footing has been real or not, the revised draft of 12 December 2003 included some relevant changes on which the EP had insisted in its assessment of the ESS. First, the EP underlined the role of the United Nations, stressing that the "UN Charter is the decisive political and legal basis for shaping international relations and the guarantee of peace and international security" (paragraph 11). Second, the EP also insists on placing prevention as a core concept of the ESS. Finally, while sharing Solana's position that the credibility of the EU's foreign policy will depend ultimately on the quality of its military capabilities and on the readiness, in the event of conflict, to also deploy them as a last resort, the EP unquestionably rejects the idea of pre-emption, since it adds that use of force must respect international law (paragraph 15).

Conclusions

The final results of the Convention and the Intergovernmental Conference signal that, for the time being, the advance towards a more integrated CFSP enclosed in the Political Union has reached its limits. The evolution of the CFSP/ESDP institutions has been kept within intergovernmentalism, whereas the accountability criterion, despite the clear awareness that it is a pending issue, has been clearly treated as an afterthought. Along the successive reforms, decision makers have tried to achieve a stronger and more efficient CFSP throughout, making the institutional system more flexible. Under the Constitutional Treaty this is all the more evident: despite the new figures of the President and a European Foreign Affairs Minister (clearly in an intergovernmental style), the CFSP and especially the ESDP have gone in the direction of further decentralisation of their institutional structures and the creation of new flexibility instruments (European Armaments, Research and Military Capabilities Agency, enhanced and structured cooperation, etc). Certainly these changes could bring about a more efficient European foreign and defence policy, but again, this poses challenges to the accountability dimension, since it could also give rise to higher fragmentation and less transparency.

The architects of CFSP/ESDP have paid little attention to the accountability dimension of this policy, but this aspect is likely to be far more important, now that some tendencies towards a Europe-wide *demos* in foreign and defence matters might be arising. The most cited example in this sense is that of the massive demonstrations against the United States' policy of the use of force against Saddam Hussein, which

took place simultaneously on 15 February 2003, in most European capitals. The terrorist attacks in Madrid on 11 March 2004 point to an increase in that Europe-wide awareness, taking into account that “l’Union Européenne, frappée à Madrid, est entrée à son tour, le jeudi 11 mars, dans l’ère sinistre du terrorisme de masse. (...) elle va devoir faire face à un adversaire”²⁴. Faced with such a common threat, EU leaders rapidly took a set of measures at the EU level (activation of the Antiterrorist Cell of Europol, drafting an Action Plan against terrorism, etc.) to ensure that, as Jaques Chirac declared, “l’Europe protégera ses citoyens”²⁵. And, in turn, common defence measures require at least formal democratic scrutiny at the EU level if the EU is to practice what it preaches on democratic accountability, legitimacy and transparency.

The course of events during Prime Minister José María Aznar’s second mandate (2000-2004) is one of the most notorious examples that the people’s voice needs to be heard and that accountability, legitimacy and transparency cannot be underestimated. The legitimacy problem rose when the Aznar Government was unable to convey to its population its reasons for supporting the US policy on Iraq, as the polls show: once the Iraq war had begun, 91% of Spanish population was against it²⁶. The parliamentary accountability was neglected when the Government, backed by the absolute majority of its party, could avoid ?during the last two months of its mandate? to appear before Parliament to explain on what basis the government had assured the existence of weapons of mass destruction in Iraq, which have not been found yet. More recently, in the aftermath of the terrorist attacks of March 11 and only 3 days before the national elections took place, the wide-spread feeling that the Government was not being transparent about which organisation was responsible for the attacks –an element that could determine the direction of many votes-, may have led the Government to lose the elections. That means, that even if “in a proper democracy, decisions are made not by polling institutes, or at the stock market, or in the streets, (they are finally made) in the voting booth”²⁷.

²⁴ J.M. Colombani “La haine et la démocratie” *Le Monde*, 16 March 2004.

²⁵ *Le Monde*, 18 March 2004.

²⁶ E. Barbé “La política europea de España 2002-2003” Observatory of European Foreign Policy Working Paper n° 48, June 2003. <<http://www.uab.es/iuee>>

²⁷ A. Glucksmann “France’s five cardinal sins over Iraq” *International Herald Tribune*, 22 February 2004, quoted in Stavridis and Vallianatou (2003).