FROM WORDS TO DEEDS

THE CONTINUING DEBATE
ON EUROPEAN SECURITY

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PREFACE

This book started as a postscript to my *Debating European Security*, which was co-published by the Centre for European Policy Studies in 1998, 50 years after the Brussels Treaty of 1948 had marked the beginning of the process of European integration. The manuscript grew as developments accelerated after the Franco-British summit meeting at St Malo and took a new turn with the evolution of a European security and defence policy. I had the privilege of being able to follow these developments after my term as Secretary-General of the Western European Union (WEU). Soon after my return to the Netherlands in 1995, I was elected a senator in the Dutch parliament. In that capacity, I became a member of the NATO Parliamentary Assembly and in 2002 an alternate member of the European Convention, which for 16 months drafted a Constitution for the European Union. In my home country, I have served as Chairman of the European Movement for the past 10 years.

Obviously, during these years I was an observer rather than a policy-maker. My motivation to continue telling the story of the debate on European security no longer was to provide an insight into the workings of an international organisation, but rather to tie together the different strands of the argument, which remained remarkably similar even under changed circumstances. The plethora of core documents, many of them ably assembled by the EU Institute of Security Studies in a growing number of volumes, as well as adjacent developments in NATO and the United Nations made me aware of the need for an overview of the political battle to square institutional and procedural arrangements with real progress on the ground.

Debating European Security dealt with the period 1948-98 and provided some inside knowledge of the functioning of the WEU and its

place between the EU and NATO. [1] My period as Secretary-General saw the first instances of Europe assuming responsibilities outside its own continent. Few could imagine that only six months after the 50th anniversary of the WEU, European defence cooperation would take a new turn at St Malo. What followed is the subject of this book. Its sequence is to trace the political debate on Europe's destiny in chapter 1 and progress in practice in chapter 2. That progress consisted of institutional measures during the successive EU presidencies, but gradually it also consisted of concrete military capabilities. The adjustment to new threats, which had been going on since 1989, shifted priorities away from collective defence. That process, which was strongly influenced by the attacks of catastrophic terrorism, is discussed in chapters 3 and 4, including the difficult debate on the interrelationship between the EU and NATO. The 'European identity' did not take shape within the Alliance, but turned into a European security and defence policy. In tracing these developments the approach is largely chronological, but not entirely. As concrete issues emerge, they are discussed separately, such as the capability commitments, civilian crisis management and police capabilities, as well as the action in Kosovo.

Chapter 5 tells of my experience in the European Convention, drafting a Constitution for the EU, and how the Iraqi crisis impacted on its proceedings. Nevertheless, it was possible to develop solidarity clauses and at the same time devise ways of enhanced cooperation among a smaller group of member states.

Chapter 6 discusses the European Security Strategy developed by EU High Representative Javier Solana, which has provided the conceptual underpinning of EU policies, even if it has not yet offered concrete guidance for defence planning. This chapter also summarises developments in 2004 and 2005. The creation of a European Defence Agency, which perhaps is better described as a capabilities agency combining requirements, R&D, procurement and evaluation, is the subject of chapter 7.

My earlier book dealt with the problem of justified coercion and humanitarian intervention, largely in the wake of the plight of Kurdish refugees on barren mountain tops in 1991 and later the dramatic events in Srebrenica. This time I describe the debate on justified intervention in

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[1] See Willem van Eekelen, *Debating European Security*, CEPS, Brussels and The Hague: SDU Publishers, 1998.

chapter 8, including the issue of prevention and pre-emption, and the important new move to recognise the 'responsibility to protect'.

Trying to be a practical Dutchman, I have always attached great importance to the notion of 'security through participation' – doing things together instead of relying on paper agreements – but also to the question of 'what for?' in the context of rebuilding our military capabilities. For that reason I have included a chapter (9) on scenarios, both from a European and an American angle, which will be essential if we are going to make the best use of scarce resources. That chapter ends with the growing interrelation of internal and external security.

As a parliamentarian I have been impressed by the consensus-building role of the international parliamentary assemblies in NATO, the WEU, the Council of Europe and the OSCE. I am grateful to the Geneva Centre for Democratic Control of Armed Forces for asking me to write Occasional Papers on the national and international dimension of democratic control and on the role of parliaments in defence procurement. These are not repeated in the present book, but the chapter on a European Defence Agency has benefited from my work in this field.

It was a real pleasure to be associated once again with CEPS, which through the years has maintained a very high standard of innovative policy analysis. I am indebted to its experienced editor, Anne Harrington, for her advice and to Kathleen King for her careful scrutiny of my first draft.

This book is primarily intended for a readership of students and professionals starting work on the common foreign and security policy of the EU, of which the European security and defence policy has become an integral part. Although concentrating on the period after 1998, the book should stand alone for a wider public as well by providing the interested reader with a summary of earlier events in the introductory chapter.

Willem van Eekelen
January 2006

INTRODUCTION

The course of European history might have been different if the European Defence Community (EDC), a project launched by French Prime Minister René Pleven, had not floundered in the French National Assembly in 1954. It was not even put to a vote, so unlikely was the chance of success, which was a great setback for the political vision of a united Europe after centuries of violent conflict. The failure of the European Constitution in a French referendum a little over 50 years later left similar feelings of disappointment and frustration. These were felt even more strongly this time, because the achievements of European integration had been solid for all of the EU member states and it would be difficult to envisage alternative compromises to the European Constitution.

At the time, the EDC probably was a bridge too far, not only because defence was the last area where integration and the ensuing sharing of sovereignty would be acceptable, but also because the project entailed the discrimination of Germany, which over time would have been untenable. The project envisaged that Germany would become part of the EDC and the EDC part of North Atlantic Treaty Organisation (NATO), while all the other countries would also be individual members of NATO. After the rejection, the alternative Acheson plan was adopted, making the German Federal Republic (at that time West Germany) a full and equal member of the Atlantic Alliance. The Brussels Treaty of 1948 between France, the UK and the Benelux countries was modified in 1954 to include Germany and Italy, and became the Western European Union (WEU). Although it contained restrictions on German rearmament, these were made more palatable by a control regime applicable to all member countries. An important element was the participation of the UK, which had remained aloof from the EDC, but was now prepared to enter a formal commitment to permanently station three divisions and a tactical air force on German

territory. For many years the WEU functioned as a reserve organisation with a collective defence clause of automatic military assistance, which was not fully matched by NATO. The Atlantic Alliance kept a discretionary element in its own Art. V, largely because the US Senate did not want to be drawn into foreign wars without a moment of decision of its own.[2]

When Robert Schuman (then French Foreign Minister) launched the European Coal and Steel Community (ECSC) in 1950, it was an economic project with an eminently political character. By making it impossible to build separate national war establishments, never again could war ensue between France and Germany. The ECSC was supposed to be followed by a defence community and to be capped by a political union. After the setback of the EDC, European integration was re-launched as an economic community. Under the security umbrella of NATO, Europe was able to reconstruct and to reach an unprecedented level of stability and prosperity. Only after the accession of the UK to the European Economic Community (EEC) was ensured did it become possible to embark on political cooperation, which meant cooperation in the field of foreign policy, but not in defence. European political cooperation (EPC) was useful in establishing direct communications among the ministries of foreign affairs, but on substance did not proceed beyond the level of a 'no-surprise policy', the principle that one should not launch initiatives before the partners had been informed and given an opportunity to comment. And even that simple principle was not fully observed.

Jumping to the situation in 2005 one might feel some nostalgia for the vision of 50 years earlier. With the EDC the perpetual groping for a European identity within the Alliance would have been avoided and

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[2] Art. V of the Brussels (WEU') Treaty of 1948 (modified in 1954) states: "If any of the High Contracting Parties should be the object of an armed attack in Europe, the other...will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power". Art. V of the North Atlantic ('Washington') Treaty of 1949 reads:

> The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

transatlantic relations might have adjusted better to the growing importance of the European Union. On the military side things might also have been easier: the EDC in its final draft had adjusted the concept of multinational forces and made the brigade the largest unit with a national composition. In today's world that has become the preferred size for a manoeuvre unit and, by the way, has come close to the two 'battle groups' that are now the focus of European capabilities.

The European Communities took a long time in dealing with defence issues and military matters. During the cold war, the Soviet threat was predominant and collective defence could only be organised through NATO, with the American nuclear arsenal as the primary deterrent to aggression. Under those circumstances the EEC was conflicted over the wisdom of adding a political component, which at the time was thought might be divisive in the transatlantic context and create the impression of stronger capabilities than the members would be able to match in practice. With the pending first enlargement of the EEC with the UK, Denmark and Ireland, resistance to launching European political cooperation (particularly from the Netherlands) abated and a start was made in 1971. The initial agenda included the political aspects of East–West relations, the Middle East and voting in the United Nations, but the closest they came to security was the emerging Conference on Security and Cooperation in Europe emanating from the Final Act of Helsinki (1975) and later becoming a formal organisation with OSCE as its acronym. Military aspects were negotiated in the Vienna-based Conference on Mutual and Balanced Force Reductions, where the Western position was coordinated in NATO (without the participation of France), and the Eastern position in the Warsaw Pact. The OSCE was no block-to-block negotiation and therefore allowed the nine members of the European political cooperation and some neutral countries to play a significant role.

In 1982 the foreign ministers of Germany and Italy took the Genscher–Colombo initiative to extend the EPC to the field of security. Three participating countries, Denmark, Greece and Ireland, albeit for different reasons, were not prepared to come along and consequently the EPC in its Solemn Declaration of Stuttgart in 1983 was not able to go beyond the statement that the 10 would discuss the political and economic aspects of security, thus omitting the military ones. The seven member states of the WEU would have been prepared to go further, but there was little enthusiasm. Several felt that defence discussions outside NATO could become conflict-ridden, certainly as long as France did not participate in NATO's integrated military structure and rejected the strategy of flexible

response. Nevertheless, all seven agreed to discuss a new role for the WEU at a meeting in Rome to celebrate the 30th anniversary of the Paris Treaties of 1954.

At a German suggestion, the ministers of defence were invited to join their foreign affairs colleagues. Their joint presence would soon become one of the most important characteristics of WEU ministerial sessions. Even in NATO the two did not sit at the same table, primarily because the French minister of defence did not attend the Defence Planning Committee, which became the principal venue for defence ministers. As a result, in ministerial sessions the North Atlantic Council was attended only by ministers of foreign affairs, except for the occasional summits at the level of heads of state or government.

At the 1984 Rome meeting, ministers agreed to meet more frequently and to reorganise the two existing agencies, the Armaments Control Agency (ACA) and the Standing Armaments Committee (SAC). At their next meeting in Bonn, three new agencies were created: one to study arms control and disarmament, one for armaments cooperation and one to study security and defence questions in general. Like the ACA and the SAC previously, they were housed in the WEU building in Paris, which also contained the staff of the WEU Assembly. In 1985 ministers tasked the Permanent Council to study how to strengthen cooperation among the existing national institutes in the field of security and defence.

The WEU's revitalisation did not proceed smoothly. Nobody was impressed by the work of the new agencies, which had taken over too many of the staff members of their predecessors. The UK provoked a crisis by withholding agreement to renew the contracts of the principal officers and showed its determination by allowing the contract of the British director of one of the agencies to lapse. The WEU was not in good shape. It was saved in 1987 when the Netherlands presidency managed to produce the WEU–Hague Platform on European Security Interests, which built a bridge between France and the other NATO members on strategic questions. The Platform recognised the need for a mix of nuclear and conventional weapons in the defence of Europe, the continued presence of American forces on the continent and the defence of member countries at their borders. The latter formula was alternative, but acceptable wording for the concept of 'forward defence' employed in NATO. Politically, the Platform gave an important signal by stating that "European integration

would not be complete as long as it did not contain a defence element".[3] This phrase was accepted by the UK and would often be quoted against it when London later put on the brakes.

The second positive development was the WEU decision of 1987 to coordinate the mine-clearance operation in the Gulf during the war between Iran and Iraq, which was the first example of Europe being prepared to assume responsibilities outside its own continent. Of course, the freedom of navigation in the Gulf and security of oil supplies was as much a European interest as an American one, or even more so. Nevertheless, in the past Europe had been so pre-occupied with its own survival, that it had allowed itself to be reduced to a regional power at best, with no ambition of force projection elsewhere to protect its interests with military means.

The Iran–Iraq war was a most peculiar contingency, for the belligerents posed no threat to the West, only the mines did. Two years later the situation was quite different. Saddam Hussein invaded Kuwait in August 1990, provoking a UN Security Council Resolution authorising the use of "all necessary means" to restore the integrity of the country and imposing a complete trade embargo on Iraq.[4] The WEU became the major enforcer of the embargo, examining about three-quarters of all ships sailing in the area. At the height of the operation 39 naval vessels, including ships from the new members, Spain and Portugal, took part in the operation. Compared with the 1987-88 operation, coordination was much better. Deployments were complementary and logistical-support capabilities were pooled along with air and sea transport from home countries.

Neither the WEU nor NATO as an organisation took part in the coalition on the ground or in the air, but individual members did. France was tasked with a bold dash on the flank in the desert and contributed aircraft. The UK took part in the ground war and suffered losses in low-flying bomber attacks. Italy lost an aircraft owing to faulty communications. All three got painful lessons about the inadequacy of their equipment. France sent an aircraft carrier without aircraft, because its planes were obsolete, being ridiculed as a *porte camions* instead of a *porte*

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[3] See Western European Union, Platform on European Security Interests, The Hague, 27 October, 1987.

[4] See United Nations Security Council, Resolution 661 adopted by the Security Council at its 2933rd meeting, S/RES/661 (1990), following up Res. 660 of 2 August, New York, 6 August 1990.

avions. At that time, Germany was still unable to despatch forces outside the NATO area, but made an important financial contribution, like Japan, and supplied a good number of Fuchs armoured chemical-warfare detection vehicles, which would have been most useful if Iraq had resorted to the use of chemical weapons.

Following the fall of the Berlin wall and the increasing likelihood of a united Germany, the need was felt for a new attempt at defining the *finalité politique* of the process of European integration. The Single Act of Luxembourg of 1985 had brought economic matters and foreign affairs together and the Netherlands presidency of 1991 tried to continue this line of thinking by applying the communitarian method to both of them. Instead the Maastricht Treaty with its pillar structure for the EU separated them again under the virtual coordination of the European Council, and added the third pillar bringing cooperation in the field of justice and home affairs within the scope of the EU. It called into existence the common foreign and security policy (CFSP) as the successor of the European political cooperation. In the monetary sphere the momentous decision was taken on a timetable for the introduction of the euro. In spite of these milestones, one could doubt whether the resulting framework deserved the title of 'Union'. The CFSP and judicial cooperation remained purely intergovernmental, without the communitarian characteristics of initiative by the European Commission, budgeting and control by the European Parliament and jurisdiction under the European Court of Justice. The most glaring shortcoming of the CFSP was its inability to include hard security within its scope. Again it proved impossible to square the circle between Atlanticists and European advocates. The result was a series of convoluted formulations, leaving military matters to the WEU. At Maastricht the WEU members issued the following declaration:

> WEU members agree on the need to develop a genuine European security and defence identity and a greater European responsibility on defence matters. This identity will be pursued through a gradual process involving successive phases.

> WEU will form an integral part of the process of the development of the European Union and will enhance its contribution to solidarity within the Atlantic Alliance.

> WEU Member States agree to strengthen the role of WEU, in the longer term perspective of a common defence, compatible with that of the Atlantic Alliance.

WEU will be developed as the defence component of the European Union and as a means to strengthen the European pillar of the Atlantic Alliance.[5]

Art. J.4 of the Treaty on European Union (TEU) contained the following wording in its first two subparagraphs:

1. The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

2. The Union requests the Western European Union (WEU), which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications. The Council shall, in agreement with the institutions of the WEU, adopt the necessary practical arrangements.[6]

At the time it looked rather complicated, particularly as the promised practical arrangements were not forthcoming. It was unclear what the European identity and the European pillar would mean for the Atlantic Alliance. In spite of President John F. Kennedy's metaphor of the dumbbell with America and Europe as its two weights, NATO was not constructed on a pillar basis and there was the question of how a European identity could function without some arrangements to express itself. A positive point was that the WEU Secretariat could be moved from London to Brussels, thus facilitating contacts with both the EU and NATO. Less encouraging was that it proved to be much easier to cooperate with NATO than with the EU. Yet, during the 1990s matters clarified themselves. Today little is heard of a European identity or pillar, and the European security and defence policy (ESDP) – only a vision at Maastricht – is now openly discussed and developed. In Amsterdam the conditional wording of Maastricht was removed in Art. J.7 and replaced by the simpler wording that the CFSP "shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy…which might lead to a common defence should the European Council so decide".[7]

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[5] For the text of the declaration, see NATO, *NATO Review*, No. 6, December, Brussels, 1991, p. 19.

[6] Treaty on European Union ('Maastricht Treaty'), 7 February 1992, consolidated version, OJ (C 325) 5, 24 December 2002.

[7] Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 1997 OJ (C 340) 1, 37 ILM 56, 2 October 1997.

At Maastricht several proposals, which had been launched during the preparations, did not muster sufficient support for early action and were referred for further examination. This applied to "enhanced cooperation in the field of armaments with the aim of creating a European armaments agency".[8] It was interesting that the notion of enhanced cooperation made its way into treaty language (before it would become a recognised mode of a vanguard pushing ahead if not all the others wanted to join) but it would take another 13 years before such an agency could be created. The other proposal aimed at developing the WEU Institute of Security Studies, which had replaced the three agencies in Paris, into a European Security and Defence Academy. So far this has not materialised.

The WEU gained some credibility by its actions in the Gulf, followed by its naval embargo of the rump of Yugoslavia in the Adriatic and a similar action manned by police and customs officers on the Danube. When the EU assumed the administration of the district of Mostar the WEU was asked to supply the police element. Later on the WEU provided the Multinational Advisory Police Element (MAPE) in Albania after the country had experienced chaos following the crash of the pyramid scheme. Paradoxically, most of the activities were carried out by police officers, except for the naval embargoes, and bore little resemblance to the 'defence implications' tasked at Maastricht.

In the military field the WEU made some progress by creating a Satellite Centre in Torrejon, Spain, and after the move to Brussels a Planning Cell located in the same building as the Secretariat. The Satellite Centre trained officers in the analysis of satellite pictures, most of which were bought from the French commercial firm SPOT. An attempt to create a separate satellite capability failed because of lack of funding. The Planning Cell provided advice to the secretary-general and the Council and worked on procedures and contingencies for the use of what came to be called the Forces Answerable to the WEU (FAWEU).

In 1992, at their meeting on the Petersberg near Bonn, ministers defined the kinds of missions that the WEU might undertake: humanitarian, rescue (e.g. of citizens from a beleaguered city) and peacekeeping along with the role of combat forces in crisis management, including peace-making. Peacekeeping referred to the traditional UN

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[8] This was part of the joint proposal by President François Mitterand and Chancellor Helmut Kohl of 4 October 1991. See my *Debating European Security* (van Eekelen, 1998), op. cit., p. 283.

concept with the agreement of the parties with a cease-fire in place. Peace-making in today's jargon would be peace enforcement. In the Amsterdam Treaty of 1997 these missions were transferred to the EU at the request of Finland and Sweden, who were prepared to take part, but did not want to subscribe to the automatic military assistance clause of the WEU.

In the field of security, the fall of the Berlin wall and the demise of the Soviet Union represented a paradigm shift, away from collective defence and towards what could best be described as peace-support operations outside our immediate borders. For a while the WEU acted as a bridge between the EU and NATO and was particularly successful in drawing in the non-EU members of NATO by allowing them 'full participation in the activities', and later also the candidates for accession to the EU. 'Security through participation' was one of my slogans in those days.

1. The Political Context and the Search for Europe's Destiny

Changing security perceptions

Since 1989, European security has undergone fundamental changes. The end of the cold war and the subsequent demise of the Soviet Union have lessened the priority given to the defence of Europe's independence and territorial integrity and, for the members of NATO, to collective defence. With varying degrees of speed and consistency the focus of security policy shifted to what is now euphemistically called 'peace-support operations', but which in reality means either robust peacekeeping or peace enforcement. During the cold war peacekeeping by the United Nations was limited to the presence of lightly armed forces in situations where the parties to the conflict agreed to it and a ceasefire was in place and holding. In 1992 the WEU took a conceptual step further and included the role of combat forces in crisis management in the spectrum of possible European missions. At the initiative of Finland and Sweden this and the other 'Petersberg missions' were included in the Treaty of Amsterdam (1997) and accepted by all EU countries except Denmark. In practice, however, the actions carried out by the EU have not yet moved beyond low-intensity operations.

Much effort was put into diplomatic paperwork developing procedures for planning and decision-making. In 1993 the WEU Planning Cell became operational when the WEU headquarters moved to Brussels. Military delegates sat next to their ambassadors at meetings of the Permanent Council, in most cases combining their function with that of military representative to NATO's Military Committee. In 1994, the candidates for the European Union, which had signed a so-called 'Europe Agreement', were invited to become associate partners of the WEU, enabling them to attend regular sessions of the Permanent Council and to participate in operations on a case-by-case basis. Europe seemed to be

going somewhere. The partner status was a major step in the process of 'security through participation'. Being present at Council meetings – and not at some specially conceived mechanism as in NATO or the EU – gave the new democracies a sense of belonging and an opportunity to make their security concerns known in a consultative and decision-making framework.

This process was interrupted by the decision in Amsterdam in 1997 to transfer the functions of the WEU to the EU. In itself this was a logical decision, for within the Union there should not be separate foreign, security and defence policies. The manner in which it was done, however, left much to be desired. The WEU was not transferred in toto, but remained as a skeleton, maintaining the Treaty with its automatic military assistance clause in Art. V, but also the Western European Armaments Group with its contracts for research and technology and the WEU Assembly where parliamentarians from all four groups – full members, associated members (Norway, Turkey and Iceland), observers and associate partners – worked on joint reports and resolutions. More serious, however, was the policy to dismantle the operational institutions recently established by the WEU and build them up again from scratch in the new EU Military Staff and the EU Military Committee. The political functions of the WEU Council were taken over by the newly created Political and Security Committee with its full-time representatives at the level of ambassadors. The process was reminiscent of the noble duke of York who marched his troops up the hill, then marched them down again, except that this time the movement was reversed. Possibly the political climate at the time did not allow for a more orderly transfer. The main players, particularly France and the UK, did not see eye to eye on the future of European security cooperation

During the 1990s, the work of the EU was capability-driven. To some the assumed lack of capabilities was an excuse for not focusing on European contingencies. What use would autonomous action be, if the capabilities were clearly inadequate? This argument was carried too far, because with armed forces totalling some 2 million men and women for the enlarged EU, a number of operations should be feasible. Not a 1990 Kuwait operation or the 1995 one in the Bosnian crisis or that of 1999 in Kosovo, but then these were American scenarios implemented largely with US forces. Alternative actions were not considered.

The question, 'what for?' became increasingly relevant for military and political reasons. Without a reasoned answer, no country would be able to quantify its defence needs. Prior to 1989 defence planning had yardsticks of opposing forces and commitments to defend precise

geographical sectors. After the fall of the Berlin wall, no one could provide uncontested arguments for the optimum size of their army, navy or air force. Only the acceptance of obligations to participate in multinational forces could introduce a new element of sustainable commitment. In order to be convincing, however, multinational force packages need some basis in probable scenarios, preferably fairly specific, but at least generic if too much precision raises questions of political sensitivity in parliamentary debates at home or diplomatic relations abroad. In any case, it will be necessary to know in advance, at least for planning purposes, which country might be prepared to participate in what type of operation. Otherwise the time would be lacking for adequate preparation of the command function and the arrangements for transportation, communications and logistics.

On the political side, governments and parliaments had to shift their attention to the circumstances and conditions under which they might be prepared to send their forces abroad. That decision will be a sovereign national decision, which is most unlikely to ever become the subject of a majority vote, even in the most integrated form of a European Union. This means that there will always have to be a measure of redundancy in planning multinational operations, for national commitments cannot always be relied upon. But the more national interests converge and military cooperation becomes closer, the more the likelihood of consensus about necessary action, and the stronger the moral pressure grows to show solidarity.

The tide in favour of the EU assuming a stronger role in security and defence policies turned in late 1998 and 1999 owing to the convergence of a number of short-term and long-term dynamics.[9] In the UK a new Labour government wanted to utilise its foreign policy and defence capacity as an indispensable element of any sizeable European action, for the dual purpose of compensating for its absence in the Schengen arrangements for free movement across borders and in the eurozone, and of playing a leading role in the shaping of a new transatlantic security bargain. The wars in Bosnia and Kosovo had left their marks on both the EU and NATO and convinced many that a different approach to military operations was needed. On the European side, awareness dawned that to have weight in

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[9] See Giovanna Bono, "The European Union as an international security actor: Challenges to democratic accountability", Chapter 10 in Hans Born and Heiner Hänggi (eds), *The 'double democratic deficit'*, Aldershot, Ashgate, 2003.

international crises some military capabilities are necessary in conjunction with the diplomatic and economic instruments relied upon in the past. Consequently, it became possible for the EU to expand its common foreign and security policy and to add a European security and defence policy under its aegis, allowing for the first time EU political control over military and police forces for external operations. In the longer term it would become clear that in a Union of 25 members or more the pillar structure of the Maastricht Treaty would become unworkable and that the issues of transparency, democracy and effectiveness would have to be addressed again.

Political destiny

The debate on the *finalité politique* resumed in the run-up to the European Council of Nice, which would be held in December 2000. The pillar structure agreed in the Maastricht Treaty was showing its defects through a lack of coherence, while the prospect of enlargement raised questions about the possibility of making progress under a system with unanimous decision-making on many issues. Meanwhile, years of conservative government in the UK had raised doubts about its willingness to participate in any sensible deepening of the integration process. Suggestions about core groups or an avant-garde re-emerged, but their composition varied. At the same time it was unclear to what extent the summit in Nice would really offer sufficient opportunity to discuss fundamental issues. Four points would be on the agenda, irreverently called the 'leftovers' of Amsterdam: the size of the Commission, the extension of qualified majority voting (QMV), the weighing of votes per country and improvement of the method of enhanced cooperation that had been agreed in Amsterdam. In fact, the European Council would take more time than ever – four days – and after acrimonious debate did not do much more than assigning new numbers of votes to the present and future members.

One of the peculiarities of European integration continued to be the overlapping processes. By the time one Treaty on European Union had finally entered into force, discussions on amending it were already in full swing. The Amsterdam Treaty entered into force in May 1999, 18 months before it was amended by the Nice Treaty, which in turn only entered into force in February 2003, when the Convention drafting the new Constitution had already been going for a year.

The conceptual debate received a new impulse from two German Christian Democratic politicians, Wolfgang Schäuble and Karl Lamers. In September 1994 they had argued in favour of the creation of a 'hard core' of those countries prepared to go further on the road to integration than the negative attitude of the UK would allow. That proposal will be remembered by the exclusion of founder-member Italy from the list of eligible countries, which made it still-born and exacerbated lingering anti-German sentiment in Italy. On 3 May 1999, only a few months after the entry into force of the third phase of the monetary union, they presented a second document sketching the future of the EU as a liberal federation with an integrated internal market and foreign policy, but with social policies left to the autonomy of member states.[10] Their paper was launched under the title "Europe needs a constitutional treaty", three years before others came to discuss this possibility. They refuted the argument that in the absence of a European people (demos) it made little sense to constitutionalise European integration, by the historical analysis that the development of a common political conscience often went hand-in-hand with a constitutional process.

They sought a synthesis between two apparently contradictory characteristics of the EU: competition on the one hand, but partnership and solidarity on the other. As Germans they were familiar with their federal model of solidarity through payments to the poorer *Länder*, but found it lacking in competitiveness. In this way, they were ahead of their time, not only in terms of a constitution, but also of the Lisbon agenda for innovation and learning. Whether this dilemma can ever be solved at the European level remains to be seen. The EU is likely to remain a mixture of communitarian integration and intergovernmental cooperation with the balance shifting according to the perception that a problem is no longer apt to national solutions. The Union is becoming a level playing field for competition, allowing the individual citizen or company to compete throughout Europe on the same basis as at home. Yet, the domestic environment remains determined by the national government, which itself is increasingly being compared with partner countries according to the method of 'open coordination'. For areas that are not (yet) ripe for regulation, comparisons are made of 'best practices', which are coming

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[10] Hartmut Marhold has reproduced the text in his collections, *Die neue Europa debatte: Leitbilder für das Europa der Zukunft*, Bonn: Europa-Union Verlag, 2001, and *Le nouveau débat sur l'Europe*, Nice: Presses d'Europe, 2002.

close to a process of peer pressure and 'naming and shaming'. The method fills a gap between the national and the EU level, and as such takes the roughness out of the subsidiarity principle, but its downside is the limited involvement of the European Commission and Parliament. Its effectiveness will be judged by progress in the implementation of the Lisbon agenda.

At the outset, Messrs Schäuble and Lamers based their vision on the internal logic of integration, but recognised that enlargement would soon make it necessary to find mechanisms to overcome contradictions between deepening and widening, and between cohesion and flexibility. As time progressed, Mr Schäuble referred more often to external pressures from globalisation and the impending enlargements of the Union. The two authors restated their idea about 'cores', but attenuated them by talking of a 'solid' core instead of a 'hard' one, and emphasised that France and Germany should be the 'core of the core'. In fact, the emphasis on a core group soon disappeared as a priority item when an unexpectedly large number of member countries qualified for membership of the monetary union, and the Labour government in the UK showed a more flexible attitude. This was further accentuated by the attitude of the 10 new member states, which were not keen on institutional arrangements that might be designed to keep them out. The possibility of enhanced cooperation, opened at Amsterdam and stretched at Nice, was not made more flexible in the Constitution, but remained as a possibility to show unwilling partners that there would be limits to unconstructive behaviour.

The European Council of Cologne in June 1999 called for an Intergovernmental Conference (IGC) to deal with the leftovers of Amsterdam. It also decided to use the method of a convention to draft a charter of fundamental rights. At this meeting, Javier Solana was appointed the dual function of Secretary-General of the Council and High Representative for the CFSP. The WEU as an organisation was considered to have 'completed its mandate' and its assets were transferred to the EU.

On 1 September, shortly after his designation as President of the Commission, Romano Prodi asked three 'wise men' to advise him on the institutional implications of enlargement. Former Belgian Prime Minister Jean-Luc Dehaene, former CEO of British Petroleum Lord David Simon of Highbury and former President of Germany Richard von Weiszäcker worked quickly and presented their report to the Commission on 18 October 1999. In a manner not uncommon for wise men, they exceeded their mandate beyond the three questions put to them and advised the ICG to proceed towards profound reform of the EU. In their analysis they not

only noted the need for a greater capacity to act, but also for greater transparency and thereby greater legitimacy and, finally, the worryingly slow speed of decision-making. They made an important point on enhanced cooperation, or 'flexibility' as they called it, by putting their finger on the risk of creating a Europe *à la carte* instead of stabilising a vanguard. Their warning resulted in the extension of the ICG to include this dilemma. The wise men proposed to apply QMV to the CFSP and to the third pillar and to grant the European Parliament the right of co-decision on every matter on which the Council decided with QMV. They did not talk of a constitution, but of a basic treaty limited to the objectives, principles and general orientations of the Union, the rights of citizens and the institutional framework. They advised that the other provisions of the existing treaties be put into separate texts, making them easier to change by a decision of the Council without the need for ratification.

In Germany the idea of a constitution was warmly defended by President Johannes Rau. To him federalism was a means of distributing power, not of centralising it. In a welcome address to President Jacques Chirac, he tried to link the horizontal *trias politica* of Charles Montesquieu with the vertical distribution of power in Germany.[11] Yet the French president had another idea of Europe. The next day before the *Bundestag* he made no reference to Jean Monnet or Robert Schuman, nor to the communitarian method or to the European Commission. It was not easy to identify his European vision, for it contained different elements, but foremost was his conviction that the nation-state remained the source of our identity and roots, as well as that for future generations. To envisage their extinction would be as absurd as denying that they had already opted for commonly exercising part of their sovereignty and that they had an interest in continuing to do so. He mentioned the European Central Bank, the Court of Justice and QMV as examples of a common sovereignty. By accepting these 'common sovereignties' (in plural, which seemed odd for a Frenchman who normally regards sovereignty as indivisible) we would acquire new power and added radiance. More specifically, he wanted to: make the Union more democratic – through the European Parliament and the national parliaments; clarify the competences, without freezing them; apply subsidiarity; and allow those who were prepared to go further to do

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[11] This occurred on 26 June 2000. President Rau had earlier explained his views in *Le Monde* (4 November 1999) and would make a plea for a federal constitution before the European Parliament on 4 April 2001.

so without being slowed down by those who did not want to proceed so quickly. His concept of '*Europe-puissance*' was one that possessed strong institutions and an effective and legitimate decision-making mechanism, giving its full place to majority voting and reflecting the relative weight of the member states. The first task for the French presidency was to conclude the Intergovernmental Conference. Then the 'great transition' would start towards stabilising the EU within its borders and its institutions. Together with Germany and France a 'pioneer group' could be formed, based on the new procedure for enhanced cooperation, and if necessary outside the treaty framework. As subjects he mentioned better coordination of economic policy, strengthening defence policy and the fight against crime. After Nice, the other institutional questions had to be tackled, for which several methods could be envisaged, ranging from a committee of wise men to a convention on the model of the current one drafting the Charter of Fundamental Rights.

For his part, former Commission President Jacques Delors was less keen on fundamental change and described himself as a mechanic convinced that without the institutional triangle of Commission, Council and Parliament nothing would work. His vision was a 'federation of nation states', which has since become accepted wisdom in France, but is not well understood elsewhere. Mr Delors did not like the idea of a constitution and opposed the method of enhanced cooperation, which put him in opposition to Pierre Moscovici, then Minister for European Affairs and currently member of the European Parliament. For Mr Delors, like for the founding fathers, the fundamental values remained the essence and his purpose was to link them again with the system he firmly believed in.[12]

A note of great concern about the speed of enlargement without the necessary institutional reform was struck by former French President Valéry Giscard d'Estaing and former German Chancellor Helmut Schmidt.[13] They did not talk about a constitution, but argued that the risk of a crisis was so serious that a new IGC made no sense without a clear political orientation from the outset.

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[12] See Jacques Delors, *Réunifier l'Europe: Notre mission historique*, Conférence Wallenberg, Aspen Institute, 14 November 1999, Notre Europe, Paris.

[13] See "La leçon d'Europe", *Le Figaro*, 10 April 2000. Turkish membership, which would bring the EU border to lie along the countries of the Middle East and the Caucasus "was absolutely no priority, and that was the least one could say about it".

The two founders of the European monetary system proposed organising Europe at three levels: first, a European space that includes the candidate countries and covers economic and free trade issues, with a degree of political integration not exceeding the current one among the 15 member states and with strict application of the subsidiarity principle. Second, they endorsed the creation of a European defence organisation (with the UK), resting on those countries that possessed important military means and which have declared publicly to accept a rapid and effective decision-making mechanism. In this way, Europe would be able to maintain influence in a world that was bound to see a reduction of the preponderance of the American superpower and the emergence of other global powers. The third level could comprise a tier to maintain what was left of the initial ambition of integration. It was not realistic to expect full integration of 30 countries, different as they were in political tradition, culture and economic development. A group of 'Europeans of the euro', willing to integrate part of their political competences on the basis of a federal approach, could become a distinct political entity on the European continent. To do so, supplementary institutions would be necessary: a Council, a parliamentary structure with operational links to national parliaments, "and certainly no Commission".[14] Both Mr Giscard and Mr Schmidt were thinking of institutions within the existing institutions and not entering into competition with the latter. That remained a weak point in their construction that was criticised particularly by the smaller countries, which saw the Commission as the only body capable of defining European interests, overarching the multitude of national interests. They tried to anticipate such reactions, by writing that these reforms would be an excellent domain for the European Parliament to take the initiative. In subsequent writings in *Die Zeit*, Mr Schmidt grew closer to the Eurosceptics and favoured limitation of the powers of the EU and a concentration on the economic and monetary union.[15]

As the number of countries meeting the criteria for euro membership increased, the core grew and offered a prospect of an all-inclusive monetary union. Denmark, Sweden and the UK qualified technically, but

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[14] Ibid.

[15] See Helmut Schmidt, "Begrenzt Europas Macht" [Limit Europe's powers], *Die Zeit*, 8 February 2001(a), regarding a conversation with the Bavarian Minister-President Edmund Stoiber, and also "Einer für alle" [One for all], *Die Zeit*, 15 November 2001(b) on the euro.

abstained for political reasons. A eurozone of 11 members was no longer a core but a sizeable majority, which met the criteria of enhanced cooperation. It posed a problem for the agenda of the Ecofin Council to organise questions relating to all 15 or only the 11, but that was manageable. If the 11 wanted to be nice to the UK, they would put more on the large agenda; if not, the discussion would be among themselves. Moreover, among the 11 there was little cohesion on other issues. Austria and Finland qualified for the euro, but had little inclination to go further on a common defence policy. For different reasons, traditionally Atlanticist countries like the Netherlands and Portugal took a similar position. Therefore, the suggestion advocated by Messrs Schmidt and Giscard to place the euro-11 at the centre found little response. The idea of Jacques Delors to fall back on the six founding states of the European Community to conclude a 'treaty within the treaty', which would make far-reaching reforms and lead to a federation of nation states, was too exclusive. It was an attempt to reconcile the opposing camps of advocates of a federal structure and defenders of national identity. Clearly, the European Union had federal characteristics, but unfortunately the word 'federation' had acquired such an emotional charge in the UK that its use became counterproductive. For some reason Britons regarded it as a concept of centralised government, while on the continent, and particularly in the Federal Republic of Germany, it was seen as a model for decentralisation with the constituent parts retaining all the powers that they had not transferred to the federal government. Anyone treading in this minefield had to be extremely cautious.

Institutional change

The debate really took off with the speech of Joschka Fischer, the German Minister of Foreign Affairs, at the Humboldt University in Berlin.[16] He firmly added the subject of the 'finality' of European integration to the agenda for Nice. Despite his repeated assurances that it was only a personal vision, his 'mulling over in public' of a few more fundamental and conceptual thoughts on the future shape of Europe got the ball rolling and accelerated debate throughout the EU. Mr Fischer started from the premise that a divided system of states in Europe, without an overarching order, would in the long term make Europe a continent of uncertainty; in the medium term the traditional line of conflict would shift from Eastern

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[16] See Joschka Fisher, "From confederacy to federation – Thoughts on the finality of European integration", speech given at Humboldt University, Berlin, 12 May 2000.

Europe back into the EU again. To integrate the new members without substantially denting the EU's capacity for action "we must put into place the last brick in the building of European integration. Namely political integration."[17] The 'Monnet method' of gradual integration with no blueprint for the final state had proved to be of only limited use for the political integration and democratisation of Europe. Mr Fischer had a simple answer: the transition from a union of states to full parliamentarisation as a European federation, which meant nothing less than a European Parliament and a European government that really did exercise legislative and executive power within the federation, based on a constituent treaty. This could only be done on the basis of a division of sovereignty between the EU and the nation states according to the concept of 'subsidiarity' (which Mr Fischer, with his tongue-in-cheek sense of humour, called a subject currently discussed by everyone and understood by virtually none).

A European Parliament in Mr Fischer's view had to represent both an EU of nation states and a Europe of the citizens and therefore needed to have two chambers. One would be for elected members who would also be members of their own national parliaments (thus avoiding a clash between national parliaments and the European Parliament, and between the nation-state and the EU). The composition of the second chamber would involve a choice between directly elected senators from the member states – with either equal or proportional representation – or a system of representation like that in the German *Bundesrat*.

In an enlarged and thus necessarily more heterogeneous European Union, Mr Fischer thought further differentiation would be inevitable. Within the next 10 years, the Union would be confronted with the alternative of either a majority of member states taking the leap into full integration and agreeing on a European constitution or a smaller group of states taking this route as the avant-garde or a centre of gravity. When would be the right time, who would be involved and would this centre of gravity emerge within or outside the framework of the treaties? These questions were impossible to answer at that time, but one thing at least was certain: no European project would succeed without close Franco-German cooperation. Several stages could be imagined. First, the expansion of

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[17] Ibid.

reinforced cooperation and then later the formation of a centre of gravity with a new framework treaty for a federation, which would

> develop its own institutions, establish a government which within the EU should speak with one voice on behalf of the members of the group on as many issues as possible, a strong parliament and a directly elected president. Such a centre of gravity…should from the start comprise all the elements of the future federation.[18]

Mechanisms would have to be developed to cooperate smoothly with others in the larger EU, following former German Foreign Minister Hans-Dietrich Genscher's tenet that no member state could be forced to go farther than it was able and willing to go, but that those who did not want to go any farther could not prevent others from doing so. If that precept were to be followed, the centre of gravity would emerge within the treaty framework, otherwise outside it.

Mr Fischer stuck his neck out, but ultimately had to draw it in again, not because of the flak he got from the West, but because he realised that his plea for a centre of gravity was incompatible with his advocacy of enlargement. If the candidates feared anything, it was the Union forming a select group from which they were likely to be excluded for some considerable time to come. Mr Fischer thought of reinforced cooperation in many areas: the further development of the euro-11 into a politico-economic union, environmental protection, the fight against crime, common immigration and asylum policies "and of course the foreign and security policy". That would reduce the newcomers to a group of apprentices.

Mr Fischer said to be aware of the institutional problems his proposals would raise with regard to the current EU, and thought it critically important not to jeopardise the EU *acquis* or to divide the Union. Therefore, mechanisms would have to be developed that permitted the members of the centre to cooperate smoothly with others in the larger EU. For the older members that was the Achilles heel of his vision, for the list of subjects mentioned for enhanced cooperation could hardly be implemented without affecting past achievements.

The speech was interesting in many respects. In few countries would a foreign minister speak so freely. Outside his country these proposals were seen as overly predicated on the German model. The combination of membership of national and European parliaments was considered too

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[18] Ibid.

burdensome, especially for the smaller countries, but most controversial was the proposal for a senate as a second parliamentary body. Most critics saw the Council of Ministers as the institution in which national views should be expressed, but that did not fit well in Mr Fischer's parliamentary approach. As a result he remained imprecise on the options for the European executive or government and – worse – said nothing on the position of the European Commission as a collegiate body with the exclusive right of initiative for European legislation. He envisaged two alternative poles: either developing the European Council into a European government, i.e. forming it from national governments, or taking the existing Commission structure as a starting point, but leading to the direct election of a president with far-reaching executive powers.

Joschka Fischer's speech firmly established his credentials as a convinced European. It accelerated the debate and other leaders joined in, but in the end few of his proposals found their way into the draft Constitution. This applied in particular to the notion of a second parliamentary chamber. Reactions were manifold and not slow in coming. Some were procedural, questioning how a foreign minister could speak in a personal capacity, but Chancellor Gerhard Schröder kept his powder dry and remained silent for quite a while. The most important rebuttal came a month later in an open letter from the French Foreign Minister, Hubert Védrine.[19] He praised his friend Joschka for opening the debate, but apart from asking a host of questions and precisions, he claimed a special position as part of the incoming French presidency of the EU. As such, he could not at the same time lead the IGC to adopt reforms and introduce a project that was already proving divisive. Moreover, the proposals for a federal structure differed on essential features, which led him to avoid theoretical discussions on its meaning and to focus on specific points. How should the members of a possible hard core be selected? Should it comprise the original six? But others wanted to join. How about the euro–11? Yet would their number not grow and exceed the size of a core? And participation in the euro did not necessarily lead to more political integration. More important still were the competences of the federal level and its institutions. It should be necessary to define exactly what would remain at, or be restored to, the national level. Any governmental structure should emanate from national governments, as it currently does from the Council and not follow the model of the Commission. How should the two

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[19] See Hubert Védrine, "Réponse à Joschka Fischer", *Le Monde*, 12 June 2000.

European structures, one large and one small, interact? If Mr Fischer meant a classic model of federation, he would be heading for a road block in France, but a model of a federation of nation states, as proposed by Jacques Delors, could be explored.

Among the conceptual contributions made before Nice, a personal note of EU Commissioner Michel Barnier figured prominently. He was clearly in favour of a basic text, a constitutional treaty, under whatever name. The European University Institute in Florence had demonstrated that this was possible in a single text with a small number of articles and he could not see why anyone would oppose an effort of clarification. In terms of reform, Mr Barnier saw three approaches: the federal vision of 'all for one', the intergovernmental hypothesis of 'everyone for himself' and a communitarian re-launch of 'everyone for all'.[20] On the federal side he favoured a bicameral system with one chamber being designated by national parliaments and governments. The intergovernmental method was insufficient to define common interests and would only produce soft norms without much obligation or commitment. Mr Barnier defended the community system as a model of shared powers: the Parliament shared legislative power with the Council and the Council exercised executive power together with the Commission. The latter pointed in the direction of a collegiate presidency, rather than embodying it in a single person. One day the president of the Commission should be elected in order to give the role direct legitimacy. Then the possibility should be opened for dissolution of the Parliament, either on a proposal of the president of the Commission, accepted by the Council, or vice versa. Finally, the high representative for the CFSP should become a vice-president of the Commission. Thus, Mr Barnier maintained his conviction that the communitarian model could be preserved, also after enlargement, and that contrary to Joschka Fischer and Jacques Delors, the Union could grow in numbers and still remain strong. A centre of gravity would be too discouraging for the new entrants.

Some ideas started to coalesce, while others became more divergent. The British and Spanish Prime Ministers Tony Blair and José María Aznar agreed with adding a second chamber to the Parliament, as well as with

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[20] See Michel Barnier, *Pour l'Europe, deux temps et trois chemins,* European Commission, Brussels, 8 June 2000. Mr Barnier wrote another note on 17 October 2001, *L'urgence européenne, note personnelle de Michel Barnier* (European Commission archives, Brussels), presenting a remarkable analysis of what the future Constitution should contain. Both are included in the collection of documents assembled by Hartmut Marhold (2001), op. cit.

strengthening the European Council, and envisaged team presidencies for the other Council formations. On substance they focused on growth, jobs and modernisation, and rejected heavy regulations and fiscal harmonisation, which would scare off investors. They preferred the method of enhanced cooperation, but respecting agreed rules and procedures. Especially aimed at critics in the UK, they made the point that the Union might become a super-power, but never a super-state.[21]

The most radical proposal came from former Prime Minister Alain Juppé and former Minister of Justice Jacques Toubon, which replaced the Council and the Commission with a president (for 30 months, with the primary function of representing the EU abroad), a head of government (for three years) who composes his/her government without restraints imposed by geography or nationality, and two chambers of parliament. They believed that enhanced cooperation for different subjects, but among the same countries, would give a heart (*coeur*) to the EU and lead to a 'reinforced Union'. Much in their proposal remained ambiguous, but its main value was the fact that the notion of a constitution was no longer an anathema to Gaullist circles.

German Chancellor Schröder chose another way to make his views known, but waited until after the Nice European Council. No speech or article, but a resolution was offered for the party congress of the Social Democrats (SPD), elaborated under the responsibility of the Federal Chancellor.[22] Its 10 points focused more on policies than on institutions. He did not use the word 'federalism', but took up an idea of his Minister of Economic Affairs, Wolfgang Clement, for a new assignment of competences to the EU and the member states. This provoked a strong reaction from his French colleague, French Prime Minister Lionel Jospin, who objected to the member states being reduced to the level of the German *Länder.* That was not what the resolution said, but French sensitivities had been aroused by the emphasis on subsidiarity and the need to transfer back to the member states those competences "which did not constitute a risk to the internal market" and these included agricultural and structural policies. For the rest, the SPD position was predictable: it

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[21] See Tony Blair and José María Aznar, "A Europe bolstered by a single currency", *Financial Times,* 13 June 2000.

[22] The resolution was published on 30 April 2001 for the Nuremberg Congress of the following November; see Hartmut Marhold (2001), op. cit.

strongly favoured enlargement. It also referred to the need for a capacity to act and a strengthening of the CFSP, including the possibility of autonomous action, but with NATO as the basis for security in Europe.

Mr Jospin stated his position before the National Assembly on 28 May 2001, a month after the publication of the SPD paper. He wanted Europe to be a societal project, a vision of world order and a political architecture. He rallied to the notion of a federation of nation states, with a better association of national parliaments added to the process. The institutional triangle of the Commission, Council and Parliament should be preserved, but some evolution would be necessary. Mr Jospin wanted to strengthen the Commission as guarantor of the general European interest by designating its president from the political group that had won the European elections. On the other hand, in case of a grave crisis or a blocked situation, the Council should be able, on a proposal from the Commission or member states, to dissolve the European Parliament. The European Council should be institutionalised, with responsibility to adopt a multi-annual legislative programme on the basis of a proposal from the Commission and the European Parliament. Below this level a permanent council of deputy-prime ministers should meet regularly in Brussels to implement the programme on the basis of qualified majority voting. On procedure the French Prime Minister coined his three C's: convene a Convention to elaborate a Constitution that should incorporate the Charter of Fundamental Rights. On substance, Mr Jospin rejected a two-speed Europe but favoured enhanced cooperation and pushed it quite far by paradoxically proposing the appointment of a president for the eurozone. He wanted a strong Europe with a message of peace, solidarity and pluralism, maintaining its cultural diversity. Mr Jospin made a few digs at the US by noting that Europe was at the head of the fight for sustainable development, while the Americans seemed to evade their responsibilities. Faced with unilateralist temptations in the world – which led to the law of the strongest or to simplistic visions – Europe should be a factor of equilibrium in international relations. The position of the high representative for the CFSP should be strengthened and the common strategies deepened. In this connection a coherent position with regard to the US anti-ballistic missile defence system was mentioned.

In the light of all these different visions and the failure of the Nice summit to reach a consensus, it was not surprising that the idea to convene a second Convention gathered speed. Some saw it as a means to gain time and, like the Netherlands and the UK, did not expect more than a number of options. It was the great merit of the Belgian presidency to list so many

questions at the European Council of Laeken in 2001 that the only way to answer them coherently was in the form of a draft basic text codifying and enlarging all previous treaties. Convention President Giscard was keen on calling it a 'constitution', for its symbolic value and to give it a sense of durability. He even talked of a document that should last for 50 years. With the privilege of hindsight, that was a mistake, at least for the northern countries. The name constitution suggested more than it really was, but that explanation did not go down well with a suspicious public. How all this happened is described later, but first we shall trace the course of events in the development of the security and defence policy.

2. Progress in Practice

On 28 June 2001, the Netherlands presidency gave a luncheon to mark the last session of the permanent WEU Council. Three days later the crisis-management functions of the WEU were taken over by the European Union and its Political and Security Committee (PSC), as envisaged at Amsterdam and confirmed in Nice. On the insistence of the Netherlands, the new institutions of the Union, the PSC, the EU Military Committee (EUMC) and the EU Military Staff (EUMS) had been formalised in Art. 25 of the Nice Treaty. The transfer was not complete, however, and a rump of the WEU secretariat was maintained to deal with the Art. V automatic military assistance commitment, relations with the WEU Assembly and armaments cooperation. It had not been possible to agree on a full merger with an open-ended protocol containing the collective defence guarantee for those who wished to sign it. The formerly 'neutral' members of the EU, particularly Sweden, had objected to integrating the WEU 'lock, stock and barrel'. Denmark maintained its opt-out of any EU defence policies. These objections seemed exaggerated as the Amsterdam Treaty, at British insistence, had reduced the substance of an EU defence policy to crisis management; nevertheless, the domestic political traffic in those countries was not able to bear more.

Shortly after the Amsterdam European Council in June 1997, where he had been present, but had not fundamentally changed the previous UK position, Prime Minister Tony Blair decided to use the security policy field for enhancing the UK's participation in European affairs. On foreign policy and defence the UK had an obvious contribution to make. Any European operation was unlikely to succeed without the assistance of British diplomacy and well-trained soldiers. The first inkling that something was cooking came in bilateral contacts, but remained tantalisingly vague. At the informal European summit at Pörtschach in Austria on 24-25 October 1998, Mr Blair told the press of "a strong willingness, which the UK obviously

shares, for Europe to take a stronger foreign policy and security role".[23] His colleagues had applauded this about-turn on the issue in London, which previously had been the main drag on EU progress, but was now ready for an open debate. That same press conference showed that Mr Blair had not yet come to any concrete conclusions and juggled with different notions: he was not wedded to fourth pillar ideas at all (i.e. the full transfer of the WEU, but without attempting to integrate it immediately in the second pillar of the CFSP), the European security and defence identity being very much within NATO. Yet, he was convinced that the only thing that was ever going to work in a crisis like that in Kosovo was diplomacy backed up by the credible threat of force.

In early December 1998, two important bilateral summits took place. The Franco-German summit at Potsdam on 1 December 1998 mentioned for the first time a common European defence policy next to the common foreign and security policy and the need for concrete action for the prevention and management of regional crises, in particular in former Yugoslavia and the Middle East. Ways would be sought to allow the EU to dispose of operational capabilities, which so far were lacking, either by giving it proper European means (through WEU and multinational formations) or by using NATO resources made available by the Alliance at its meeting in Berlin. Two days later, President Jacques Chirac and Prime Minister Blair met at St Malo and agreed on the responsibility of the European Council – on an intergovernmental basis – to decide on the progressive framing of a common defence policy in the framework of the CFSP. They continued:

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[23] Many of the documents quoted in this book are reproduced in Chaillot Paper No. 47, *From St-Malo to Nice, European defence: Core documents*, compiled by Maartje Rutten and published by the WEU Institute for Security Studies in Paris in May 2001. She followed it up with Chaillot Paper No. 51, *From Nice to Laeken*, in April 2002. Jean-Yves Haine completed Volume III in Chaillot Paper No. 57, *From Laeken to Copenhagen* in February 2003 and Antonio Missiroli compiled Volume IV in Chaillot Paper No. 67, *From Copenhagen to Brussels* in December 2003. Chaillot Paper No. 75, *EU security and defence: Core documents 2004*, compiled by Nicole Gnesotto, contained Volume V, which was published by the EU Institute for Security Studies, Paris, February 2005. All are accessible at www.iss-eu.org.

> To this end, the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them and a readiness to do so, in order to respond to international crises.[24]

Their joint declaration also stated that the EU will need to have recourse to suitable military means and specified them as European capabilities pre-designated within NATO's European pillar, or national or multinational European means outside the NATO framework. It was a sea-change in the British attitude towards European defence and the start of a continuing process, leading up to the Headline Goals of Helsinki and new institutional arrangements. Things started moving, in High Representative for CFSP Javier Solana's words "with the speed of light". Even a trained physicist like Mr Solana might be forgiven the exaggeration, because progress was real.

The European Council of Vienna on 11-12 December 1998 welcomed the new impetus given to the debate and considered that for the EU to be in a position to play its full role on the international stage, the CFSP must be backed by credible operational capabilities. The WEU would conduct an audit of the assets available for European operations.

In 1999, Germany took over the presidency of both the EU and the WEU and on 24 February produced an informal reflection, which contained five options for military crisis-management operations with potentially different participants and different degrees of European involvement:

1. NATO operations in which all NATO members participate;

2. NATO-plus operations, conducted by NATO and including Partnership for Peace (PfP) members and possibly others (for example, the Stabilisation Force in Bosnia (SFOR));

3. NATO operations in which not all NATO members participate with troops (e.g. the extraction force for the Kosovo Verification Mission);

4. European (EU/WEU)-led operations using NATO assets and capabilities. These would be conducted by Europeans having recourse to NATO assets in the application of the Berlin decisions; a further implementation decision at the NATO summit in Washington would be required for this option to be fully operational; and

5. autonomous European (EU/WEU)-led operations conducted by the Europeans without recourse to NATO assets.

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[24] See the Foreign and Commonwealth Office, Joint Declaration issued at the British-French Summit, Saint-Malo, France, 3-4 December 1998, London, 4 December 1998.

The German presidency asked a large number of penetrating questions, such as: What are the minimum requirements for an effective decision-making capability? Should the WEU be merged with the EU along the lines of the phase concepts introduced during the last IGC on treaty changes or in one go? Do we need regular or ad hoc meetings of the General Affairs Council together with defence ministers? Do we need an EU military committee? How do we involve non-EU European NATO members and the Associate Partners? And how do we address US concerns as expressed by Secretary of State Madeleine Albright on 7 December 1998 and compressed into three D's: no decoupling, no duplication and no discrimination?

Less than three weeks later, Germany firmed up this reflection by a proposal to the informal meeting of EU foreign ministers at Eltville on 13-14 March 1999. The guiding principle was to strengthen the CFSP and to complement it by the development of a common EU policy on security and defence. "This requires a capacity for action backed by credible military capabilities and appropriate decision-making bodies. Decisions to act would be taken within the institutional framework of the European Union."[25] The EU Council would thus be able to make decisions on the whole range of activities in the external relations of the Union (trade, the CFSP and defence).

Some of the questions posed earlier were answered in the proposal. There would be a need for political control and strategic direction, a capacity for analysis, sources of intelligence and relevant strategic planning. The paper opted for a permanent body consisting of representatives with political/military expertise, an EU military committee and an EU military staff including the EU Situation Centre. An interesting new point on the arrangements with NATO and its non-EU European members was the reverse side of this coin: all EU member states should be able to participate fully in European operations drawing on NATO assets and capabilities.

The European Council of Cologne of 3-4 June 1999 confirmed this line of thought by adopting a presidency report on strengthening the CFSP by a common EU policy on security and defence. It expressed the conviction "that the Council should have the ability to take decisions on the

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[25] The German proposal from the meeting of EU foreign ministers in Eltville on 13-14 March 1999 is reproduced in Chaillot Paper No. 47 (Rutten, 2001), op. cit., p. 17.

full range of conflict prevention and crisis management tasks defined in the Treaty on European Union",[26] i.e. the Petersberg tasks. Decisions to act would be taken within the framework of the CFSP according to appropriate procedures in order to reflect the specific nature of decisions in this field. The exact formulation of the declaration at St Malo was repeated: the Union must have the capacity for autonomous action backed up by credible military forces, the means to decide to use them and a readiness to do so in order to respond to international crises. The only difference was that in Cologne the words "without prejudice to actions by NATO" were added. Moreover, the need to undertake sustained efforts to strengthen the industrial and technological defence base was recognised, "which we want to be competitive and dynamic". On the transfer of the WEU to the EU the Council took a step back under the guise of their determination to launch a new step in the construction of the European Union. It only managed a cumbersome formula: the General Affairs Council was tasked "to prepare the conditions and the measures necessary to achieve these objectives including the definition of the modalities for inclusion of those functions of the WEU which will be necessary for the EU to fulfil its new responsibilities in the area of the Petersberg tasks";[27] therefore, no full merger, only a transfer of functions.

The sensitive issue of the participation of non-EU member states was taken forward with the statement "that all participants in an EU-led operation will have equal rights in respect of the conduct of that operation, without prejudice to the principle of the EU's decision-making autonomy, notably the right of the Council to discuss and decide matters of principle and policy".[28] In the report of the German presidency, non-EU European NATO members were promised satisfactory arrangements to ensure their fullest possible involvement in EU-led operations, building upon existing consultation arrangements within the WEU. The latter phrase, taken from the Washington summit, would later be used by Turkey in demanding more than the WEU arrangements. Linguistically they had a point, as 'building upon' suggested something additional, but in practice their demand was difficult to meet: in the WEU the associate members and

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[26] See European Council, Presidency Conclusions of the European Council in Cologne, 3-4 June 1999(a).

[27] The Petersberg tasks defined in 1992 included humanitarian and rescue missions, peacekeeping and the role of combat forces in peace-making (i.e. peace enforcement).

[28] See European Council (1999a), op. cit.

partners participated in the regular WEU Council, but that would be unlikely in the General Affairs Council of the EU. Neither the EU nor NATO allow non-members in their regular council meetings and devised special bodies for meetings with other countries.

NATO summit in Washington

On 24 April 1999, NATO marked its 50th anniversary and admitted three new members: the Czech Republic, Hungary and Poland. The decision was clearly a political one, for during the cold war a country that did not border on any other NATO member would have had a slim chance of joining the Alliance. Times had changed and NATO had elaborated a new strategic concept ready for approval. But again events in the Balkans had changed the security environment. Just as the 1994 summit that had been highjacked by the Bosnian crisis, so was the 1999 session dominated by Kosovo. Three weeks later the bombing of Serbia began, leaving the public in the new member countries somewhat puzzled. Having thought that they were joining a defensive alliance, they were immediately involved in offensive action, for Hungary even one that was on its doorstep.

The summit saw the fundamental security tasks of NATO as providing a stable Euro-Atlantic security environment in which no country would be able to intimidate or coerce any other through the threat or use of force, consulting on any issue that affects their interests, along with deterrence and defence against any threat of aggression. Key words for the enhancement of security and stability were 'crisis management' and 'partnership'. Like its predecessor of 1991, the new strategic concept provided little guidance for defence planning beyond generalities, such as deployability and mobility, survivability and sustainability, incorporating logistics and force rotation, and the need to have a limited but militarily significant proportion of ground, air and sea forces capable of reacting rapidly. A new but not further-defined essential operational capability was called 'effective engagement capability'. The overall size of the allies' forces would be kept at the lowest levels consistent with the requirements of collective defence and other Alliance missions and their peacetime geographical distribution should ensure a sufficient military presence throughout the territory of the Alliance.

While these are all laudable objectives, for the most part they are difficult to quantify, which is not surprising in a situation where large-scale conventional aggression was deemed highly unlikely, although "the

possibility of such a threat emerging over the longer term exists".[29] Instead, the security of the Alliance remained subject to a wide variety of military and non-military risks that were multi-directional and often difficult to predict. These included uncertainty and instability in and around the Euro-Atlantic area and the possibility of regional crises at the periphery of the Alliance, which could evolve rapidly. An effort to be more specific became stranded in a list of generalities: ethnic and religious rivalries, territorial disputes, inadequate or failed efforts at reform, the abuse of human rights and the dissolution of states. It remained unclear under what circumstances these risks and challenges would provoke a military response.

One area in which, under the influence of the Kosovo crisis, the speed of events overtook the NATO bureaucracy was the acceptance of the ESDP as an element of the common foreign and security policy. The summit's final communiqué was more forthcoming than the strategic concept prepared earlier. The latter did not go beyond the notions of the Berlin communiqué of 1996 and only mentioned them briefly. Para. 53 stated that NATO's command structure would be able to undertake command and control of the full range of the Alliance's military missions, at times through the use of deployable combined and joint HQs, in particular combined joint task force (CJTF)[30] headquarters, to command and control multinational and multi-service forces. It added that:

> It will also be able to support operations under the political control and strategic direction of either the WEU or as otherwise agreed, thereby contributing to the development of the ESDI within the Alliance, and conduct NATO-led non Article 5 crisis response operations in which Partners and other countries may participate.[31]

In para. 58, dealing with the need to work closely together given reduced force levels and constrained resources, a reference to the European Security and Defence Identity (ESDI) was added, almost as an afterthought to pacify suspicious critics:

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[29] The text of the final communiqué of the NATO Washington summit on 24 April 1999 is reproduced in NATO, *The reader's guide to the NATO summit in Washington,* NATO Office of Information and Press, Brussels, 1999(a) (ISBN 92-845-0132-6).

[30] In the term combined joint task forces, 'combined' stands for multinational and 'joint' refers to inter-service.

[31] See NATO, *The Alliance's Strategic Concept,* Doc. 0773-99, NATO Office of Information and Press, Brussels, 1999(b).

> The detailed practical arrangements that have been developed as part of the ESDI within the Alliance contribute to close allied co-operation without unnecessary duplication of assets and capabilities.[32]

It sounded as a statement of fact. One could only hope it was true. Earlier, in para. 30, the standard reference to ESDI (which "will continue to be developed within NATO") appeared, a process requiring close cooperation between NATO, the WEU and, if and when appropriate, the EU. The reference was followed by a positive assessment:

> It will enable all European Allies to make a more coherent and effective contribution to the missions and activities of the Alliance as an expression of our shared responsibilities; it will reinforce the transatlantic partnership; and it will assist the European Allies to act by themselves as required through the readiness of the Alliance, on a case-by-case basis and by consensus, to make its assets and capabilities available for operations in which the Alliance is not engaged militarily under the political control and strategic direction either of the WEU or as otherwise agreed, taking into account the full participation of all European Allies if they were so to choose.[33]

This sounded positive, but was not sufficiently innovative to keep up with the new momentum of the ESDP. The final communiqué of the Washington summit was much more forthcoming. It acknowledged "the resolve of the European Union to have the capacity for autonomous action so that it can take decisions and approve military action where the Alliance as a whole is not engaged". And it took an important step in defining "ready access by the EU to the collective assets and capabilities of the Alliance for operations in which the Alliance as a whole is not engaged militarily" as follows:

a) assured EU access to NATO planning capabilities able to contribute to military planning for EU-led operations;

b) the presumption of availability to the EU of pre-identified NATO capabilities and common assets for use in EU-led operations;

c) identification of a range of European command options for EU-led operations, further developing the role of the deputy SACEUR[34] in

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[32] Ibid.

[33] Ibid.

[34] The Supreme Allied Commander Europe (SACEUR), whose headquarters are in Mons, Belgium, was formerly called the Supreme Headquarters Allied Forces Europe (SHAPE) but now the Allied Command Operations. The other major

order for the incumbent to assume fully and effectively his/her European responsibilities for such operations; and finally,

d) the further adaptation of NATO's defence planning system to incorporate more comprehensively the availability of forces for EU-led operations.

The Council in Permanent Session was tasked to approve these arrangements, but owing to Turkish opposition, which sought to link agreement to more extensive participation in ESDP decision-making, it would take until 16 December 2002 before the NATO ministerial session could approve the 'Berlin Plus' arrangements, which allowed the "fullest possible involvement" of non-EU members of NATO with the ESDP.

NATO action in Kosovo

The escalation of the crisis in former Yugoslavia had all the trappings of a Greek tragedy. Events were predictable and seemed inevitable, only the magnitude and barbarity of the conflict exceeded what people thought possible in a civilised Europe. They harboured the potential for a much larger conflagration involving all countries in the region, either directly or by proxy. The first act saw fighting between Serbs and Croats – particularly in the Vukovar area – to be followed by the second act, the eruption in Bosnia-Herzegovina. The third act was likely to be the explosion of Kosovo, which would lead to the horrific scenario of the disintegration of Macedonia and the neighbouring countries fighting over the pieces. The first three acts unrolled as feared; the last one could be contained, but barely.

In 1995 the Bosnian crisis came to a head with Serbians holding UN Protection Force (UNPROFOR) soldiers hostage, the massacre at Srebrenica and finally NATO air strikes against Serbian military installations. The Dayton Peace Accords of that year had ended the war but did not achieve the structure of a comprehensive peace going beyond the confines of Bosnia. The agreement brokered by Richard Holbrooke owed much to the last-minute concessions made by Yugoslavian President Slobodan Milosevic and his willingness to sign on behalf of the demurring Bosnian Serbs. In return, Mr Milosevic expected that the Dayton Accords had brought him a guarantee of territorial integrity for what remained of the Federal Republic of Yugoslavia (FRY), including Kosovo. For a while the

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NATO Command is the Allied Command Transformation at Norfolk, Virginia, formerly called Supreme Allied Command Atlantic (SACLANT).

situation in the province seemed to improve after Mr Milosevic and Kosovar President Ibrahim Rugova agreed in a surprise meeting in 1996 to end the six-year Albanian boycott of schools. High hopes were shortlived, however, and further rapprochement was not forthcoming. In 1998 the decade of peaceful action came to an end with the violent entry of the Kosovo Liberation Army (KLA) and its demand for independence.

On 13 October 1998, US Secretary of State Madeleine Albright summoned the NATO foreign ministers to approve the Activation Orders (ACTORDS) that would allow air strikes against Serbian targets in Kosovo and elsewhere in the country if Serbia failed to comply with UN Security Council Resolution 1199 on withdrawing its forces from the field of battle. The US obtained the ACTORDS, but the same evening the North Atlantic Council despatched Mr Holbrooke to Belgrade in a last attempt to avert war. Once again he seemed to succeed. Mr Milosevic promised to withdraw his army and a substantial part of his security forces and NATO did not have to act. In Brussels the permanent representatives heaved a sigh of relief as, in spite of the sabre rattling with the orders, NATO was still poorly prepared for an air campaign. Mr Milosevic was aware of NATO's lack of readiness, which probably hardened his stance when in 2001 NATO again issued a threat. If so, he misjudged NATO's determination to uphold its credibility and take military action, if necessary even without an explicit mandate from the Security Council.

The October agreement provided for the entry into Kosovo of 2000 unarmed OSCE 'verifiers' to monitor a ceasefire, backed up by an 'extraction force' stationed outside the province. The OSCE also would have a role in negotiating the details of restoring autonomy for Kosovo. The agreement had something in it for the Kosovars in allowing the refugees to come down from the hills and, more importantly, in taking a step – albeit feeble – towards internationalisation of the conflict through OSCE. Serbia was allowed to keep 10,000 police and 11,000 army personnel in Kosovo, which proved to be a recipe for disaster. The KLA predictably made progress in extending its area of control and had several skirmishes with the Serbs. A Serbian massacre of 40 Albanian-speaking Kosovars outside the village of Racak brought matters to a head.

In January 1999 a draft arrangement for Kosovo was presented at a conference in Rambouillet, which to the chagrin of Mr Milosevic was accepted by the Kosovars. They would not have obligatory links with Serbia, but only some with the Yugoslav Federation. On the final status a

mechanism was proposed that would take into account the will of the people after three years. A side-letter from Madeleine Albright to KLA leader Hashim Thaci indicated that this mechanism would include a referendum, which made him give up his demand for immediate independence. The Serbs obtained some safeguards for their minority, including a disproportionately large representation in the Kosovo parliament. For Mr Milosevic the stumbling block was the presence of a NATO military force to guarantee the constitutional and political provisions. His refusal led to a 78-day air war in June 1999, but not before two NATO Generals, Wesley Clark and Klaus Naumann, had travelled to Belgrade to issue an ultimate warning.

President Bill Clinton offered three aims for the bombing campaign: to demonstrate the seriousness of NATO's purpose, to prevent further violence against the Kosovar population and to preserve regional stability. These aims were not immediately realised. Against all expectations, President Milosevic managed to cleanse north-western Kosovo from Albanians and at the same time consolidate his authority at home. Those who had argued that he would give in after a few days of bombing, or was looking for an excuse to do so, were proven terribly wrong. In fact, Kosovo almost became a case of 'the operation was successful, but the patient died' as the region was being emptied of Albanians. Some 750,000 refugees crossed the borders with Albania and Macedonia. The bombing campaign ran out of targets (and the remaining ones became a political issue) and the lack of troops on the ground to turn the tide became painfully obvious. The situation was exacerbated by public denials in Washington of any intention to despatch ground forces, thus lessening the impact on President Milosevic and facilitating his military planning. Once again, democracies proved to be poor war strategists in publicly foreclosing options that might constrain the enemy. Only the Blair government in London was prepared to keep the option of ground forces alive.

The North Atlantic Council did not give a free hand to their military authorities. Different levels of delegation were determined for the selection of targets to be bombed. The Supreme Headquarters Allied Powers, Europe (SHAPE) prepared the target lists and handed them to the countries contributing aircraft to the campaign. Although President Chirac publicly prided himself at having vetoed certain targets, the difficulty that arose in the Council was about the move to the next level of delegation, not about individual targets. This situation was greatly resented by the US military, which later, during the war in Afghanistan, cited the Kosovo experience as a reason for not involving NATO more closely. In any case, the US air force

delivered most of the ordnance and few allies made a substantial contribution. Among them, only the Netherlands' aircraft were able to shoot down a Serbian plane, because they possessed an adequate stand-off weapon.

The Kosovo intervention was a fundamental departure from past practice. For the first time since Europe settled down to the Westphalian system, action was taken to change the status quo in an operation to restore human rights to part of a sovereign country. No wonder that champions of sovereignty, such as Russia and China, opposed it. A Russian draft resolution in the UN Security Council (UNSC) obtained only 3 votes out of the 15. Public support for the bombing action was widespread throughout NATO. The extent of human suffering and violation of human rights was so massive that it restrained political reactions to the long duration of the bombing before it yielded results. The absence of casualties among the pilots participating in the air campaign and the avoidance of concrete involvement in ground operations were contributing factors. Negative reactions came from Russia, which suspended cooperation with NATO and its Parliamentary Assembly.

More widespread was the debate on the question of legitimacy in the absence of a clear UNSC mandate and whether grave violations of human rights could provide their own legitimacy for coercive action. On the whole this legitimacy was recognised in a situation where the Security Council did not live up to its primary responsibility for peace and security by taking concrete action. That was also the case in Canada, usually most insistent on UN mandates. Its Director-General for the International Security Bureau, Paul Meyer, told a group from the NATO Parliamentary Assembly (NPA) that there was no division in the Security Council on objectives, and that the problem arose over the use of force. In his view humanitarian imperatives did override the sovereignty issue and the lack of a formal mandate. All parties supported the bombing, but for the Canadian government it was a difficult decision.[35] In Greece the situation was different, but the outcome the same. The population was overwhelmingly against the bombing, but the government nevertheless managed to join the NATO consensus. On the whole, NATO again had scored a point as a credible organisation capable of effective action. Its indirect effect was the realisation among Europeans that the possession of

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[35] Remarks by Paul Meyer noted by the author in Ottawa on 11 August 1999.

at least some military capabilities would be necessary to give clout to the CFSP. After the intervention the Security Council regularised the situation by installing the UN Mission in Kosovo (UNMIK) and the interim administration in Kosovo, but most of the military were supplied by NATO.

In the words of the International Institute of Strategic Studies (IISS),[36] Kosovo constituted a highly significant precedent, which established more firmly in international law the right to intervene on humanitarian grounds, even without an express mandate from the UN Security Council. The position of the NATO states suggested, however, that such intervention would be lawful only when

- a grave emergency threatens widespread loss of life;
- that emergency's existence is authoritatively confirmed; and
- action by the Security Council is blocked by (the threat of) the veto.

These criteria of the IISS, valuable as they were for circumscribing acceptability, did not provide guidance on how deeply the international community might be allowed to intervene in the internal affairs of a country. That issue would arise in the Iraq war, where regime change became identical with the search weapons of mass destruction (WMDs).

On 3 June, Mr Milosevic finally gave in and met all five conditions NATO imposed on him: all Serbian troops would leave; NATO could move into Kosovo; the refugees could return; an international administration would be created; and the foundation was laid for a political solution. Why did he yield? Ivo Daalder saw three reasons: the bombing campaign, although precision-guided and without much collateral damage, started to hurt his economic infrastructure and began to affect the tactical situation on the ground; from mid-May he had to reckon with a positive US decision on a ground war; and finally, Russia could not substantially help him.[37] A fourth reason might have been that by not continuing the fight he had better chances of staying in power.

What lessons can we draw from the Kosovo experience? For Europe, Kosovo constituted the second case in which intervention was possible only with the active participation and leadership of the US. The British shift

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[36] See the International Institute of Strategic Studies, *IISS Strategic Survey 1999-2000*, Oxford: Oxford University Press, 2000, p. 26.

[37] See Ivo Daalder, *Winning Ugly*, The Brookings Institution, Washington, D.C., 1999.

towards a European defence policy is assumed to be caused by exasperation over the Kosovo crisis. NATO won, but barely, and failed to prevent a humanitarian catastrophe. Fortunately, the refugees returned, but that was owing to the determination of the Kosovars. NATO had no proper plan and could not match its words with prompt military action. The internal debate on ground forces was counter-productive and the air campaign did not destroy the military targets: the Serbian troops were not isolated and were able to maintain their lines of communications. The doctrine established under President Josip Broz Tito against a possible Soviet invasion proved its value. At the time of the Rambouillet conference, NATO should have demonstrated resolve by pre-deploying its forces. Yet, after the summer of 1998 it would have been difficult to prevent a military conflict. A few months earlier, that might have been possible, because President Milosevic was not yet ready and the Kosovars not yet militant. Richard Holbrooke's October agreement was flawed, because it only constrained Mr Milosevic and did not demand anything from the KLA, which was bound to re-emerge as soon as Serbia withdrew. Then, in early November Mr Milosevic changed course, fired his chief of staff and the chief of the security forces and started 'operation horse-shoe' to squeeze the Kosovars out.

The EU from its side did not do well either. The conclusions of the European Council in Berlin were long on Mr Milosevic, but short on the bombing or other measures. In the end everyone was lucky that internal developments within Serbia led to the removal of President Milosevic and later to his despatch to The Hague tribunal. There was no consensus on the future of Kosovo and the political question was postponed. That was the difference with the Bosnian settlement, which ended with an agreement on how to run the place. In the case of Kosovo that was difficult, particularly because the UN Security Council still regarded the province as part of the FRY, even though the FRY had lost much of its meaning when Montenegro started its move to secede.

In a briefing to the NATO Parliamentary Assembly, Pieter Feith, then working in the NATO International Secretariat, drew nine lessons from the Kosovo operation:[38]

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[38] See Pieter Feith, Briefing to the NATO Parliamentary Assembly, Brussels, 20 February 2000.

1) A clear political consensus was needed to get rid of the security forces of Slobodan Milosevic, later to be extended to halting ethnic cleansing.

2) Clear and unambiguous messages were required.

3) NATO should be more politically involved than was possible in the G-7 and the Contact Group.

4) Constraints were needed to avoid collateral damage and casualties among own forces.

5) Room for diplomatic initiatives was required.

6) All options were to be kept open.

7) A permanent solution requires the agreement of the EU, the US and Russia.

8) The NATO strategic concept was validated with its emphasis on crisis management, flexibility and its PfP approach.

9) Crisis management required the sustainability of a long-term presence.

Five years later, the western Balkans remains an important test-case for the EU, not for an 'hour of Europe' but for a concerted effort in conjunction with others. Gradually the EU has taken over most of the operations from NATO, except Kosovo. The diminishing risk of a massive explosion leaves more scope for non-military measures, but their success does not rest assured. The component parts remain dependent upon external aid, have weak government and extensive mafia practices, and struggle with problems of national identity and state-building. On the EU side, the inclusion of five different free trade areas in the draft stability and EU Association Agreements should become more coherent.

For a while after the surrender of Slobodan Milosevic the EU could hide behind the formula of 'standards before status' following the report by the Independent Commission for Kosovo under the chairmanship of Richard Goldstone.[39] It made conditional independence subject to substantial improvements in the human rights situation of the minorities and the return of refugees. Tolerance was seen as the political and moral condition for self-determination. The other point was the exclusion of changes in the borders of Kosovo and the guarantee that it would not constitute a threat to its neighbours. The report was important in making

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[39] See the Independent International Commission on Kosovo, *Kosovo Report*, Oxford: Oxford University Press, 2000.

clear to the Kosovars that they had to do better, but the emphasis on standards was running out of steam when it became clear that the ultimate status was bound to impact on the standards applying to minorities. The status quo was becoming untenable. In 2005 the Contact Group took a step forward by indicating what Kosovo would not be, but did not specify what it could be. There would be no return to the situation prior to 1999, nor would Kosovo accede to another area or be partitioned. In June the UN Security Council supported the secretary-general's proposal to review the implementation of standards and to report his views on a political solution in September, to be followed by negotiations between the parties. After the summer former Finnish President Martti Ahtisaari was put in charge of the negotiations.

There seems to be growing acceptance of Kosovar independence, possibly subject to certain conditions. For the short term, however, a major obstacle has been created by the Serbian minority in Kosovo, which refused to participate in elections and have thus made inter-ethnic dialogue virtually impossible. Conditional independence seems a likely outcome, yet will meet considerable opposition from Serbia, which talks of "more than autonomy but less than independence", as well as from Russia and China.[40] Others fear a domino effect on Montenegro and Republica Srpska, but the former might declare its independence anyway, while the latter does not have the geographical conditions for statehood. Ten years after the Dayton agreement a draft constitution is on the table to unify Bosnia as one country with a single president and a strong central government. Belgrade has reacted ominously, however, and stated that any dictated solution risks destabilising the region.[41]

The respected Kosovar-Albanian politician Vetton Surroj has suggested a provisional solution with an ambiguous *de facto* independence: statehood without internationally recognised sovereignty. This formula has been erroneously compared with the Taiwan model, because the People's Republic of China denies statehood to Taiwan and threatens the use of force if Taipei declares independence. It maintains the fiction of 'one country, two systems'. In Kosovo we face the dilemma of how long the population will go along with an ambiguous status and remain a *de facto*

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[40] See Tim Judah, "Kosovo's Moment of Truth", *Survival*, Vol. 47, No. 4, 2005, pp. 73-84.

[41] See the *NRC Handelsblad*, 21 November 2005.

protectorate. Serbia is proposing a partition of Kosovo, which has always been rejected by Pristina. Although the moment of truth has been postponed by the death of President Rugova, who was much respected for his peaceful means, it is nevertheless approaching fast.

Towards European military capabilities

In the run-up to the European Council in Helsinki, much work was done, on both the institutional arrangements and – with substantial British input – the capabilities needed. Prior to St Malo and Cologne some European capabilities existed, headquarters as well as forces. The Eurocorps in Strasbourg combined units from France, Germany, Spain, Belgium and Luxembourg. It was followed by the European Rapid Operation Force (EUROFOR) in Florence with Italian, French and Spanish participation. In the naval field the southern European countries established the European Maritime Forces of the southern members of the WEU (EUROMAFOR). They were grouped together as the Forces Answerable to the WEU or 'FAWEU' along with other existing capabilities and were given a dual purpose – European in addition to their availability to NATO. This applied to the German–Netherlands Corps and the UK–Netherlands Amphibious Force. The WEU Planning Cell established in Brussels in 1992-93 attempted to tie them into generic scenarios, but did not establish a force-planning process comparable to that of NATO, nor command arrangements overarching the headquarters of the respective multinational forces. It was assumed that any deployment would take place under the command of a lead nation. Multinationality was in fashion. NATO had created the Allied Rapid Reaction Corps (ARRC) under British command, to be followed by the German-Polish-Danish Corps in Schwerin and the Baltic battalion. Multinationality stressed common responsibility and solidarity, but also avoided the risk of one country being singled out for retaliation. In the UN context multinationality implied fairly small contributions, often not more than a reinforced battalion. Now the Bosnia and Kosovo experiences pointed in the direction of a corps-sized European capability.

At a British–Italian summit in London on 19-20 July 1999, a joint proposal was made to set criteria for improved and strengthened European defence capabilities and effective performance, including a time table for European-wide goals but also for national capability objectives to achieve this European aim. More specifically, it was proposed to organise a peer review by at least one joint foreign affairs/defence ministers' meeting of the General Affairs Council per EU presidency in order to measure

progress against the agreed criteria. These efforts were also to be underpinned by the detailed work on NATO's Defence Capabilities Initiative (DCI). Finally, a road map was to be drawn up for more effective European defence procurement.

French President Jacques Chirac wrote to the new Finnish EU presidency on 22 July 1999 to submit an action plan to follow up the decisions taken in Cologne. He proposed to give to the Political and Security Committee the tasks previously fulfilled by the Political Committee of Political Directors from capitals (COPO) and to have it chaired by the incoming High Representative/Secretary-General of the Council, Javier Solana. It would be composed of ambassadors different from the permanent representation to NATO, thus ending the 'double-hatting' several countries had adopted for the WEU. The new committee would deal with both CFSP and defence matters. Next to it a military committee would function consisting of the military representations to the NATO Military Committee (for those countries that belonged to the Alliance). Here double-hatting would apply, which, if implemented, constituted an improvement over the WEU practice where several countries including France had a separate military delegate to the WEU. Unfortunately, it was not put into practice and Belgium and France kept separate military representatives to the EUMC.

On 15 November 1999, Lord George Robertson, Secretary-General of NATO, weighed in with a speech to the NATO Parliamentary Assembly in Amsterdam. He regarded a more mature transatlantic security relationship as a high priority. The division of labour in the Kosovo campaign had been militarily necessary, but was politically unsustainable in the longer term. "The European Security and Defence Identity is no longer just an attractive idea; it has become an urgent necessity. Simply put, the burden of dealing with European security crises should not fall disproportionately on the shoulders of the US".[42] Lord Robertson turned the three D's of Madeleine Albright with their negative connotation (no decoupling, no duplication and no discrimination) into positive principles, the three I's of improvement in European defence capabilities; inclusiveness and transparency for all allies; and the indivisibility of transatlantic security, based on our shared values. ESDI should not mean 'less US' but 'more

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[42] The text of Lord Robertson's 15 November 1999 speech in Amsterdam is reproduced in Chaillot Paper No. 47 (Rutten, 2001), op. cit., p. 60.

Europe', and hence a stronger NATO. In response to questions he said, and would repeat on many other occasions, that he was less interested in 'wiring diagrams' than in concrete capabilities.

On the same date, the General Affairs Council met for the first time with EU defence ministers and discussed the preparation of progress reports for the European Council in Helsinki of 10-11 December. As Finland was not a full member of the WEU, Luxembourg assured its presidency during this semester. The Council also authorised Javier Solana to accept the office of Secretary-General of the WEU in addition to his duties as Secretary-General and High Representative for CFSP. Mr Solana assumed this office on 25 November after expiration of the mandate of José Cutileiro.

The WEU Ministerial Council met on 22-23 November and took note of the audit of assets and capabilities for European crisis-management operations and approved its recommendations. In principle, Europeans had the available force levels and resources needed to prepare and implement military operations over the whole range of Petersberg tasks. Yet, a number of gaps and deficiencies were identified. Priorities with regard to collective capabilities were strategic intelligence and strategic planning. For operational capabilities the recommendations were similar to NATO's Defence Capabilities Initiative availability, deployability, strategic mobility, sustainability, survivability, and interoperability and operational effectiveness. In addition, the Europeans needed to focus on multinational joint operation and force HQs. The WEU military were tasked to assess the time constraints in the build-up of ad hoc operation and force HQs for immediate and rapid reaction based on relevant force packages.

The emphasis on force packages was most useful, for increasingly the link between HQs and forces was slackening, as also seen in NATO. During the cold war a NATO commander knew precisely which forces would be available for the defence of a sector and could train them together. Today, assignments are looser and reflect more an inventory of forces to draw upon. This arrangement might enhance flexibility, but has the drawback of taking more time in assembling and moulding the different units into a coherent force. Moreover, the question should be answered as to whether the flood of multinational HQs has not reached excessive proportions. That could not be said of operation HQs providing overall direction. Here NATO had the advantage with SHAPE, while the Europeans only possessed national capabilities in the UK (Northwood) and France (Creil); Germany, and later Greece and Italy, announced the creation

of a similar capability. In the meantime, the WEU was preparing a command post exercise with NATO, to practice and validate crisis-management procedures and consultation arrangements in the event of a WEU-led operation using NATO assets. In addition, work was done on concepts for civil-military cooperation and for medical support. Actual field missions were limited to the MAPE in Albania and, at the request of the EU, the WEU Demining Assistance Mission (WEUDAM) in Croatia.

Almost a year after St Malo, another Anglo-French summit took place on 25 November 1999 in London, and again set the scene for the European Council. The Helsinki summit was called upon to:

- set itself the goal of being able to deploy rapidly and then sustain combat forces, which are militarily self-sufficient up to corps level with the necessary command, control and intelligence capabilities, logistics, combat support and other combat service support (up to 50-60,000 personnel) and appropriate naval and air combat elements. All these forces should have the full range capabilities necessary to undertake the most demanding crisis-management tasks; and

- urge the member states to provide the capabilities to deploy in full at this level within 60 days and within this package to provide some smaller rapid response elements at very high readiness. As such a deployment needs to be sustainable for at least a year, it will require further deployable forces (and supporting elements) at lower readiness to provide replacements for the initial force.

Northwood and Creil were made available as options to command EU-led operations and would include multinationalised cells to include officers from other EU partners. Moreover, the UK would be ready to provide British forces for the Eurocorps HQ (now turned into a rapid reaction force) for specific operations, just as the Eurocorps nations had already done for the British-led Rapid Reaction Corps of Allied Command Europe.

The word 'autonomous', which had caused so many ripples on transatlantic waters, re-appeared, but with a different angle. While St Malo had bluntly called for the capacity for autonomous action, the London declaration softened it by wanting to give the European Union "the autonomous capacity to take decisions and, where the Alliance as a whole

is not engaged, to launch and to conduct EU-led military operations".[43] The same phrase would appear five days later in the Franco-German summit in Paris on 30 November 1999. That meeting was less conceptual and concentrated on some important aspects of equipment cooperation. It proposed to create a European transport command and envisaged the development of a common transport aircraft. A less specific paragraph dealt with their determination to combine intelligence resources, including those in space in order to constitute common European capabilities.

The Helsinki Headline Goals

The European Council meeting in Helsinki on 10-11 December 1999 agreed the Headline Goals in line with the Anglo-French proposals:

> Member States must be able, by 2003, to deploy within 60 days and sustain for at least one year military forces of up to 50.000-60.000 persons capable of the full range of Petersberg tasks.[44]

At the same time it was decided to establish a non-military crisis management mechanism to coordinate the various civilian means and resources, in parallel with the military ones, at the disposal of the Union and the member states.

The decision was based on two presidency reports, one on *Strengthening the Common European Policy on Security and Defence* and the other on *Non-Military Crisis Management of the European Union*.[45] The latter stated that in establishing a rapid reaction capability urgent consideration would be given to developing civil police capabilities. The former contained the new permanent structure of political and military bodies in Brussels: a Political and Security Committee (PSC), the Military Committee (EUMC) and the Military Staff (EUMS). Pending their activation, interim bodies were to be set up as of March 2000 and military experts would be seconded to the Council Secretariat. In the interim period Mr Solana was asked to make full use of the WEU assets for the purpose of advising the Council. In its meeting of 14-15 February 2000, the General Affairs Council formalised the interim arrangements. The PSC represented a new departure by including both political and military matters. It replaced the

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[43] The Declaration of the Anglo-French summit in London on 25 November 1999 is reproduced in Chaillot Paper No. 47 (Rutten, 2001), *supra*, p. 77.

[44] See European Council, Presidency Conclusions of the European Council in Helsinki, 10-11 December 1999(b).

[45] Ibid.; see Annexes 1 and 2 of Annex IV.

COPO that had coordinated the European political cooperation, but had not dealt with security issues except the OSCE agenda. Thereby the cooperation lost some of the personal touch, which the first German participant, Berndt von Staden, described as the *Direktintegration der Aussenämter*,[46] but the increasing workload required a permanent presence in Brussels. This meant the appointment of another ambassador in Brussels – for many countries the fourth after their permanent representatives to NATO and the EU and the bilateral ambassador to Belgium. The newcomer was the most junior and had to accept that his/her colleagues in the Committee of Permanent Representatives to the EU (COREPER) assumed the right to have a look at his/her collective effort before it was passed on to the foreign affairs council, currently called the General Affairs and External Relations Council (GAERC). The members of the EUMC were present at the meetings of the PSC, but did not have the equal status they enjoyed in the WEU Council. The Treaty of Nice formalised these institutional arrangements.

Well before Helsinki and at British initiative, a detailed description of the composition and tasks of the new bodies was drawn up. The final version of this 'toolbox paper' was presented to the EU defence ministers' meeting at Sintra on 28 February 2000, and provided the basis for the Capabilities Commitment Conference to be held in November. It also contained an annex on terminology. The paper is too detailed to be analysed here. Only an example will suffice. The build-up of a crisis was analysed as follows. In the early stages the focus of EU activities was likely to be on diplomatic, humanitarian and economic crisis-prevention measures. As the crisis emerged, the Military Staff would provide an initial military situation assessment to the Political and Security Committee through the chairman of the Military Committee, drawing on all available information sources, including NATO. On this basis the PSC, together with the Policy Planning and Early Warning Unit and other relevant elements of the European Council Secretariat would develop a political/military framework for addressing the crisis. Once this framework had been agreed by nations, the PSC, through the chairman of the Military Committee, would task the military staff to develop and prioritise military strategic options. These could include options for operations with or without the use of NATO assets and capabilities. The military committee and military staff

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[46] *Direktintegration der Aussenämter* refers to the direct integration of the foreign ministries.

would be the permanent components of the EU decision-making structure for all types of EU-led operations. Other planning capabilities and command structures would be drawn from NATO or from national or multinational sources. The chain of command would encompass three levels. The Operation Commander, appointed by the PSC/Council, would need a military-strategic operation HQ to plan the mounting and conduct of a joint operation. A wide-ranging operation would also require a theatre HQ to plan at theatre level and conduct the operation in the field. Finally, supporting and component HQs would be required, depending on the circumstances. Obviously, for less complex operations these arrangements could be simplified, as had been the case for past WEU operations.

For EU-led operations using NATO assets, the deputies of SACEUR and SHAPE were identified as the primary, although not the only, candidates for operation commander and military-strategic operation HQ. If no NATO assets were used, planning and command requirements would draw on existing national and multinational HQs available to the EU, multinationalised by adding officers from participating nations.

Elaboration under the Portuguese presidency

The year 2000 started with high expectations. Not in the false belief that it was the first year of the third millennium, for in fact it was the last year of the second. In my note to the annual Dolder meeting in Zürich, I expressed the hope that the EU would be able not only to clear up the 'leftovers' of Amsterdam, but given the economic upturn in France and Germany to also take the decisions needed to get ready for the biggest enlargement in its history. It seemed necessary to enhance the efficiency of decision-making in the Council by more delegation to permanent bodies in Brussels, including a permanent committee for foreign policy, security and defence issues and authority for the high representative to formulate policy options independently from the EU presidency. It would also be important to give more effect to the anodyne strategies that had been adopted for relations with Russia, Ukraine and others and to allow a measure of majority voting for their implementation as envisaged at the Amsterdam European Council in 1997.

Fortunately, the so-called 'neutral countries' had not blocked the designation of Javier Solana as Secretary-General of the WEU alongside his other tasks for the EU, providing an immediate personal link between the two organisations. Nevertheless, it seemed that integrating them fully might still cause considerable problems, primarily of membership.

Therefore, it appeared preferable to transfer the Western European Union 'lock, stock and barrel' to the CFSP and reduce treaty changes to a minimum. It was held that the collective defence guarantee of Art. V should remain, albeit only for those countries willing to adhere to it. Abolishing the article would be a step back in terms of European solidarity, even though its implementation had never been envisaged outside the NATO framework. In my view, the WEU clause was an additional guarantee among its signatories, strengthening the more discretionary article in the Washington Treaty establishing NATO. In any case, by 2000 collective defence had lost much of the priority attached to it during the cold war.

What mattered most now was to enhance the credibility of the CFSP by giving it some military capabilities for European-led operations in cases where NATO (which meant the US in particular) did not want to be involved as an organisation. Some argued that without US participation the Europeans would not be able to do anything, but that would depend on the nature and place of the conflict. On their own continent the Europeans already provided the bulk of the available forces. The problem seemed to be more political than military: Who would provide political guidance for the conduct of the operation? Presumably, the PSC (or COPS as the French acronym) would take over from the permanent WEU Council and the CFSP ministerial council would be reinforced with defence ministers when dealing with military operations. The full participation of the associate members of the WEU (originally Norway, Iceland and Turkey, but after NATO's enlargement also the Czech Republic, Hungary and Poland) in the activities should be maintained, because without their consent the development of a constructive relationship with NATO, avoiding unnecessary duplication through allowing the use of NATO assets for EU-led operations, would not be possible.

The Helsinki Headline Goal was a political commitment, but contained insufficient detail for the purposes of military planning. Questions remained as to where the EU-led task forces might be expected to operate, with whom and how often. The Portuguese presidency took matters several steps further. On 14 March 2000 the interim PSC and six days later the General Affairs Council, reinforced with ministers of defence, agreed that a 'food for thought' paper entitled the *Elaboration of the headline goal* should be the basis for future work. It outlined a systematic step-by-step approach:

Step 1.   an outline of the overall strategic context for the European Union's Helsinki Headline Goals;

Step 2.   articulation of key planning assumptions; these contained the premise that the most demanding operations would occur in and around Europe;

Step 3.   selection of planning scenarios that describe illustrative situations for the employment of EU-led forces;

Step 4.   identification of the force capabilities required to support the scenarios;

Step 5.   development of illustrative force packages that have the required capabilities and conformation of their effectiveness against the planning scenarios; and

Step 6.   using these different force packages to define the full range of requirements implicit in the headline goal.[47]

Finally, national contributions were to be compared against the Headline Goal and capability gaps defined.

During the Portuguese semester ministers of defence were closely involved. After their meeting at Sintra they attended two meetings of the General Affairs Council, on 20 March and 13 June, and participated as usual in the WEU ministerial meeting in Porto on 15-16 May. At the European Council at Santa Maria da Feira on 19-20 June the different strands were brought together in a presidency report with four appendices. The earlier European Council in Lisbon on 23-24 March had reviewed progress but not taken any decisions. It mentioned that as a first priority for civilian crisis management a preliminary database on civil police capabilities had been established and that the European Commission was preparing a proposal to set up a Rapid Reaction Fund.

The Helsinki European Council had invited the incoming Portuguese presidency to make proposals for the modalities of consultation and participation (or both) that would allow the non-member states concerned to contribute to EU military crisis management, and for principles for consultation with NATO. Finally, an indication was requested as to whether or not treaty amendment was judged necessary.

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[47] The 'food for thought' paper on *Elaboration of the headline goal* that was discussed at the General Affairs Council of 20 March 2000 is reproduced in Chaillot Paper No. 47 (Rutten, 2001), op. cit., p. 102.

At Feira, it was understandable that much attention was given to the Capabilities Commitment Conference scheduled for November. It was thought that the interim military body – the future EUMC – should propose the elements encompassing the Headline Goal by identifying the capabilities necessary for the EU to respond to the full range of the Petersberg tasks. As the last one of a series of guidelines, it was stated that non-member countries would be encouraged to contribute through supplementary commitments. In fact, Turkey, Poland, the Czech Republic and Hungary had already offered them, although the arrangements for their participation and for consultation with NATO had not yet been clarified. Discussions in Brussels had been acrimonious and did not produce much. The Presidency Conclusions could not say more than that the modalities for EU–NATO relations had been identified in four areas, covering security issues, capability goals, the modalities for EU access to NATO assets and the definition of permanent consultation arrangements. Ad hoc working groups would pursue them, and the deputy SACEUR would participate in the second and third areas.

The EU further proposed to hold a series of meetings in a single, inclusive structure in which all the 15 countries concerned (the non-EU European NATO members and the EU accession candidates) could "enjoy the necessary dialogue, consultation and cooperation with the EU".[48] Their joy must have been tempered, however, by the first guideline, stating that the development of the Headline Goals should be conducted by the 15 member states of the European Union "in accordance with the decision-making autonomy of the EU as well as the requirements regarding military efficiency". The point on decision-making was appropriate – the WEU arrangements had similarly provided decision-making powers only for its full members – but the reference to military efficiency was gratuitous.

The proposed structure distinguished between routine and operational phases, both for the interim period and the permanent arrangements. The operational phase was further divided into discussions considering options for action and the subsequent period when the Council decided to launch an operation and an ad hoc Committee of Contributors was set up. A formula had already been developed for the latter in Helsinki, the operational phase *stricto sensu*:

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[48] See European Council, Presidency Conclusions of the European Council in Santa Maria da Feira, 19-20 June 2000(a).

> Upon a decision by the Council to launch an operation, the non–EU European NATO members will participate, if they so wish, in the event of an operation requiring recourse to NATO assets and capabilities.
>
> They will, on a decision by the Council, be invited to take part in operations where the EU does not use NATO assets.
>
> Other countries who are candidates for accession to the EU may also be invited by the Council to take part in EU-led operations once the Council has decided to launch such an operation.[49]

Later, at the Feira European Council meeting on 19-20 June 2000 the following statement was added:

> Those countries (of both categories) which have confirmed their participation in an EU-led operation by deploying significant military forces, will have the same rights and obligations as the EU participating Member States in the day to day conduct of that operation.[50]

Despite the establishment of the Committee of Contributions, the Council/PSC would be responsible for the political control and strategic direction of the operation. The paper did not specify how these two bodies would interact. For instance, would all contributing countries participate in the PSC when it discussed the strategic direction?

The routine arrangements envisaged a minimum of two meetings in a format of the EU plus 15 non-member countries (EU+15) during each presidency, supplementing the meetings held as part of the reinforced political dialogue on CFSP matters. Equally, a minimum of two meetings would be organised in the EU+6 format for the non-EU European NATO members. For the Czech Republic, Hungary and Poland, who figured in both formats, this would mean at least four meetings. Finally, a meeting at ministerial level would be organised with the 15 and with the 6. The Council or PSC could organise additional sessions and in the event of a crisis, dialogue and consultation would be intensified, presumably mainly through the PSC.

In terms of information this plethora of meetings would seem to be sufficient. That, at least, was the impression of President Clinton before the December 2000 ministerial session of the North Atlantic Council. He wrote to the Turkish government to advise them to accept the EU–NATO

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[49] See the Helsinki European Council, 1999(b), op. cit.

[50] See the Presidency Conclusions of the European Council in Santa Maria da Feira, European Council, 2000(a), op. cit.

relationship. It was to no avail, because Turkey felt, with some justification, that the proposed arrangements were less than what it had obtained in the WEU. There, it had been able to attend at least half of the regular Council meetings, with the possibility to propose items for the agenda and to participate in decision-shaping. As the WEU worked by consensus (albeit of the full members) no votes were taken. Associates and observers could not block the consensus, but their participation gave them status and the ability to make their views known before a consensus was reached, and thus to join in a process of 'security through participation'.

Feira was also supposed to give an indication of whether or not the Treaty on European Union should be amended to take account of the new institutions for the new security and defence policy. The legal service of the Council Secretariat was of the opinion that the Presidency Conclusions of Cologne and Helsinki could be implemented without it being legally necessary to amend the treaties, with a caveat:

> However, such amendments would be necessary if the intention is to transfer the Council's decision-making powers to a body made up of officials, or to amend the Treaty's provisions regarding the WEU. Furthermore, it is for member states to determine whether amendments to the Treaty would be politically desirable or operationally appropriate.[51]

As a result, the presidency suggested that the issue of treaty revision – which was particularly supported by the Netherlands – should continue to be examined between the Feira and Nice European Councils.

Capabilities commitment during the French presidency

In preparation for the Commitment Conference, ministers of defence met at Ecouen on 22 September 2000. In his summary as Chairman, the French Minister of Defence Alain Richard, gave a somewhat new description of the Petersberg tasks. With four basic hypotheses or scenarios all of them could be covered: separation by force of belligerent parties; prevention of conflicts; humanitarian aid; and finally, the evacuation of nationals. He also reported that in order to be able to deploy 60,000 persons in all possible configurations of use, the objective should be greater, probably nearer 80,000. For air forces the aim was between 300 and 350 fighter planes and

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[51] The Presidency Report to the European Council is reproduced in Chaillot Paper No. 47 (Rutten, 2001), op. cit., p. 125.

for naval forces 80 ships. As three examples of prognoses in coping with deficiencies the minister mentioned the command capacity acquired by the Eurocorps for the terrestrial component, demonstrated in the Kosovo Force () by General Juan Ortuno and his staff. The satellite imaging interpretation of the WEU at Torrejon would be transferred to the EU. And six members had officially declared their commitment to a military transport aircraft developed by Airbus. Alongside came the Franco–Netherlands initiative on maritime strategic transport. At the end, his statement gave an encouraging indication of a more flexible attitude towards the European Parliament. While France had never previously accepted any competence of the European Parliament in defence matters, Alain Richard would inform its committee on foreign affairs and human rights of the progress made at Ecouen.

The WEU held its last substantive ministerial session in Marseilles on 13 November 2000. With the transfer of most of its functions to the EU, the WEU would keep some residual functions and structures as from 1 July 2001, particularly those arising from Arts. V (the automatic military assistance clause) and IX (the annual report on its activities to the WEU Assembly). What these functions would entail in practice remained to be seen. If there were no activities, because these had been transferred to the EU, the report was likely to be empty. The collective defence obligation was closely tied to NATO and did not involve a separate military organisation. This question mark also cast doubt on the continued value of the WEU Assembly, although it remained the only parliamentary forum for politico-military aspects based on a treaty. The future dimension of parliamentary involvement with European security is discussed in a separate section of this study.

In Marseilles it was decided to suspend the consultation mechanisms with the EU and NATO. The Satellite Centre and the Paris-based Institute for Security Studies would be continued in the form of agencies within the EU, the Institute also being tasked to undertake the activities of the Transatlantic Forum. The EU would take over the MAPE mission on police cooperation with Albania. The Demining Assistance Mission in Croatia would be continued under the responsibility of Sweden until the expiration of its mandate on 9 May 2001. The Western European Armaments Group would continue to carry out its function of reflection and cooperation in the armaments field, which was extended to Austria, the Czech Republic, Finland, Hungary, Poland and Sweden. The Western European Armaments Organisation was increasing its target for funding research and technology projects.

At Feira the preparatory work for the Capabilities Commitment Conference had been entrusted to the Headline Goal Task Force. When EU–NATO relations and cooperation were addressed, the group was reinforced by NATO experts. By July 2000 a first catalogue was produced, which after several updates was discussed under the chairmanship of the Alain Richard at the Capabilities Commitment Conference in Brussels on 20-21 November 2000. In his opening statement he made an additional point on the area of deployment of European forces. Thought had to be given to distant operations, often in a degraded environment, when the defence of European interests or the support of UN decisions so demanded. The catalogue itself remained confidential, but a declaration was issued explaining its purpose. The process of developing more effective military capabilities without unnecessary duplication "does not involve the establishment of a European army".[52] In addition to the 60,000 persons – up to army corps level – the member states would rapidly develop "collective capability goals, particularly in the field of command and control, intelligence and strategic transport". By 2003 the Union would be able to carry out the full range of Petersberg tasks, but certain capabilities needed to be improved both in quantitative and qualitative terms in order to maximise the capabilities available to the Union. The Force Catalogue constituted a pool of more than 100,000 persons and some 400 combat aircraft and 100 vessels, substantially more than had been envisaged at Ecouen a month earlier. Meeting the collective capability goals would be a process continuing beyond 2003. Some countries had already announced decisions in this field, to

- develop and coordinate monitoring and early warning military means;

- open existing joint national headquarters to officers coming from other member states;

- reinforce the rapid reaction capabilities of existing European multinational forces;

- prepare the establishment of a European air-transport command;

- increase the number of readily deployable troops; and

- enhance strategic sea-lift capability.

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[52] See European Council, Military Capabilities Commitment Declaration, 21 November 2000(c).

The declaration avoided overly ambitious statements. By 2003 the Union would "gradually be able to undertake Petersberg tasks in line with its increasing military capabilities". Further improvement of the availability, deployability, sustainability and interoperability of forces would be needed, if the requirements of the most demanding Petersberg tasks were to be fully satisfied. Efforts also needed to be made in specific areas, which were only indicated in very general terms, such as "military equipment, including weapons and munitions, support services, including medical services, prevention of operational risks and protection of forces". Concerning strategic capabilities, emphasis was put on multinational solutions and the pooling of resources. Among the projects in this field figured the well-known areas of strategic mobility and intelligence. Under the heading "strengthening essential operational capabilities" resources were listed for search and rescue in operational conditions, means of defence against ground-to-ground missiles, precision weapons, logistical support and simulation tools.

The declaration stressed the importance of an evaluation mechanism, both in quantitative and qualitative terms. The Nice European Council of December 2000 was expected to approve its broad outline, based on a consultation method among the member states. Those participating in NATO's integrated military structure would rely on its defence planning and review processes and the involvement of NATO experts in the Headline Goal Task Forces would be continued (the so-called 'HTF Plus'). EU commitments would, however, be less binding than in NATO: their political and voluntary nature was recognised, which implied that member states were responsible for any adjustment of the commitments in the light of the evaluation made.

The paragraph on relations with NATO seemed satisfactory. It held that EU commitments should be compatible with the force goals accepted in NATO, and the EU capability goals and NATO's Defence Capabilities Initiative should be mutually reinforcing. Unnecessary duplication of procedures and information requests should be avoided. The contribution of the 15 non-member countries would be taken into account.

Nice was not nice

The Nice European Council of 7-9 December 2000 was the longest in history but devoted little attention to security and defence. Most of its time was taken up by the 'leftovers' of Amsterdam relating to voting power in the Council, the number of seats in the European Parliament and the

composition of the Commission, all of them in the perspective of the future enlargement of the EU with at least 10 new member states. Whether the solutions found for these issues would really make the Union ready for enlargement remained a moot question. The best that could be said of the outcome was that without their resolution it would have been difficult to continue the process. On the ESDP the Council approved the presidency report plus annexes and decided that the Union should be made operational in this field no later than the meeting in Laeken in December 2001. At the insistence of the Netherlands the EU Treaty was amended to include a new Art. 25 providing a basis for the new Political and Security Committee. It reads:

> Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

> Within the scope of this Title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations.

> The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, without prejudice to Article 47.[53]

The new Art. 25 with all its safeguards of Council competence and its reference to other articles[54] did not deserve a prize for clarity. Nor did it explain that with the establishment of the PSC the Union entered the field of defence policy and that behind the facade of this new body a military committee and a military staff would function. Nevertheless, it would have been odd if this committee at ambassadorial level had not been given a basis in the Treaty. The most important part of the new text was the

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[53] See the Treaty of Nice, OJ C 80, 10 March 2001.

[54] Art. 207 deals with COREPER, the committee of permanent representatives that is charged with the preparation of Council work and the Council Secretariat. Art. 47 states that the Treaty creating the European Community does not detract from the Treaties establishing the European Communities.

provision of decision-making power, albeit delegated, for the PSC. This was new in the Union, where thus far ministerial presence in a Council session (if necessary in another format) had been required to take valid decisions. In the NATO and the WEU permanent councils the ambassadors had always been authorised to take decisions on behalf of their ministers.

To many, the inclusion of the new Art. 25 came as a surprise. It had been a persistent demand of the Netherlands, which had gathered little support. Most countries did not see the need and some feared complications in their domestic ratification processes. Its inclusion has been blamed for the negative result in the Irish referendum on the Treaty of Nice, but it seemed exaggerated to hold this vague and unreadable article alone responsible for a failed campaign in favour of the Treaty.

Acceptance at Nice was seen as a French gesture towards the Dutch to gain their approval of the changed distribution of votes in the Council for reaching a qualified majority. The Dutch did not comply and spoiled their relationship with Belgium by insisting on obtaining one vote more. Germany was the big winner by agreeing to the same number of votes as France and the UK (29), but seeing its preponderance in terms of population rewarded by 99 seats in the European Parliament. A qualified majority would be reached if three criteria had been fulfilled: 71% of the votes and a majority of the member states, who represented at least 62% of the population. Germany would also do well under this population criterion.

The Nice Treaty also eased the conditions of enhanced cooperation by removing the possibility of a veto and extending it to the CFSP. It opened the door for a group of countries to request permission from the Council to enter this strengthened form of cooperation in the implementation of a joint action or a common position in the context of the CFSP. Art. 27b stated explicitly, however, that "It shall not relate to matters having military or defence implications". This meant that such questions would have to be dealt with by all 15 members of the EU together. The only flexibility remaining would be 'constructive abstention' by the country finding itself in an isolated position. Another positive point was the transfer of parts of the intergovernmental third pillar relating to asylum and immigration policies to the communitarian first pillar.

On the substance of the common ESDP the Presidency Conclusions at Nice simply stated that the European Council approved the presidency report plus annexes. In fact, it was a whole bunch of annexes with annexes to annexes and appendices to annexes. They codified everything that had

been agreed earlier and added very little. On the Capabilities Commitment Conference it was said that the member states had signalled their determination to make the necessary efforts to improve their operational capabilities further in order to carry out in full the most demanding of the Petersberg tasks. On police capabilities the papers stated that by 2003 member states should be able to provide 5,000 officers, 1,000 of whom to be deployed within less than 30 days. The new permanent bodies were formally established: the Political and Security Committee, the Military Committee and the Military Staff – and their terms of reference were spelled out. The PSC would have a central role in the definition and follow-up to the EU response to a crisis. The text continued: "The Secretary General/High Representative, who may chair the PSC, plays an important role in providing impetus. He also contributes to the effectiveness and visibility of the Union's action and policy".[55]

Under the heading "Inclusion in the EU of the appropriate functions of the WEU" the report confirmed the EU's intention of assuming the crisis-management function of the WEU. The arrangements with NATO and other countries appeared somewhat haphazardly throughout the presidency report. Early on, it reiterated the importance of assured access to NATO's planning capabilities and of the presumption of availability of NATO's assets as envisaged at the Washington summit. The report continued that that the EU "will call on NATO for operational planning of any operation using NATO assets and capabilities". That was very definitive. It was less so for the situation in which the EU examined options for conducting an operation: "the establishing of its strategic military options can involve a contribution by NATO's planning capabilities". A positive note was struck on the joint meetings of the interim PSC and the North Atlantic Council in mid-September and early November, which were said to have marked a decisive stage in the development of a relationship of confidence between the EU and NATO. The two secretaries-general also concluded an Interim Security Agreement.

Section VI of the report detailed the arrangements for the consultation and participation of other potential partners. Contrary to what this heading might have suggested, it did not deal with non-EU NATO members – which were discussed in a separate annex – but with countries

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[55] See European Council, Presidency Conclusions of the European Council in Nice, 7-9 December 2000(b).

such as Russia, Ukraine and Canada, with which the EU maintained a political dialogue. Information would be exchanged once every six months by the PSC troika. In a crisis, when a military crisis-management operation was considered, this framework would be used for consultations on "possible participation by potential partners", either by the troika or by the secretary-general/high representative.

Annex V to Annex VI dealt with the arrangements concerning non-EU European NATO members and the candidates for accession to the EU. These repeated the decisions of Helsinki and Feira and the proposed meeting schedule. Accordingly, each country might appoint a representative from its mission to the EU to follow the ESDP and act as interlocutor with regard to the PSC. They might also accredit an officer to the EU Military Staff who would serve as a contact for possible involvement in military activities; further, a minimum of two information meetings would be held during each presidency. During NATO/EU exercises specific liaison arrangements would be organised.

For crisis situations, a distinction was made between the pre-operational phase, in which consultations would be intensified at all levels, and the operational phase where other countries were taking part in the actual operation. During the former, the discussions at the politico-military expert level would ensure that potential contributors would be informed of the European Union's intentions and the military options being envisaged. At the start of the operational phase, when the Council had selected the strategic military options the operational planning work would be presented to those who had expressed their intention in principle to take part in the operation. This would enable them to determine the nature and volume of their contribution once the Council had approved the concept of operation. Having taken into consideration the outcome of the consultations with non-member countries, they would formally be invited to take part according to the arrangements agreed at Helsinki. For non-EU European NATO members, this meant, as explained earlier, the right to participate in an operation using NATO assets and the possibility, on a decision by the Council, to be invited to join operations when the EU does not use these assets. Other candidate countries to the European Union might also be invited once the Council had decided to launch the operation. For autonomous operations the non-EU allies may send liaison officers to the Military Staff to exchange information on operational planning and the contributions envisaged at the time (which would later to be specified during meetings with the operation commander). Then the participants would confirm the level and quantity of their national contributions at the

Force Generation Conference, following which the operation would be formally launched and the Committee of Contributors established.

Malaise in 2001

The year 2001 started with a feeling of malaise. The summit at Nice had done the bare minimum, but failed in a convincing move to modernise the Union in time for the coming enlargement. The intergovernmental reflexes seemed to grow by strengthening the European Council, a tendency to reduce the Commission to the role of supervising the internal market and increasing bilateralism. With the coming of the euro, it was held that more progress should be made on moving from market integration to the integration of policies. One conference participant sighed with an adage of Goethe: "the creation of definitive order is not given to mankind, and God does not seem to want it"!

The picture was not more positive on the NATO side. The usual meeting of NATO parliamentarians in February was confronted with stalemate on most issues. My own summing up went as follows: the transfer of NATO assets to the ESDP was blocked by Turkey, which wanted to have assured participation in the planning of operations before agreeing to assured EU access to NATO assets. The country followed a literal interpretation of the Washington summit, which had indicated arrangements building on those existing in the WEU, while in fact they would obtain less than the full participation in the activities agreed during the Maastricht conference. The absence of progress raised the question of whether we could still talk of a European identity within NATO or switch to the ESDP and its relationship with NATO consultations. Moreover, no one talked anymore of the CJTF concept that had looked so promising at the 1994 summit, both for NATO itself and for the relations with the EU.

On Kosovo there was no clarity about its future status. Enlargement was not yet formally discussed out of fear of diverging promises. In Washington no one was in favour of a next round in 2002 and the Pentagon stressed that the summit of 1999 did not say that there would be further enlargement.[56]

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[56] On 31 January 2001, Senator Gordon Smith, Chairman of the Subcommittee on European Affairs, told the NPA Defence and Security Committee that there would not be 50 votes in favour of enlargement. Senator Joseph Biden was worried about the ESDP coming at the expense of NATO: "We often talked about 'wither NATO',

On the US National Missile Defence programme a discussion of the implications for the allies was postponed until the US had made up its mind on the preferred system. The leader of the US delegation, Douglas Bereuter, voiced his frustration about EU policies, which on trade increased non-tariff barriers and on security seemed to wish to put NATO under UN auspices. The balance of argument was restored somewhat by Christoph Heusgen, then Director of the Policy Unit under Javier Solana, who pointed at the maximum effort to ensure transparency. He did not see much duplication with NATO except the Military Committee (largely made up of the MilReps to NATO – only Belgium and France and the non-NATO countries had separate delegates) and the EU Military Staff of some 130 people engaged in strategic planning as distinct from tactical and operational planning. If NATO assets were required, NATO planning was needed; if an HQ of the lead nation would not do it, then Northwood in the UK or Creil in France would. In this connection, G.G. Messervy-Whiting of the EUMS pointed out that the EU was planning to do some things that NATO would not undertake, such as the evacuation of citizens, humanitarian relief and blue helmet operations. A remarkably positive note was struck by Norway, which had issued the following declaration in Oslo:

> Norway strongly supports the development of a common European security and defence policy. We are convinced that it will serve our security interests in the broadest sense. That is why we have made clear that our planned Armed Forces Task Force for International Operations, totalling some 3500 personnel will be available to EU led operations. We will make active use of the structures established for third-party cooperation at the Nice summit in December, as well as actively pursuing our bilateral contacts.[57]

The American Permanent Representative to NATO, Alexander Vershbow, stated at the same meeting that the new administration was in favour of the ESDP if it was done right and aimed at two goals: increasing European capacity to contribute to NATO operations and providing a more effective option for the European nations to take the lead if NATO was not engaged. The key to success would be the acquisition of capabilities that should have been procured long ago, such as secure communications, the suppression of enemy air defences and all-weather capabilities for aircraft.

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but only recently questioned our motives". State Department official James Dobbins gave continuing support to the process, but the Heritage Foundation was against a 'big bang' entry of a large number at once.

[57] Minister Thorbjørn Jagland issued the declaration on 5 February 2001.

He admitted that the Europeans were contributing 85% of the military presence in Bosnia and Kosovo, but also noted that this was stretching their capabilities to the limit. He added that sometimes he had the impression that autonomy had become a goal in itself and felt that all operations, whether or not using NATO assets, needed a degree of inclusiveness.

Two weeks later, the WEU Institute of Security Studies in Paris organised a seminar on the same issues.[58] Alfred van Staden made the point that an effective security and defence policy needed more than just capabilities; it needed swift and timely decision-making as well. Bill Hopkinson regarded the ESDP as both an obstacle and a driving force. It was an obstacle in raising transatlantic tensions that had repercussions in Europe, certainly if the ambition was to form a counterweight to the US. The EU would need political institutions capable of giving clear instructions to the military, but also the will to share burdens and to inflict casualties if necessary. The driving force was the need for serious effort to reach the declared aims and to function in practice. Working together would create understanding and team spirit and ultimately interdependence. Joint formations had the advantage of risk- and burden-sharing. If the defence task was taken seriously, it would promote integration, but the outcome might be messy, with some doing more than others. And those who did most would also be entitled to have the most say. In that sense a directorate might develop. Finally, Mr Hopkinson startled the audience with his assertion that Kosovo had been NATO's first, but also last war.

On 11 September 2001, the perception of security really became multi-dimensional. The old threats were still there, but internal and external dimensions were blurring. Weapons of mass destruction were becoming accessible to non-state actors, who were not susceptible to traditional deterrence. Security in the streets and at airports became a primary concern of the individual citizen. This was more the case in the US than in Europe, which had lived with various forms of terrorism for decades. For the US its new vulnerability was a shock, exacerbated by the feeling that Americans were singled out by the terrorists in their uncompromising fight against the Western way of life. In that respect the attacks on the World Trade Center as the symbol of globalisation and on the Pentagon as the base of American military power had great symbolic

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[58] The seminar was held on 1 March 2001.

value. The attacks changed the world, but also the debate on the legitimacy of intervention, the capabilities needed to deal with a phenomenon that was only partly military, the problem of failed states and the challenges of post-conflict reconstruction. NATO had to review its Defence Capabilities Initiative and the EU its shortfalls. Much of the force planning of the past bore little relevance to the new demands for special forces, unmanned aerial vehicles (UAVs) and police-type units to engage in peace-building. NATO was not asked to fight against the Taliban, but if it had been, it would have had preciously few forces for that type of operation.

EU defence ministers met in Brussels on 19-20 November 2001 for a Capabilities Improvement Conference (CIC) and approved the Helsinki Force Catalogue 2001, which gave a survey of the commitments, and the Helsinki Progress Catalogue 2001, which analysed in detail the shortcomings in realising the Headline Goals. Obviously, the lessons of 11 September and the subsequent operation in Afghanistan could not be included, so some of the objectives would have to be amended later. More importantly, they agreed upon a European Capabilities Action Plan (ECAP) to overcome those shortfalls. The initiative for this plan was taken in September by the Netherlands Minister of Defence Frank de Grave. In a note to the Netherlands parliament he gave the following reasons for the plan:[59]

a) to increase the effectiveness of the European defence efforts;

b) to apply a bottom-up approach on the basis of existing forms of cooperation among member states;

c) to demonstrate the importance of coordination among member states and with NATO; and

d) to enhance political and public support for the capability improvements.

On the basis of these premises member states could commit themselves, individually or in groups, to reinforce certain capacities, thus applying the lead nation concept. These considerations found their way into the Action Plan that was included in the CIC declaration which itself figured as Annex 1 to the presidency report on the ESDP submitted to the European Council at Laeken in December 2001. Both the declaration and the report suffered from an ambiguity caused by the statement at Nice a year earlier that the ESDP should become operational not later than the

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[59] See Frank de Grave, Letter to the Second Chamber of the Netherlands parliament, Doc. 26900, No. 43, 7 December 2001.

Laeken summit. The Headline Goals themselves, however, would only be fulfilled in 2003. As a result the notion of becoming 'operational' referred primarily to the organisational set-up of the PSC, the MC and the EUMS. Moreover, it was not made clear what the EU would be capable of doing immediately. Both documents confirmed that by 2003 the EU would be able to perform the entire spectrum of the Petersberg tasks. Nevertheless, efforts should be made to allow the EU to conduct in an optimum manner the most complex operations and to reduce the limitations and possible restrictions on their size, deployment and risk levels.

By now, force levels were sufficient with a reservoir of more than 100,000 persons, approximately 400 combat aircraft and 100 ships. Additional commitments had been made in terms of rocket launchers, communications, electronic warfare, armoured personal carriers, bridge-laying and engineering, and naval air capabilities had been committed as well as search and rescue and precision-guided armaments. Under efforts still to be made figured fairly general requirements such as the protection of deployed forces, the capacity to engage enemy forces and logistics. Similarly, the readiness of ground forces had to be improved as well as their operational mobility and flexibility. No wonder that several ministers left the CIC meeting a bit perplexed as to the real situation. This feeling was enhanced by the continuing imprecision of the types of mission envisaged under the 1992 Petersberg spectrum. The role of combat forces in crisis management as set out in the Petersberg tasks could entail virtually everything, but a corps-size capability was by definition limited and should not be compared with the overall capabilities of NATO. Close scrutiny of the Capabilities Improvement Chart in addition to the Action Plan, even in its simplified format, confirmed that progress in filling the gaps did not fully justify the jubilant tone of the report. In November 2001, out of a total of 144 required military capabilities, 94 had been made available. A year later 10 capabilities had been added, leaving 30 deficiencies, especially in the area of the 'heavy' Petersberg tasks involving enforcement action. Several countries had plans for meeting them, but their implementation would take them well beyond 2003.

In spite of these perplexities, one had to recognise real progress. Numbers were raised and gaps closed, either entirely or partially. At the command level a sufficient number of headquarters had been offered and at the levels of the overall operation, the field headquarters and component commands had been added. Air and sea transport were able to deploy an

initial entry force and strategic mobility had also improved. There was still a shortage of large transport aircraft and roll-on ships, but this could be remedied by joint use and organised recourse to commercial means. The most persistent shortcomings were seen in assisting strategic decision-making, since the means of intelligence, target acquisition, surveillance and reconnaissance remained limited. Whether a shortfall also existed in the field of command, control, communication and intelligence (C4SI) would depend on a qualitative analysis that was still to be completed.

Finally, the contributions of the non-EU members of NATO and the candidates for EU membership were also updated and included in a supplement to the Forces Catalogue. In line with the agreement made earlier at the Göteborg European Council, a detailed mechanism would be developed to follow and evaluate the military capabilities, taking into account the NATO defence-planning process and the planning in the context of the Partnership for Peace initiative.

The Turkish issue

As explained earlier, Ankara took the words in the Washington Summit Declaration literally, that the arrangements with the EU should "build on" those developed in the WEU, but it was already difficult enough to produce something similar to the WEU practice where all associates and observers attended regular meetings of the Permanent Council. Neither in the EU nor in NATO was such participation ever made possible. A solution of the Turkish problem remained on the agenda during nearly the whole of 2001. Thanks to persistent efforts of the US and UK with some assistance from the Netherlands, a compromise was finally found in December 2001. An important demand from Turkey was a statement that the ESDP should not be used against a NATO ally. The impossibility of invoking NATO or the EU against a member of the other organisation had been agreed in the WEU meetings of 1991-92 inviting Greece to join. As such it was nothing new, even though Greece never felt happy with it. In any case, the situation was different in the EU, which did not have the automatic military assistance clause of the WEU Treaty.

More difficult was the Turkish demand for participation in decision-making to launch an operation and for the option to join in. Here, the WEU provisions could not be taken as a precedent, as the *full participation in the activities* of the associate members that was promised in Maastricht did not cover the unqualified right to participate in the implementation of decisions taken by the member states. In principle, this participation would

be possible "unless a majority of the member states, or half the member states including the presidency, decide otherwise".[60] The December 2001 compromise stated that in case of an operation in the vicinity of a non-EU ally or touching on the security interests of that country, it would be consulted before the Council took a decision on issuing an invitation to participate. Turkey could live with this formula, but now Greece did not agree and needed time for reflection. As long as the participation issue had not been resolved, the Netherlands maintained its reservation on § 29 of the report for Laeken declaring the ESDP operational. Its government stated that before agreement, the EU–NATO relationship had to be clarified, including in particular the mechanism of making available NATO assets for EU operations. As the EU would have difficulty in mounting enforcement action on its own, NATO capabilities would remain indispensable for some considerable time. Inasmuch as EU capabilities improved, it would be able to conduct more complex operations. Therefore, in each case in the future an assessment should be made of the ability of the EU to execute the operation.

The Turkish problem lingered on. First it delayed implementation of the Berlin Plus agreement. Later, after the accession of Cyprus and Malta, it made it impossible for EU-NATO consultation to go beyond the agreed operations in the Balkans and Darfur. We shall return to this problem later.

Focus on civilian crisis management during the Swedish presidency

Sweden took over the EU presidency from France shortly after the Nice summit in 2000 and focused on the civilian aspects of crisis management. In May 2001, a conference was held at the level of directors-general of police to work out the Feira mandate to establish a capability of 5,000 persons, 1,000 of whom should be available within 30 days. Subsequently, the European Council of Göteborg on 15-16 June 2001 adopted an action plan and on 19 November a ministerial Commitment Conference took place in Brussels. The latter raised the objective for the short-notice capability from 1,000 to 1,400. Several countries offered integrated units capable of rapid reaction and interoperability, while others promised individual officers.

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[60] See Willem van Eekelen (1998), op. cit., p. 126 and ch. 6. The same formula was used for calling a meeting of the Permanent Council, which was exclusively restricted to the full members.

Events in former Yugoslavia had shown how important police units were in the grey area between combat forces and civilian administration. The WEU had gained some experience in Mostar and later in the police element in Albania (MAPE). In describing the mission, the declaration issued by ministers in November stated that the EU could support police operations conducted by the UN or OSCE and also conduct autonomous actions. Coordination with the UN, OSCE and the Council of Europe was envisaged to avoid duplication. Qualitatively, the mission could be to reinforce local police or to substitute them, which meant that all forms of specialisation should be included. Similarly, the commitments could include both civilian police and those with a military status like that of the Gendarmerie in France, the Carabinieri in Italy, the Guardia Civil in Spain and the Marechaussee in the Netherlands.

The Action Plan was taken forward by a new police unit within the EU Council Secretariat, which would be able to plan and conduct police operations. Its terms of reference included integrated planning and coordination, assessment of a situation, preparation of exercises and the establishment of cadres and legal rules. Göteborg also established the principles and modalities for the participation of the non-EU NATO members and the EU candidate countries.

The EU did not stop at the creation of a police capability and formulated concrete objectives relating to the rule of law and civil protection in the context of civilian aspects of crisis management. At Feira four priority areas had already been defined: policing, reinforcing the rule of law, and strengthening civil administration and civil protection. The Göteborg European Council added to their rationale: strengthening the rule of law was a precondition for the consolidation of peace and security; "international efforts to strengthen, and where necessary re-establish, credible local police forces cannot be fully successful if the police are not complemented by a functioning judicial and penal system".[61] Equally the EU should play a catalysing role within international organisations to promote the definition of a clear mandate for international missions involving officials and experts in the field of rule of law, as well as the elaboration within the UN framework of a "basic, directly applicable, interim legal framework, to be used when the international community faces an institutional and normative vacuum". The summit agreed that the

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[61] See European Council, Presidency Conclusions of the Göteborg Council of 15-16 June 2001, SN200/1/01, REV 1, Brussels, 2001(a).

EU should develop a comprehensive range of agreed standards for selection, training and equipment of officials and experts in the field of the rule of law, and modules for their training.

These points were taken up by the Belgian presidency, which identified the following elements to be taken into account:

- The first element involves recognition and observance of the local law. In the case of temporary absence or inapplicability of local law, recourse might be made to an interim legal framework to be elaborated within the framework of the UN. The report noted in particular experience gained in Kosovo and East Timor. It would be desirable that the police officers and judiciary had a good knowledge of the law and procedures of the region in crisis but should also possess the means to guarantee in the field the enforcement of the fundamental rights that are the pillars of the rule of law. For this purpose "an identification of the relevant international standards to be taken into account could be helpful".[62]

- The EU was willing to assist the UN in elaborating a basic interim legal framework. "Such a framework should reconcile the particular nature of crisis management operations in the field of security and respect for human rights and allow in the long run a restoration of the rule of law."

At the end of 2001 it was still too early to judge the significance of the cooperation in this field. It certainly constituted an important area of activity. In Kosovo most experts agreed that police, judges and prisons were more urgently needed than the military after Mr Milosevic had been replaced. Yet, the problems were considerable in winning the trust of the local population in the administration of justice by foreigners. Moreover, it remained to be seen to what extent an interim legal framework could be developed in the abstract and be imposed rapidly in a concrete crisis situation. Nevertheless, it was worth trying. The same applied to the mechanism for reinforced cooperation in the field of emergency intervention for the protection of civilians, which was agreed by the Council on 23 October 2001.

Belgium assumed the presidency during the second half of 2001, which saw three important events: the terrorist strike of 11 September, which is discussed in the next chapter and led to an extraordinary

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[62] See the Presidency Conclusions of the Laeken European Council (2001b), op. cit.

European Council meeting expressing solidarity with the US and adopting an action plan for the fight against terrorism; the Capability Improvement Conference of 19 November identifying 55 capability shortfalls and proposing a new capability review system; and the Laeken European Council of 14-15 December, which opened the way towards the Convention on the Future of Europe by drawing up a list of questions and appointing Valéry Giscard d'Estaing as its Chairman. The Convention is discussed in chapter 4.

3. Terrorism Strikes – Adjustment to New Threats

The world is full of paradoxes and so is Europe. Who, before 11 September 2001, would have believed that NATO would invoke Art. V and its collective defence implications for the first time in response to a terrorist attack on the US? Previously the dangers of terrorism had been recognised in NATO's strategic concept but were generally regarded as one of the new 'risks and responsibilities' coming under Art. IV instead of the collective defence clause of Art. V. Who, before 11 September, would have expected France and Germany to solicit US requests for participation in the Afghan operations far outside the NATO area? In an entirely different area, who would have expected Germany to attempt tinkering with the stability pact on which the value of the euro depends? Indeed, the world was changing.

In the security field the invocation of Art. V was a brilliant initiative to show European solidarity with the unprecedented catastrophe in the US. For a brief moment it did more for transatlantic relations than any gesture or declaration in the past. The US speaker of the House of Representatives travelled specifically to Ottawa to thank the members of the NATO Parliamentary Assembly for their demonstration of solidarity. Yet, it raised several questions. First, the Netherlands permanent representative raised some eyebrows by delaying the Council in order to ask for instructions from his government. Second, the invocation was made dependent upon determination that the attack was directed from abroad. That confirmation came on 2 October. Third, some reticence was shown about the possible consequences: Would other terrorist attacks also fall under Art. V, and would the allies have to do everything the US asked? Presumably not, for the US National Security Strategy of 2002 defined terrorism broadly as "premeditated politically motivated violence perpetrated against innocents". This could not imply that every instance would lead to collective defence.

After the confirmation of the external origin of 9/11 a host of measures were taken: naval forces were deployed to the eastern Mediterranean as a 'backfill' operation to free US assets. AWACS aircraft were moved from Europe to Tinker Air Force Base in the US. The military authorities were instructed to draw up a concept for fighting terrorism. NATO was not involved in generating the forces for the International Security Assistance Force (ISAF), but would have been able to do so. Later NATO was requested to take command of the force.

The attacks of 11 September marked the first time that a non-state actor became a strategic threat and in an entirely new manner. The threat was directed against the Western way of living and did so in a frighteningly uncompromising manner: no demands, no negotiation, only destruction. Some were reminded of the anarchist attacks in Europe of a century earlier. How would this affect the security of the North Atlantic Treaty area? Previously, collective defence was thought to imply American leadership and command arrangements within NATO. That was also the understanding behind the European security and defence policy. At British insistence the ESDP would deal with crisis management only, while NATO would manage collective defence and could undertake crisis management if all its members including the US wanted to be engaged. That paradigm changed with the decision to leave the leadership of the Afghan war to the US, which would ask for contributions from the allies. François Heisbourg called this the 'don't call us, we'll call you' arrangement, which made many people impatient.

The concept of a 'coalition of the able and willing' had existed for peace-support operations since the fall of the Berlin wall. Usually there were more able than willing allies; this time the partners were willing, but the US did not attach much value to their ability to make a useful contribution. Most pledges were more symbolic than operationally useful. As a result the press questioned NATO's relevance during the December ministerial session in Brussels. And indeed, NATO did not seem the best framework to develop an anti-terrorist strategy, as it possessed no economic, police or judicial means necessary to develop a coherent approach. It also was questionable whether a NATO label would be helpful in an action in Central Asia.

There were good reasons for the paucity of requests: the US could do it all alone and was not keen to repeat the Kosovo recriminations over targeting. Moreover, special operations required personnel who had

trained together intensively and were confident that they could rely on each other. In NATO the special forces had never worked together before and for many countries had not even been identified as a force requirement. Another argument was that the operation was run by the US Central Command (CentCom), which had no links with NATO. Nevertheless, the fact remained that NATO was hardly involved and was limited to the exchange of information and some backfill replacement of US assets deployed to the Afghan theatre.

The training requirement plays an important role in all multinational units. From 22-28 May 2002, the EU conducted its first crisis-management exercise, CME 02, in the context of the ESDP. Its objective was to test and evaluate a range of procedures and structures and, more particularly, the framework within which the full range of EU civilian and military instruments should be coordinated as well as the interaction among EU institutions and member states in a crisis situation. At the end Mr Solana seemed satisfied with the results and concluded that the Union had acquired a body of procedures and concepts that enabled it to integrate military and civilian aspects of crisis management. In view of later squabbles over planning capabilities it was interesting to note his remark that the EU had demonstrated that it possessed adequate strategic planning capacities.

Comparing the capabilities of the EU and NATO in combating terrorism, the EU was better placed to take measures against internal terrorism but did little against the external threat. At first, the EU took the application of Art. V to mean that it could leave most of the crisis-management consultations to NATO and focused on non-military matters such as money-laundering, police cooperation, arrest warrants and harmonising maximum sentences for terrorist and other crimes. Its third pillar of justice and home affairs got a powerful impulse, which even seemed to overtake the second pillar of foreign and security policy in importance. As usual, the latter primarily dealt with post-crisis reconstruction. Many of its leaders resorted to an unsightly scramble to Washington and did little to forge a united response in the military field. The European Council at Laeken in 2001 even explicitly rejected a combined European input into the peacekeeping force for Afghanistan.

The US managed to build a coalition in a remarkably short time. Its purpose never was precisely defined, but focused on Osama Bin Laden and al Qaeda and subsequently on the Taliban for harbouring them. It was a

coalition against the terrorism of this form of Muslim fundamentalism, not against authoritarianism. It included regimes with few democratic credentials. Providing a new rationale after the capture of Bin Laden would not be an easy task. The Iraq crisis has postponed the answer, but the question remains as to how one can ever win a war against terrorism. One does not have to agree with everything Eric Hobsbawm wrote in his autobiography, defining himself as standing at a slight angle to the universe, to be struck by his comment, that America having won the cold war against the former USSR, implausibly decided on 11 September 2001 that the cause of freedom was again engaged on another life-and-death struggle against another evil but spectacularly ill-defined enemy.[63]

Unfortunately, after a successful beginning in Afghanistan, the quick military victory in Iraq failed to build the peace rapidly enough to turn the country around. The Europeans followed suit in putting terrorism first among the new threats to be countered, but did not see a direct link with Saddam Hussein, evil as his regime undoubtedly was. Admittedly, many of them were cynically sceptical about the objective of bringing democracy to the Middle East, but may eventually be persuaded if the government finally emerging from the elections in Iraq results in a reasonably effective government, able to stand on its own feet. Unfortunately, the threat of civil war is blurring that prospect and will perpetuate the need for foreign forces to maintain order. If there is one lesson from peace-support operations in the past, it is the need for a long, often very long, military presence in order to allow the situation to stabilise and to give civil society a chance to re-establish itself. Except for the Kuwait war, which restored the old government after the expulsion of Iraqi forces from its territory (and was more like a traditional inter-state war) all operations in failed states or ethnic and religious conflicts have proven to be of long duration and presented the dilemma of withdrawing too early or risking the sympathy for the occupying forces.

Policy implications

The immediate effect of the emergence of catastrophic terrorism was a stop to the declining trend of defence budgets, but new money did not go to old priorities. Intelligence-gathering and international cooperation among the

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[63] See Eric Hobsbawm, *Interesting Times – A Twentieth-Century Life*, London: Abacus, 2003, p. 404.

services, the adaptation of intervention forces (with priority given to special forces and the police) were the new beneficiaries. The UN Security Council unanimously adopted Resolution 1373 of 28 September 2001 against the financing of terrorist activities. The EU was pushed to make progress in the third pillar of justice and home affairs, where files that had been pending for years finally moved forward. An indirect effect on international affairs was the rescue of Pakistan from a slippery slope descending into Taliban-like conditions. NATO had to respond to the question of whether all terrorist attacks would lead to the invocation of Art. V or a certain order of magnitude would be needed to trigger an Alliance response. For the EU, strict observance of the principle that collective defence would be for NATO to undertake would in turn paralyse European action. But the US did not want to tie its hands to NATO in its Asian operations, and some European countries would have been reluctant to go there.

Both in NATO and the EU the longer-term policy implications had to be defined. What was the desired form of future coalitions for crises outside their immediate periphery? Was the ESDP already mature enough to operate that far out or should the focus be on making compact European contributions available to the organisation or lead nation most immediately involved? Would there be a new urgency in resolving the Israeli–Palestinian question and was there any chance left for doing so? Would the Afghan crisis finally be the end of the cold war period and result in a new relationship with Russia, even giving it a role in certain decision-making processes, and what would this do to US leadership?

The latter question had a direct bearing on the enlargement issue. Both NATO and the EU were adding new members, but the two processes were not linked. The EU had a 'big bang' of 10 countries in May 2004, excluding for the time being Bulgaria and Romania (who have a date for 2007) and Turkey (with whom the negotiations started in October 2005) but including the Baltic countries. At first, the NATO picture was less clear except that there was agreement that at least some new members should be invited in order to show that the door of the Alliance was indeed open. Slovenia and Slovakia seemed to qualify, but other candidatures were more questionable. One could argue that their present status was not worse than that of the Czechs, Hungarians or Polish at the time of their accession. All had worked hard on their Membership Action Plans. In the end, as always, it was a political decision with very much consideration accorded to the

American position. Furthermore, if Washington agreed, why should the Europeans object to an extension of the transatlantic security zone?

In this context much weight was given to an assessment of the policies and sensitivities of President Vladimir Putin. He stuck his neck out with regard to Russian public opinion in rallying quickly to the US coalition in Afghanistan, reminding the West that Moscow had been aware of the terrorist threat long before. Was it appropriate under these circumstances to proceed with the US National Missile Defence programme and NATO enlargement? For a while Washington was prepared to go slow on missile testing. Moscow agreed to the principle of reducing the numbers of intercontinental ballistic missiles (ICBM). Ultimately, however, the US went ahead with denouncing the Anti-Ballistic Missile (ABM) Treaty of 1972. Inclusion of the Baltic countries in NATO was opposed by all Russians. The reasons were more psychological than real, but in politics that matters. For the West the real issue was whether we all would be better off with enlargement, especially as we admitted that there was no military rationale for the process. The candidate countries rightly wanted to belong to Western organisations, but economically had much at stake in relations with their eastern neighbours. For their stability and prosperity EU membership would be more important than NATO.

Prime Minister Tony Blair saw the need for a new initiative to draw in Russia. In 1997 Moscow had accepted the NATO–Russia Founding Act in the context of its participation in Partnership for Peace, but never made good use of its many possibilities. Russia's main aim was an arrangement in which it would be able to participate in decision-making on an equal basis with the NATO members. A formula of 19+1 for consultations in which the full members stuck to positions they had previously agreed among themselves, did not meet that objective. The Blair proposal went some way in meeting Russian wishes in envisaging joint decisions on certain issues. He had hoped to reach agreement during the December 2001 ministerial meeting, but several countries wanted more time for reflection and preferred postponement until the spring 2002 session in Reykjavik.

The crucial question was whether the new relationship would extend beyond the fight against terrorism. During a meeting of the Joint Monitoring Group of the NATO Parliamentary Assembly and the State Duma our Russian colleagues expressed the hope for a wider agenda. They had a point. Terrorism will be with us for a long time, perhaps forever, even though at the moment governments and even some separatist

movements are less inclined to sponsor violent methods. But terrorism alone would be insufficient as an organising principle for lasting international cooperation. The reconstruction of Afghanistan as a multi-ethnic society might offer wider scope for action, but it would also be liable to jockeying for position among all its neighbours. There was no love lost for the Taliban, which only had diplomatic relations with Pakistan, but the history of the country does not augur well for a peaceful Afghanistan that would refrain from growing drugs and ensure safe operations for pipelines bringing oil and gas from Central Asia to the Indian Ocean.

Ever since the fall of the Berlin wall and the subsequent decline in European defence budgets to cash in on the 'peace dividend', US attitudes towards the CFSP and later the ESDP were characterised by extreme scepticism. It was dismissed as 'Euro-babble' or in the Texan vernacular as 'big hats, no cattle'. American emphasis on the 'revolution in military affairs' and synchronising emerging information and weapon technologies was not energetically pursued in Europe and threatened to undermine allied interoperability. Which European forces would still be able to fight together with US units? The Helsinki Headline Goals would lack strategic lift and satellite-based real time intelligence, and in NATO the Defence Capabilities Initiative also failed to tackle the high end of the spectrum.

Part of the criticism was certainly justified, but much of it was exaggerated. It was all very well to say that defence should shift from being threat-driven to capability-driven, but it became increasingly difficult to quantify military requirements in an environment where collective defence had lost its absolute priority and peace-support-types of intervention had moved up on the agenda. Equally, the Defence Capabilities Initiative had become a typical NATO programme including some 58 deficiencies without prioritisation. As a result all the parties could say that they were addressing many of them, without having to undertake much additional effort. In 2001, in its third year, 24 had been rectified and 14 showed little progress. Deficiencies were notable in the suppression of enemy air defences, anti-missile and air defence, combat identification and the provision of deployable forces – all items of considerable importance in military interventions. The criticism was most unfair in the context of the operations in former Yugoslavia, where SFOR and KFOR were predominantly manned by Europeans. In the Macedonian arms-collection operation no Americans participated. Of course it was true that the bombing was carried out by the US and that the Europeans did not possess

the assets required, but then it should also be recalled that this type of action was the only one acceptable to the US…and that it almost failed in producing a timely success.

The question Europeans would have to answer in providing defence improvements would continue to be 'what for?'. In response to this question then as now it is too simple to say that they have to spend more. The conduct of the Afghan campaign would not have been different if the Europeans had spent more on defence. Looking forward, it will be more important to spend differently. As noted before, the Headline Goal aimed at a limited capability, a robust army corps with supporting air and naval assets. It did not seek to create an EU army, but a capability to support EU security policies and enhance their credibility. Such a limited capability should also be restrained in its ambitions and clarify what it would be capable of achieving, not what it cannot do. There are plenty of things it will not be able to do, but that is not the point. Within its limitations it should be able to mount a rapid reaction force, which is well-trained and exercised in a multinational context, focusing on the periphery of the EU, but also able to make a contribution to a UN or OSCE operation on behalf of those states that are willing to do so. In my view, now held for more than a decade, the utility of the Headline Goals will depend on the ability to compose 'force packages' that are pre-planned for various scenarios. Current practice in NATO, where headquarters no longer have organic links with dedicated forces, might be wonderful in terms of flexibility, but a disaster in rapidly organising combined operations of combat forces.

Transformation

Well before 11 September 2001, the US Department of Defense was working on its *Quadrennial Defense Review* (QDR) report characterised by the word 'transformation'. It appeared on 30 September and underscored the point that there are many threats against the nation and that they will take many forms. In his foreword, US Secretary of Defense Donald Rumsfeld set out its objective:

> to establish a new strategy for America's defence that would embrace uncertainty and contend with surprise, a strategy premised on the idea that to be effective abroad, America must be safe at home.[64]

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[64] See Office of the Secretary of Defense, *Quadrennial Defense Review Report*, Washington, D.C., 30 September 2001.

As explained in a briefing to the NATO parliamentarians,[65] the review undertaken by the United States essentially rested on seven themes:

- uncertainty and surprise about the next adversary and where the adversary might attack;

- asymmetric warfare, which would put a focus on coercive instruments;

- new concepts of deterrence, which had to be multi-layered and multi-faceted and include denial and protection. Retaliation could no longer be its centre piece;

- homeland security, as the US must be safe at home in order to effectively project its force abroad;

- the view that the US cannot wait for the next surprise and have to transform defence in order to protect critical bases, to deny the enemy both access and sanctuaries, to conduct information and space operations, and to improve communications. More reliance would be put on joint task forces. The 'interim brigade unit teams' would be sent to Europe by 2007;

- a paradigm change from a threat-based to a capabilities-based approach; and

- a new approach to risk management.

The QDR report was presented as a vision, with the blueprint to follow later. Yet, it was a compromise as the US president and secretary of defense had wanted to be more revolutionary, skipping a generation. Apart from the expected emphasis on homeland defence, the report was important in providing a new standard for sizing forces. If faced with two major regional conflicts, overlapping in time, the US should be able to decisively defeat the adversary in one and hold the line in the other. In the words of Hans Binnendijk, the shift was from 'win-win' to 'win-hold', thus freeing substantial forces for flexible use.[66] In addition, the geographical focus was fixed upon northeast and southwest Asia – together with the need for new bases near areas of instability. This focus was a striking change from the earlier expectation of a reduced military presence abroad.

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[65] See the briefing by Barry Pavel, Principal Director for Strategy in the US Department of Defense, for the Parliamentary Transatlantic Forum, National Defense University, Washington, D.C., 3 December 2001.

[66] See Binnendijk and Johnson (2004), op. cit.

No adversaries were named. To the contrary, the report stated that it focused more on how an adversary might fight than on whom the adversary might be and where a war might occur

Much emphasis was put on future challenges. As the review noted, the US would not wait for the next surprise. US Deputy Secretary of Defense Paul Wolfowitz gave the future 'a seat at the table' of risk management. Conceptually the partial shift from deterrence to dissuasion was interesting because it was more than semantic. During the cold war the French always used the word '*dissuasion'* when they meant deterrence, giving it an appeal by stressing reason rather than terror. Now the US used dissuasion as the opposite of the arms race: a limited missile defence would dissuade North Korea from spending money on ICBMs that would never get through and therefore lose their power as blackmail. The multifaceted approach to deterrence, including denial and protection, provided food for thought for the high priests of deterrence who had filled many library shelves with their 'thinking about the unthinkable'. To them the most interesting question would be whether the old maxim of the cold war – 'uncertainty is the deterrent' – could still be maintained, or more precise responses would have to be announced in order to forestall negative developments.

The implications of the QDR for Europe were not spelled out; nor were those for US participation in peace support. The war in Iraq postponed any 'blueprint', which at best could now be expected only from the next QDR, due in February 2006. A reduction of US troops in the Balkans was widely expected. So far US forces in Europe have been geared for high-intensity conflict. In NATO the distinction between Main Defence Forces and reaction forces has been abandoned, but in practice most armies have a hard job in fulfilling their peace-support commitments and simultaneously maintaining the professional skills of their soldiers. The only indication given in the report was that the new US forward-stationed interim brigade unit team would be ready to be deployed in Europe by 2007. Some mentioned Bulgaria or Romania as a future location. The secretary of the army would explore options for enhancing ground force capabilities in the Arabian Gulf.

Could the war against terrorism, combined with the new US defence posture, lead to new arrangements for burden-sharing? As previously indicated, the EU possesses in its third pillar an unprecedented measure of intergovernmental cooperation and harmonisation in the field of justice

and home affairs. But to a large extent this cooperation has internal application alone. Nevertheless, common policies in the field of immigration and asylum, an enhanced mandate for Europol and closer contacts among intelligence sources are important instruments in controlling terrorist movements. These instruments are unique in the world and are being extended to the candidate countries for EU membership, so that most of Europe could become a special zone of vigilance against terrorism and thus a valuable partner.

A division of labour in the military field, as distinct from the political area, is not as difficult, but still delicate. At first glance, there would not be anything wrong with it. Task specialisation had been discussed for decades, especially by the smaller NATO members that would not be able to cover the entire spectrum of capabilities. Most attempts came to nothing, however, as the larger countries did not want to create new dependencies and the smaller ones doubted the availability in a crisis of assets entrusted to others. Nevertheless, the Headline Goals should include a degree of specialisation if the force packages are to be used effectively. Not every European country has to contribute everything as long as there is an equitable sharing of risk overall. A division of labour where some only provide medical units and others the combat forces will not be sustainable.

That problem also figures prominently in transatlantic relations. The US too often gets the feeling that it has to do the dirty work and Europe does not play its part. In that respect the mine-cleaning operations of the WEU during the Iran–Iraq war in 1987-88 was the first instance of Europe assuming responsibilities outside the NATO area. Similarly, UK, French and Italian participation with land and air forces in the eviction of Saddam Hussein from Kuwait was important in showing that the US was not alone. Subsequent events in Somalia, where American troops lost their lives in a situation that was not regarded as a vital interest to the US, changed Washington's approach to crisis management. When in the role of Chairman of the Joint Chiefs, Colin Powell developed the doctrine of going in with an overwhelming force to do the job quickly and with minimum losses and then to get out. As Secretary of State he changed that view and reassured Europeans of the continued US presence in Bosnia and Kosovo; "we went in together, we'll go out together" suggested a prolonged stay after the immediate military action had been completed and peace-building activities were in progress. It was an important statement; however, it should not be taken literally for the mere fact that a European presence in

these two Balkan regions may have to last for decades. In other words, the EU may never 'get out', while at a given moment a build-down and eventual departure of US forces might become justified and acceptable.

The initial Afghanistan operation was largely a unilateral American campaign to hunt down Osama Bin Laden and destroy the Taliban by aiding the opposition through aerial bombardments. Few demands were made on the allies during the fighting, but after the defeat of the Taliban the reconstruction of a national government was left to the UN and the peacekeeping force assembled without American units participating. It was a case of 'we'll do the cooking, you do the dishwashing'. Politically such a low profile on the ground probably was an astute tactic, but it was not yet clear how this would fit in with the new emphasis on forward basing in the QDR of 2001. During 2005 the US changed course and tried to merge Operation Enduring Freedom with ISAF, but there was little enthusiasm from the allies, including the UK, which did not want an American general in charge of the entire affair.

The hope that the events of 11 September would persuade the US to become more multinationalist in its policies did not come true. Its newly confirmed determination to abrogate the ABM Treaty, its refusal to ratify the international penal court and the Kyoto agreement and the obstacles put in the process of a convention on biological weapons were proof of the contrary. The unilateralist streak in US policy continued to be present. The first test in its attitude towards Europe would come in the context of force levels in Bosnia and Kosovo. Europe could and should do more, but the credibility of the operations would benefit if some US presence could be maintained. Without it, Europe's bluff would be called. If subsequently the EU were to rise to the occasion and manage well (which should not be all that difficult) confidence in the CFSP/ESDP would receive a boost.

A mandate for the Spanish presidency of 2002

The Laeken summit of December 2001 had declared the ESDP operational, but at the same time demonstrated that this operationality was largely limited to the institutional arrangements on paper. A formidable mandate was left for the incoming Spanish presidency, which was invited to report to the European Council in Seville on 21-22 June 2002.[67] Obviously, work

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[67] The Declaration on the Operational Capacity (Annex II to the Presidency Conclusions of the Laeken European Council) admitted its limited scope by stating

had to continue on the Headline Goals and the action plans for the military capabilities and the police. Then there was the unresolved question of the financial arrangements for crisis-management operations. Part of the mandate was to work out the practical modalities of civil-military cooperation, which was no easy task. The European Commission had access to the EU budget, but only limited competence. It was able to contribute to civilian crisis management and reconstruction, but only up to a point. The Stability Pact for the Balkans was coordinated by an outsider and the UN CivPol Unit in the Council Secretariat came under the EU's intergovernmental second pillar. In an inter-institutional agreement the European Parliament had voted a lump sum of €200 million for the CFSP, but this would not be available for military crisis management. Most nations, especially the larger ones, favoured the principle 'costs lie where they fall', i.e. all parties pay their own expenses except for a relatively small multilateral budget for common costs. NATO works on the same principle, although its annual infrastructure budget represents a sizeable investment.

As long as the ESDP remained an intergovernmental activity with no links to the European Parliament, recourse to the EU budget would be impossible. The alternative of establishing a large fund for crisis management, separate from the EU institutions, seemed most unlikely. Mr Solana's reports showed how cumbersome the pillar structure of the Union operated. In 1986 the Single European Act of Luxembourg had brought the Economic Community and the European political cooperation together in a single Treaty. The trend towards convergence was not continued at Maastricht. At that time a link was established with the WEU, which was requested "to elaborate and implement decisions having defence implications".[68] Not much came of it and paradoxically the few requests to the WEU were limited to police and customs activities. Ten years later the crisis management functions of the WEU were transferred to the EU and a common security and defence policy would be developed as part of the common foreign security policy. That was logical. The EU could not have separate policies in these fields. Security and defence are integral parts of

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that "the EU is now able to conduct some crisis-management operations" – see Chaillot Paper No. 51 (Rutten, 2002), p. 120. The mandate to the Spanish Presidency was incorporated in para. 30 of the Presidency Report on European Security and Defence Policy (ibid., pp. 129-130).

[68] See Art. J4 sub 2 of the TEU.

foreign policy. Unfortunately, a new division was created between military and civilian crisis management, owing to the pillar structure.

Coordination between the first and second pillar remained a seemingly impossible task and as a result the EU was not able to use all its instruments in a coherent manner. To the extent that some results were achieved, they were the outcome of the good personal relations between Commissioner Chris Patten and the high representative. The changing six-monthly presidency made the threesome a further nuisance. Some suggested that the high representative should also have a seat in the European Commission. That would not be possible if simultaneously the post-holder retained the position of secretary-general of the Council, which made the individual the servant of the Council and to a certain extent subordinate to the presidency. On the other side, being a member of the Commission implied a limit on personal initiative as decisions are taken by a collegiate body. The problem seemed insoluble as long as the pillar structure was maintained and the right of initiative of the Commission was not extended to the second pillar in its entirety. Only then could the function of high representative be combined with a vice-president of the Commission. It was short of a miracle that the Intergovernmental Conference following the European Convention agreed on the combination of the functions of high representative and vice-president of the Commission in a single foreign minister.

The mandate for the Spanish presidency also included the phrase "to enhance cooperation in the field of armaments as member states consider appropriate".[69] The second part of the sentence already indicated that this might be another 'mission impossible'. Several members showed no enthusiasm for bringing armaments into the orbit of the EU. It was not only a question of the old Art. 223 (now 296), which took armaments out of the internal market. It would be conceivable to have competition among the EU member states and to maintain the article as a bargaining chip against non-members, including the US, which applied restrictions on the imports of armaments. The problem was deeper in the nature of the European arms industry, where only a few countries are able to act as prime contractors and most of the others only produce components. In such a situation the larger members prefer arrangements among themselves – a kind of reinforced cooperation facilitating work-sharing over a range of projects as

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[69] See Chaillot Paper No. 51 (Rutten, 2002), op. cit., p. 129.

envisaged in OCCAR (*Organisation Conjointe de Cooperation en matiere d'Armement*). Moreover, the consolidation of the European defence industry was entering a new phase. First it focused on national champions and then it entered into transborder mergers, some of which are now strong enough to survive alone or to consider transatlantic cooperation. The major failure on the European side was still the dispersed manner in which research and development were funded, leaving the European Union far behind the US.

In this connection the Spanish presidency was invited to study the Belgian suggestion to formalise the meetings of defence ministers and give them a place in the Council framework. There seemed to be widespread support for the idea, but Ireland and Sweden were opposed in addition to Denmark, which ever since the 1997 Treaty of Amsterdam dissociated itself from defence cooperation in the EU. Part of the problem was the format of the General Affairs Council. Joint meetings of foreign affairs and defence ministers were foreseen in crisis situations. This has been standing practice in the WEU since its revitalisation of 1984 and was conducive to rapid decision-making. Foreign ministers provided their analysis of the situation and defence ministers could immediately indicate which forces they could make available. Separate meetings of defence ministers took place at the beginning of WEU ministerial meetings, but their agenda was limited to equipment cooperation, the former Eurogroup at 13 having been transferred to the WEU as the Western European Armaments Group (WEAG). These days, defence ministers have much more on their plate and there was merit in putting their work on the Headline Goals firmly within the EU structure. Spanish Defence Minister Federico Trillo took this up and, in a speech in Madrid on 10 January 2002 setting out the objectives of the Spanish presidency for ESDP, proposed the format of the General Affairs Council with defence ministers. His aim was "to reach an exact balance between full respect for the institutions and permission to the Ministers of Defence to carry out their work on developing the ESDP". [70] This intention was noted by the General Affairs Council of 18-19 February and defence ministers were enabled to discuss certain agenda items, limited to issues covering military capabilities, chaired by the minister of defence of the country holding the presidency.[71]

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[70] The text of the speech by Defence Minister Trillo is reproduced in Chaillot Paper No. 57, (Haine, 2003), op. cit., pp. 14-21.

[71] Ibid., p. 38.

In Minister Trillo's speech, "effectiveness" and "more Europe" were key words, the latter meaning a greater effort on interoperability, specialisation and capabilities. His approach was modest but realistic. In May a progress report would be made on the European Capabilities Action Plan (ECAP) but Mr Trillo made clear that it would not attempt to set up standing rapid reaction forces. It aimed at "the development of concepts and procedures that will allow for the deployment of the rapid-reaction elements foreseen at Helsinki, while specifying use of the elements most readily available in the Helsinki Catalogue". Among the aspects to be considered he mentioned decision-taking procedures, the designation of command and control elements and the speedy generation of command elements and forces. In view of the controversy that erupted in the spring of 2003 over the EU's establishment of an operational command capability, the wording of Mr Trillo's speech is quoted in full:

> The Spanish Presidency…will promote the work for making use of the command and control capabilities offered, existent and future – both national and multinational. In view of the abundance of European initiatives in this field, we must encourage their effective use.
>
> Among other work, the drawing up of the lead/framework nation concept should be mentioned, together with the GHQ's[72] standardised operation procedures (SOPs), or the issue of the marking of the national GHQs (multinationalised or multinationisable) and the improvement of their operationality, projectability and C2 features. It will also be important to bear in mind the matter of the Alliance's European Command Arrangements.[73]

All these issues were seen as complex and requiring work under future presidencies as well. No wonder public opinion was unimpressed and questioned the assertion of the Laeken European Council that the ESDP was operational.[74] In any case, much work remained to be done. Progress on the ECAP in order to remedy shortfalls is reviewed in the next chapter.

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[72] Ibid., p. 16. The speech referred to "general headquarters", which would not be repeated later. The usual terminology was operations HQ and field HQ.

[73] Ibid., pp. 16-17.

[74] See the Declaration in Annex II of the Presidency Conclusions of the Laeken European Council, 14 and 15 December 2001, SN 300/1/01 REV 1, Brussels, 2001(b).

Minister Trillo also touched on several undecided issues. On the Belgian idea of compiling a defence white book he said that the Institute for Security Studies would start compiling a book on European defence "which will be descriptive in nature and whose readership is intended to be the parliamentary assemblies and the general public". So, there would be no policy document in the sense of a White Paper; that idea remained controversial in the Council. On the parliamentary dimension the speech was very bland: the sense of importance of keeping the parliaments informed was shared, but the fact was accepted that for the time being only the national parliaments were competent to exercise parliamentary control over matters of defence policy. Not a word was said about the consensus-building roles of parliamentary assemblies like the WEU Assembly and the NATO Parliamentary Assembly.

Conflict prevention

The Spanish presidency was also expected to report on the implementation of the European programme for the prevention of violent conflict and to continue developing and giving further practical expression to EU cooperation with the UN, the OSCE and other relevant organisations. Conflict prevention had been the subject of a report by High Representative Solana to the Nice summit, which defined the central challenge as coherence in deploying the right combination and sequence of instruments in a timely and integrated manner. The report continued:

> This demands greater coherence and complementarily at several levels, between the pillars, between the Union and its international partners in conflict prevention.[75]

Conflict-prevention policies could not be separated from the broader issue of how the EU set its priorities in the area of external relations (§ 8) and could only be effective if the Union adopted a proactive approach, identifying problems before they became acute and translating early warning into early action. Mr Solana advocated a much more focused approach than the earlier 'strategies' emanating from the Amsterdam summit. Strategies had been written for the Balkans, Russia, Ukraine and the Mediterranean, but their impact had been minimal because they did not

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[75] Quoted from para. 7 of the report; see the Presidency Conclusions of the European Council of Nice (Report 14088/00) in European Council (2000b), op. cit.; the text of the report is also reproduced in Chaillot Paper No. 47 (Rutten, 2001), op. cit., pp. 212-21.

manage to rise beyond the level of generalities and benevolent platitudes. On this occasion, Mr Solana recommended that conflict prevention should be addressed by the General Affairs Council, possibly during its annual orientation debate on external relations, and integrated into its work and that of the Development Council:

> The Union should set the explicit aim of developing targeted, common approaches to countries and regions at risk of conflict, taking account of CFSP, development, trade, economic and justice and home affairs issues.[76]

On the policy planning side a format for the EU's Country Strategy Paper s had been agreed. On the implementation side it was recommended that more use be made of special representatives "with the objective of more focused, flexible and robust diplomatic engagement". Further, the Political and Security Committee should develop its potential as a focal point within the framework of the CFSP and ESDP (then still called the common security and defence policy (CSDP)) for the development, implementation and monitoring of conflict prevention policies.

After the Nice European Council of 2000, the European Commission prepared a very substantial Communication on conflict prevention, giving an overview of all its activities.[77] The EU itself was an on-going exercise in making peace and prosperity with a wide range of instruments at its disposal. The projection of stability in supporting regional structures in Africa, but also autonomous trade concessions to the western Balkans were mentioned as examples with a long-term stabilisation prospect. External aid might be focused on the (re)emergence of a favourable political environment and there might be a need to become more involved in security sector reform and specific rehabilitation programmes. The Communication argued that the EU should improve its ability to react quickly where a country seemed to be entering a downward spiral. The Commission admitted that security sector reform had not traditionally been a focus of Community cooperation, but felt that in many countries achieving structural stability may require a fundamental overhaul of the state security sector. Where support from the Community could offer added value, the Commission should focus on this sector; where member

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[76] Ibid., para. 8, third recommendation.

[77] See European Commission, Communication on Conflict Prevention, COM(2001) 211 final, Brussels, 11 April 2001.

states were better placed to assist (as in the case of reforming armed forces) they would be encouraged to do so during the discussion of the EU's Country Strategy Papers. The Community could support conversion of military resources to civilian use, and the decommissioning of WMDs and conventional weapons. Within the limits of its competences, the Commission intended to play an increasingly active role in the security sector area.

The Communication also had an interesting section on sanctions. So far, their impact had been somewhat disappointing; because of poor design and poor enforcement it had generally been a question of too little, too late. To target so-called 'smart' preventive sanctions and minimise the suffering of ordinary people a rigorous preliminary analysis would be necessary:

> Preventive sanctions might be justified as legitimate countermeasures to serious violations of human rights or humanitarian law. However, as a general rule, they will have to be compatible with international obligations (e.g. WTO and Cotonou Agreement).[78]

The presidency report on the EU programme for the prevention of violent conflicts was less extensive than the Communication from the Commission. Apparently, some of the proposals were regarded as out-of-bounds in terms of the competence of the Commission. The report stressed the need for greater coherence among the activities carried out under the different treaties. The EU had taken a considerable number of actions with a clear aim of conflict prevention: efforts in the Balkans, the Caucasus, Central Asia and the African Great Lakes region, as well as in the fight against terrorism after the 11 September attacks were all mentioned as examples. The sobering conclusion was added that "not all efforts undertaken by the EU had been successful".[79] So, more efficient preventive strategies were necessary. A systematic approach to early warning and early action was called for as well instruments aimed at short-term prevention and dealing with the root causes of conflict.

Based on conflict assessments of more than 120 countries, the European Commission had maintained a 'watch list' of those that were a priority and developed a set of conflict indicators. The Council Secretariat

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[78] Ibid.

[79] See European Council, Presidency Conclusions of the Seville European Council of 21-22 June 2002, 13463/02, Brussels, 24 October 2002; the report is also reproduced in Chaillot Paper No. 57 (Haine, 2003), op. cit., pp. 96-103.

had started an early warning process providing assessments for the Political and Security Committee. These are undertaken jointly by the Policy Planning and Early Warning Unit (PU), the EU Military Staff Intelligence Division and the Joint Situation Centre. The General Affairs Council of 13 May 2002 had stressed several elements in enhancing coherence: the main role of the PSC in bringing issues to the attention of the Council, through COREPER; the association of the geographical working groups with conflict prevention; and the role of heads of mission as the main EU 'sensors' in the field. An attempt was made at prioritising their work with the following instruction:

> In examining the likelihood of conflict in a country or region, there should be an evaluation of the potential impact of an eventual conflict on EU Member States and international stability, the EU's capacity of influence/interest in the region or country, the instruments at the EU's disposal, the role of other actors on the ground (international organisations other States, NGO's, etc.) and the possibility to cooperate with them, as well as the need to ensure the follow-up of decisions taken.[80]

Instruments for short-term prevention were fact-finding missions, monitoring missions (such as the Togo facilitators), election observation missions, human rights monitors, special representatives or other types of representatives (presidency representatives, tasking senior officials of the Council Secretariat or the Commission and other envoys).

Long-term conflict prevention required the combined use of various policies and instruments at the EU's disposal. Mention was made of policies such as those in the areas of: trade (an 'open door' approach such as the 'Everything but Arms' initiative as well as the EU contribution to the Kimberly process for the trade of rough diamonds); environmental policy such as the Kyoto protocol; human rights issues (including respect for minority rights in potential conflict regions and post-conflict rehabilitation, and support for the International Criminal Court); international financial policies; and non-proliferation, disarmament and arms-control instruments, including those related to small arms and light weapons. In the annex a contribution by the CFSP working groups on conventional arms exports (COARM) global disarmament and arms control (CODUN), and non-proliferation (CONOP) went into more detail. Its most salient conclusion

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[80] See General Affairs & External Relations Council (GAERC), Council Conclusions at the GAERC meeting of 13 May 2002(a) in Brussels.

was that a sound and coherent EU policy on export controls could be a major contribution to conflict prevention, impeding the acquisition and development of weapons by states of concern or terrorist groups.

In my later submission to the working group on defence of the European Convention (reproduced in Annex 3), I stressed that as a new and potentially autonomous actor in the field of security the EU had a chance to develop a broad concept of security. In my view the programme of action decided by the European Council of Göteborg (2001) had a weak point in lacking a reference to crisis management. If this should be explained by the reluctance of the formerly 'neutral' members of the EU, it could be overcome by the formulation of a strategic concept, responding to the question of 'what for?' in terms of the ESDP, the Headline Goals and the conditions governing the possible use of force. Such a concept should develop the notions of comprehensive security, including conflict prevention, democracy-building and economic development, but also cooperative security with neighbouring regions. To be credible it should also contain a military capability underpinning the policies of the EU.

Police capabilities

In spite of the high-sounding statements about operational readiness, the year 2002 witnessed no EU military deployment. That would come only a year later when the deadlock over the use of NATO assets had been broken and the Berlin Plus arrangements had entered into force, giving the EU access to NATO assets. Paradoxically, it was another police mission that came first. On 28 January 2002, the General Affairs Council announced the EU's readiness to ensure by 1 January 2003 the follow-on to the UN International Police Task Force (IPTF) in Bosnia up to the end of 2005. Less than a month later, on 18-19 February, the Council adopted the mission statement of the EU Police Mission (EUPM), its chain of command, coordination and financing arrangements, as well as the modalities for the contributions of non-member states. In the first instance, the non-EU European members of NATO, EU accession candidates and those OSCE member states already contributing to the IPTF were invited to participate. The EU would address the whole range of rule-of-law aspects, including institution-building programmes, which should be mutually supportive with the police activities. The chain of command would be as follows:

- The police commissioner would lead the mission and assume its day-to-day management.

- The police commissioner would report to the secretary-general/high representative through the special representative of the EU in Bosnia and Herzegovina.

- The special representative would report to the Council through the secretary-general/high representative for the CFSP.

- The PSC would provide the political control and strategic direction.

- The secretary-general/high representative would give guidance to the police commissioner through the special representative.[81]

The Council formally adopted a Joint Action for replacing the IPTF on 11 March 2000, establishing the EUPM and a preparatory planning team. It took almost a full year of preparations before the IPTF could be taken over, but it was a useful first step in a process of the EU assuming more responsibility in former Yugoslavia. The involvement of the UN in police activities in this ethnically sensitive area was one of the doubtful elements of the Dayton agreement. How could one expect police officers from other continents, with completely different traditions of police authority, to bring together Serbs, Croats and Muslims in a multicultural environment? Apparently, in 1995 the EU was unable to muster sufficient personnel for the task, but other considerations also played a role. The fathers of Dayton wanted some role for the UN and had little confidence in the effectiveness of the EU. With the inclusion in the Helsinki Headline Goals of 5,000 police officers, EU credibility was enhanced.

A corollary to the police capability was that concerning the rule of law, i.e. judges, prosecutors, correctional officers and experts in this field. The Göteborg European Council had set a target of 200 officials by 2003, including a capability to supplement rapid-deployment police units or fact-finding missions, who would be deployable within 30 days. To this end a Rule of Law Capabilities Conference was held in Brussels on 16 May 2002, which came up with voluntary national commitments of 282 officials for crisis-management operations by 2003, including 60 being available within 30 days and 43 for fact-finding missions. They were divided into broad categories of judiciary system (72 judges, 48 prosecutors and 38 representing administrative services) and penitentiary system with 72 and 34 officers. This meant that the Göteborg targets had been met in a

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[81] For details on the EUPM, see Renata Dwan and Zdislaw Lachowski, "The military and security dimensions of the European Union", ch. 6 in Alyson J.K. Bailes (ed.), *SIPRI Yearbook 2003,* Oxford: Oxford University Press, 2003.

balanced way. Nevertheless, some points required further attention, the first of these being, as was to be expected, the financial aspects, but also the variety in the background of the officials that came from institutions with different competences. Some of them enjoyed an independent status with respect to their national administration. Therefore great interest was expressed in developing common crisis-management training modules. Finally, the EU was working on guidelines for criminal procedures, which would be offered, as an intellectual contribution, to support the Office of the UN High Commissioner for Refugees (UNHCR) in implementing recommendations of the Brahimi report of 2000, which had called for a doctrinal shift on the use of civilian police in peace operations.

Except for these guidelines, the progress on capabilities said little about the way in which the police assets would be used. In 1995 the UN Department of Peacekeeping Operations had encapsulated the experience gained with CivPol since the UN Transition Assistance Group (UNTAG) mission in Namibia in 1989 in the SMART concept: Supporting human rights; Monitoring the performance of the local enforcement authority; Advising the local police on best practice; Reporting on situations and incidents; and Training local enforcement personnel in best practices for policing and human rights.

The SMART concept proved inadequate in situations such as Kosovo or East Timor, where the United Nations had assumed sovereign authority and established a transitional administration, as discussed in a SIPRI Research Report.[82] In those cases the UN police component had to substitute for local police forces and perform functions that previous CivPol operations did not entail. In the absence of a sovereign state authority, executive police officers had the power to arrest and detain individuals and to investigate crimes of all kinds; they were armed and had to carry out law enforcement duties at the same time as they were attempting to re-establish local police capacity. To have a lasting effect, the authority to put in place and supervise a comprehensive framework for law and order is a prerequisite and policing should thus be seen as part of a rule-of-law continuum that includes the judiciary and penal institutions. Given the short rotations of international police officers and the diversity of their legal systems, the creation of a cadre of police should be taken in hand

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[82] See Renata Dwan (ed.), *Executive Policing, Enforcing the Law in Peace Operations*, SIPRI Research Report No. 16, Stockholm International Peace Research Institute, Stockholm, 2002. The models for transferring executive authority are on pp. 109-17.

to provide for longer assignments and specialised knowledge. Local police training cannot be done as a simple 'add-on' to operational duties.

The SIPRI report also included interesting models for transferring executive authority. One of its main conclusions was that in view of the enormity of the challenge, law enforcement should be approached with caution and that it should be based on a clear, and to the public, transparent legal framework. Second, international policing would, of necessity, be limited in the number of objectives it could successfully achieve. Yet, prioritisation would be extremely difficult. Third, Renata Dwan made the point that, while multifunctional team approaches would be required, Western domestic police cultures tended to be insular and suspicious of close contacts with the military, while the judiciary was often perceived as a separate element of the rule of law.

Another Civilian Crisis Management Capability Conference was held on 19 November 2002 at ministerial level. At the conference it was stressed that in addition to the existing EU police-planning capability an appropriate EU planning and mission-support capability should be established within the Secretariat General of the Council covering the other areas of civilian crisis management as a matter of priority. Not surprisingly, ministers noted that the budgetary implications still had to be addressed. In addition, coordination in the field had to be improved and a unified chain of command in EU missions established, as well as full synergy between the European Community and EU instruments. Civil-military coordination would be strengthened through an action plan.

Financing common costs

The cost of the EU Police Mission was estimated at €38 million annually, consisting of €11 million in operational costs, €4 million for local staff, €5 million for international civilian staff and €18 million for per diem and travel costs of the seconded police officers, their salaries being covered by the sending states. Start-up costs of €14 million for 2002 would be covered by the CFSP budget, but in future years this budget could provide only €10 million and would have to be increased. In preparing for consultations with the European Parliament member states agreed to finance the per diem and travel costs on the basis of costs lie where they fall, i.e. also shared by the sending states. Financing continued to be a tricky business in the intergovernmental activities of the EU.

Art. 28 of the Treaty on European Union provided for charging administrative expenditure for the institutions (whether or not arising from operations having military or defence implications) to the EC budget. Nevertheless, operational expenditure for military/defence operations must be charged to the member states. This was deemed to include the use of non-military assistance strongly related to a military operation. The Helsinki Headline Goal Catalogue made the sending nations responsible for obtaining transportation resources to deploy, sustain and redeploy their forces. Yet some common costs would have to be covered in the budget of an operation. In Annex II to the presidency report on ESDP, submitted to the European Council at Seville on 21-22 June 2002, these were spelled out and divided in two categories: a) incremental costs for (deployable or fixed) headquarters for EU-led operations in comparison with the situation in which they were not involved in an operation, such as transport, administration, locally-hired personnel, communications, barracks and infrastructure, public information and representation/hospitality; and b) incremental costs incurred for providing support to the forces as a whole, such as infrastructure, additional equipment, identification marking and medical expenditure.

The General Affairs Council of 17 June 2002 adopted this general framework for identifying common costs as distinct from all other costs, which had to be financed on the basis of costs lie where they fall (all parties paying for their own expenditures). The following week the European Council approved the presidency report on ESDP with its six annexes, but the financial principles were a facade without any real money behind it. No solution was provided as to how the common costs should be financed. The report itself proposed a series of items on which further work would be necessary, the first being "the possible need for a separate budget for EU common costs as well as for adequate control and auditing".[83] The truth of the matter was that countries such as France and the UK did not want a role for the Commission and the European Parliament in the ESDP, without which it could not be financed from the Union budget, while others refused to consider a parallel budget. As a result, the bizarre paradox continued of a high representative with recognised competence but no money, and a

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[83] See the "Financing of EU-led Crisis Management Operations having Military or Defence Implications", Annex II, European Council (2002), also in Chaillot Paper No. 57 (Haine, 2003), pp. 85-89.

commissioner for external relations with access to the European Union's budget, but only competent for matters of civilian crisis management.

It would take until February 2004 to adopt intergovernmental rules for meeting the common costs for ESDP operations, which after long debate were defined as headquarters, transport, management, local forces, communications, caserns, public relations, infrastructure, additional equipment, medical services, and civil and military exercises. These would be financed under the ATHENA mechanism, based on the GDP key.[84] It represented a step forward in comparison with NATO, which still followed the principle that operational costs had to be born by each participating state individually and therefore found it difficult to deploy forces to places such as Darfur in Sudan. From a democratic point of view, resorting to a separate budget apart from the EU budget was not ideal, but it was a practical solution to a real problem.

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[84] The agreement was reached in Decision 2004/197/CFSP of 23 February 2004, OJ L 063, 28 February, pp. 68-82.

4. Transatlantic Crossroads

In 2002 a large chunk of the security debate centred on the question of NATO's relevance in the era of US power.[85] At the January Dolder meeting near Zürich, opinion among the Europeans was divided. One argued that the US would not run wars outside Europe in the NATO framework. NATO was a war machine of last resort, not of choice, which derived its value mainly from the practice of joint planning, standing operating procedures and rules of engagement. Another rebutted that, if you wanted to make war, NATO was still the best available. And a third raised the ironic question of whether the Alliance, after invoking Art. V, really had "restored the security of the North Atlantic area". An American participant pointed at the paradox that the Pentagon had created an Office of Force Transformation because there was no agreement on a future force structure. Now a compromise would have to be struck between homeland defence, including missile defence, and asymmetric warfare. Later, post-conflict stabilisation forces would be added.

Much attention was paid to the likelihood of a US intervention in Iraq. A senior American thought the case for action to be strong, but no scenario was attractive. The only opposition to Saddam Hussein came from the Kurds, but they were unable to obtain support from their neighbours. Perhaps the system was more brittle than it appeared for the moment. His preferred option was to focus on the Iraqi potential to supply weapons of mass destruction for terrorist action and to obtain support for international inspections. The regime was unlikely to be able to accept them, which could be followed up by air strikes. No one doubted that Iraq had chemical weapons, but its conventional capabilities were also assessed as quite formidable: 2,700 main battle tanks, 2,200 of which would be operational. Doubt was expressed about the likelihood of the UN Special Commission

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[85] See John Vinocur, "Is NATO relevant under US Power?", *International Herald Tribune*, 6 December 2001.

(UNSCOM) ever being able to go back to resume its inspections, a sentiment that apparently was shared among the inspectors. With the privilege of hindsight, we now know that all these analyses were wrong. Saddam Hussein had no chemical weapons left, but could not admit it openly if he wanted to retain his position in the Middle East as a symbol of defiance against the US. If he had cooperated better with the Hans Blix team upon their return, he could have avoided the negative tone of their report, which would have made US intervention very difficult. As to his conventional forces, they disappeared in the sandstorms and disbanded, as advised by the Americans on their mobile telephones, and in the ensuing chaos early consolidation appeared impossible. So far it is not known to what extent the subsequent attacks on the occupying forces had already been prepared in order to sabotage the reconstruction effort.

Two weeks later, on 2 February 2002, the European security community gathering at the traditional *Wehrkunde* Conference in Munich was shaken up by a provocative but also moving speech by US Deputy Secretary of Defense Paul Wolfowitz. It was moving because it ended with the example of a German destroyer shortly after 11 September drawing close to the USS Winston Churchill, flying the American flag at half-mast and manning the rails while signalling "We Stand by You". It was provocative because, although appreciative of the 3,500 troops contributed by coalition partners to Operation Enduring Freedom and the International Security Assistance Force in Kabul, it posed the question: What have we learned from the events of 11 September? Mr Wolfowitz warned of terrorists possessing weapons of mass destruction. The problem had gone beyond crime and punishment and required prevention and sometimes pre-emption. In his view, "we are at war" and in war the mission must determine the coalition; the coalition must not determine the mission, otherwise it would be reduced to the lowest common denominator. So there would be different coalitions for different missions, which would not 'unravel' if some country stopped participation. In the military transformation agenda to be launched at the Prague summit the development of NATO's capacities in counter-terrorism should be a key component and part of NATO's basic job description: collective defence. Art. V threats could come from anywhere and in many forms. Rather than guessing which enemy would confront us and where, he stressed that we should focus on what capabilities adversaries could use against us, shore

up our vulnerabilities and exploit new capabilities to extend our own military advantages. That was the essence of a capabilities-based approach to defence planning.

Reading the speech again several years later, it seems less provocative. Admittedly, the speech contained a veiled barb against the French, who had intervened in targeting decisions during the Kosovo campaign. It also provided a prelude to Pentagon doubts about the capabilities of its allies, but Europeans had a point in saying that before 11 September, the US – and NATO Secretary-General Lord George Robertson – had stressed different capabilities without prioritising them and, for example, without emphasis on the special forces, which would be much in demand in the Afghan campaign. Most worrying to NATO supporters was the concept of varying coalitions for missions, which hardly seemed compatible with the traditional stress on common values. If the coalition had no role in a consultation process, the allies had no other choice than to sign up to the mission as defined by the US or abstain altogether. Yet, it was realistic to assume that in 'out of area' operations not involving the defence of NATO territory not everyone would join, so the real question was whether collective defence should remain geographically limited or extended to other common interests.

In Munich, Mr Wolfowitz did not say openly that NATO should go global. That came later, at the NATO summit in Prague on 21-22 November, when the heads of state and government decided "to strengthen our ability to meet the challenges to the security of our forces, populations and territory, from wherever they may come" (§3).[86] The word 'pre-emption' was not used, but the chosen wording came close to it in saying "we are determined to deter, disrupt, defend and protect against any attack on us". In order to carry out the full range of its missions, "NATO must be able to field forces that can move quickly to wherever they are needed to sustain operations over distance and time" (§4). It was a typical NATO compromise text. The possibility of operations outside the Treaty area was confirmed but the phrase "wherever they are needed" remained vague and subject to (unanimous) ad hoc decisions of the North Atlantic Council. Nevertheless, it was an important outcome for the work of NATO planners. As early as 1992, at the annual IISS conference Manfred

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[86] See NATO, Prague Summit Declaration issued by the Heads of State and Government, Press Release (2002) 127, 21 November 2002.

Wörner had declared the out-of-area debate out of date, but that referred to operations in former Yugoslavia. Now, more distant action had to be envisaged and attention turned to the ways in which it could be implemented. Not for the first time was the focus on capabilities without formulating a clear idea of the concrete tasks they should be able to perform. That made sense up to a point, because without the capabilities no action would be possible, but with the building-up of new forces the 'what for?' question continued to pop up, both in NATO and in the EU.

Pillar, bridge, identity and separable or autonomous capability?

The NATO bureaucracy never was at ease with the European political cooperation and feared that it would be divisive within the Alliance. The same could be said of many people in Washington. The meetings of the political directors took place outside the consultations in the Brussels headquarters and showed little transparency to the rest of the world. Yet, no one really could object to the EEC, and later the European Union, attempting to forge a more coherent link between its economic policies and political objectives. As long as the EPC did not deal with security (except for the OSCE) there was no outright clash or duplication with NATO, but on other issues two separate circuits developed. Consequently, the primary function of NATO as a forum for consultation eroded. Paradoxically, after the end of the cold war NATO became more military in its orientation instead of more political. It focused on operations – first in the Balkans and later in Afghanistan, but political objectives were insufficiently discussed to be able to present a convincing picture to the outside world. The worst came during the US intervention in Iraq, when no discussion in the North Atlantic Council (NAC) took place at all. The EU did not do any better and was equally split down the middle.

The problem of EU-NATO relations was exacerbated by American resistance to the formation of a 'European caucus' within NATO. Washington wanted to remain involved in consultations from the beginning and not be confronted by European positions that had emerged in its absence. In negotiations such as the multilateral trade rounds the US had seen how the difficulty in agreeing upon European positions had held up progress in the plenary. That would be unacceptable in crisis management, where speed would be of the essence. It is true, however, that there is a difference between Alliance consultations, based on solidarity and cooperation, and the competition of trade negotiations. Reluctant on

the one hand, but eager for a stronger military European contribution on the other, Washington never came to grips with the problem, which inexorably moved to the emergence of two centres of decision-making in Brussels, making the problem of interaction only larger.

President John F. Kennedy coined the image of a two-pillar structure for the Alliance, but during his time this was premature in view of the incomplete structure of European integration. American leadership remained crucial in the face of the Soviet threat and most Europeans were content with this reassurance of their security. If there was any talk of a transatlantic bargain, it referred to the American nuclear umbrella in exchange for better European conventional defences to strengthen deterrence and make it less dependent on nuclear retaliation. Transatlantic relations never were without irritations, but the predominant interest of collective defence dampened them considerably and by and large made American initiatives in the politico-military field palatable to their European allies. The Europeans on their side were hesitant; however, to globalise their relations with the US for fear that its predominance in defence would extract undesirable concessions in the economic sphere. As a result, relations between the US and the EEC and later the EU never reached the maturity that might have been hoped for.

The pillar image lingered on. After 1991, when the WEU gained some brief respectability as a vehicle for actions that the EU had put at arms length but NATO was not able to undertake, the organisation was described as being simultaneously the European pillar of NATO and the military dimension of the European Union. But pillars standing alone without a connecting frieze made little sense. At Maastricht the European Union was constructed with three pillars and an overarching European Council. While not very efficient, this was at least a model for combining the communitarian and intergovernmental aspects of EU integration. Within NATO the European presence remained limited to contacts at the level of deputy and assistant secretary-general and occasional meetings of the NATO and WEU Councils. NATO Secretary-General Manfred Wörner made a point of inviting his WEU colleague to the ministerial sessions, even the restricted ones, but substantial inputs were few and far between. The exception was the cooperation in the Adriatic in 1994 to enforce the embargo against Serbia. For the rest, the ambassador of the WEU presidency country was charged to inform the NATO Permanent Council about the proceedings in the WEU Council the preceding day. The practice

of joint councils has been continued with the Political and Security Committee of the EU after it took over from the WEU. This meant that non-NATO members would also sit around the table, in addition to non-EU members on the NATO side. Such meetings were useful in providing transparency, but inevitably grew very large as most countries are represented by two ambassadors.

Several other metaphors acquired new currency in the semantic vocabulary of transatlantic discourse. Could the WEU be seen as a bridge? Not really, because it was part of the European shore. Then could it be viewed as a European identity?[87] The term is not easily comprehensible and no one specified what it meant. As far as it dealt with defence it was presumed to be within NATO, but the Alliance never made the organisational arrangements to make a European identity visible. In fact, the US adamantly opposed the creation of a European caucus that would discuss agenda items before they were taken up in the North Atlantic Council. The only exception was the Eurogroup initiative of 1968 by Denis Healey, then the UK Secretary of State for Defence, to better present the European defence contribution to the US and to promote cooperation on defence procurement among the Europeans.

Identity suggests a measure of personality and individuality, but also a degree of oneness and unity encompassing both specificity and closeness, which makes it possible to stand out in relation to other identities. In 1973 the EPC had embarked on an abortive attempt to define the European identity in terms of common heritage, common interests, specific commitment and the status of the integration process. In substance, however, this definition did not rise above a series of platitudes stating that links were important with all parts of the world. The existing close ties with the US and the sharing of values and goals that emanated from a common heritage were said to be profitable for both sides and should be preserved. They did not, however, affect the determination of the (then 9) members to act with autonomous unity.[88] At the same time they wanted to continue

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[87] See my report to the Sub-Committee on Defence and Security Cooperation between Europe and North America of the NATO Parliamentary Assembly, *EU, WEU and NATO: Towards a European Security and Defence Identity*, Security and Defence Committee, Doc. AS 257, DSC/DC (99)7, NATO Parliamentary Assembly, Brussels, November 1999.

[88] Reviewing the text after more than 30 years, the word 'autonomous' is a striking example of the input of Michel Jobert, the former French Foreign Minister,

their constructive dialogue with the US and base their cooperation on equality developed in a spirit of friendship. The resulting document was so anodyne that it was soon forgotten. Moreover, it was overtaken by Henry Kissinger's initiative to launch a year of Europe, which also proved ill fated after the oil boycott had turned it into the year of the Arabs.

The 1986 Single European Act of Luxembourg drew the EEC and EPC closer together and stated that "closer cooperation on questions of European security would contribute in an essential way to the development of a European identity in external policy matters".[89] That made sense if the EPC was to develop into meaningful policy coordination and did not necessarily extend into the realm of defence. The WEU Platform on Security Interests took it a step further by intending "to develop a more cohesive European defence identity". The North Atlantic Council of 11 December 1987 responded positively and noted that WEU ministers "affirmed a positive identity in the field of European security within the framework of the Atlantic Alliance, conducive to the strengthening of the transatlantic partnership and of the Alliance as a whole". The NATO summit in Brussels of 29-30 May 1989 used different wording and talked of "a reinforced European component of our common security effort and its efficiency". The joint US-EU declaration of 23 November 1990 affirmed that the "European Community is acquiring its own identity in economic and monetary matters, in foreign policy and in the domain of security".

The word 'defence' appeared in December 1990 in the communiqué of the North Atlantic Council, but it was linked with NATO: "A European security and defence role, reflected in the construction of a European pillar within the Alliance will not only serve the interests of the European states, but also help to strengthen Atlantic solidarity". The NAC communiqué of Copenhagen of 7 June 1991 produced another mix in "the emergence and development of a European security and defence role" and the necessity of "complementarity between the European security and defence identity as it emerges in the Twelve and the WEU, and the Alliance". The words

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resurfacing many years later at St Malo in the context of autonomous military action. Most other ministers would have preferred another adjective.

[89] This quotation and the selection that follow in this paragraph and the next are reproduced in van Eekelen (1998), op. cit., which contains "References to a European Identity in Official Statements" in Annex VI.

"European security identity and defence role" were repeated at the Rome summit of NATO in November 1991 and also in the Strategic Concept adopted then. The WEU declaration issued at the time of the Maastricht European Council of 10 December 1991 agreed "on the need to develop a genuine European security and defence identity and a greater European responsibility in defence matters. This identity will be pursued through a gradual process involving successive phases." The NAC of 19 December reproduced the decisions taken at Maastricht in detail under the heading of "European Security Identity and Defence Role". Six months later, in Oslo on 4 June 1992, the NAC finally brought home the title of a European Security and Defence Identity or ESDI. That did not mean that other images would no longer be used. The NATO summit declaration of January 1994 mentioned the European pillar not less than five times. The word 'identity' made some sense when it referred to the WEU, which was at arms length of the EU, but after its functions were transferred to the EU in 1998 the emphasis was to be on the European security and defence policy, which was an integral part of the EU.

The semantic issue being more or less settled, attention shifted to capabilities and the possibility of European operations. Initially, the WEU had an advantage over NATO in not being prevented from engaging in out-of-area operations. Until Germany had cleared this issue with the Constitutional Court in Karlsruhe, it was not able to engage its military forces outside the NATO area. The WEU never required all partners to be militarily involved as soon as the political decision to be engaged had been taken by the Council. Its first operation where Europeans took responsibility for actions outside the European continent was the mine-clearing operation in the Gulf during the Iran–Iraq war. Later, the German problem was solved by its participation with personnel of the *Bundesgrenzschütz* in the embargo operation on the Danube. NATO Secretary-General Wörner did his utmost to lift the restriction on Alliance operations, but it took time. On the US side he was spurred on by US Senator Richard Lugar's dictum that NATO had to go out of area or out of business.

In November 1993 the WEU ministerial meeting decided to intensify their coordination on Alliance issues representing an important common interest, with the aim of introducing joint positions agreed in the WEU into the process of consultation in the Alliance. Second, in future crises it was recommended that the WEU and NATO should hold consultations,

including those through joint Council meetings on whether and how they might cooperate. And third, the hope was expressed that the forthcoming NATO summit of January 1994 would endorse the principle that the WEU could use the collective assets of the Atlantic Alliance, such as communication systems, command facilities and headquarters. This would be the only way to avoid unnecessary duplication. At the NATO foreign ministers' meeting to prepare for the summit, I described the WEU as the "operational arm" of the EU. Reactions were favourable, also from US Secretary of State Warren Christopher, who supported a strong ESDI as the logical consequence of the process of European integration. In his opinion, NATO should offer the common assets on the principle of 'separable but not separate', meaning that they could function under different command arrangements without affecting their ultimate availability to NATO. On their availability he was not fully clear: the NATO consultation process should continue to generate views on all topical security issues, but he did not regard them as implying a possible veto on the use of Alliance assets. A decision by the NAC would be necessary to safeguard Alliance cohesion, but the new concept of CJTF would be tailored for actions by both NATO and the WEU. The summit declaration ingeniously avoided the word 'decision' by the NAC and mentioned 'consultations' when NATO assets were to be made available.

The 'separable but not separate' metaphor was a suitable placebo for those who were concerned about the Europeans going their own way. It did not stand up, however, to close scrutiny. Once made available, it would be most unlikely that the forces could be withdrawn, and in any case no one worried what would happen to the assets when the crisis was over. CJTF on the other hand was a most innovative new concept of the American military to operate in an environment that would be increasingly multi-service, multi-agency and multinational.[90] Ad hoc pooling of resources to deal with humanitarian crises or regional conflicts was bound

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[90] The monograph by Admiral David Paul Miller, *Retaining Alliance Relevance, NATO and the Combined Joint Task Force Concept* (National Security Paper No. 15, Institute for Foreign Policy Analysis, Cambridge, MA, 1994), suggested two major NATO commanders: a US-Canada group at SACLANT in Norfolk and a Western European Group at SHAPE in Belgium. His successor, General John J. Sheehan went a step further in suggesting a resource command. Ultimately, Norfolk became the Allied Command Transformation under General Edmund Giambastiani, without operational responsibilities.

to remain inadequate. For a better chance of success 'employment packages' needed to be formed around the nucleus of a pre-selected and pre-trained command element and based on central planning but decentralised execution. The concept would enhance NATO's own capability for crisis management, but could also provide for the needs of the WEU. Unfortunately, it was never formally put into practice. NATO planning for the WEU did not have a lucky start and aimed at operations that were either too large or too small. When asked about this in 1994, the SACEUR, General George Joulwan, complained of the lack of guidance he received from Brussels, which made him use a contingency plan developed for Bosnia. When NATO actually deployed in Bosnia in 1995 with the planned size of some 50,000 personnel, it did not do so under a CJTF banner.[91] Nor did it do so in the small Kosovo Extraction Force for the possible evacuation of OSCE monitors, which consisted entirely of European units. The EU-led Operation Concordia in Macedonia in March 2003 could be said to draw on the Berlin Plus arrangement, but it consisted only of 350 lightly armed personnel for a period of six months and therefore could have been accomplished without recourse to NATO.

Several things went wrong. France stepped back from its announced resumption of a role in the appropriate NATO bodies after an unfortunate misunderstanding between Presidents Clinton and Chirac. They came within one sentence, only four words, of Europeanising the function of Commander-in-Chief Allied Forces, Southern Europe (CINCSOUTH) at the headquarters in Naples and giving France the prospect of occupying the post some time in the future. If this had been successful the subsequent debate on ESDI and ESDP might have been muted.[92] Washington with some justification hesitated to give up its post as major subordinate commander, which was double-hatted with the Sixth Fleet. The situation between Greece and Turkey and generally in the eastern Mediterranean was better handled by an American commander able to provide the glue to keep the Alliance together.

Greek-Turkish problems were also the reason why agreement on the availability of NATO assets proved so difficult. Ankara wanted to make sure that those assets would not be provided for European operations in

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[91] See van Eekelen (1998), op. cit., pp. 191-212.

[92] See Ronald Asmus, "Rethinking the EU, why Washington needs to support European integration", *Survival*, Vol. 47, No. 3, 2005, pp. 93-102.

which Turkey was not allowed to participate and it would take years to square that circle. Finally, the Berlin meeting of the NAC in 1996, which focused on CJTF, put it firmly in the centre of NATO's own approach towards contingency operations. A new concept was coined of a single system being capable of performing multiple functions, including non-Art. V operations. In other words, NATO could do it all on its own and the division of labour would not be drawn along the lines of collective defence for NATO and non-Art. V activities for the WEU. In future the criterion would be whether NATO as a whole would not be engaged, primarily because the US would not be prepared to join. At Berlin NATO did not make any dissenting noises and declared support for "the development of ESDI within NATO by conducting at the request of and in coordination with the WEU, military planning and exercises for illustrative missions identified by the WEU".[93] ESDI was described as a "permanent and visible" part of NATO, but the details seemed complicated and much of the earlier enthusiasm was lost. NATO wanted to maintain control of the assets handed to Europe, even if the Alliance was not engaged in an operation. If the ESDI remained a purely military device to leave everything as it was, but to give final command authority to the deputy SACEUR, it would never remotely resemble a European identity. The military had a point in saying that they remained responsible for the rotation of personnel and the quality of their work, but politically the message for the scope of autonomous action was not positive. The French countermove to Berlin was the development of the 'lead nation' concept and during their presidency of the EU an exercise was organised using a national headquarters as the basis for the command structure, bringing in officers from other participating countries. In any case, it would take years before the Berlin Plus agreement was redefined. By that time the WEU had transferred its functions to the European Union, but the problems remained the same.

In 1999 the President of the NATO Parliamentary Assembly, Javier Ruperez, convened a steering group to argue the case for the ESDI, aiming at repeating the successful report of his predecessor Senator William Roth on the future of NATO. He wanted the ESDI within NATO, but then an Alliance that incorporated all members of the EU. In his view, neutrality should not be allowed to survive because opting out ran counter to the

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[93] See NATO, Ministerial Meeting of the North Atlantic Council in Berlin, Press Communiqué NAC-1-96(63), 3 June 1996.

spirit of solidarity. Europe needed a security dimension for building up a European consciousness. Part of the new reflection should cover the mechanism needed for the transfer of NATO resources to the EU. His compatriot and later successor Rafael Estrella rebutted that the CFSP aimed at autonomous actions, such as the strategy with regard to Russia and others, so the ESDI could not be entirely within NATO. This led Mr Ruperez to the question of which autonomous military actions could be regarded as probable, either by the EU or the US. The exercise petered out, because Mr Ruperez was appointed Spanish ambassador to Washington, but his questions remained.

In my opinion it was and remains illogical for the US to stress the importance of the ESDI, but simultaneously resist any European caucus in NATO. This stance is even more illogical in a period when the US reserves the right for unilateral action and focuses on coalitions of the willing to join them. In fact, the Europeans are much less likely to engage in autonomous action than the Americans and envisage doing so only if the US does not want to become engaged. The more the EU builds capabilities, either for NATO-led or EU-led operations, the more it should be able to formulate views on objectives and strategy.

The real problem lies in the way Europeans develop common positions and subsequently introduce them into NATO consultations. There is no reason why that could not be done in a spirit of complete openness and transparency and willingness to adapt initial views to sound arguments advanced by others, especially the US. Immutable positions stand up poorly in an alliance and, if they occur, would constitute a serious problem, regardless of any European pillar or identity. Washington should be less concerned about the Europeans ganging up against them. Europeans might be divided about joining the US, but are most unlikely to act against its clear wishes. The danger to NATO is not EU success, but its failure to deliver, for EU success will not be measured in terms of its consistency with NATO, but in its capacity to generate an independent and influential role in security affairs.[94] In any case, without the ESDI, and the

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[94] As noted by US Representative Douglas Bereuter, leader of the US delegation to the NPA at a session of the Committee for External Relations, Human Rights and CFSP of the European Parliament in Brussels, 22 February 2000. On 2 February, Senator Gordon Smith told a visiting NPA group that in cases like Kosovo his first option would be the ESDI. He wondered whether NATO should deal with ethnic conflict, but also insisted that the Alliance was more than just Art. V.

subsequent ESDP (which soon replaced the identity metaphor), European spending on defence would have decreased. While the political quarrel continued, things on the ground sometimes could be arranged amicably. At the beginning of the year 2000 the Eurocorps provided the core of the KFOR headquarters and five years later France participated in a NATO Response Force (NRF).

American representatives went too far with the presumed 'right of first refusal' for NATO to undertake a mission, in preference to the EU. It was pressed in reaction to the Franco-British agreement at St Malo concerning the possibility of autonomous European action. I found the vocabulary peculiar, because who was offering anything? In reality it would be difficult enough finding anyone willing to act. During a crisis all international organisations would be consulting their members, and hopefully each other as well. Informally, NATO would keep the pride of place, for everyone would be keen on using its well-oiled machinery with American participation, but why formalise it in an artificial and probably time-consuming manner? If the US did not want to join, either the CJTF or the autonomous mode would be possible, but it would make little sense to determine the best option through a binary process of elimination. The argument that conferring this right upon NATO would force the Alliance to make up its mind was risky. Would the US always want to say clearly that it did not wish to be involved, thereby bringing diverging opinions out in the open and putting the remaining partners at a disadvantage?

Another suggestion to arrive at a formal division of labour – that of leaving the Balkans to the EU and the Middle East to the US – equally should be approached with caution for several reasons. First among these is that any division of labour, by definition, is divisive. Would it be politically desirable or feasible to parcel out parts of the world where both the EU and the US had important interests? In 2000 the sceptics would sneer that the EU would not be up to it and might be pushed to do things it was not ready for. More importantly it would risk eroding NATO by under-cutting the assumption that security remained indivisible. Philip Gordon warned a group from the NATO Parliamentary Assembly against institutional gimmicks: if Europe puts value to the table, NATO would move that way. His conditions for the right outcome were the building of better European capabilities, for NATO to remain the preferred option whenever possible, good NATO-EU links including the availability of NATO assets, the involvement of non-EU allies and equitable defence-industrial cooperation.

He also made the important point that duplication referred to planning and command structures, not to the Europeans acquiring weapon systems.[95]

So far, the EU has conducted only one autonomous operation. In the summer of 1994 in Bunia in the Ituri province of the Democratic Republic of Congo a multinational force of some 1,500 personnel acted quickly to deal with an eruption of violence and managed to control the situation until a larger UN force could be despatched. One could ask the question of whether a Berlin Plus arrangement could have acted with similar swiftness in this time-sensitive contingency.[96] This experience would later be the model for the 'battle group' concept of the EU.

Every time NATO goes through a crisis of confidence, calls are heard for a second Harmel report to redefine the future tasks of the Alliance. In 1967 the Belgian Foreign Minister Pierre Harmel performed a valuable function in raising morale after NATO had to move from Paris to Brussels by focusing on the doubleheader of defence and détente (and in passing formulating German unification as an objective). Usually the establishment has not been in favour out of fear that everything would be turned upside down and so far it has not happened. In 1993 the German Foreign Minister Klaus Kinkel toyed with the idea of a different set-up of the Alliance, inviting all EU members to join and thus making the European identity within NATO more visible.[97] The last call for a group of wise men came from Chancellor Gerhard Schröder at the Munich security conference of 2005, when he pointed at the waning substance of NATO's political consultations. We shall come back to that difficult period in transatlantic relations. At this point it suffices to note that governments generally are not enamoured of special panels or wise men, unless they see no way out and want to gain time. Usually they want to control developments more closely than is possible when a group of independent statesmen or experts (or both) have a go at the problem.

The most worrying trend in transatlantic relations was the widening divergence on a variety of issues, ranging from ratification of the

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[95] The point was made at The Brookings Institution, Washington, D.C., 4 February 2000.

[96] See the chapter by Philip Gordon (untitled), in Nicole Gnesotto (ed.), *EU Security and Defence Policy – The First Five Years (1999–2004),* EU Institute of Security Studies, Paris, 2004(a), pp. 215-19.

[97] See van Eekelen (1998), op. cit., p. 190.

Comprehensive Test Ban Treaty to hormones in beef, genetically modified organisms, hush-kits for noisy aircraft engines and development issues such as the import of bananas from former colonies. In the past, the debate on protectionism related primarily to classic commercial issues – tariffs, quotas and preferences, for example – but now also extended to health and environmental policies and pure food legislation. It was compounded by the fact that on these issues the EU was more permissive of national exceptions than the World Trade Organisation (WTO). To cap it all, the WTO was suddenly confronted by an unholy alliance of NGOs and interest groups, whose only common ground was opposition to further trade liberalisation. Transatlantic compromise was more necessary than ever, but was not forthcoming in the presidential election year 2004. Many of the issues did not immediately relate to security matters, but were bound to have an impact on the overall perception of American policies. With a Bush administration bent on spreading democracy, paradoxically the Europeans became increasingly sceptical about the way these values and norms were being applied. The American campaign against the International Criminal Court was a case in point. Torture during the occupation of Iraq was even more painful. Anti-Americanism increased throughout Western Europe albeit in varying degrees, with the UK and the Netherlands being least affected.

American attitudes towards European integration have become ambiguous. It is difficult to determine a precise moment when benign scepticism turned into more negative or even hostile attitudes. The failure of France to return to the military side of NATO in 1995 as the result of a misunderstanding between Presidents Chirac and Clinton had something to do with it. Suspicions of French designs to construct the European identity as a counterweight to the US have always been a factor, which reached a climax during the French opposition (and even active campaigning) in the Security Council to the American intervention in Iraq. This happened in the middle of the work of the European Convention and influenced opinion on the resulting Constitution and its subsequent setback in referenda among a small but vocal group of experts.

That opinion was shaping up as early as 1992 when a Pentagon White Paper bluntly stated that the US government must "discourage the advanced industrial nations from challenging our leadership or even aspiring to a larger regional or global role". It thought it critical for the US to "retain the pre-eminent responsibility for addressing…those wrongs

which threaten not only our interests, but those of our allies and friends, or which could seriously unsettle international relations".[98] To most Europeans the idea of the EU challenging American leadership seemed far-fetched, but some exaggerated declarations of European politicians might have nourished those concerns. An extreme example was the unwise statement at the European Council of Lisbon in 2000 that within 10 years the EU should become the most competitive group in the world. Half-way through the decade, little has happened to fulfil that promise. In any case it would have already been quite a challenge to become simply competitive, but to say 'most competitive' was absurd.

Some European writers, indignant about American unilateralism and the intervention in Iraq, have kindled the bushfire. The German philosopher Jurgen Habermas and his French colleague Jacques Derrida published a joint plea for a common foreign policy, beginning in a core Europe.[99] They took the massive demonstrations across Europe to protest against the impending invasion of Iraq as "a sign of the birth of a European public sphere" and argued that it was necessary for Europe "to throw its weight on the scales to counterbalance the hegemonic unilateralism of the US". Europe should exert its influence in shaping the design for a coming global domestic policy, presumably an extension of the Western European way of doing things. The cacophonous response to this outright plea for building the European identity on the basis of overt opposition to the US led Anatol Lieven to the melancholy observation that European nations were largely formed by defining themselves as enemies of other European nations: a German was a German because he was neither a Pole nor a Frenchman, and so on.[100] His conclusion was that much would depend on more extreme enemies. If no major terrorist attack occurs against the US, the country might gradually move towards a basically pragmatic and restrained approach to deal with the rest of the world. After the attacks in

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[98] See Jeremy Rifkin, *The European dream: How Europe's vision of the future is quietly eclipsing the American dream*, New York: Tarcher/Penguin, 2004, p. 292.

[99] See Jurgen Habermas and Jacques Derrida, "After the War: The Rebirth of Europe'', in the *Frankfurter Allgemeine Zeitung* and *Libération* of 31 May 2003. Their essay and a wide variety of responses appeared in Daniel Levy, Max Pensky and John Torpey (eds), *Old Europe, New Europe, Core Europe: Transatlantic Relations after the Iraq War*, London and New York: Verso, 2004, reviewed by Anatol Lieven in the *Financial Times* of 19-20 February 2005.

[100] See Lieven's review in the *Financial Times* (19-20 February 2005), *supra*.

Madrid and London, one might add that European attitudes to terrorism are hardening too, and leading to tougher measures in dealing with the threat.

Lawrence Freedman approached the issue from a different angle. The EU had a comparative advantage in soft power, using non-military means of influence and persuasion, at least in its own neighbourhood, but this was derived from the fact of its very existence rather than from an active foreign policy. Its common foreign policy was still largely reactive "and the basic organising principle often appears to be to find the minimum necessary for a quiet life".[101] He felt that many Europeans, probably a majority, had little interest in a Europe that could define itself only in relation to the US and would rather want to work together with Washington. He seemed right. A European Union of 25 members or more might be able to agree on certain common policies to protect shared interests, but ganging up against the US is unlikely to be one of them.

The US foreign policy elite, both Republican and Democrat, have consistently supported a stronger and more globally responsible EU, on the assumption that it would be more open, more free-market oriented and a more useful partner in addressing global security issues, hopefully releasing the US from some of its international responsibilities.[102] Consequently, those policy-makers could be expected to see the European crisis as having negative implications for transatlantic burden-sharing and the promotion of stability in areas of US interests. These concerns were voiced by Philip Gordon of the Brookings Institution in warning his compatriots that they should not cheer a French 'no' vote to the Constitution. Its result would be the sort of disunity and political paralysis that made the current EU such an awkward partner.[103] Rejection of the Constitution would undermine further enlargement, lead to divisive and unworkable proposals for 'core groups' and signify a victory for the anti-American, anti-capitalist, anti-globalisation activists who formed a nucleus of the rejectionist camp. These views are contradicted by the influential and

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[101] See Lawrence Freedman, "Europe must focus on more than America's weakness", *Financial Times*, 22 February 2005(a).

[102] See Marcin Zaborowski, "How the US views the European crisis", *EUISS Newsletter*, No. 15, EU Institute for Security Studies, Paris, July 2005.

[103] See Philip Gordon, "America has a big stake in Europe's constitution", *Financial Times*, 17 May 2005.

conservative Heritage Foundation, which has long argued against support for European integration and in favour of a policy of dividing the Europeans. The American Enterprise Institute was subtler in supporting European integration as long as it was limited to economic aspects, but objected to what it regarded as advancing political centralism in the Constitution. Both organisations were particularly critical about the parts of the Constitution that strengthened the external role of the Union, which in their view would be detrimental to transatlantic relations. Most people, however, were indifferent or even oblivious of the impending stalemate in the Union and in the words of Marcin Zaborowski, would be prone to come to regard it as another example of "this European mess".[104]

Ronald Asmus tried to bridge the gap by giving four fundamental reasons why the US has a real and growing interest in the success of the European Union:[105]

1) For sustaining peace and security in Europe, the European Union is the best guarantee.
2) The US has a profound stake in the EU remaining a magnet with influence beyond its borders, helping to anchor the young and fragile democracies to the West.
3) There is a need for strategic cooperation between the US and Europe.
4) There is the potential to form a natural coalition of democracies that work together to confront new challenges.

From the European side one could not agree more, but will it happen? It takes 'two to tango' and US leadership will only function if its steps do not hurt the toes of its partners. It will have to take the views of the allies sufficiently into consideration to have everyone recognise its interests in a joint partnership. Making NATO more political is long overdue but cannot be the whole story, because today's challenges have outgrown the military-focused framework. It will only be possible to set a common global agenda if the dance produces new figures in the search for a common purpose and a sense of shared norms.

NATO and the EU play leap-frog

As the debate continued, NATO and the EU played a game of leap-frog. After the Helsinki Headline Goal of 1999 the Prague summit of 21-22

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[104] See Zabarowski (2005), op. cit.

[105] See Asmus (2005), op. cit., p. 93.

November 2002 created the NATO Response Force of some 20,000 persons with an initial operational capability by October 2004 that was to be fully operational two years later. It would consist of technologically advanced, flexible, deployable, interoperable and sustainable forces including land, sea and air elements ready to move quickly to wherever needed, as decided by the Council. With this decision NATO jumped ahead of the EU: the NRF would be an 'insertion force' with considerable fighting power and substantial air and naval components, able to deploy much quicker than the 60 days set for the EU Headline Goals. Its units would be designated in advance as a force package, while the EU was still working on the basis of a Force Catalogue from which units could be selected when a crisis erupted.

On the European side, defence ministers also worked on their capabilities. On 11 February 2002 the European Capability Action Plan had been launched under the Spanish presidency to remedy 24 significant shortfalls with the help of 12 and later 19 panels. Informal meetings were held in Zaragoza on 22-23 March and Rethymnon on 4-5 October, and their first formal meeting in the format of the General Affairs and External Relations Council (GAERC in the new jargon and 'jerk' in the vernacular) took place on 13 May. At Zaragoza High Representative Solana struck a stern note. Ultimately, the ECAP was to deliver real capabilities and to be able to do so the issue of resources for defence should be addressed seriously. European defence spending had steadily declined throughout the 1990s to an average of less than 2% of GDP. In his view, increased solidarity and a stronger sense of common interests among member states should reduce the scope for purely national military intervention and push towards integration among their armed forces. Therefore, it should not be hard to move more decisively towards greater task-sharing, the development of multinational capabilities and pooling of resources. Strategic mobility, communication and information systems were prime candidates for that approach.[106]

The formal meeting of defence ministers of 13 May 2002 examined all relevant aspects of the development of EU military capabilities as set out at the 2001 European Council of Laeken. The conclusions were positive but hardly spectacular. The ECAP was scrutinising many of the shortfalls, but ministers recognised that "as expected at this early stage, significant shortfalls will remain until results have been produced, while others still

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[106] See Chaillot Paper No. 57 (Haine, 2003), op. cit., pp. 49-51.

need to be addressed".[107] The Council also confirmed the need for further development of concepts and procedures in accordance with the Presidency Work Plan on Rapid Response. Reference was made to work "in the various areas related to the improvement of operationality of Headquarters".

The presidency report on ESDP to the European Council at Seville on 21-22 June 2002 incorporated these elements. It also made a conceptual point by stating that "The bottom-up and voluntary character of the ECAP has been built into the mechanisms established for ECAP implementation", a sentence that required further elucidation to become comprehensible.[108] Obviously no country could be forced to change its commitments or national planning against its wish, but in a multinational context it would be necessary to merge bottom-up and top-down processes. NATO did so successfully by agreeing guidance from above as the basis for commitments and for implementation from below, which was then evaluated together. In the EU such a defence-planning cycle still appeared to be an anathema to French sensitivities. Yet, without it the coherence of European capabilities would remain doubtful.

On structure the report mentioned that the WEU Satellite Centre and Institute for Security Studies had become operational as EU agencies on 1 January 2002. Within the Council Secretariat a Joint Situation Centre had been further developed, which would improve support to the Council in the whole field of CFSP.

At Rethymnon in October 2002 (with the Greek minister as host in view of the Danish non-participation in the ESDP), Javier Solana repeated his call to defence ministers for spending more and doing better. More significant was his moving away from the bottom-up approach. He argued that it should be combined with a process that gives the necessary political impetus for the actual implementation of the technical options prepared by military experts. Ministers had an essential role in this process, on the basis of the advice of the EU Military Committee. In other words, waiting for uncoordinated national contributions would not be sufficient. Therefore, High Representative Solana appealed for a common definition of operational requirements and better coordination of acquisition and

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[107] See the Council Conclusions of the General Affairs & External Relations Council (2002a), op. cit., reproduced in Chaillot Paper No. 57 (Haine, 2003), *supra,* pp. 57-59.

[108] Ibid., p. 77.

research programmes. Another interesting remark dealt with the need to take fully into account the new NATO Defence Capability Initiative. ECAP and the DCI were not per se mutually reinforcing, but had to be financed out of the same set of budgets.

On 19 November defence ministers again met in the GAERC format and considered the intermediate reports of the ECAP panels "encouraging". Mr Solana was satisfied with the progress made within a short period of time, except in the area of improving European military capabilities. He still did not have an overall picture of the state of play in the various ECAP panels, which made it difficult to collectively assess progress and to give meaningful political guidance for the way ahead. To enhance European credibility, High Representative Solana proposed to ensure that at least a few high visibility projects were implemented – or at least firmly committed and funded – by the end of 2003, if possible concentrating on capabilities that were critical for EU strategic autonomy. Thus spurred into speedier action the GAERC called for the EU rapid response elements to be finalised, able to react within 5-30 days, with streamlined crisis-management procedures and advance planning based on illustrative scenarios. In the Headline Force Catalogue the rapid response elements were to be identified specifically and the modalities worked out for the use of the agreed framework-nation concept and other concepts as might be agreed.

On that occasion the Secretariat-General of the EU Council provided an illustrative document on the ECAP[109] drawn up by representatives of the states that chaired panels, then 19 in total. The list was illuminating for its scope and the incorporation of capabilities for offensive operations:

1) *Helicopters.* Out of the three attack helicopter battalions required by the Headline Goal, two had been contributed, which would be sufficient in all but the most demanding scenarios. On support helicopters the panel was still at an early stage.

2) *Nuclear, chemical and biological (NBC) protection.* Initially the requirement of two battalions was raised to three, but later amended

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[109] See General Affairs & External Relations Council (GAERC), Council Conclusions at the GAERC meeting of 19 November 2002(b) in Brussels; see also Chaillot Paper No. 57 (Haine, 2003), op. cit., pp. 148-155 for the document and annex.

to just one NBC company. Offers had been received to make up this shortfall as well as for contributing to deployable NBC laboratories.

3) *Surveillance and target acquisition units/UAVs.* Requirements in terms of quality and quantity had been established, which were now being compared with existing assets and ongoing projects in member states. A final report was to be ready by March 2003.

4) *Medical role and medical collective protection.* In the medium to long term, it was held that a multinational approach could possibly remedy the shortfall.

5) *Special operations.* Proposals were to be made to end the shortfall for concurrent EU scenarios by the end of 2003.

6) *Carrier-based air power.* The panel considered that at least 60 aircraft would be necessary, which required an increase of national contributions.

7) *Suppression of enemy air defence.* Threat analysis had shown that the destruction of an acquisition radar or ground-to-air site would not be sufficient for guaranteeing the safety of an offensive deep strike mission. Short-term solutions were explored such as jamming devices or other appropriate weapons, but further analysis was needed, e.g. on localising and identifying any defences before deciding on a procurement policy.

8) *Air-to-air refuelling.* A short-term solution involving additional national contributions would be possible by the end of 2003. Medium-term, interim (until 2012) and long-term solutions were being developed.

9) *Combat search and rescue.* Quantitative requirements could be met if additional forces were provided; qualitatively, the panel was considering alternatives for improving European capabilities.

10) *Cruise missiles and precision-guided munitions (PGM).* Recent operations and the foreseeable geopolitical environments underlined the importance in crisis management of extremely precise weapons, fired from aircraft or ships. In 2003 European cruise missile capabilities were to be increased substantially and requirements would be fully met by 2006. Most EU member states already had acquired or ordered PGM. In view of the diversity of launchers efforts were now directed towards their interoperability.

11) *Tactical ballistic missile defence*. Possibilities seemed to exist in the further combining of expertise, joint development of doctrines and procedures, multinational exercises and armaments cooperation.

12) *Deployable communication and information modules (DCMs)*. The number of assets offered (four from France, two from the UK and one from Italy) was insufficient to meet the overall requirement for eight DCMs, also because of differences in size and composition. A step-by-step approach was followed to define the specific assets needed for deployable headquarters.

13) *Theatre surveillance air picture*. Requirements had been compared with existing national capabilities. Options for enhancement were to be presented by March 2003.

14) *Strategic imagery intelligence collection*. For the short term, the panel concentrated on images provided by observation satellites, both commercial and military. They considered that medium-term (2005-07) access to future military or dual-use systems would be negotiated and for the timeframe 2010-15 common programmes for the next generation of observation satellites should be developed.

15) *UAVs at high and medium altitude with long endurance and tactical UAVs*. This concerned the French–Dutch MALE project and the integration of drones in the airspace and their certification.

16) *Strategic air mobility/outsize transport and general cargo aircraft* (items 16/17 in the document). These two panels only reported that they would be able to present options in time to meet the deadlines.

17) *Roll-on-roll-off/general cargo shipping* (items 18/19 in the document). Options were developed for the use of commercial assets and the appropriate management mechanisms and related legal issues.

It remained difficult to assess the overall significance of these reports for the mounting of EU-led operations. Undoubtedly, progress was being made, but one could only sympathise with Javier Solana's outburst that political guidance for the way ahead was hardly possible. Of course, the same question could be asked of NATO planning for crisis-management operations, but there US assets could fill the gaps left by the Europeans; the well-oiled machinery of the NATO command structure and its defence-planning cycle were better able to put forces together and to define and remedy shortcomings. For the EU the interrelationships between the panels needed to be elaborated: What good would cruise missiles be without

strategic intelligence and target acquisition and a follow-up with ground forces? For the short term it would be meaningful to clarify what tasks the EU would be able to perform initially and to build from there in the context of the most plausible contingencies, rather than continually emphasise shortfalls in a panoply of requirements, some of which would only be needed in scenarios where autonomous European action was not to be expected soon. Moreover, the acquisition of deep-strike capabilities, such as cruise missiles and the suppression of enemy air defences, required political support for the contingencies of their possible use, which would not be easily provided by national parliaments.

Surveying developments in 2002 led to the paradoxical conclusion that the year had not witnessed any deployment of EU forces for Petersberg tasks, in spite of the fact that the Laeken European Council had adopted a Declaration of Operational Capability of the common European security and defence policy. That would only come a year later when the deadlock over the use of NATO assets had been broken and the EU took over from NATO in Macedonia, to be followed by the first autonomous operation in the Democratic Republic of Congo and the agreement that by December 2003 NATO would hand over SFOR in Bosnia, where the EU already had established a police mission as a follow-on to the UN International Police Task Force.

5. The Convention on the Future of Europe

It took until February 2003 before the Treaty of Nice entered into force. An Irish referendum had turned negative, requiring another declaration to make the text palatable to public opinion.[110] Fortunately, this did not preclude the continuation of the conceptual debate. At the Nice European Council meeting in 2000 the European leaders had issued a Declaration on the Future of the Union, calling for a deeper and wider debate on the future development of the EU, and agreed a general, but not very precise, roadmap towards the next Intergovernmental Conference, expected for 2004. It would be prepared by a broad-based Convention including the candidate countries and a sizeable number of members of the European Parliament. The debate was to address the question of subsidiarity, the status of the Charter of Fundamental Rights, a simplification of the treaties and the role of national parliaments. At the European Council at Laeken, held a year after Nice, it had already become clear that the agenda would have to be wider than those four points. Apart from further extending the areas of qualified majority voting in the Council of Ministers, coupled with co-decision of the European Parliament, the mechanisms of the second pillar would have to be improved. The triumvirate of Javier Solana as High Representative for CFSP, Chris Patten as Commissioner for External

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[110] The Presidency Conclusions of the European Council at Seville in 2002 included a National Declaration by Ireland in Annex III and a Declaration of the European Council in Annex IV. Ireland stated that it was not bound by any mutual defence commitment, nor party to any plans to develop a European army. The Council repeated the wording of Nice that the development of the Union's capacity to conduct humanitarian and crisis-management tasks did not involve the establishment of a European army. Both texts, issued by the European Council of Seville of June 2002, are reproduced in Chaillot Paper No. 57 (Haine, 2003), pp. 74-75.

Relations and the six-monthly presidency worked reasonably well in Macedonia (with the participation of NATO Secretary-General Lord George Robertson as well) but was cumbersome. It was also clear that the high representative should be given larger powers of initiative and work in tandem with the Commission. Moreover, the EU was hampered by divided competences, with Mr Solana responsible for politico-military crisis management and Mr Patten (with the money of the EU budget behind him) for the civilian aspects. That was no efficient way of operating – even though present personalities made the best of it – and was contrary to the reality that the EU could only make a mark when all its resources were used in a coherent manner.

The idea of a Convention was not new. It had been successfully tried in drafting the Charter of Fundamental Rights under the chairmanship of the former German President Roman Herzog. In 1999, the European Council of Tampere accepted a German proposal to codify the existing fundamental rights in the Union into a single document and entrusted the task to a mixed convention of 15 government representatives, 16 members of the European Parliament, 30 national parliamentarians (2 from each member country) and 1 European commissioner. The outcome was a consensus text, which was adopted by the Nice European Council as a political document, but not legally binding. That distinction undoubtedly made agreement easier.

The Belgian presidency deserved credit for widening the scope of the debate. The declaration emanating from the Laeken European Council of December 2001 listed some 58 questions to be answered by the Convention. Europe not only had to be made more democratic, more transparent and more efficient, but also had to resolve three basic challenges: to bring the citizen closer to the European design, to organise European politics in an enlarged Union, and to develop it into a stabilising factor and a model in the new, multipolar world. The Convention was tasked with drawing up a final document that might comprise either different options (indicating the degree of support they received) or recommendations if consensus was achieved. The subsequent Intergovernmental Conference would take the ultimate decisions. The Laeken declaration was short on defence policy: the only questions posed related to how a more coherent external policy and defence policy could be formulated, and whether the Petersberg missions should be updated. There was quite a difference, as noted by Philippe de

Schoutheete, with the precise questions posed about the institutions, the instruments, the competences, subsidiarity and other issues.[111]

The Convention followed the earlier model, but with some differences. Its President, Valéry Giscard d'Estaing, would be aided by two Vice-Presidents, former Italian Prime Minister Giulio Amato and the former Belgian Prime Minister Jean-Luc Dehaene. The Commission had two representatives, Commissioners Antonio Vitorino and Michel Barnier. All candidate states, including Bulgaria, Romania and Turkey were given equal treatment to the full members and would also have one government representative and two parliamentarian members. The European Parliament wanted to have 30 members, as many as the MPs from member countries, but was kept at 16 as in the previous Convention. All members had substitutes, who were allowed to participate in the working groups, and as the Convention progressed, they were also permitted to speak even when their full member was present. Altogether, there were 210 persons plus observers from the Economic and Social Committee, social partners and the Committee of the Regions. During the hearings with representatives from civil society and in the committees, many others were allowed to speak.

The European Convention was opened on 26 February 2002 by an impressive speech from its president. The great hemicycle of the European Parliament in Brussels was packed and the hall opposite provided television viewing. Everyone had the feeling of being present at the creation of something new. Opinions differed on what exactly it would turn out to be. Mr Giscard himself sketched the alternatives: either a yawning abyss of failure, adding to the current confusion in the European project, or agreement on a concept of the European Union bringing unity to our continent and respect for its diversity. His speech combined philosophical vision with a clear sense of purpose, without becoming unduly rhetoric. For the first time since the Messina conference of 1955 the future of Europe would be examined in detail – a Europe that had made three fundamental contributions to humanity: reason, humanism and freedom. The main reason why Europe was marking time was the difficulty of combining a strong feeling of belonging to the EU with a continuing sense of national identity. Therefore, the first stage of the

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[111] See Philippe de Schoutheete, *La coherence par la defense – Une autre lecture de la PESD*, Cahier de Chaillot No. 71, EU Institute for Security Studies, Paris, October 2004.

Convention should be attentive listening to the question: What do Europeans expect of Europe at the beginning of the 21st century? Special attention would be paid to a Convention for young persons and to interaction with civil society. Would Europeans imagine Europe 50 years hence as a more uniform Europe, driven forward by a process of harmonisation or as keeping its diversity while respecting cultural and historical identities? His question left the audience puzzled, because the obvious answer would be: both. That would be the outcome of the Convention after 16 months' work: union in diversity. It was not entirely clear why Mr Giscard said that the two objectives would result in different approaches. Perhaps to show that he had no preconceived ideas about the ultimate result.

In any case, the formulae he proposed to consider in a second stage gave room for different visions:

- the organisation of the European institutions resulting from the Treaty of Nice;

- the plan for an EU organised along federal lines, as put forward by high-level German decision-makers in particular;

- the document prepared by the European Commission modernising the Community method; and

- the solutions submitted under the banner of a 'federation of nation states', whether or not they involved the creation of a second chamber.

The third stage should be the formulation of a proposal. The Laeken declaration left the Convention free to choose between submitting options and making a single recommendation. Obviously, a broad consensus on a single proposal would carry considerable weight and authority and open the way towards a constitution for Europe. He did not want to choose now, but nevertheless pointed the way when, with the argument of avoiding disagreement over semantics, he proposed to call it a 'constitutional treaty for Europe'. To most of the audience the difference was small. On working methods, Mr Giscard made only a few remarks in his inaugural address, the most important dealing with the nature of a convention in general: it was neither an Intergovernmental Conference, nor a parliament, but a group of men and women meeting for the sole purpose of preparing a joint proposal. None of the inaugural speakers made a reference to security and defence policy.

During the 16-month gestation period of the Convention several outside events had an impact. First, the Seville European Council in 2002 took some decisions on the CFSP, which could be seen as pre-empting some of the work of the Convention by designating the meetings of the foreign ministers as the General Affairs and External Relations Council. Second, the European Parliament adopted an omnibus resolution that dealt with several issues under consideration by the Convention. Third, the crisis in Iraq led to a delay in the proceedings, particularly on the issues of external action.

In the light of the coming enlargement, the Seville summit adopted a number of measures changing the rules of procedure of the Council and limiting the number of formats to nine. Several ministers could attend at the same time. The GAERC combined general affairs and external affairs, but would discuss them in separate sessions with their own agendas and possibly on different days. External affairs would entail the whole field of external action, including the CFSP, ESDP, foreign trade, development cooperation and humanitarian aid.[112] For the first time in December 2003, a strategic multi-annual programme for the next three years would be adopted, drafted by the presidencies concerned in consultation with the Commission. Anticipating this, an operational programme for the next year would be presented by the two incoming presidencies in December 2002. Preparatory meetings for the budget during the first semester would be chaired by the presidency for the second semester. Some more technical groups would be chaired by a member of the Council Secretariat. The presidency would be able to limit speaking time and to ask delegations sharing a particular point of view to designate a single speaker.

These measures made organisational sense, but seemed to preclude the high representative or future foreign minister from chairing the Council. Another implicit innovation, but also recognition of a fact of life, was the reference to caucusing by like-minded countries on a particular issue, which would encourage the formation of ad hoc coalitions.

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[112] Publication of the revised conclusions of the Presidency, Doc. 13463, POLGEN 52, took a long time and appeared on 24 October 2002. The European Council meeting had taken place on 21-22 June 2002. Annex I contained rules for the organisation of the work of the European Council. Annex II (not contained in Chaillot Paper No. 57) listed the measures concerning the structure and working of the Council. Under pressure from sectoral ministers, the number of formats would later be increased.

The European Parliament reports

On 26 September 2002 the European Parliament adopted the report on *The Progress Achieved in the Implementation of the CFSP*.[113] It dealt *tous azimuts* with topical issues, but also with fundamental institutional questions. The general point was made that a substantial expansion of intergovernmental bodies in the EU's CFSP management had taken place, particularly through the extension of new security and defence policy structures in the Council Secretariat. More specifically, the report

- reiterated its view that in order to avoid the inefficiency caused by the situation (in which the EU remained silent on major international issues) the tasks of high representative and the commissioner for external relations must be merged; further, this new office, to be set up in the Commission, must be given a pivotal role in daily crisis management and be answerable both to the Council and the European Parliament;

- restated that effective external action by the Union required steps to be taken towards shaping a common, though not single, EU diplomacy, boosting the political role of the network of Commission delegations;

- took the view that the creation of a council of foreign ministers that could also include ministers for defence, external trade and development cooperation, could shape the EU's conflict-prevention policy and crisis management much more coherently and effectively; however, the report repeated its demand that a separate council of ministers of defence should be created for ESDP matters; and

- demanded that the high representative/commissioner for external relations be made answerable in writing to the European Parliament. The Council's annual report on the financial implications of decisions taken within the framework of the CFSP did not go far enough.

Concerning the ESDP, the document

- called for a clear negotiating mandate for direct talks between the high representative and the NATO secretary-general;

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[113] The Resolution adopting the report is reproduced in Chaillot Paper No. 57 (Haine, 2003), pp. 118-128.

- advocated a greater division of labour to fill gaps in the Rapid Reaction Force and reiterated its demand for a European armaments agency;

- took the view that the EU and its member states should not limit themselves to peacekeeping missions alone, but also be in a position to carry out peace-enforcement operations in accordance with the UN Charter;

- welcomed the agreement of 17 May 2002 on the funding of military operations, distinguishing between joint and individual costs. Nevertheless, it recommended that the transport of troops to the deployment area and accommodation there should be treated not on a case-by-case basis, but as joint costs as a matter of principle. Joint costs should be funded from the Community budget (as already occurred in the civilian sphere in the case of police operations) and not from a subsidiary budget of the member states;

- called for the mutual assistance obligations laid down in the WEU Treaty to be incorporated into the future EU draft Constitution; and

- proposed that crisis prevention and the ESDP be integrated in the Barcelona process with a view to achieving mutual security.

Working groups

When the European Parliament adopted its resolutions on CFSP, the Convention had already moved into phase 2, the working groups. Initially, Mr Giscard had not envisaged them, but a near-revolt from the plenary against an overly large role for the Presidium had led to their creation. The first six were on subsidiarity, the Charter of Fundamental rights, legal personality, the role of national parliaments, complementary competences and economic governance. Later another four developed on external action, defence, simplification of legislative procedures, and freedom, security and justice. Finally, an 11th group formed on social policy. The groups were chaired by members of the Presidium. The group on external relations was headed by Jean-Luc Dehaene; defence was led by Michel Barnier (who originally had hoped to become chairman of both committees).[114] The working groups were composed according to the wishes of the individual

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[114] See de Schoutheete (2004), op. cit., p. 13. Some of the 'non-aligned' questioned the need for two committees.

members. Thus they were not representative for the Convention as a whole, but thanks to very thorough proceedings, with hearings of experts and large numbers of written contributions, their reports commanded much support. In the third phase, however, when the Presidium was drafting the Constitution, not all recommendations were taken on board.

On 10 September the mandates of the working groups on external action and defence were published, both quite brief, but with substantial annotations. The external action group focused on the definition of the interests of the Union, on ensuring consistency and coordination of all available instruments, rapid action, the experience gained with the post of high representative, how the necessary forces should be made available, and what arrangements should be made for external representation. The group on defence had eight points, covering:

- what defence remit could be envisaged for the EU, apart from the Petersberg tasks;

- what could be done to ensure that member states have the military capabilities needed to guarantee the credibility of the Union's defence policy, including the possibility of admission criteria and a pact to be complied with, such as that agreed for the monetary union;

- whether enhanced cooperation should be extended to defence matters;

- how to ensure quick decision-making during crisis management and, as a separate question, coherent planning of the EU's operations; and

- whether a European arms agency should be envisaged.

The annotated mandate postulated more specific questions:

1) The group was to consider the question of whether an undertaking of collective defence should be enshrined in the Treaty or in a protocol annexed thereto, possibly with an 'opting-in' clause for states that might not wish to subscribe to such an undertaking as of now, or which might not yet have the capabilities.

2) Mechanisms were therefore to be identified that ensure that the member states meet their commitments as regards military capabilities. It was thought that one possibility would be to take as a basis what has been done for monetary union: namely to establish strict criteria that member states must meet if they are to be allowed to participate in the EU's defence policy and a legal act that they would have to comply with thereafter. Those member states that

were unable to participate in this mechanism or that did not wish to do so could join it subsequently when they fulfilled the requisite criteria.

3) In the case of mutual assistance and military capabilities, the mechanisms were to allow those states that have the will and the means to do so to intensify their commitments.

4) The working group was to consider ways of ensuring that decisions could be taken rapidly and effectively during the implementation of an operation and that the military leaders could identify a clear chain of command.

5) The group was to consider how to ensure that the planning of military and civil aspects (which may incidentally be covered by Title V or by the EEC Treaty and must therefore be planned respectively by the Council General Secretariat's new politico-military structures and by the Commission) is coordinated.

6) The group was also asked to give consideration as to whether forms of cooperation on armaments could be incorporated into the Treaty, such as cooperation among all member states or voluntary cooperation with accession criteria. It was suggested that the group might investigate the possibility of setting up an arms agency whose tasks (research, development and acquisitions) and operating methods would have to be studied in detail.

Near the end of the proceedings in the working groups, on 21 November, the French and German Foreign Ministers, Dominique de Villepin and Joschka Fischer, presented joint proposals to the Convention, thus following up the announcement at the Franco–German defence and security summit at Schwerin of 30 July 2002. At that time their statement had been fairly general, deriving its interest primarily from the fact that the two were on speaking terms again. Their leaders talked of harmonising requirements-planning and mentioned the A400M transport aircraft, transforming the air-transport coordination cell into a European transport command; they spoke of a 'federation' of space observation systems including Helios II and SAR-LUPE and discussed the exchange of increasing numbers of officers in their headquarters. The two countries would present proposals on preventing and fighting terrorism, notably against deployed forces, and an analysis of the threat posed by the proliferation of WMDs and their launches.

In the Convention the two ministers were quite specific. They proposed to annex a political declaration to the Treaty dealing with solidarity and common security in order to identify the entire spectrum of risks, including terrorism in particular, and the means to face them. They envisaged a transformation of the ESDP into a European security and defence union, which would also strengthen the European pillar of the Alliance. Although in principle it would be desirable that all member states participated, there would be situations in which not everyone would be willing or able to do so. Therefore reinforced cooperation should also be available in the ESDP, notably in the fields of:

- multinational forces with integrated commands, without prejudice to their employment in NATO;

- armament and capabilities; and

- human resource management and the development of common doctrines.

In their view, starting reinforced cooperation should become possible by qualified majority, with a lower threshold of participants (rather than half the members) and guarantee rapid decision-making. Nevertheless, unanimity would remain necessary for the launching of a military operation, albeit with the possibility of constructive abstention. Those countries willing to do so should transfer their WEU Art. V commitment to the EU by making use of reinforced cooperation.

On developing military capabilities, France and Germany proposed a protocol containing the commitments of the participating countries and establishing new forms of cooperation, notably by harmonising their requirements planning, joining (*la mise en commun*) their capabilities and resources and task specialisation. They also advocated a European armaments policy but saw it in an intergovernmental framework to harmonise operational requirements and to procure equipment in multinational programmes. The possibility of an armaments agency was mentioned twice, but somewhat differently. For acquiring equipment developed in multinational programmes an agency could eventually be used by enlarging the OCCAR agreement. Yet, at the end of the paper there was a firm proposal to include in the Treaty a European armaments agency, if necessary on the basis of reinforced cooperation. The two countries further recommended that the Treaty include the progressive creation of a European market for arms, thus adapting Art. 296 (previously Art. 223) of the Treaty, which kept this aspect a national prerogative.

Armaments required specific arrangements for transit and customs tariffs, along with information security, intellectual property and research.

Other half-way contributions came from the European Commission, which did little good and created confusion. On 1 December both an official Communication[115] of the Commission and the 'Penelope' working document on institutional architecture were published, the latter under the personal responsibility of Commission President Romano Prodi, but judging by underground rumbling, not adequately staffed within the Commission.[116] Even the two Commissioners participating in the Convention, Messrs Barnier and Vitorino, appeared to have been left out of the loop. Penelope was a closely argued draft treaty, which utterly failed to make a mark on the proceedings.

The Commission Communication described the area immediately to the south and east of the Union as *de facto* the ideal area for a common foreign policy. If it was to acquire a higher profile, the Union must have decision-making capacity on security and defence issues and encourage the development of a European arms industry. Through the EU Europeans would be able to defend their model of society and exercise their democratic rights more effectively and more completely. The Commission repeated its agreement with a merger of the functions of high representative and the commissioner responsible for external relations (already expressed in its Communication of 22 May 2002) and now proposed creating the post of secretary of the European Union as a vice-president of the Commission with special status. During an as yet unspecified transitional period the post-holder would exercise the Commission's right of initiative as regards the CFSP "within the framework of the guidelines and mandates given to him by the Council, or of a group of member states with a particular interest in a specific question and whose common interests might require action on the part of the Union".[117] At the end of the transitional period the Council, acting on a

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[115] See European Commission, For the European Union, Peace, Solidarity, Freedom, Communication on the Institutional Architecture, COM(2002) 728 final 2, Brussels, 11 December 2002(b).

[116] European Commission, *Feasibility study – Contribution to a preliminary draft Constitution of the European Union*, Working Document by the working party chaired by François Lamoureux, Brussels, 4 December 2002(a).

[117] See European Commission (2002b), op. cit.

proposal from the Commission and applying an *enhanced* qualified majority, would rule on the arrangements by which the secretary of the Union would autonomously exercise the Commission's right of initiative in terms of the CFSP. Consequently, the Council would also have to rule on the extent of the member states' right of initiative at the end of the transition period. Other proposals on external relations such as international trade and development would continue to form part of the Commission's autonomous initiative. The secretary of the Union would have access to a single administration resource drawn from the General Secretariat of the Council, the Commission and the member states, placed under his/her authority and benefiting from the administrative infrastructure of the Commission. This unity of administration was deemed essential if common action was to be effective.

On defence an earlier version of Penelope document envisaged the creation of a delegate for defence issues, in line with its thinking of turning this area into a 'fourth pillar' of the EU. In its final form it proposed to refer defence to an optional additional act, which would also have had the effect of continuing the WEU arrangement, but transporting the organisation into the Union framework. This would have had the advantage of including the WEU 'lock, stock and barrel' and avoiding a squabble with the non-aligned, but would not create the solidarity inherent in a union. Moreover, the notion of a fourth pillar had been explicitly discarded earlier by a group of 'wise men' under the chairmanship of Mr Dehaene.[118]

The groups on external action and defence were interlinked but stood alone with regard to the other working groups, except the one on legal personality. Under the able chairmanship of Giulio Amato that group not only achieved a consensus minus one (the French Europarliamentarian William Abitbol) on a single legal personality for the European Union as a whole, but also concluded that as a result the pillar structure could disappear. This did not mean, however, that procedures for decision-

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[118] The report, "The Institutional Implications of Enlargement, Report to the European Commission", European Commission, 18 October 1999 (retrieved from http://www.europa.eu.int/igc2000/report99), came out well before the European Council of Nice. The other members of the group chaired by Jean-Luc Dehaene were Richard von Weiszäcker and Lord David Simon of Highbury, with Philippe de Schoutheete acting as secretary. They felt that Art. 17 of the Treaty on European Union (TEU) offered certain possibilities of integrating the WEU without modifying the Treaty.

making should become identical. A separate regime for the CFSP remained possible. Although the Treaty already enabled the Council to conclude agreements in the areas of CFSP and police and judicial matters on behalf of the Union, conferring legal personality on the Union would clarify the possibility for the Union as such to conclude agreements in the field of its competence. In this connection the working group on external action noted that the Court of Justice had recognised implicit external Community competences when the conclusion of international agreements was necessary for the implementation of internal policies. The group also made the point that in a possibly regrouped section of the new draft Constitutional Treaty, covering all aspects of external action, it would be useful to have provisions (and preferably one single provision) indicating who would act on behalf of the Union in negotiating and concluding international agreements.

The working group on external action, chaired by Convention Vice-President Jean Luc Dehaene, covered a wide range of subjects. Its main impact was a list of principles and objectives that found their way into Art. III-283 of the Constitution (see Annex 2) and a thorough discussion of four options for bringing the roles of the high representatives and the commissioner responsible for external relations closer together:

1) The first option was to enhance their synergy, while keeping their functions separate, through recognition of the right of proposal of the high representative; his/her participation in the relevant meetings of the Commission, possibly with the status of observer; the preparation of joint proposals; and more cooperation between their services, with a possible merger in certain areas and the creation of EU embassies. Then the functions of high representative should be split from that of the secretary-general of the Council. A considerable number of members of the group felt that maintaining two distinct functions would not ensure coherence and were looking for bolder institutional change.

2) A second option concerned bringing the functions of the high representative into the Commission, i.e. extending the communitarian method to the CFSP, but not the ESDP. A considerable number saw this as the most effective solution, but at the same time noted that it might not be attainable at this stage, as there was no consensus among member states to turn foreign policy into an exclusive or shared competence of the Union.

3) Also considered was the option of exercising of both offices by one person with the title of 'European external representative' who would be appointed by the European Council with a qualified majority and with the approval of the president of the Commission and endorsement by the European Parliament. Procedures for CFSP and Community issues should remain distinct. In the capacity of high representative the post-holder would have the formal, but not exclusive right of initiative in the Council, and if this right was exercised the Commission was to abstain from taking a competing initiative. The initiatives and decisions to put to the Commission in effect would not be subject to prior approval by the college of Commissioners. On issues falling under Community competences s/he would fully participate in decisions of the college following the regular procedure of majority voting. The new official would ensure the external representation of the Union and replace the current troika.

Opponents of this option questioned its compatibility with the principle of collegiality and felt that the scope of responsibility was too large for one person. According to insiders this was also the personal view of the current high representative Javier Solana, but he did not say so openly.

4) A fourth option was the creation of the post of 'EU minister of foreign affairs' under the direct authority of the European Council, combining the two functions of high representative and RELEX commissioner and chairing the newly formed External Action Council. In the wording of the report, "the aim would be to increase coherence between policy guidelines agreed by the Council and the operational responsibilities of the Commission in the field of external action, while respecting the competencies attributed to each institution".[119]

Not surprisingly, a large trend emerged in the working group in favour of the third option with a European external representative. The fourth was overly weighted in favour of the Council and the disputed function of a European president. As we see later, the Convention ultimately agreed upon a mixture of options 3 and 4 above, in which it

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[119] Ibid.

accepted the title of minister of foreign affairs, but more narrowly circumscribed the function of the president of the European Council.

Much attention was paid to the vexed question of qualified majority voting. The group advanced the dubious argument that the CFSP was not a policy that advanced by legislation (which was true), and was thus less adapted to the use of QMV (which did not follow, because legislative decisions have much more lasting effects than the ad hoc decisions that characterise most CFSP matters). Nevertheless, the group agreed that QMV as "an instrument of last resort to unblock a stalemate" could have a positive effect on consensus-building. Even in Community policy areas the Council rarely proceeded to a vote. The current need for unanimity restricted the Union's capacity to act and resulted in a policy dictated by the least ambitious position. To overcome the risk of increasing 'CFSP inertia', a considerable number of persons advocated extending the use of QMV as a general rule (without prejudice to decisions in the military/defence area) but others voiced objections: it would be difficult for a member state to find itself in a minority position when its vital interests were at stake and voting would heighten non-member state awareness of internal EU disagreement. To counter these arguments suggestions were made to provide an emergency brake by involving a vital national interest or some other safeguard clause such as Art. 23.2 of the TEU.

Notwithstanding the different positions, the group in general was favourable to better use being made of the existing provisions for QMV and could agree to a *passerelle* clause in the draft Constitutional Treaty providing for the possibility of the European Council agreeing by unanimity to extend the use of QMV in CFSP. A special case, which almost made it into the draft Constitution, was the introduction of a joint initiative by the high representative and the Commission, which would then be decided by the Council with QMV. It was deleted by the Presidium after a visit of Mr Giscard to London. He later defended the refusal with the argument that the Commission should not be the judge in deciding the voting mode.

The working group also showed wide support for QMV in all areas of commercial policy, including services and intellectual property; for including the European Development Fund into the overall EU budget; for a single spokesperson in international fora when there was an agreed position of the Union; and for a single representation of the eurozone in international financial institutions. Development assistance was to be

considered as an element of the global strategy of the Union, and required more cooperation between the EU and member states. Together they provided more than half of all donor aid.

The Barnier report

The composition of the working group on defence, chaired by Commissioner Michel Barnier, was not representative for the Convention as a whole inasmuch as it contained many opponents of strengthening the ESDP. Several Scandinavians voiced objections to a 'militarisation' of the EU and advised those wanting a collective defence commitment – albeit in an optional protocol – to seek it in NATO. They were not susceptible to the argument that the existing formulation of Art. 17 of the TEU already stated "the progressive framing of a common defence policy…which might lead to a Common Defence, should the European Council so decide". Fortunately, they did not object to a number of far-reaching recommendations, provided a footnote made clear that these were not shared by all members of the working group.

The report also appeared on 16 December but followed a different format. The first part reviewed the legal context, developments since the Cologne European Council of June 1999, progress made and the gaps remaining, and the new challenges and threats of the evolving strategic environment. The actions of the high representative in 'flashpoint diplomacy', as in the case of Macedonia, had been significant and useful, but in declaring the ESDP operational the 2001 Laeken European Council had only noted that the Union was now capable of conducting *some* crisis-management operations. With regard to the use of NATO assets, the Berlin Plus agreement had not yet been concluded. Under the existing provisions of the TEU qualified majority voting could not be applied to decisions having military or defence implications, nor could their operational expenditure be charged to the budget of the European Communities. The report described in detail the diversity in the situation of individual states, in terms of status in the WEU and NATO, their defence industries, budget differences, deployment capabilities, nuclear capabilities and professional or conscript armies. Some forms of closer cooperation already existed, both in the area of armaments and in multinational military units with headquarters.

The report considered that after 11 September the threat was no longer defined solely by the risk of conflict between states or ethnic groups.

The current situation was more one of global insecurity characterised by less clear-cut risks (such as those posed by international terrorist organisations or the use of weapons of mass destruction) that eluded conflict management in the traditional sense. The group stressed that the security and defence policy made a powerful contribution to the Union's credibility, but did not aim at transforming it into a military alliance. The objective was "to provide the Union with the instruments needed to defend its objectives and its values and to contribute to peace and stability in the world in conformity with the principles of the UN Charter and international law".[120] More specifically, the group recommended:

I.   *On crisis management*

   a)   updating the Petersberg tasks to include conflict prevention, through early warning and confidence and security-building measures (CSBM); joint disarmament operations (WMDs and arms control programmes); military advice and assistance in 'defence outreach' including developing democratically accountable armed forces; post-conflict stabilisation; and support for the authorities of a non-member country, at their request, in combating terrorism. One could take the view that these tasks were already implicit in the Petersberg tasks, but spelling them out would do no harm as long as it did not detract from the most important task of the role of combat forces in crisis management, including peace enforcement;

   b)   ensuring coherence and efficiency by giving the high representative a right of initiative in crisis management, specifying the type of operation contemplated and the resources needed, and assigning to the post-holder the responsibility for coordinating the civilian and military aspects of the operation. It was proposed to set up a relatively modest fund, based on member states' contributions, from which the preparatory stage could be financed. Provision was to be made for the early establishment of a mechanism for bearing common costs; and

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[120] See European Convention Secretariat, Final Report of Working Group VIII on Defence, Rapporteur: Michel Barnier, CONV 461/02, Brussels, 16 December 2002 (retrieved from http://register.consilium.eu.int/pdf/en/02/cv00/00461en2.pdf).

c)   facilitating flexibility in decision-making and action. Under this heading some far-reaching proposals were made. Most members wanted a move from unanimity to other decision-taking procedures, relying more on consent and a culture of solidarity. The launching of an operation would be decided unanimously, but the rules on constructive abstention would apply, although these might be relaxed. Those member states not wishing to support an operation actively and in particular not to contribute militarily would be encouraged not to oppose the operation, but to abstain. Once the operation was under way, abstaining states would not participate in decisions concerning its implementation, but could join at a later stage. They would, however, take part in decisions having important political consequences or fundamentally changing the original concept of the operation.

In view of the diversity in capabilities and willingness to commit them, several members of the group proposed emulating the euro example and providing for a form of closer cooperation, open to all member states wishing to carry out the most demanding tasks and fulfilling the requirements it to be credible. Conditions for taking part in this 'defence eurozone' would be a presumption that pre-identified forces and command and control capabilities would be available, as well as participation in multinational forces with integrated command and control capabilities, and other factors such as force preparedness, interoperability and deployment capabilities. In addition, some members proposed amending the provisions for enhanced cooperation to open it for security and defence matters and relaxing the threshold of the required number of participants.

II.   *The response to the new threat: More solidarity*

a.   A solidarity clause was recommended enabling recourse to all of the Union's instruments for the protection of the civilian population and democratic institutions. Such a clause, originally proposed by France and Germany, would not be a collective defence commitment, but apply to threats from non-state entities. A pool of specialised civilian or military civil-protection units might undertake joint training and intervention

> coordination programmes to facilitate intervention in the event of natural or humanitarian disasters within the Union.

b.   A solidarity and common security clause in an annex to the Treaty was proposed, to identify risks of any sort that threaten the Union (including terrorism) and the means of dealing with them. It was thought that such a clause would produce a European security and defence union that would also contribute to the European pillar of the Alliance.

c.   A collective defence clause for member states wishing to share the obligation of the Brussels Treaty relating to mutual military assistance was suggested, thus bringing to an end the WEU. Some members considered this unacceptable because of their non-aligned status and others were opposed because collective defence was covered by NATO. The proponents argued that it would be sensible to allow this closer type of cooperation on defence within the framework of the Treaty rather than outside it. Decisions would be taken only by the participating states.

III.   *Capabilities and armaments: Towards a European agency*

Many members of the group supported the setting up, on an intergovernmental basis, of a European armaments and strategic research agency to meet operational requirements by promoting a policy of harmonised procurement and to support research into defence technology, including military space systems. A mechanism was needed to evaluate and improve the way in which member states fulfilled their commitments. If was felt that this should cover *inter alia* the proportion of the defence budget in relation to GNP and its share for equipment and research as well as force preparedness, including deployment capabilities and their interoperability. Entrusting these functions to the armaments agency would turn it into a true capabilities agency, authorised to monitor member states' progress. Its head would report annually to a Council configuration bringing ministers of defence together.

IV.   *Strengthening the institutional framework*

This section was the least substantial. It recommended that there should be a political figure, acting under the Council's authority, with responsibility for EU action in the area of ESDP, who should be the same person as the high representative for CFSP. On parliamentary

scrutiny the report evaded the problem of what to do with the WEU Assembly and only recommended regular meetings of the relevant committees of the national parliaments; some wanted members of the European Parliament to be associated with these meetings.

On 20 December both reports – on external action and on defence – were debated in the Convention plenary. Mr Dehaene defended the double-hatting of one person with the two functions of high representative and RELEX commissioner. If the official spoke on behalf of the Commission, the Council should decide by QMV, but if the proposal was only the initiative of the high representative, unanimity would apply. Further, the high representative would chair the foreign affairs council.

The strongest opposition came from the UK's Secretary of State for Wales, Peter Hain. He argued that greater coherence was not necessarily the same as a merger of the two functions. More generally, he consistently opposed QMV in defence policy with the argument that the despatch of military forces into harm's way should remain a national prerogative. That point was widely shared, but did not lead other members to the view that therefore all matters of ESDP should require unanimity. Mr Hain's compatriot, the leader of the Liberal Group Andrew Duff, also had reservations about double-hatting, but for different reasons. He feared a Council cuckoo in the nest of the Commission. Serving two masters was not impossible, but rather improbable, certainly if the post-holder could act without the agreement of the full college of commissioners. What, for example, would be the official's relationship with the president of the Commission and the latter's prerogative of requesting a commissioner to resign? French Foreign Minister Dominique de Villepin also expressed doubt about the double-hatting. Criticism from other members related to the need for a more geo-political and strategic context: What did we want to achieve with the CFSP?

On defence some opposition came from the neutral or non-aligned, as could be expected. Some argued that with the ESDP being part of the CFSP there was no need for a separate chapter on defence. And why did the members of NATO not keep defence within the Alliance they belonged to? The solidarity clause in case of terrorist attack or calamity received broad support. It was an ingenious attempt to place solidarity in a wider context than collective defence and was hard to refuse. The same applied to the proposal for an armaments agency with a wider scope than just procurement.

In his summing up Mr Barnier concluded that the proposals had been received very positively, particularly the extension of the Petersberg tasks, the solidarity clause (which had to be drafted carefully to clarify its scope and the range of available instruments), the armaments agency and the point of giving the high representative responsibility for the ESDP. No consensus was reached on the flexibility clauses for crisis management and defence, but Mr Barnier noted the strong appeal for going beyond the present situation. He underlined that the Presidium should consider the relationship between possible forms of enhanced cooperation, the scope of a defence policy in which all members would be included and the necessary political solidarity.[121]

A draft Constitution

In January 2003 the Presidium started the introduction of draft articles for the Constitution, but the details of external relations and defence only came in April, which meant that the final phase of the Convention did not start before the plenary of 15-16 May. Not surprisingly, the Presidium found the task difficult and needed long additional sessions. In April a crisis threatened when Mr Giscard published a set of articles of his own, which would have given the draft Constitution a distinctly intergovernmental flavour, but the storm passed when he left the task of modifying them to the Presidium in his absence. The result contained some innovative and ingenious formulations, but in several respects fell short of expectations. Some ideas, which had been overwhelmingly rejected, such as a people's congress, had been retained, while others that had received wide support, like QMV in foreign policy, had not been included.

In the plenary the decision-making procedures proved to be the biggest problem in the area of CFSP. Many speakers feared that it would be paralysed if the requirement of unanimity was maintained and suggested a number of alternatives. Some wanted to retain unanimity only for cases in which a proposal had not been submitted by the foreign minister. Other suggestions were the introduction of a super qualified majority and enhanced cooperation in all fields of the CFSP. According to the summary report of the session all were agreed that a member state could prevent a decision being taken if its vital interests were at stake. In that case the

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[121] European Commission, *Preparatory Working Documents for the European Convention*, Publications Office, Luxembourg, 2004(d), p. 643 (ISBN 92-78-40184-6).

foreign minister should attempt to formulate a proposal that would be acceptable to the member concerned.[122] Mr Giscard defended the deletion of QMV by arguing that the working groups had not been representative for the Convention as whole and that, more importantly, the proposals needed to have a chance of being accepted in the subsequent IGC. He did not say so, but during his visit to London the UK government had stated its opposition to most of the innovations for the CFSP and wanted no collective defence clause, no structured cooperation and no title of European foreign minister giving the impression of the Union becoming a state. Personally, Mr Giscard rejected the compromise formula of Mr Dehaene to apply QMV if the full Commission was supporting a proposal of the high representative, because he did not want to make the Commission the determining factor for deciding how CFSP matters should be handled.

On defence the new text remained quite ambitious and closely followed the Barnier report. Although in the past most provisions were about what the Union could not do, now they included enabling clauses. Most members could accept the proposed range of modalities for 'flexibility'. Virtual unanimity existed on the possibility to execute a mission, which had been unanimously agreed by the Council, with a limited group of member states. But that would not be much. It resembled the Amsterdam decision on unanimous adoption of strategies, which could be implemented with majority voting. The next step – structured cooperation – was more delicate and raised concerns about its closed character. Why not keep it simple and apply 'enhanced cooperation' to the entire range of Union activities, including defence? One member made the clever point that a reference to action outside the Union framework did not belong in its Constitution. Wide support existed for a mutual defence clause as a necessary element of solidarity and for the need to improve the military capabilities at the disposal of the Union.

To sum up the state of the debate at the end of the Convention, three modalities were envisaged for action in the field of defence and security:

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[122] Ibid., p. 786. Personally, I don't recall such unanimity in the Convention on this delicate issue of introducing the 'Luxembourg compromise' of yesteryear.

- The Council could entrust the execution of a task, within the Union framework, to a group of member states in order to protect the Union's values and serve its interests.[123]

- Those member states whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework.[124]

- A form of enhanced cooperation was supported for mutual defence as long as the European Council had not taken the decision to create the common defence envisaged in the Maastricht Treaty and subsequent treaties. The participating states would assist each other, in case of an armed attack on the territory of another participating state, with all available military and other means, in accordance with Art. 51 of the UN Charter concerning the right of self-defence.[125]

During the last three plenary sessions these issues did not play a prominent role. The group of national parliamentarians started to assert itself on other points. Previously, its meetings had been fairly disorganised with no clear positions emerging. Members had quite different views of their tasks with the British alternate member Lord John Tomlinson taking the most minimalist view in loudly clamouring for concentration on the future role of national parliamentarians in EU matters. Fortunately, his liberal colleague, Lord Robert MacLennan of Rogart provided closely argued legal opinions on a wide range of issues. The Eurosceptic David Heathcote-Amory did not want a constitution at all and followed a strict interpretation of the Laeken mandate to answer the questions posed. In the end he submitted a minority opinion to demonstrate that other options existed. The overwhelming majority, however, favoured a constitutional treaty, which would put all questions and issues into a coherent context. Occasionally the question of the mandate popped up, as in whether

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[123] In the new numbering of the Constitution this clause is contained in Art. I-41 sub 5 and elaborated in Art. III-310.

[124] This point is noted in Art. I-41 sub 6 and elaborated in Art. III-312 and Protocol 23.

[125] As in Art. 40 sub 7 of the Convention draft, elaborated in its Art. III-214, which made clear that the assistance provided would be without prejudice to the obligations under the North Atlantic Treaty. It was changed by the IGC and took the form of a general solidarity clause discussed later.

economic governance really was a subject to be included. More important was the relationship between part I (principles, competences, institutions and instruments) and part III (policies). Mr Giscard took the view that the Convention should not change existing policies, but most members wanted to know how the changes agreed on competences and so forth would work out in the formulation and implementation of policies.

Time was insufficient to fully discuss the policies. Therefore, the European Council of Thessaloniki in 2003 was asked to allow more time to finalise those provisions. That was agreed for 'technical points' only, but the additional plenary in July was far too involved with the final package and unable to properly complete part III. Moreover, the sequential approach followed by the Convention proved to have a major drawback by making it difficult to change procedures in part III, if such changes had not been envisaged in part I. This problem would arise in particular when considering possibilities for more QMV in the foreign policy area; the option of a super QMV, which was suggested by several members, had been precluded in part I.

In the endgame the position of the president of the European Council, the chairmanship of the other councils and the composition of the Commission emerged as the most crucial questions, with as a common strand the wish for equality of members in rotational arrangements. Not everyone favoured full equality; notably the French and German government representatives were unhappy with a status that would be the same as that of, say, Malta. The problem was complicated by the fact that the new members had negotiated and acquired positions specified in the Nice Treaty. So they would have a member of the Commission at least until 2009 (when the Union was expected to have 27 or more members) and participate in decision-making with a formula for calculating a qualified majority, which included a number of votes in addition to the requirement of a majority of the member states who represented 62% of the overall population.

The new formula for majority voting – 50% of the member states representing at least 60% of the population – seemed a good compromise: the larger countries could block a decision, but would need a considerable number of smaller countries to take a positive decision. It was fair, democratic and, above all, permanently applicable, regardless of further enlargements in the future. Yet it would not give Poland or Spain the status of a nearly-large member that the Treaty of Nice (unwisely) had granted

them. Although France, Germany, Italy and the UK obtained 29 votes at Nice, Poland and Spain received 27 in spite of their substantially smaller populations. Paradoxically, the new formula would not reduce the influence of the two countries in a vote in percentage terms (and in fact, even slightly increase it), but in relative terms their status would be farther removed from the largest members. The problem was compounded by an emerging division in the Convention between the large and small member states. A group of 16 smaller countries was meeting to assert equality. Although the proposed rotation of members of the Commission would apply to all states, the number of 15 voting commissioners plus non-voting status for the others was seen as insufficient to underpin the Commission as a common institution with legitimacy to define EU interests.

Consensus gradually emerged on the position of the permanent president of the European Council (for two and a half years, once renewable) by 'ring-fencing' the functions of the role. As Mr Giscard noted, the post-holder would be a 'chairman' rather than a 'president'. Most members realised that the largest countries were already committed to the new function and concentrated on conditions that could make the triumvirate of president of the European Council, president of the Commission and foreign minister a workable arrangement. This task was done by accepting Commissioner Vitorino's suggestion that a presidency was less prone to pursue national hobbies if it took the multi-annual programme as its basis, proposed by the Commission and agreed by Council and Parliament. In addition, it was made clear that the president should not have legislative or executive functions and in representing the Union should do so 'at his/her level' (i.e. in meetings with the heads of state with countries such as the US and Russia) and leave the remainder to the foreign minister. Mr Vitorino opposed a Benelux proposal to have the General Affairs Council chaired by the president of the Commission, with the argument that this official should defend the proposals of the Commission, which was difficult if at the same time a compromise had to be sought. Minister Fischer played with the idea of having this Council chaired by a vice-president of the Commission, but was pulled back by the federal chancery in Bonn. Whether these objections would also apply to the European Council was left open and the criteria for its president did not exclude that in future a president of the Commission could be appointed to double-up with this task. One objection to the European president, which gained some strength later, was the inclusion of the European Council among the institutions of the Union. It was feared this would lead to

building another bureaucracy. Opinion varied, because one could also argue that the European Council should make use of the Council Secretariat. On occasion it had been the most decisive element in the Union.

On 30 May the national parliamentarians accepted a proposal from Dutch Senator René van der Linden to form a working group for preparing a meeting with Mr Giscard and his vice-presidents. There were too many proposals for amendments to be successful in the short time available, so priorities had to be set. In the liberal caucus Lamberto Dini thought of a straw poll, even though the government participants rejected this on the ground that the Convention was not representative. He did not agree with that argument, for, if anything, the national parliamentarians were weighted in favour of sitting governments. Nevertheless, he yielded to the chairman of the caucus, Andrew Duff, who preferred trying to find a new consensus by a combination of diplomatic and parliamentarian approaches. At first glance he felt that about 20% of the text should be amended in the second round.

On 11 June the plenary received a revised part I and immediately broke it up into its constituent parts. The most difficult points were defence cooperation and enhanced cooperation, but it was also worrying that the revision procedures for parts I and III were still identical. Many felt that it should be easier to change the policies than the constitutional principles. This point appeared sensitive to the Irish, as former Prime Minister and Member of the Presidium John Bruton argued that amendment without unanimity was unlikely to be acceptable to the Irish public. Mr Duff tried an intermediary option of an easier amendment procedure when there would not be a change in the competences as outlined in the Constitution.

That evening came the revolt of the small states. The representatives of 16 of them drafted amendments over dinner on a host of issues affecting their status. They wanted to delete the European Council from the list of institutions; omit the legislative council and give the General Affairs Council the task of coordinating the work of the other council formats; have a minimum of five members of the European Parliament per member state (as in Nice and not four as proposed in the Convention) and equal rotation in both the Council presidency and in the Commission.

The next day Mr Giscard and Secretary-General Sir John Kerr met the national parliamentarians without their assistants. MP Marietta Giannacou and René van der Linden explained the demands drawn up together with the Europarliamentarians:

- The president of the Commission should have the right to refuse candidates that have been proposed by the member states.
- The right of approval by the European Parliament should also cover the non-voting commissioners.
- The president of the Commission should be appointed after appropriate consultations.
- The president of the Commission should be involved in the preparation of the European Council.
- There should be no legislative or executive powers for the European Council.
- The General Affairs Council should determine the Council formats, with equal rotation of their presidency.
- The CFSP could not function with unanimity and if normal QMV was not possible a super QMV should be considered.

Other members calibrated some of the points. Jürgen Meyer from Germany defended his amendment for a people's initiative and Prionsias de Rossa. from Ireland did the same for social policy. Ben Fayot from Luxembourg was worried about the institutional triangle and demanded clarification of the role of the Commission *vis-à-vis* the president of the European Council. Pierre Lequiller from France and Josep Borrell from Spain wanted as much QMV as possible, if necessary with a higher threshold. Adrian Severin from Romania pressed for the list of points as the last chance for a compromise. Only Kimmo Kiljunen from Finland upset the agreement among the parliamentarians and distanced himself from the paper, which he found to be overly influenced by the Europarliamentarians. His colleagues were angry because a disunited presentation would diminish the chances of success.

Mr Giscard made clear that he was not negotiating and that the Presidium should consider the amendments. Personally, he doubted the imaginative character of the final product; there was too much conservatism in the institutions and apparently the new members needed time to discover Europe. He did not understand the resistance to the concept of a European president: in the present mode the role could not be seen as a threat to the institutional equilibrium. In his view, both the Parliament and Commission should be smaller; otherwise, they would never be able to govern and to identify European interests. To Jürgen Meyer's plea for a 'people's initiative' Mr Giscard was favourable, but the

Presidium had rejected it. It would be a pity if the legislative council were to disappear, for it could be a counterweight to the lobbies of sectoral ministers, promote coherence in policy-making and facilitate the co-decision process with the European Parliament. On a revision clause with a (large) majority decision, he did not expect agreement among the governments. Similarly, QMV in foreign policy would be difficult, for it concerned action instead of legislation; on big issues he did not see the willingness of a minority to accept the views of the majority. On rotation of positions as presidency and in the Commission, he thought full equality difficult to attain, but it might be possible to reach a balance in the system by including other functions.

After this session the Presidium met throughout the afternoon to consider the amendments and the plenary was convened again in the evening. Mr Giscard presented the list of changes,[126] which met several of the conditions put forward by the national parliamentarians:

- The preamble would contain the words "inspired by the cultural, religious and humanistic traditions of Europe".
- Art. 20 would stipulate that the European Council did not perform legislative tasks.
- Art. 21.2 would provide for cooperation between the president of the European Council and the president of the European Commission, on the basis of discussions in the General Affairs Council, for the preparation of the European Council and the continuity of its deliberations.
- Art. 23.4, concerning the formats of the Council, would provide for rotation of their presidency (except in the Foreign Affairs Council) with a minimum duration of one year. The European Council would establish the system taking into account the European political and geographical equilibrium and the diversity of member states. Mr Giscard added his personal opinion that this would be a difficult undertaking.
- The new system for determining a qualified majority contained in Art. 24 would take effect only on 1 November 2009 after the elections for the European Parliament in that year.

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[126] The numbering of the articles was changed after the IGC and in most cases advanced one figure.

- External representation of the Union would be a prerogative of the European Commission, except for the CFSP and other cases mentioned in the Constitution (Art. 25.3).

- Non-voting members of the Commission would also be subject to the collective approval by the European Parliament (Art. 26.2).

- In the principle of democratic participation formulated in Art. 46, a fourth paragraph would be added to include a 'people's initiative'. At least 1 million citizens could request the Commission to present a proposal for a legal act of the Union.

That was as far as the Convention could go before Mr Giscard went off to Thessaloniki to report to the European Council in June. Upon his return the Convention was allowed to continue briefly for some technical details, but in fact made some major improvements. The Convention ended on 10 July, but in a tough meeting on the final eve the Presidium managed to make some further progress. The minister of foreign affairs would be assisted by a joint European external action service, with the details to be agreed by the Council and the Commission, without prejudice to the rights of the European Parliament. The European symbols would figure in the Constitution, such as the flag, anthem, motto, euro and the celebration of 9 May, Schuman day. The European Parliament would be informed about a range of subjects and obtain the right of approval of treaty changes if the convention method had not been used. Unfortunately, the *passerelle* clause on the possibility of moving to QMV in the CFSP would remain unchanged. This caused widespread disappointment, especially among Convention members Elmar Brok, Andrew Duff, Lamberto Dini and Hanja Maij-Weggen. Nevertheless, when the texts became available, the mood was euphoric – consensus was near on an acceptable compromise. To many the final draft left something to be desired, particularly the hurried treatment of part III on the policies and the unsatisfactory provisions of part IV on revision, but in spite of 'some imperfections' the outcome was better than that from any IGC in the past. Only Mrs Ana Palacio-Vallelersundi of Spain put a reservation on the institutional part, and the Danish Europarliamentarian Jens-Peter Bonde submitted a minority report calling for power to the citizen, the election of each Commissioner by popular vote in his country and the submission of the Constitution to referenda. To the others the next battle was to defend the text and to prevent it from being unravelled in the coming intergovernmental negotiations. Some innovations would have to be tried in practice to

ascertain their feasibility. Nevertheless, the fact that consensus had been reached so broadly on a single text and options had been avoided was short of a miracle. Mr Giscard deserved tribute for the way in which he had steered the proceedings, and for being prepared to give up some of his own pet ideas.

2003 – Crisis and progress

The year 2003 was one of crisis and contrasts. As Nicole Gnesotto wrote in her preface to Chaillot Paper No. 67, which reproduced the important documents of that year, it showed acute political divisions over the war in Iraq and therefore affected the relations with the US. It also failed to reform the institutions of the European Union, but in spite of all this managed to make considerable progress on security and defence. The EU embarked upon three military and police operations in the Balkans and Africa, finalised the Berlin Plus agreement between the EU and NATO, created the European Defence Agency, agreed on the European Military Staff, multilateralised the security strategy proposed by Javier Solana and agreed in principle on a solidarity clause in case of terrorist attack or other calamity.

These achievements, however, had to be set against the background of a general political crisis among the 15 member states, which made the paradoxes even more apparent. Ms Gnesotto listed several. In February, the UK and France fell out in the UN over the legitimacy of military action against Saddam Hussein, while at the same time President Chirac and Prime Minister Blair held a bilateral summit at Le Touquet, agreeing on broad measures to revitalise their military cooperation and the ESDP. Within NATO, the Iraq crisis potentially had repercussions on Turkey and led to a major disagreement with France, Belgium and Germany over the invocation of Art. V in case Turkey was attacked, yet a few weeks later the Berlin Plus agreement was finalised and an EU-NATO relationship established to universal satisfaction. Again, throughout the spring of 2003 the possibility of autonomous EU military operation was seen as an anathema to NATO primacy by the US and several European countries, yet in June the Union decided unanimously to launch its first independent military operation and acted rapidly in the Democratic Republic of Congo. In December the European Council failed to reach agreement on the Constitution, but virtually all clauses relating to the ESDP were approved.

Nicole Gnesotto drew several lessons from this paradoxical situation of political clashes combined with advances on defence issues. Her first one was optimistic: when it came to security, European crises usually had positive outcomes. That was true, but it could also be said of most other crises within the EU, where ultimately compromises were struck. The second related to the curious phenomenon that defence policy could develop independently from foreign policy, impervious to political differences, but also contradicting the declared objectives of the ESDP and its prospects of a common defence as an extension of the CFSP. On this point, she might have been too Cartesian, given that since 1989 the debate on European defence had centred on the issue of capabilities. Some countries used the lack of capabilities as a pretext for doing nothing, but as capabilities improved, the possibilities for European action also increased. After Kosovo, the UK changed its mind over the ESDP, but continued to stress capabilities. British pragmatism was averse to declaratory policies, which could not be backed up by concrete action. This difference of approach has often been the cause of friction with the Latin mind, which sketches distant prospects and takes time to fill them in.

The third lesson concerned the relationship with the US, which after 11 September had become largely unpredictable, just as likely to mobilise the Europeans as to become a divisive factor among them. The Iraq crisis had provoked an unprecedented split among the larger members, going much deeper than the special position of France. Hence the central issue for the EU would be how American policy could be taken into account and, if necessary, influenced. In other words, how could the CFSP be different from Washington's policies, yet at the same time demonstrate solidarity with the US. Most of the European initiatives and the security strategy in particular could be seen as attempts to solve that dilemma.

The Franco-British summit at Le Touquet might be taken as another lesson in integration: it discussed everything the two countries could agree on and left their differences aside. If a certain issue becomes too difficult, it might be better left alone for some time so the parties remain on speaking terms with each other by focusing on other issues. Policy towards the Middle East and the Israeli-Palestinian problem in particular has never been a success – not in the CFSP nor in the preceding European political cooperation. That is often seen as a weakness of European policy, but the argument should not be carried too far, because no one else can claim credit for better results. In such cases it might be preferable to limit the CFSP to

policies that are susceptible to consensus and to tread warily on others. So, it is a matter of less of a comprehensive single policy and more common *policies*. This does not mean that contentious issues should be avoided altogether, but they should not be allowed to spill over to the overall state of relations. In this respect the EU did well in moving its new security strategy close to US priorities – terrorism and weapons of mass destruction – but also in making the point that responses to these threats could not be exclusively military. In this way the EU managed to isolate disagreements over the intervention in Iraq and to find common ground on wider issues.

Iraq and the failure of coercive diplomacy

This is not the place for a full description of what happened in New York during the Iraq crisis. The issues were hardly discussed in NATO and the EU and, as always happened with events in the Middle East, had surprisingly little impact on the way Europeans dealt with each other. Some would see that as a sign of parochialism, others as acquiescence in the powerlessness to influence developments. In essence it was a sign of the fact that European interests, either explicit or unspoken, had insufficiently converged to make a common foreign policy feasible. That situation continues up to the present day where the triumvirate of France, Germany and the UK have negotiated with Iran over its nuclear energy programme, which might be a useful complement to US aims but is kept outside the formal structures of the EU.

The crisis was a failure of collective coercive diplomacy. Developments in the UN Security Council confirmed my conviction that this body is a forum for political compromise and not the fount of international law. On the whole it remains weak on implementation and many of its resolutions are not followed up with concrete measures. That had been the case with Iraq ever since the Kuwait war. Differences of opinion in the Council debates strengthened the hope of Saddam Hussein that once again he would be able to get away with minimum concessions. Looking back on the proceedings, a major mistake was the absence of clear criteria for measuring compliance and judging the result of the inspections by UNSCOM, as well as the lack of a firm deadline for their completion. But both were not acceptable for the opponents of military action, because they would in all probability start an irreversible path towards intervention. At the beginning everyone was convinced that Saddam Hussein had to disarm. What they did not fully realise was that he would

not be able to do so, or admit that he no longer possessed weapons of mass destruction, without ruining his position as a regional power.

UN Resolution 1441 of 8 November 2002 seemed a masterful compromise, but with inherent ambiguity: it stated that "Iraq had been and remains in material breach of its obligation under relevant resolutions…in particular through its failure to cooperate with UN inspectors" and it afforded Iraq "a final opportunity to comply with its disarmament obligations" by giving within 30 days

> a currently accurate, full, and complete declaration of all aspects of its chemical, biological and nuclear programmes…False statements or omissions and failure at any time to comply with, and cooperate fully in the implementation of this resolution, shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment.[127]

Finally, it was recalled that the Council "has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations". Hans Blix reported on 19 December that after Iraq's declaration the issues identified by UNSCOM "remain unresolved". On 9 January he added that he had not found a 'smoking gun' but that Iraq had failed to answer "a great many questions", and on 27 January that "Iraq appears not to have come to a genuine acceptance – not even today – of the disarmament which was demanded of it and which it needs to carry out to win the confidence of the world and to live in peace". His remark that cooperation on process (access to sites) had been good, but that the Iraqis had fallen short of substance and, in his words, "it is not enough to open doors. Inspection is not a game of catch as catch can". With the cumulative effect of these reports, the die seemed to have been cast against Iraq.[128]

It was not, however, because the Security Council was breaking up. A week earlier it had met at ministerial level for an open debate on counter-

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[127] See United Nations Security Council, Resolution 1441 adopted by the Security Council at its 4644th meeting, S/RES/1441 (2002), *0266826*, New York, 8 November 2002.

[128] I am indebted to Eduard J. Vernède for his master's thesis, "The United Nations Security Council and Iraq: A case study of the strategy of coercive diplomacy", Erasmus University, Rotterdam, 2004. He was an intern at the Netherlands Mission to the UN during the first four months of 2003. His analytical framework was based on Alexander L. George, *Forceful Persuasion, Coercive Diplomacy as an Alternative to War*, Institute for Peace, Washington, D.C., 1997.

terrorism, which was used by Foreign Minister Joschka Fischer to make clear the German political point of view on Iraq: he was strictly against military action because it would have negative consequences for the region and a negative impact on international relations. He warned his colleagues that a military action could end the unity of the UNSC in its fight against terrorism. Later, when the Council met on 5 February to hear US Secretary of State Colin Powell's case against Iraq, Mr Fischer did not repeat his view that the only way towards total disarmament was a peaceful one, but the harm was done. At the *Wehrkunde* meeting he said that he simply did not believe the facts of the Powell presentation and on 5 March he joined a hastily convened meeting with his French and Russian colleagues, vowing "not to allow" a resolution authorising war to be passed by the Security Council.

During these weeks the debate in the Security Council centred on the drafting of a second resolution that would make the use of force possible. The US, the UK and Spain tabled a resolution on 24 February, with as its principal operative paragraph that the Security Council "decides that Iraq has failed to take the final opportunity afforded to it by Resolution 1441".[129] To make it more palatable for the swing votes, it did not contain the words 'all necessary means', which had been coined during the first Gulf war and applied several times since then. France, Germany and Russia tabled a 'non-paper' giving the inspections another 120 days. In mid-March the UK made a final effort to give Saddam Hussein 10 more days to respond to six key tests for Iraqi disarmament, including a statement by Saddam Hussein on Iraqi television that he would give up weapons of mass destruction and the surrender or explanation of the 10,000 litres of anthrax that were still missing. France and Germany rejected any ultimatum involving the use of force. In the early hours of 17 March, France tried to move the meeting to the afternoon to come up with a proposal of setting a deadline in one or two months, but was not even supported by Germany, which had never been in favour of deadlines. Soon after, a disappointed British Permanent Representative, Sir Jeremy Greenstock, told the press that a vote on the resolution would not be pursued, because one country (France) had underlined its intention to veto any ultimatum, no matter what the circumstances. That night President George W. Bush made a televised speech telling Saddam Hussein and his sons to leave Iraq within 48 hours

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[129] See United Nations Security Council, Draft Resolution, S/2003/215, New York, 23 February 2003 (http://www.un.org/News/dh/iraq/res-iraq-24feb03-en.pdf).

or face military action. He added that the UN had not lived up to its responsibilities in disarming Iraq, "so we will live up to ours".

What lessons can we draw from this failure of coercive diplomacy? In his theoretical framework, Alexander L. George identifies three key elements that should be present if it is to be successful: a perception that an asymmetry of interest and motivation exists that favours the coercers; a sense of urgency of the demand and the inclusion of a deadline/timeline to convince the coerced parties that prolonging the conflict would work against their own interest; and a threat of punishment that is credible.[130] Eduard Vernède adds as a fourth element: clear and timely communications by the coercers about their resolve.[131] In pursuing coercive diplomacy several strategies present themselves, with declining degrees of intensity:

- an ultimatum,
- a tacit ultimatum,
- a gradual turning of the screw,
- a try-and-see approach, and
- a carrot-and-stick approach.

Coercion is related to the concepts of deterrence and compulsion, which played such a big role in strategic thinking during the cold war. The difference lies in the potential of coercive diplomacy to be an alternative to primary reliance on military action. It seeks to persuade the opponent into compliance with a mixture of carrots and sticks. As such it is an appealing concept for the European Union, which possesses the range of instruments necessary for its effective application. Of course, success is not assured, as we have seen in Kosovo and now in Iraq, because the opponent is not convinced that yielding is the only alternative. Could this outcome have been different concerning Saddam Hussein? In this case probably not, because his status was linked to virtual possession of chemical and bacteriological weapons and the possibility of eventually acquiring nuclear weapons. On the other hand, President Bush thought that if he did not act now, the situation in the Middle East might turn awry during the next five years or so. He obviously underestimated the difficulties of post-war reconstruction in a multi-ethnic Iraq along with the possible repercussions

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[130] See George (1997), *supra*.

[131] See Vernède (2004), op. cit.

of a country with a Shia majority upon its Arab neighbours, including Saudi Arabia, but gave priority to the removal of an autocratic and unscrupulous dictator.

Should the US have followed a different course in the Security Council? Eduard Vernède argued that their multilateral strategy failed owing to inconsistency in its motivation. President Bush should have limited his argument to the regime's non-compliance, which was admitted by everyone, and not have introduced other justifications such as unproven links with terrorism or the controversial need for regime change to remove a tyrannical dictator. The rebuttal to this argument was that the only chance of obtaining compliance was to remove Saddam Hussein. Initially, the firm determination of the US to pursue hard coercion against the regime, if necessary unilaterally, helped to bring the Security Council on board by the creation of a common interest, asymmetric to that of the Iraqi president. Without it, Resolution 1441 would never have been adopted. The second requirement of President Bush's, a sense of urgency, was met by the deployment of US troops to the region, but the third, a deadline, never materialised.

Although Iraq was not discussed officially in NATO or in the EU, the NATO Parliamentary Assembly devoted considerable time to its implications for the Alliance at its Prague session in May 2003. Pierre Lellouche, one of the few Frenchmen supporting intervention, was the Rapporteur in the Defence and Security Committee. He agreed that the inspections could not have been prolonged indefinitely. In 1998 the presence of WMDs had been established and no explanation had been received about what had happened to them since. His conclusions were that inspections could only be effective if the country concerned collaborated with the inspectors; further, he stressed that a credible threat was necessary to legitimise military intervention and agreement among the larger countries was a prerequisite. Unfortunately, these countries were currently divided over their views of a 'multipolar' world.

Militarily the campaign was radically different from the past, featuring: no heavy initial bombardment; a deep tank penetration with relatively few troops – less than half of the Kuwait campaign and lighter and more flexible; improved guidance to the individual soldier; and very few casualties among coalition forces, some 160, and not all of them caused by enemy action. Accidents and friendly fire took a relatively heavy toll. On the dark side figured higher than expected resistance from paramilitary

forces and the ensuing inability to consolidate control and prevent looting. Mr Lellouche's question marks went in the same direction: How could a civilian administration be restored and how should we deal with the wider problem of relations with one and a half billion Muslims in the world?

As the first war under the 'revolution of military affairs', the Iraq campaign was bound to have a strategic effect, particularly on the conduct of asymmetric warfare. Lord Timothy Garden pointed at the psychological effort (Psyops) at a tremendous scale with pamphlets being dropped everywhere.[132] Special forces had been important in the Western Desert, but on the whole he was not certain what difference network-centric warfare had made. And how accurate the intelligence had been became a crucial question for the new form of warfare to work. Furthermore, in a rapid race forward, logistics predictably had proven difficult and sometimes vulnerable, impacting on the progress made. Nevertheless, the overall swiftness of the campaign had been impressive. The campaign started on 20 March and on 4 April Baghdad airport had been captured.

Many questions remained that would not be fully answered in the years to come. Did the campaign in Iraq really represent a fundamental change in warfare? Airpower had been effective in cutting the links between the command and control nodes and the defending forces, but then Iraq had been under constant surveillance for over a decade and was constrained by sanctions in the modernisation of its capabilities. In any case, there had not been sufficient feet on the ground for rapidly pacifying the country after the initial military success. Was the platform/weapons balance of investment right and what would this mean for the cost-effectiveness of new generation of air-delivered, precision-guided weapons? And most important for future interventions in failed states and otherwise, what are the combat implications if a nation has to be rebuilt afterwards? Targeting policy will be affected by the need to rebuild essential services as soon as possible. In the Political Committee of the NATO Parliamentary Assembly Bert Koenders raised the question of legitimate war out-of-area in the context of the invocation of Art. V against

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[132] See Professor Sir Timothy (now Lord) Garden, *Iraq: The Military Campaign, Lessons Learned – A First Look*, NATO Parliamentary Assembly, Brussels, 25 May 2003.

terrorist attacks.[133] If self-defence was stretched too far, what would this mean for the role of the United Nations in peace and security?

Only a few members of the EU were involved in the reconstruction effort in Iraq with a military presence and their number was dwindling. NATO could not move beyond a small mission to train the new Iraqi army, partly outside the country. In November 2004 the European Council issued a statement that EU involvement in Iraq could not take place "until all security concerns were appropriately addressed".[134] In the meantime some of the lessons learned have become apparent. The recent book by Paul Bremer., the former head of the Coalition Provisional Authority in Baghdad, has confirmed that after the successful military campaign there were insufficient forces to consolidate the victory; that there was no detailed post-war reconstruction plan; that the US lacked decent intelligence to deal with an insurgency it had failed to predict, but had been prepared by Saddam Hussein; and that the Americans were naively shocked by the dismal state of Iraq's economy and infrastructure after years of sanctions.[135] We see later in the discussion that these shortcomings are already reflected in increased attention to post-conflict stabilisation and reconstruction.

Further proposals

A number of bilateral summit meetings took place during the year and were used to gather support for innovative ideas floated in the Convention or for actions in the field. Sometimes their statements fell flat and served only to show the conviction that Europe had to progress further. The

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[133] See Bert Koenders, *Tackling Iraq – Questions and Implications for the Alliance*, Draft General Report, Doc. 58 PC 03, NATO Parliamentary Assembly, Brussels, 24 April 2003.

[134] See European Council, Presidency Conclusions of the Brussels European Council of 4-5 November, 14292/1/04, REV 1, 8 December 2004(c).

[135] See Lewis Paul Bremer III and Malcolm McConnell, *My Year in Iraq: The Struggle to Build a Future of Hope*, New York: Simon & Schuster, January 2006. Bremer defends the decision to disband the army – which was approved by the highest levels in Washington – because reconstituting a Sunni-led army would have plunged the country into civil war. He admits that he should have insisted more strongly on measures against looting. See also the *Financial Times* article, "Bremer claims he was used as Iraq 'fall guy'", 10 January 2006 by Edward Alden and Guy Dinmore.

Franco-German summit for the 40th anniversary of the Elysée Treaty on 22 January 2003 proposed the creation of "a European Security and Defence Union which will give concrete shape and efficiency to its members' solidarity and common security and must also contribute to strengthening the European pillar of the Atlantic Alliance".[136] The word 'Union' was suggesting something similar to the monetary union based on the euro. The reference to a European pillar was odd, because that concept had vanished from current jargon. Para. 25 raised eyebrows in other European capitals, because it indicated a special relationship within the 15 member states:

> France and Germany will ensure they adopt common positions in the international bodies, including the Security Council, and define agreed strategies vis-à-vis third countries, especially in the framework of the Common Foreign and Security Policy.[137]

It has to be remembered that at that time Germany was a member of the Security Council, but nevertheless the announcement of common positions was at variance with the insistence of both France and the UK to maintain the right of independent positions in the UNSC and with Germany's professed alignment with the CFSP.

Next to the joint declaration of President Chirac and Chancellor Schröder another declaration was produced on the same day by the Franco-German Defence and Security Council.[138] It repeated the proposal for a European security and defence union and was more specific concerning its objective: it sought to ensure the security of its territory and peoples and contribute to the stability of its strategic environment. To achieve this objective, France and Germany specifically wished to promote:

- a comprehensive vision of the EU's security entailing a passage on "solidarity and common security" in the Constitution and appending a political declaration identifying every kind of risk, including in particular that of terrorism, and the means to confront them;
- greater flexibility by extending and further adapting the enhanced cooperation mechanism to the ESDP;

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[136] See Ministère des Affaires Etrangères, Fortieth Anniversary of the Elysée Treaty, Joint Declaration by Jacques Chirac, President of the Republic, and Gerhard Schroeder, Chancellor of the Federal Republic of Germany, Paris, 22 January 2003. The text is also reproduced in Chaillot Paper No. 67 (Missiroli, 2003), op. cit., p. 18.

[137] Ibid., p. 19

[138] Ibid., pp. 22-26.

- a strengthening of military capabilities and the development of new forms of cooperation, especially by harmonising the planning of needs, the pooling resources and capabilities, and, eventually, the sharing out of tasks; and

- the definition of a European armaments policy including the creation of a European armaments agency, based on OCCAR, which could be progressively enlarged.

Among the concrete measures announced by the Council figured the subordination of the Franco-German Brigade to the Eurocorps as a very rapidly available element. Based on the future A400M aircraft, the two countries intended to form a joint air-transport squadron. They also announced an analysis of the threat constituted by the proliferation of weapons of mass destruction.

Something very controversial happened soon after on the way to the Constitution. On 29 April 2003, Belgian Prime Minister Guy Verhofstadt convened a meeting of his colleagues Gerhard Schröder, Jean-Claude Juncker and Jacques Chirac. This group represented the 'coalition of the unwilling' on Iraq, which gave it a special significance. The conclusions were not spectacular and fitted in the way the Convention was developing, except on one very sensitive point in transatlantic relations: the creation of a headquarters in Tervueren as a "nucleus of a collective capability which instead of national means they would make available to the EU for operational planning and command of EU-led operations without recourse to NATO assets and capabilities". [139] In principle, something could be said in favour of an EU planning capability for its own autonomous operations. Mr Verhofstadt had already included the idea in a letter to Messrs Chirac and Blair in July 2002, but received a cold response to his concern about the stalemate in the development of the European security and defence policy. This time he tried again with a different group, but the timing was disastrous. It came six weeks after the Berlin Plus arrangements had been finalised at last and NATO had handed over its Operation Allied Harmony in Macedonia to the EU's Operation Concordia under the deputy SACEUR as operation commander. Why hurry to create another headquarters and why in Tervueren? A joker said that apparently Belgium was looking for a new occupant for its obsolete Africa museum. Much ridicule was spent on

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[139] For the text of the Tervueren communiqué see Chaillot Paper No. 67 (Missiroli, 2003), op. cit., pp. 76-80.

the proposal of what came to be known as the 'chocolate summit', suggestive of heads of government eating pralines of chocolate soldiers.

The rationale, as explained by Philippe De Schoutheete, was twofold: first to get around the situation in which the smaller countries would have no choice but putting their forces under the command of the British or the French as the only eligible lead nations. In practice this amounted to putting an EU label on what was essentially a British or French operation. The second argument was to remove the temptation for other countries to build headquarters similar to Northwood and Creil, which would lead unnecessarily to a multiplication of national capacities.[140]

The effect on the Convention was negative and led to further delay in discussing defence issues. In particular, doubt was cast on the notion of permanent structured cooperation. Was Tervueren the beginning of such cooperation? In Washington the biting comment was that Europe needed better capabilities, not more headquarters. Although suspicions lingered, the crisis did not escalate further, thanks to a compromise brokered by the UK. At a meeting in Berlin between Messrs Blair, Chirac and Schröder on 20 September 2003, it was agreed to expand the EU Military Staff and invite NATO to establish a liaison arrangement with it, while at the same time create a small EU cell at SHAPE. Their communiqué stated that "the EU should be endowed with a joint capability to plan and conduct operations without recourse to NATO resources and capabilities". Washington was greatly disturbed and the US ambassador to NATO, Nicholas Burns, called it "the most serious threat to the future of NATO".[141] Nevertheless, the claim to an autonomous planning capability for the deployment of a force of 1,500 troops (or 3,000 if two battle groups were deployed simultaneously) was not illogical. Autonomous European operations were likely only when the US did not want to join. Moreover, the planning task for such limited operations did not require the involvement of the entire NATO machinery and could be achieved with a modest enlargement of the EU Military Staff. The American reaction was overdone and most people in the EU and NATO were happy with the compromise. The three countries that had drafted it introduced the proposal during the Naples meeting of 29 November 2003 under the title "European Defence: NATO/EU

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[140] See de Schoutheete (2004), op. cit., p. 26.

[141] See Thomas Fuller, "Summit talk of European military ties upsets US", *International Herald Tribune*, 17 October 2003.

consultation, planning and operations". It was taken over in its entirety by the Italian presidency and approved at the European Council meeting of 12 December. In an effort to patch up transatlantic relations the Council issued a declaration as an annex to the Presidency Conclusions, which repeated the call of the strategy document for an international order based on effective multilateralism. If the transatlantic partnership was to yield its full potential, the EU-US relationship must be effective. The declaration ended by stating "Now more than ever, the transatlantic link is essential if we want to create a better world".[142]

The controversy came to an end six months later at the European Council of 17-18 June 2004. It was agreed to establish a civilian/military cell within the EU Military Staff, a small EU cell at SHAPE and that NATO liaison arrangements with the EUMS were to enter into force by the end of the year. It was held that by 1 January 2006 at the latest, an operations centre should be available, able to plan and conduct autonomous operations within the scope of the Petersberg tasks, on the scale of Operation Artemis in the Democratic Republic of Congo, i.e. some 1,500 troops. The Council reaffirmed the parameters of December 2003 by stating:

> in particular that this will not be a standing HQ, that the main option for autonomous military operations remains national HQs and that a decision to draw on the collective capacity of the EUMS would be taken, upon the advice of the Military Committee, in particular where a joint civil/military response is required and where no national HQ is identified.[143]

The question remained as to what extent the NATO Response Force and the battle groups would compete with each other. Since 1999, NATO and the EU had been presenting a picture of leap-frogging organisations. The Helsinki Headline Goals with 50-60,000 troops, available within 60 days and sustainable for a year, had been modelled on the experience in Bosnia and Kosovo, where a corps-size operation had had to be mounted. The NATO Response Force, at the initiative of US Defense Secretary

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[142] See European Council, Presidency Conclusions of the Brussels European Council of 12-13 December, 5381/04, Brussels, 5 February 2004(a). The Annex was also was reproduced in Chaillot Paper No. 67 (Missiroli, 2003), pp. 297-98.

[143] See European Council, Annex 1 to Presidency Conclusions of the Brussels European Council of 17-18 June, 10679/2/04, REV 2, Brussels, 19 July 2004(b), which is also reproduced in Chaillot Paper No. 75 (Gnesotto, 2005), p. 98.

Donald Rumsfeld, aimed at a much more rapid intervention, involving all three objectives in an 'insertion force' with fighting capabilities. The political motivation of this proposal, which was implemented with unprecedented speed, was the argument that it was the last chance for the Europeans to keep NATO relevant to the Pentagon. The NRF would consist of European contributions and the US part would be limited to supporting force multipliers such as strategic transport and satellite intelligence. That changed in 2005 when the US became ready to assign forces to the NRF. Another interesting development was the willingness of France to join, although this caused a problem in taking a decision on deploying to Darfur.

As a result of the humanitarian crisis in Bunia in the Ituri province of the Democratic Republic of Congo, the EU moved to the battle group concept, which also focused on quick reaction. There, a force of some 1,500 troops had been able to stem escalation and to fill the gap before a UN peacekeeping force was assembled and deployed. The first battle group was to be operational in 2005 and by 2007 two groups should continually be on stand-by. Will they ever be used? This question is a good one and also applies to the NRF. Will the time needed for political decision-making allow for deployments within 5-10 days?[144] And what crises are susceptible of being contained by 1,500 persons? A great deal of pre-planning will have to be done, preferably in the form of (illustrative) scenarios. Although it is true that political agreement to a scenario in advance of a real crisis will be difficult to obtain, it will be necessary to know under what circumstances the promised contributions will be made available, for which kind of operation and where in the world.

In the debate about competition between NATO and the EU it seems paradoxical that both the NRF and the battle groups are made up of European soldiers. The old criterion, that NATO would be the organisation of choice if the US participated in the operation, consequently makes less immediate sense. Equally, it would not be wise to insist on a general 'right of first refusal' for NATO. Under the Berlin Plus arrangement the EU could make use of NATO assets and even conduct an EU-led operation under the command of the deputy SACEUR. Therefore, it is not very clear how the

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[144] The Presidency Report to the European Council of Thessaloniki (19 and 20 June 2003) recognised in para. 13 that the ability to respond rapidly depended on the political will of member states and their ability to accelerate decision-making (reproduced in Chaillot Paper No. 67 (Missiroli, 2003), op. cit., p. 155.

choice would be made. Of course, the size of the NRF is larger and its sustainability is a maximum of six months. The deployment of EU battle groups is envisaged for 30-120 days, but both units operate under the assumption of 'first in, first out', which means that under most scenarios they need to be replaced by others in order to continue the mission. Equally, their readiness status is similar: the battle groups work with 5-10 days, the NRF with 5-30 days. Both are formed through force generation conferences, but in NATO these are based on the requirements formulated by the SACEUR, for two rotations at the same time, while for the EU it is twice yearly, 'bottom-up' and less formally coordinated by the EU Military Staff and Military Committee. The EU extends this process to the niche capabilities of the smaller countries, which cannot be major contributors to a battle group.

The military side of the problem of possible competition could be solved by an agreed rotation schedule, which would avoid simultaneous calls by both on the same national units. In any case, the same units should not be dedicated to both the NRF and the EU battle groups. The extremely short readiness time makes that most undesirable. NATO at 26 members and the EU at 25 have sufficient forces to deliver 20,000 to 25,000 personnel for the NRF and 3,000 for the battle groups at any given time. In practice, a particular unit could be assigned to one force this year and to the other force two or more years later. In other years the force would have a role in general NATO defence planning or in the EU's Headline Goals. It would be a mistake to think of European capabilities only in terms of the NRF and battle groups. That would not be a sufficient rationale for maintaining combined defence forces of close to two million soldiers.

On the political side, the problem of who does what has to be solved in early consultations between NATO and the EU. The size and intensity of the operation and the need and willingness for the US to join in will be crucial elements. In any case, it will be important for all units to fulfil the same criteria for training, operating procedures, standards and certification. Both sides will also have to know what the other organisation will be able to do in terms of missions, deployability and sustainability, force generation and rotation schemes.

Another outstanding question concerns the progress of the permanent structured cooperation. To what extent will it be applied and who would be likely to join? The new member states as well as the neutral ones have feared exclusion from an important new area of cooperation,

either because of a lack of sufficient military capabilities or willingness to enter into more binding commitments. When signing up for the battle groups or niche capabilities, almost all EU member countries have taken the position that they had sufficiently demonstrated their willingness to contribute larger forces to the EU. But would this be sufficient to qualify for the structured cooperation? Further, the additional requirement of more binding commitments towards each other has not been defined.

Permanent structured cooperation is a special form of enhanced cooperation, which would come to be legitimised in advance by the Constitution without a need of further approval. In theory, its qualifications make it less open-ended than the enhanced cooperation envisaged in other areas. There it is mainly functional, to make progress with a smaller group of, say, 8 in an EU of 25 member states, when a qualified majority is not allowed or not attainable; it would have limited scope and not represent a core group across the board of Union activities. Its main value would lie in its availability as a means to go ahead if others are stalling. It is not easy to find good examples for enhanced cooperation outside the current cases of the euro, the WEU, the Schengen agreement and armaments cooperation. Perhaps some specific forms of taxation or environmental measures may be eligible, particularly if decision-making in the enlarged Union proves difficult, but on the whole the unity of the internal market would be an argument against proliferation of limited regimes.

The Constitution in the balance

The task of transforming the outcome of the Convention into a constitutional treaty fell on Italy. Expectations were not high in view of the controversial position of Italian Prime Minister Silvio Berlusconi. Italy had been given the assurance that the ceremony of signing the Constitution could take place in Rome, thus turning back full circle to the Treaty of Rome of 1957. But many issues remained to be resolved. At the final session of the Convention, Spain, Poland and Austria had voiced reservations and in Warsaw a kind of frenzy developed to maintain the Nice arrangements for qualified majority voting. 'Nice or die' became the slogan of some member states, reinforced by the sentiment that a reference to God would be necessary to embark on the voyage towards European finality.

The European Council of Thessaloniki in June 2003 had concluded that the draft Constitution of the Convention would be a good start for the

Intergovernmental Conference and from the start the Italian presidency wanted the outcome to stay as close to this draft as possible. Any change could be made only on the basis of an alternative consensus, which had a sobering effect on the inclination to introduce amendments: the actor proposing a change had to muster support for his/her ideas. Equally, the presidency avoided the creation of an institutionalised negotiating forum of high officials and raised the process to the level of heads of government, assisted by the ministers of foreign affairs. This approach was endorsed by the informal meeting of the GAERC at Riva del Garda on 5-6 September 2003. The European Council started the IGC on 4 October and met again on 16-17 October and 12-13 December. The foreign ministers met five times, including an important 'conclave' in Naples on 28-29 November. Senior civil servants met twice as 'focal points' – not to negotiate, but to draw up an inventory of outstanding issues. Legal experts met to screen the texts.

Based on the Naples meeting, the Italian presidency drew up a list of more than 50 changes and additions, which seemed susceptible to consensus. The outstanding issues, however, were such that the December session of the European Council broke up fairly quickly without an agreement, relating mainly to the composition of the Commission and the European Parliament, the definition of a qualified majority and the scope of its application. The incoming Irish presidency proceeded carefully with a series of bilateral meetings prior to the European Council of 25-26 March 2004 and was able to accelerate its mediation efforts after the terrorist attacks in Madrid on 11 March had reinforced the sense of necessity for strengthening the effectiveness of the Union. The changes of government in Spain and Poland allowed new incumbents to modify positions on the voting method, which led Dublin to the conclusion that on all remaining issues compromises should be possible. In three sessions of the GAERC ministers and one meeting of the focal points, items from the list of outstanding issues were transferred to the document of finished subjects. On 18 June the European Council reached an overall agreement,[145] which

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[145] See European Commission, Note on IGC 2003: Intergovernmental Conference, 12-13 December 2003, Presidency Proposal, Conference of the Representatives of Governments and Member States, CIG 60/03, PRESID 14, Brussels, 9 December 2003. The list of agreed items drawn up by the Irish Presidency figured in the European Commission's Note on IGC 2003: Meetings of Heads of State or Government, Brussels, 17-18 June 2004, Doc. CIG 81/04, PRESID 23, Brussels, 16 June 2004(d) and the outstanding issues to be decided by the June European

did not change the security provisions. The subsequent screening by the legal experts had the unfortunate effect of changing the numbering of the final text to be signed in Rome on 29 October 2003, in comparison with the draft of the Convention.

Solidarity clauses

In the Convention draft the notion of solidarity appeared in several places. The preamble mentions it in its second paragraph in the context of "to strive for peace, justice and solidarity throughout the world".[146] The Union's values in Art. I-2 refers to the values "common to all Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail". Art. I-3 sub 3 adds "solidarity among generations", and sub 4, dealing with relations with the wider world, "solidarity and mutual respect among peoples". Art. I-5 includes the principle of "loyal cooperation" for the relations between the Union and the member states, which "shall, in full mutual respect, assist each other in carrying out the tasks which flow from the Constitution".

A specific solidarity clause was proposed in case a member state is the victim of terrorist attack or natural or man-made disaster. It was included in the draft as Art. I-42, which states that:

> The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:
>
> (a) - prevent the terrorist threat in the territory of the Member States;
>
> - protect democratic institutions and the civilian population from any terrorist attack;
>
> - assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;
>
> (b) - assist a Member State in its territory at the request of its political authorities in the event of a natural or man-made disaster.[147]

Council in the Commission's Note on IGC 2003: Meeting of Heads of State or Government, CIG 82/04, PRESID 24, Brussels, 16 June 2004(c).

[146] See the Draft Treaty establishing a Constitution for Europe, adopted by consensus of the European Convention on 13 June and 10 July, CONV 850/03, Brussels, 18 July 2003.

[147] The detailed arrangements for implementation were stated in Art. III-231: member states shall coordinate between themselves in the Council, assisted by the

Among so much solidarity it was odd that no reference was made to assistance in the case of an armed attack. Jacques Chirac and Gerhard Schröder had included it in their proposal for a European Security and Defence Union contained in the declaration celebrating the anniversary of the Elysée Treaty, but the Convention had not been able to do more than devise a series of modalities to introduce some flexibility in an area that basically would continue to be governed by unanimous decision-making. In the IGC the Italian presidency reached solutions on the old problem of a collective defence commitment and the new proposal for structured cooperation but it had not been easy. The two problems were interrelated because, if everyone was prepared to render military assistance to a partner in case of aggression, the need for some to enter into more binding commitments would not arise to the same extent.

The dilemma for the neutral or non-aligned was that they wanted to maintain their policy, but at the same time prevent the others from establishing core groups, from which they would be excluded. In the autumn of 2003 they went public with their opposition. In an article by the Finnish Foreign Minister Erkki Tuomioja in the *Financial Times* of 28 October, under the headline "Europe needs to work as a whole on defence", he warned of the risk of splitting the Union and thus weakening the CFSP.[148] He insinuated that a group of countries had the ambition of retaining a role as guardian of the true European faith, which the 10 new members were perceived to threaten. Mr Tuomioja rejected the premise of the Convention's proposal, as he saw it, that a "smaller group has to act as a vanguard without trying or even wanting to involve the Union as a whole". He had a point in opposing a core group that itself would decide on the ability of new applicants to join, without any agreed criteria, but this had already been redressed in the IGC and the new European Defence Agency could assist here.

More fundamental was his position that a group of countries could not be allowed to use the EU 'trademark' without a mandate from the Union. What followed was the bizarre argument for a leader of a non-aligned country that Europe should not duplicate NATO resources as only

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Political and Security Committee and by the standing committee foreseen in Art. III-162 to ensure operational cooperation on internal security.

[148] See Erkki Tuomioja, "Europe needs to work as a whole on defence", *Financial Times*, 28 October 2003.

NATO could give a credible security guarantee. And if Finland were to give up its military non-alignment – for which there was neither need nor support – it would be NATO to which it would send the application. This rightly raised eyebrows among those who said that the non-aligned had entered the Union under false pretences by not accepting any prospect of a common defence. Fortunately, Mr Tuomioja left the door open to developing the solidarity clause in a way acceptable to all.

The public debate was continued with a joint letter in the *Dagens Nyheter* of 11 November 2003 by Mr Tuomioja and his colleague, the Foreign Minister for Sweden Laila Freivalds under the headline "We want a stronger EU security policy".[149] Their main objections – to structured cooperation and a mutual defence clause within the European Union framework – remained and the principle was repeated that all EU crisis-management actions must be backed by common decisions, but the setting was more constructive. In their letter the two ministers stated that the European Union "must have the capacity to tackle all types of action that member states want to be able to carry out, including some that are very complex and demanding". The article concluded with "support for the idea of a new solidarity clause that builds on the voluntary principle while expressing the political solidarity that already exists between EU members".

This idea was taken up in a letter to the IGC of 5 December by the four foreign ministers of the neutral and non-aligned, with Brian Cowen for Ireland and Benita Ferrero-Waldner for Austria joining their colleagues from Finland and Sweden. They were prepared to underline the principle of EU solidarity more widely in the field of security, including in situations referred to in Art. 51 of the UN Charter, but "provisions containing formal binding security guarantees would be inconsistent with our security policy or with our constitutional requirements". As a result, the following text was proposed:

> If a Member State is [a] victim of armed aggression, it may request that the other Member States give it aid and assistance by all the means in their power, military and other, in accordance with article 51 of the UN Charter.[150]

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[149] See Erkki Tuomioja and Laila Freivalds, "We want a stronger EU security policy", *Dagens Nyheter*, 11 November 2003.

[150] See Conference of the Representatives of the Governments of the Member States, "IGC 2003 – European Security and Defence Policy", Letter to Franco

The Italian presidency tried several formulas in the run-up to the December European Council. The articles enabling enhanced cooperation for common defence were deleted.[151] In their place came a general solidarity clause without any procedural follow-up on how it could be implemented. The outcome was positive inasmuch as it contained an obligation of aid and assistance. It was ambiguous, however, in the statement that this shall not prejudice the specific character of the security and defence policy of certain member states. The full new para. 7 of Art. I-41 reads as follows:

> If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.
>
> Commitments and cooperation in this area shall be consistent with commitments under NATO, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.[152]

What does this mean? The reference to Art. 51 is no problem, for both the WEU and NATO did the same thing. This placed them clearly in the realm of collective defence (with the obligation to report any action taken to the Security Council) and prevented them from being regarded as agencies under the UN, which would have made them dependent on authorisation by the Security Council. The first sentence of the new text resembles Art. V of the WEU, which included a commitment of automatic military assistance, but for all practical purposes, left its implementation to NATO. Yet the word 'military' no longer appeared. The second sentence was problematical if the neutral and non-aligned were to take it as an escape from the obligation in the first sentence. A proper interpretation would be that all member states have the duty to assist militarily, but that some will only do so bilaterally and not automatically participate in an organisational framework. It certainly does not amount to an alliance clause. One might question the value of such an arrangement, but at least a taboo has been

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Frattini from Erkki Tuomioja, Laila Freivalds, Brian Cowen and Benita Ferrero-Waldner, CIG 62/03, Brussels, 5 December 2003.

[151] Specifically, Art. I-40, para. 7 and Art. III-214 of the Convention draft were deleted.

[152] See the Treaty establishing a Constitution for Europe, CIG 87/04, 6 August 2004.

broken and the notion of solidarity has been extended to its root elements of defending territorial integrity and national independence. It is to be expected that the growing cooperation among the 25 member states, now even including Martian subjects such as battle groups, will influence political realities and get people used to military cooperation. Fortunately, in the absence of concrete military threats from neighbouring countries, there is time to develop a new consensus on the future of the ESDP and to concentrate for the short term on the new threats outlined in Javier Solana's 2003 EU security strategy paper, *A Secure Europe in a Better World*.[153]

Although the possibility of enhanced cooperation for collective defence was deleted, the Constitution maintained a remnant of the Amsterdam Treaty in Protocol 24, which, with reference to Art. 41(2) had as its sole article: "The Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them". The reference related to the prospect of a common defence, which since Maastricht had been made less conditional and stated that the CSDP "shall include the progressive framing of a common Union defence policy. This will lead to a common defence when the European Council, acting unanimously, so decides." Clearly, that prospect should be maintained, but in 2004 the link with the WEU was odd. Its functions had been transferred to the EU and the only remaining activities were armaments cooperation (but the WEAG would be transferred to the European Defence Agency) and the WEU Assembly. If the solidarity clause were to be enshrined in a ratified Constitution, maintaining the modified Brussels Treaty (1954) would make little sense. The Dutch presidency made an attempt to finish the WEU off at a ministerial meeting in New York, but met Belgian opposition, which rightly argued that the automatic military assistance clause should be maintained as long as the Constitution had not entered into force.

The WEU Assembly made a proposal to the Intergovernmental Conference, to make the mutual defence obligation in the Constitution identical to Art. V of the modified Brussels Treaty, in order to ensure:

> that all the member states would be entering into a clear commitment,
> that provisions on cooperation with NATO would be included in the

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[153]See Chaillot Paper No. 67 (Missiroli, 2003), op. cit., pp. 324-33 and European Commission (2003b), (also retrievable from http://ue.eu.int/uedocs/cmsUpload/ 78367.pd.)

> Constitutional Treaty, and that the way in which the mutual defence obligation would be guaranteed for those countries which are member states of the EU but not of NATO would be specified.[154]

The report recommended that the Brussels Treaty should be maintained "for as long as the European Union does not have either the appropriate legal means or the necessary instruments to render the Treaty and all the WEU bodies obsolete" and that the new members of the EU should be invited to become members of the WEU.

The position of the WEU Assembly had become tenuous in the absence of an interlocutor. The WEU Council meetings had ceased, making a sensible dialogue impossible. The Assembly continued to produce useful reports and remained the only forum where national parliamentarians could discuss security and defence issues, but its debates continued in limbo. It had suggested the formation of an interim assembly for intergovernmental cooperation, consisting of national and Europarliamentarians, but this option did not make headway in the Convention or in the IGC. Then the Assembly gave itself the new name of Interparliamentary European Security and Defence Assembly. The European Parliament on the whole was not keen to have another assembly working on issues in what it regarded to be its own domain, if not now, then sometime in the future. Governments limited themselves to the option of the COSAC, the half-yearly meeting of members of the European Affairs committees of national parliaments, where the European Parliament was represented. Nevertheless, national parliamentarians had no high opinion of the COSAC, which was doing little more than providing information and but did not engage in the consensus-building role of joint work on reports and resolutions.[155]

Other changes

Another change was made in the scope of structured cooperation. The word 'permanent' was added and it was made clear that this cooperation

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[154] See Bart van Winsen (Rapporteur), *The European Security and Defence Policy following EU and NATO enlargement – Reply to the annual report of the Council*, Document C/1860, WEU Assembly, Paris, 2004.

[155] For the role of parliamentary assemblies, see Willem van Eekelen, *Democratic control of armed forces: The national and international parliamentary dimension*, Occasional Paper No. 2, Geneva Center for the Democratic Control of Armed Forces, Geneva, October 2002.

would not affect the provisions for the Petersberg tasks contained in Art. III-309. Protocol 23 stipulated that it would be open to any member state that undertakes to:

a)   proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes and in the activity of the European agency;

b)   develop the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at tactical level as combat formations, with support elements including transport and logistics, capable of carrying out the tasks referred to in Art. III-309, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days;

c)   take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;

d)   work together to ensure that they take the necessary measures to make good, including through multilateral approaches, and without prejudice to undertakings in this regard within NATO, the shortfalls perceived in the framework of the 'capability development mechanism'; and

e)   take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the agency.

The effect of these changes, paradoxically, was to enable virtually all of the member states to join in the permanent structured cooperation. At the same time the changes were a strong incentive for the two major, concrete ongoing activities: the battle groups and the agency. On the other hand, the hopes, albeit unrealistic, of some member states that this cooperation would result in a core group acting on behalf of the EU were thwarted. The decision to start an operation clearly would have to be taken unanimously, only softened by the possibility of constructive abstention for countries that did not want to share in the decision, but that would not

prevent the others from conducting the operation. If a third of the membership abstained in this manner, a decision could not be taken.

Another change in the field of external affairs was the provision that the EU's minister of foreign affairs shall preside over the Council for Foreign Affairs. As vice-president of the Commission the post-holder shall be responsible for the tasks of the Commission in the field of external relations and for other aspects of the Union's external action; for these matters (i.e. those relating to the specific tasks of the Commission) the individual shall be bound by the Commission's collegiate procedures. If the Commission has to resign on account of a censure motion passed by the European Parliament, the foreign minister must resign from the Commission (but presumably could be re-appointed). The president of the Commission was conferred the right to request a commissioner to resign, but with regard to the foreign minister this right was subject to the European Council's agreement.

The fear that the minister of foreign affairs might become a cuckoo's young of the Council in the nest of the Commission was real, but ultimately most participants were prepared to try the new arrangement because it would improve the effectiveness of the Union's policies. It could put an end to the absurd situation in which High Representative for CFSP Javier Solana had the competence, but no money and External Relations Commissioner Chris Patten had access to the EU budget, but no competence except in civilian aspects of crisis management. Moreover, Mr Solana had no problems in his relationship with the Commission thanks to the excellent cooperation with Mr Patten and was hampered much more in his freedom of action by the six-monthly presidency, which wanted to put its mark on the CFSP.

The title 'foreign minister' also provoked a degree of opposition. To some it created the impression of the EU moving towards a (super)state. In particular, British members preferred to follow their national terminology and thought of the title 'secretary for foreign affairs'. In the Dehaene report to the Convention the name 'external relations commissioner' had been proposed. There the ministerial title had been associated with the rejected option of a strong president of the European Council.

At first, Mr Solana himself was not keen on the double-hatting formula and gave priority to allowing enhanced cooperation in the security field. He did not lobby the Convention either way. In his annual State of the European Union address to the EU Institute of Security Studies in Paris

in June 2003 he welcomed the effort of the Convention to be more precise as to who represents what and added ironically that for a declaratory policy it was not necessary to have it conveyed by a single person. Then the troika of past, present and future president would be sufficient. But if the EU wanted to become an active player, the old arrangements would no longer suffice.

Another issue to be decided was how the new minister would relate to the European Parliament. In the past, countries such as France and the UK showed little enthusiasm for a greater role of the European Parliament in the CFSP, largely because their own parliaments had little say in these matters. In their view, a parliament should be limited to its legislative function. Mr Solana took care to inform it regularly, beyond the minimum required by the treaties. In its part I the Constitution did not move much beyond the Nice Treaty in stipulating in Art. I-41 sub 6: "The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy. It shall be kept informed of how it evolves." Real progress was made in Art. III-304, which included in the tasks of the foreign minister the duty to see to it that the views of the European Parliament "are taken into consideration as appropriate". Cynics might say that opinion would vary on what was considered appropriate, but the Parliament undeniably got a foot in the door for putting questions about the follow-up. In addition, the European Parliament attained the right to address questions and recommendations to the foreign minister. Twice yearly a debate would be held on the progress made in the CFSP, including the common security and defence policy.

Obviously, implementation of the new subsidiarity procedure would require changes in national parliamentary procedures. National parliaments should get organised to reach an opinion on new legislative proposals from the Commission within the timeframe of six weeks. That has posed a special problem for countries with a bicameral system, which probably would have to resort to a form of joint committee for dealing with the subsidiarity issue. Divided opinions are theoretically possible, but would cancel each other out in the 'yellow card' procedure in the Union framework.

Aftermath

After the conclusion of the IGC and the signing of the Constitutional Treaty on 29 October 2004, the European Parliament endorsed the Constitution on

12 January 2005 with a resolution giving a closely argued rationale for its positive appreciation.[156] It welcomed in particular greater clarity concerning the nature and objectives of the Union, its greater efficiency and stronger role in the world, more democratic accountability and more fundamental rights for the citizen. The text also provided an argument against those who fear that the EU will become a centralised, all-powerful 'super state' by pointing at:

- the strong emphasis on decentralisation inherent in the theme of unity in diversity;

- the obligation to respect the national identity of the member states "inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government" contained in Art. I-5;

- the principles of attribution of competences (by member states of the EU to "attain objectives they have in common" as stated in Art. I-1), subsidiarity and proportionality; and

- the involvement of member states in the decision-making process within the Union and in the approval of any changes therein.

The resolution said little about security matters. The reference to solidarity was limited to the clause relating to terrorist attacks and calamities, and on security and defence policy the text was limited to the statement that the ability of the EU to create common structures would be strengthened with the necessary flexibility to allow for the diverging approaches of the member states in these matters. The Parliament endorsed the creation of the post of foreign minister and said of the integrated European foreign service that it should be positioned as close to the Commission as possible and contribute to the communitarian dimension of Europe.

Afterwards member states had to decide on ratification of the Constitution, which would be subject to a referendum in a growing number of countries, including France, the Netherlands and the UK (the latter probably not before 2006). There was competition among the UK, the Czech Republic and Denmark for being last, but the UK won. A referendum on a complicated subject such as the Constitution was asking for trouble, particularly in periods of economic gloom and unpopular governments.

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[156] See the Motion for a Resolution 2004/2129(INI), which also gives a useful list of all earlier resolutions on this subject since Altiero Spinelli presented his draft for a European Union in 1983.

Although the text was more readable than previous treaties on European Union, few people would be able to grasp its essential points of transparency, democracy and effectiveness in a Union of 25 member states. The paradox was that rejection would leave us with the Treaty of Nice, which on all accounts is less capable of managing the enlarged Union. But that argument would carry little weight with voters who were dissatisfied with Europe in general and their own government in particular. The problem is compounded by the fact that it will be very difficult to interpret the reasons for rejection in a way that will enable a repair job on the difficult aspects.

Lithuania and Hungary took the lead with a convincingly positive vote in their parliaments. Eleven others followed, including Germany and Italy, and in referenda Spain and Luxembourg. Together these countries represented a majority of the EU membership. France and the Netherlands had a resoundingly negative outcome. According to the text of the Treaty, the European Council would take stock of the situation if by November 2006 four-fifths of the EU member states had approved the Constitutional Treaty.

The long period needed to complete the ratification of the Constitution risked having a paralysing effect on the normal business of the Union, particularly if delicate issues were raised simultaneously, such as the adoption of the financial perspectives for the period 2007-13. At a time when the population had to be convinced that Europe is good for them, it was counterproductive to simultaneously wage battles over disparities in financial contributions. This put a heavy premium on the sensible conduct of the rotating presidencies during the ratification period. The 2005 Luxembourg presidency took the risk and tried to solve the financial questions rapidly but failed. After their defeats in the referenda, the governments of France and the Netherlands were hardly in a position to make concessions. The abortive Brussels European Council of June 2005 under the Luxembourg presidency spoiled the atmosphere even more. At the time it seemed that a reduction of the British 'rebate' could be expected only if the amount spent by the EU on the common agricultural policy (CAP) was to be reduced within a fairly short time span. But that would be difficult in view of the agreement in 2003 to limit only the growth of the CAP to 1% annually. At the end of his presidency, Prime Minister Blair agreed at the Brussels European Council in December to a deal by giving up a quarter of a growing rebate in order to help finance aid to the new

member states, but only received a soft commitment in return to review budgetary reform in 2008. The other issue, whether richer countries should claim money from the structural funds for the poorer regions in their own country, was not touched upon in December. A deal was struck at a volume for seven years of €862.3 billion (1.045% of overall GDP) compared with the original Commission proposal of February 2004 of €994.3 billion (1.21% of GDP), which had raised expectations of the new member states too high. For the CFSP, Mr Solana obtained €100 million annually, more than before, but only half of what he had asked for. Military expenditure remains excluded from the EU budget.

In the public mind the feeling of 'we are paying too much' has assumed exaggerated proportions, particularly because everyone is paying according to the same principles, but some are getting more receipts than others. This will probably require some arrangements for capping the size of the so-called 'net contributions', but if some are allowed to pay less, others will have to pay more. More than anything else in the Union, the budget is a zero-sum game.

In the field of CFSP the loss of the position of minister of foreign affairs will be most severe. Not that the function was without problems, straddling the Council and the Commission, but the role was worth trying in order to allow synergies to develop, including use of the Union budget. Now as before much will depend on the relationship between the high representative and the commissioner for external relations, but several other commissioners have responsibilities in areas that have a direct impact on external relations. That too would have been a problem under the minister of foreign affairs, and his/her colleagues would have had to adjust to the semi-autonomous status of the role. Particularly interesting in this connection was the creation of a joint external service, incorporating officials from the Commission, the Council and those on secondment from member countries. Javier Solana, who had already been designated as the first minister of foreign affairs and knows Brussels well, would be up to that difficult task. Unfortunately, the future of the post has been thrown into limbo, which means that the fall-back position of joint proposals by the high representative and the external affairs commissioner will have to be utilised to the maximum.

Uncertainty about the fate of the Constitution weighs heavily on the solidarity clause. Not much can be expected before November 2006. For the short term this means that the modified Brussels Treaty of 1954 will not be

abrogated and the WEU will continue its truncated existence. In theory it would be possible for the member countries to endorse the solidarity provisions separately, like other articles that could be lifted out of the Constitution. Cooperation on security and defence would in any case remain intergovernmental, but in view of the many innovations contained in the Treaty text it could not easily be implemented without a comprehensive framework. It could also be taken up in the form of a core group but as the largest advocate of this modality (France) has rejected the Constitution, a push in this direction would lack credibility. This does not, however, absolve the countries with a 'no' vote from making proposals for the way forward. First steps in this direction were made by the European Commission with its *Plan D for Democracy, Dialogue and Debate*, and by the European Parliament with its resolution on the Duff–Voggenhuber report. These are discussed in the concluding chapter.[157]

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[157] The growing number of publications on the Convention started with *The Accidental Constitution: The Story of the European Convention* by Peter Norman, EuroComment, Brussels, 2003. Several participants told their story: Olivier Duhamel, *Pour l'Europe, la Constitution européenne expliquée et commentée*, Paris: Editions du Seuil, 2003, revised in 2005; Alain Lamassoure, *Histoire secrète de la Convention Européenne*, Paris: Albin Michel, 2004; Caspar Einem from Austria wrote *Die Quadratur der Sterne, So Schrieben wir Europas Verfassung*, Vienna: K&S, 2004; Kimmo Kiljunen from Finland wrote *The European Constitution in the Making*, CEPS, Brussels, 2004; Andrew Duff authored *The Struggle for Europe's Constitution*, Federal Trust for Education and Research, London, 2005. In February 2003, the Netherlands Ministry of the Interior published the *Report of the International Conference on a European Constitution* held in The Hague on 28-29 November 2002. "The European Parliament and the European Constitution" (see for example http://www.europarl.eu.int/Europe2004/index_en.htm) of 2005 published the resolution adopted by 500 in favour, 137 against and 40 abstentions on 12 January 2005, based on the *Report on the Treaty establishing a Constitution for Europe* by Rapporteurs Richard Corbett and Inigo Méndez de Vigo, (2004/2129(INI)) Doc. A6-0070/2004 final, European Parliament, 9 December 2004, which supported the Constitution. See also Steven Everts and Daniel Keohane, "The European Convention and EU Foreign Policy: Learning from Failure", *Survival*, Vol. 45, No. 3, 2003.

6. Progress on a Security Strategy

While the IGC was going on and Iraq kept the member states divided, it nevertheless was possible to make progress on a security strategy, which defined the new threats facing Europe in a way that ran parallel to thinking in the US. High Representative Javier Solana presented his draft of *A Secure Europe in a Better World* at the European Council in Thessaloniki on 20 June 2003 and managed to obtain endorsement through the process of multilateralisation without much damage to the original concept. His main concerns were terrorism, weapons of mass destruction and failed states in connection with organised crime. The new threats were often more distant, more dynamic and more dangerous, and the first line of defence would often be abroad. This implied that we should be ready to act before a crisis occurred. None of the threats could be tackled by purely military means and in his view Europe should think particularly of operations involving both military and civilian capabilities. Mr Solana's main objectives were extending the zone of security around Europe and strengthening the international order. The strategy held that Europe should become more active, more coherent and more capable. A key sentence was "we need to develop a strategic culture that fosters early, rapid and when necessary robust intervention".[158] It survived in the final text adopted by the European Council of 12 December 2003. That could not be said of another expression, "pre-emptive engagement", coined in the context of strengthening the international order by contributing to better governance in the world and offering justice and opportunity to everyone. The first draft stated that "Pre-emptive engagement can avoid more serious problems in the future". Although this wording was put in a paragraph related to trade and development policies, it did not survive in the drafting

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[158] See European Council (2003b), op. cit. Both the text of the draft and the final document are reproduced in Chaillot Paper No. 67 (Missiroli, 2003), op. cit. The notion of pre-emption is discussed later in this book.

group. It came too close to the doctrine of pre-emption by military means, which had appeared in the new American strategy documents. The words were changed to "preventive engagement" and moved to a different place in the document, under the heading "Policy implications for Europe" instead of "Countering the threats". Finally, the notion of "effective multilateralism", which was already present in the first draft, was highlighted as the caption of the objective of "an international order based on effective multilateralism", which clearly was a political message against American unilateralism.

The Solana document was remarkable, both in content and timing. Perhaps it was not a proper strategy, but more a pre-strategic concept or even an "inspirational sketch",[159] but it certainly was the most coherent response to the new environment the EU had to live in and, as a political document, could be compared with the US National Security Strategy. The difference was that the EU could list all the means and all the threats, but had to remain vague as to what specific end its capabilities could be used to exert influence. Critics pointed at the absence of any mention of the purposes of the European Rapid Reaction Forces, which was seen as an indication that they would focus on pre- and post-crisis management.[160] This shortcoming prevented the document from becoming a fully fledged strategy. Nevertheless, its timing at the height of the transatlantic rift over the Iraq crisis was propitious as a successful attempt to show that political priorities did not differ much in substance.[161] Both the US and the EU put terrorism at the head of the list as well as weapons of mass destruction. Obviously, there were differences in meeting these threats. Washington focused more on hard power, using the military in a war-winning mode.

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[159] See Simon Duke, "The European Security Strategy in a comparative framework: Does it make for secure alliances in a better world?", *European Foreign Affairs Review*, No. 9, 2004, pp. 459-81.

[160] See Asle Toje, "The 2003 European Union Security Strategy: A Critical Appraisal", *European Foreign Affairs Review*, No. 10, 2005, pp. 117-33. Toje's concluding remark called the strategy "a recipe for masterly inactivity" because everyone agreed that the EU should have a security policy, but not on what it should be about.

[161] For a detailed comparison with the US National Security Strategy, see Alyson J.K. Bailes, *The European Security Strategy, an Evolutionary History*, SIPRI Policy Paper No. 10, Stockholm International Peace Research Institute, Stockholm, February 2005(b).

The Europeans accepted the need for military capabilities in support of their political goals, but tried to maximise the spectrum of instruments at their disposal in the EU. Crisis management would be successful only if the entire range of diplomatic means – conciliation, governance, financial and technical support, the repair of infrastructure, inter-ethnic rapprochement and if necessary sanctions (using both carrots and sticks) – were utilised in combination with each other. In this approach the role of the military abroad was comparable to that of the police at home: after quelling a disturbance they should deter by their presence, but have the will and capability to act decisively when the preservation of law and order demanded. The Swiss military scholar Gustav Däniker defined this role as the 'guardian soldier'.

In the extreme, the difference between the US and the EU could be described as hard power versus soft power, but that comparison needs qualification. In the US, authors such as Joseph Nye have written extensively on the need to combine the two. On the European side, which possesses little hard power, there is an obvious inclination to upgrade the importance of soft power, but the lesson of recent crisis-management operations shows that, without some military capabilities, soft power is unlikely to be effective. In this context the emphasis of the Solana paper on early, robust action is significant, all under the caveat that solutions cannot be reached by military means alone.

The US National Security Strategy, signed by President George W. Bush on 17 September 2002, itself was not a unilateralist document.[162] It focused on championing aspirations for human dignity, strengthening alliances to defeat global terrorism and work to prevent attacks against the US and its friends. It emphasised working with others to defuse regional conflicts and preventing its enemies from threatening the US, its allies and its friends with weapons of mass destruction. It further sought to ignite a new era of global economic growth through free markets and free trade, expand the circle of development by opening societies, build the infrastructure of democracy and develop agendas for cooperative action with the other main centre of global power.

Politically more important than the somewhat semantic debate on pre-emption versus prevention was the changing US attitude towards

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[162] See the White House, *The National Security Strategy of the United States of America,* Washington, D.C., September 2002.

alliances, already signalled before. In the words of Secretary of Defense Rumsfeld and his deputy Paul Wolfowitz, the coalition no longer determined the mission, but it was the mission that determined the coalition. In other words, for the Americans NATO would be a toolbox without much influence on how crises should be managed, and the US would be the hegemon showing leadership for those who wanted to follow, either within or outside the Alliance. That was bound to erode the partnership. During the cold war the Europeans had accepted American leadership, because only the US could neutralise Soviet power. Today, however, that leadership can continue only if Washington is prepared to consult its European allies and not pursue unilateral policies from the outset.

Effective multilateralism

The notion of effective multilateralism resembles the proverbial giraffe: easy to recognise, but difficult to define. The fact that it should be effective already indicates that many forms of multilateralism do not attain their objective. The qualifier was added to make clear that multilateralism in itself is not inherently good. Most organisations remain purely intergovernmental without binding commitments and reappraisal of performance. Only very few have decision-making procedures with a form of majority voting that is binding on the participants. The EU decides a growing number of issues with QMV but virtually never extends this to the realm of foreign affairs and defence.

NATO had a force-planning cycle, with ministerial guidance, force proposals by the Major NATO Commanders, a defence-planning questionnaire and replies by member states, followed by country examinations, ultimately leading to a commitment for one year and an indication of effort for the next four years. Although the overall plan clearly created a multilateral framework, contributions were determined by what the members were prepared to do in terms of expenditure and composition of their forces. Laggards were faced with moral pressure, but could persist in their insufficient contribution. On political issues consensus remained the rule, although in practice often the convention was observed that in a minority of one, no one would persist in opposing a decision. Only Greece and Turkey have on occasion not followed this approach, and in the 1980s footnotes appeared under decisions on nuclear matters.

The UN Security Council adopts resolutions with nine affirmative votes, assuming that there is no veto from a permanent member, and the outcome is binding on the parties to which they are addressed. If these parties do not comply, sanctions might follow, but enforcement remains a weak spot of the functioning of the Council. The General Assembly of the UN adopts resolutions with a two-thirds majority, but their character is only politically binding.

The plea by the Solana strategy for effective multilateralism is responsive to the current mood of interdependence in which no single state, not even the US as the only remaining superpower, is able to successfully achieve complex objectives on its own. On the other hand, the US cannot be compelled to do things that it considers to be against its national interests, nor does it have to ask permission from anyone for the conduct of its policies. Therefore, international order should not be built against the strongest power, but in cooperation with it. Throughout history the emphasis on international law and agreements has come from the weaker powers wanting to restrain the stronger. Hugo Grotius's advocacy of the law of the seas was a prime example. To reach some acceptable degree of effectiveness in today's world it is necessary to recognise the fact of American pre-eminence. The UN will not be able to preserve international peace and security in opposition to the US. The only way to exert some influence on an America that is increasingly inclined to free itself from the obligations of international institutions is to demonstrate that these organisations can be effective in delivering what they promised and will have value for everyone as a source of legitimacy and joint action.

It is easy to criticise the US for going it alone on Iraq. We shall never know how politics in the Middle East would have developed if Saddam Hussein had been allowed to stay in power. In military terms the US proved its superb capability to defeat conventional forces, but was not able to deal with counter-insurgency and peacekeeping assignments. Far too little attention was paid to planning for reconstruction and humanitarian assistance. Washington has recognised this and is currently is taking remedial measures.[163]

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[163] See Max Boot, "The struggle to transform the military", *Foreign Affairs*, Vol. 84, No. 2, 2005, pp. 103-18. The US State Department set up an Office of Reconstruction and Stabilisation. To remedy the shortage of infantry soldiers, which make up only 4.6% of the entire active-duty military, the National Defense University has proposed the creation of special constabulary divisions. Boot

It also is interesting to note that US declaratory policy does not reject multilateralism as such. On the contrary, President Bush consistently talks about 'coalition forces', thus creating the impression of broad support for his political and military objectives. Equally, in the WTO the US works constructively with panels settling disputes and accepts their outcome. Clearly the US attaches great interest to the proper functioning of the international trading system. Unfortunately, this feeling does not translate into the realm of security and military power. The maxim that stated 'the mission will determine the coalition', instead of vice versa, could easily destroy NATO. No wonder European allies are stressing the need for revitalisation of the consultative processes in the organisation. Everyone accepts that the actual despatch of forces abroad will always remain a sovereign national decision, but if NATO has no role in determining the mission, its members will have no choice except to follow the American proposal or stay out. Then NATO's politico-military framework would no longer perform a multilateral function and would be limited to being a tool of US policy. That cannot be the purpose of a multilateral organisation.

Historians argue that through the ages no hegemonies in power ever accepted becoming subjected to a multilateral rule-based system. So why should we expect this from the US? Ivo Daalder and James Lindsay called their book *America Unbound* to describe the present trend to refuse commitments restraining US freedom of action.[164] To them the deeper problem is not so much the imperious style of President Bush (whom they see as a revolutionary at heart, audacious rather than cautious), but the premise that America's security rests on an America unbound. Earlier in US history, part of the Monroe doctrine refused both entanglement in European wars and European involvement in the Western hemisphere, but at the same time championed international law. Now, the US is in a different position after playing a decisive role in two world wars and a cold one. Today, the hope for a multilateral approach to law and justice rests on a moderate version of the moralistic tradition of American foreign policy and the recognition of the necessity of international interdependence. Alfred van Staden went too far in saying that the present problem of world

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rejected this because in places such as Iraq, soldiers have to switch at a moment's notice from fighting to peacekeeping.

[164] See Ivo H. Daalder and James M. Lindsay, *America Unbound*, Washington, D.C.: The Brookings Institution Press, 2003.

order is basically how to manage American power,[165] for in reality there is very little scope for managing anything; in that respect the term 'crisis management' has always been a misnomer. But he is right in his conclusion that the effectiveness of the UN system very much depends on the possibility of linking American power with international legitimacy. Priority should be given to strengthening the legal regimes that have been established to combat international terrorism and to counter the proliferation of weapons of mass destruction. In concrete terms this means pressurising the states that remain outside the anti-terrorist conventions, if necessary by sanctions, and putting cases of non-compliance with the Non-Proliferation Treaty on the agenda of the UN Security Council. If the other permanent members of the Council do not cooperate in dealing with these problems, they will bear the responsibility for the ineffectiveness of the UN. If multilateral organisations do not function properly, states will resort to coalitions of the willing seeking their own legitimacy.

2004 – Reconciliation and consolidation

After the crisis over US policy on Iraq, which split the EU down the middle, 2004 was a much better year for the EU's role in the world. Enlarging the EU with 10 new member states was the biggest success of a common foreign policy aimed at stabilising a continent by definitively terminating the dividing lines of the cold war. It took longer than the enlargement of NATO, but the impact was wider and deeper than the security dimension. The EU also showed that in some foreign policy and security issues it might be better placed to achieve results than NATO or the US. The best example was the regime change in Ukraine, where overt NATO involvement would have been counterproductive in leaving Russia no way to back down. The same might happen in Iran, although both the EU and the US will face some hard decisions if nuclear proliferation continues. On Turkey the EU managed to use a shrinking window of opportunity to decide to start negotiations in October 2005, which are aimed at membership but do not give a guarantee of successful completion. Finally, the ESDP underwent further diversification by the development of civilian

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[165] See Alfred van Staden, *Power and legitimacy: The quest for order in a unipolar world,* Clingendael Diplomacy Papers No. 1, Clingendael Netherlands Institute of International Relations, The Hague, April 2005(b). This paper marked the retirement of Prof. van Staden after serving as Director of the Netherlands Institute of International Relations for more than 10 years.

aspects of crisis management, thereby capitalising on its unique potential to merge a spectrum of instruments into a holistic approach to security.[166]

On the military side, much effort was put into the battle group concept, building upon the success of Operation Artemis in the Democratic Republic of Congo as the first EU autonomous operation. It seemed as if NATO and the EU were leap-frogging over each other in boosting rapid reaction capabilities. The EU started with the Helsinki Headline Goals of 50-60,000 personnel available within 60 days and sustainable for at least a year. NATO followed with the NATO Response Force (originally some 20,000, but growing to 25,000), ready at much shorter notice (within weeks) and able to fight as an insertion force. The battle groups would be much smaller, some 1,500 personnel, available within 5-10 days. How would these forces relate to each other? Could units simultaneously be assigned to both? And how could the time required for decision-making be geared to rapid deployment? These are among many questions that so far have not yet been fully answered.

The proposal for a NATO Response Force was launched by US Defense Secretary Rumsfeld at an informal meeting of NATO defence ministers in Warsaw in 2002. NATO acted with unusual speed, spurred into action by the feeling that this might be the last chance to convince the Pentagon that the Europeans were serious in their determination to improve their defence capabilities. In 2003 the NRF already possessed an initial operating capacity with the goal of reaching full deployment in 2006. Every six months another set of units, which had been working up to full readiness for about a year, would be on standby for immediate activation. At the beginning of each period an exercise would be held under overall command of a framework nation and subordinate component commands for army, navy and air force. The composition of the NRF would be based on a combined joint statement of requirements and the various contributions would be certified to ensure that they would be up to the expected standard in terms of composition and training.

The purpose of the NRF is threefold: a collaborative and focused effort that builds joint and combined capabilities and promotes interoperability, and above all cohesively transforms NATO capabilities. Transformation was the new game in town, first in the US, later also in Europe. It aimed at a new vision of future operating environments and at

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[166] See the "Preface" by Nicole Gnesotto (2005) in Chaillot Paper No. 75, op. cit.

building the capabilities necessary to deal with them. NATO responded by changing its command structure and turned Allied Command Atlantic (ACLANT) in Norfolk into Allied Command Transformation, contiguous to the national US command with the same mandate. It was judged important to maintain a major NATO command on American territory. In Europe a Joint Warfare Center was created in Stavanger, Norway and a Joint Analysis and Lessons Learned Center in Warsaw. The NRF should be able to perform different missions, but primarily in the area of crisis response, either as a stand-alone force or as a demonstrative force package, or as a force enabler acting as an initial entry force for others to follow.

Exercise Allied Action, held in the spring of 2005 was largely a Spanish-Portuguese affair as far as the land component was concerned. This meant that its impact on transformation was limited. Comments on the work of the Joint Warfare Center and the modern Spanish headquarters at Zaragoza were highly favourable. Shortcomings were a lack of attack helicopters, medical evacuation, logistics and insufficient manoeuvre units. On the naval side the absence of land attack capabilities became apparent, which would be remedied only when a NATO strike fleet joined the operation. As a result of these lessons learned, NATO planners raised the preferred size of the NRF to some 25,000 personnel.

Work on the EU battle group concept started with a 'food for thought' paper by the UK, France and Germany.[167] It sought a catalogue of high-utility force packages that could be rapidly tailored to specific missions, usable either individually or together in small multiples. Key elements of the joint proposal concerned joint force packages that were:

- coherent, credible and battle-group size including appropriate supporting elements (combat support in the form of fire support and operational assistance and combat service support in the fields of administration and logistics) together with necessary strategic lift, sustainability and debarkation capability. For a Central African theatre the baseline battle group would require 200 C130 aircraft sorties (or 30 C17 or similar aircraft) for initial deployment. Sustainability should be for 30 days of initial operations, extendable to at least 120 days;

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[167] The paper dated 10 February 2004 was reproduced in Nicole Gnesotto (2005), *supra*, pp. 10-16.

- designed specifically (but not exclusively) to be used in response to a request from the UN and capable of participating in an autonomous operation under a Chapter VII mandate (i.e. to restore international peace and security);

- appropriate for, but not limited to, use in failed or failing states (of which most are in Africa); and

- capable of deploying within 15 days to respond to a crisis, which would mean formations fully manned, equipped and trained, and held at high readiness, defined as typically 10 days notice or less.

The paper assumed that the EU's framework nation concept could be applied to the command function, with the possibility of rapid augmentation and multinationalisation of the headquarters. Currently, three operation headquarters with a 10-day readiness or less figured in the Force Catalogue. In some cases a fully-fledged force HQ (FHQ) might not be necessary, for example if the battle group was to assist another force its staff officers could join their HQ; for a small, benign and primarily land operation an augmented brigade HQ might be sufficient. Similarly, for operations with a maritime bias an FHQ at sea based on existing national capabilities might be appropriate.

At that time it was not envisaged to assign the battle groups to a standing rotation or roster, but to regard them as a high readiness inventory (initially seven to nine) providing the 'first stop' for EU rapid response, replacing the High Readiness Capabilities database. If this line of thinking were maintained, problems would arise in connection with assignments to other rapid reaction forces, especially the NATO Response Force. The food for thought paper stated that battle group formations will have potential utility as a contribution to the NRF (which is based on rotation) or vice versa, but such switching would undermine the credibility of both concepts. Commanders hate being assigned to two tasks at once, which means that if they have to engage in one, they cannot simultaneously perform the other. Excluding dual-tasking might imply that flexibility in crisis situations would be limited unduly, but then it does not seem necessary to maintain such flexibility. Not everyone has to be ready to participate in everything at the same time and the number of members of the EU and NATO is large enough to develop rotation schemes that provide sufficient capabilities for both. This does not exclude the possibility of both the NRF and the battle groups engaging in a single operation if this becomes necessary and is decided politically, but command arrangements

should remain clear. The debate should not be stretched too far, however, because as yet both consist entirely of European forces, and national governments will argue that they possess only one set of forces. The problem might come up again when US forces join the NRF, as foreseen in 2005 but not yet implemented. In any case, the battle groups are intended for autonomous EU operations, which means that they should be able to function without recourse to NATO assets.

The trilateral paper on battle groups was endorsed by the EU with 2007 as the target date for full operational capability.[168] It made some additional points on links with the United Nations. It held that the battle group concept should be developed in a manner complementary to the SHIRBRIG initiative, which was larger (up to a brigade), but was held at slightly lower readiness (15-30 days) and was constituted principally for operations under a UN Chapter VI mandate. It would be possible to use SHIRBRIG to relieve a rapidly deployed battle group, subject to consultations with the UN. In all cases attention would have to be given to the links to follow-on forces, whether regionally generated or otherwise made available. This may require the battle group to take under command the lead elements of the successor formation or leave small elements behind for an effective overlap.

Progress on capabilities

The presidency report on the ESDP of 15 June 2004 called the ability of the EU to deploy force packages at high readiness in response to a crisis a key element of the 2010 Headline Goal. This could be either as a stand-alone force or as part of a larger operation enabling follow-on phases. The report continued:

> These minimum force packages must be militarily effective, credible and coherent and should be broadly based on the battlegroups concept. This constitutes a specific form of rapid response and includes a combined arms battalion-sized force package with Combat Support and Combat Service Support. Rapid reaction calls for rapid decision making and planning as well as rapid deployment of forces.
>
> On decision making the ambition of the EU is to be able to take the decision to launch an operation within 5 days of the approval of the Crisis Management Concept by the Council. On the deployment of forces the ambition is that the forces start implementing their mission

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[168] This occurred at the GAERC meeting of 22 March 2004.

on the ground no later than 10 days after the EU decision to launch the operation. Relevant air and naval capabilities would be included. The need for reserve forces should be taken into account. These high readiness joint packages (battlegroups) may require tailoring for a specific operation by the Operation Commander. They will have to be backed up by responsive crisis management procedures as well as adequate command and control structures available to the Union. Procedures to assess and certify these high readiness joint packages will require to be developed. The development of EU Rapid Response elements including battlegroups will strengthen the EU's ability to respond to possible UN requests.[169]

The European Council of December 2003 had taken the decision to set up a civil-military planning cell, composed of some 35 civilians and military within the EU Military Staff. It took about a year to establish its mission as follows:

The Civ/Mil cell will enhance the EU's capacity for crisis management planning. It will reinforce the national HQ designated to conduct an EU autonomous operation, assist in coordinating civilian operations and have the responsibility for generating the capacity to plan and run an autonomous EU military operation, once a decision on such an operation has been taken. Crisis management activities are complex and, in most cases, call for the use of civilian and military means. The creation of the Civ/Mil Cell is a step in the EU's efforts to harness the wealth of civilian and military instruments at its disposal in responding to crises. The operation of the Cell should lead to greater coherence of the civilian and military structures under the Secretary-General/High Representative.[170]

Finally, the European Council of December 2004 decided that the capacity to rapidly set up an operations centre should be available by 1 January 2006 at the latest. Readiness would be assured by a permanent key nucleus, which would be reinforced upon a Council decision to activate an operations centre. This decision, normally in the form of a joint action, would include the appointment of the operation commander.

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[169] See Annex 1, para. 4, which is reproduced in the informative report by Konstantinos Vrettos to the Defence Committee of the WEU Assembly on *ESDP developments and the Headline Goal 2010 – Reply to the annual report of the Council*, WEU Assembly, Paris, 15 June 2005.

[170] See European Council, Doc. 13990/04 EXT 1, Brussels, 28 January 2005(a).

2005 – Renewed multilateralism, but institutional failure

The year started out with a new US administration, which seemed to recognise that even the most powerful country in the world could not manage everything on its own. The visit of President Bush to Europe was seen as a charm offensive to make a new start. Donald Rumsfeld, the controversial Secretary of Defense, who a year earlier had antagonised the allies that did not support his Iraq policy by calling them 'old Europe' got a laugh at the Munich Conference on Security Policy on 11-13 February by saying "that was the old Rumsfeld". This time it was Chancellor Schröder who put the cat among the pigeons with his remark that NATO no longer was the primary venue where transatlantic partners discuss and coordinate strategies.[171] His speech, read by Defence Minister Peter Struck, continued by saying that the same applied to the dialogue between the EU and the US "which in its current form does justice neither to the Union's growing importance nor to the new demands on transatlantic cooperation". Therefore, he proposed a panel of independent personalities to make recommendations for the adaptation of the structures of our cooperation to the changed circumstances and to report early in 2006. The speech provoked uproar only a few days before President Bush arrived in Europe, but stated a fact of life: NATO had not served as the principal forum of consultation. Allied political consultations had declined in substance, but then NATO ministerial sessions never produced thorough discussions as ministers kept to their prepared statements. Only restricted sessions (and the early days of the Nuclear Planning Group with US Defense Secretary Robert McNamara) produced discussions in which ministers personally became more deeply involved. It was also quite legitimate to ask whether direct EU–US relations could be improved in order to fill the gap. NATO Secretary-General Jaap de Hoop Scheffer hurriedly called the German chancellor to ascertain the scope of his remarks, but also admitted that NATO should become more political.

The words of the chancellor did not contribute to the necessary fence-mending, which might have been possible. Nor were they very original; both Kofi Annan and the OSCE had resorted to high-level panels to make

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[171] The speech of the German Chancellor Gerhard Schröder was given at the 41st Munich Conference on Security Policy on 11-13 February 2005. The point was not new. At the Rose–Roth seminar of the NATO Parliamentary Assembly in Bratislava it was made by William Hopkinson on 25 April 2002.

recommendations. Chancellor Schröder's proposal was only procedural without any substantial indications of what should be changed. The next day Foreign Minister Joschka Fischer did his best to fill this gap, but did not get further than mentioning issues such as the death penalty and the Kyoto protocol on CO_2, hardly items for a strategic discussion with a US focused on the Middle East and weapons of mass destruction.

Perhaps the biggest tactical error was the absence of the chancellor himself (because of illness) and the reading of his speech by Defence Minister Struck, who according to some in the audience did not pronounce every passage with equal conviction. Now the upshot was that Germany, formerly America's best ally, had allowed a certain distance to creep into the relationship. Not that anything extremely wrong was said. A strong Europe was seen as a guarantee for a loyal division of labour in the transatlantic partnership, but the assertion of a new position for Germany was hardly necessary. The remark that Germany's foreign and security policy emanated from its position in the centre of Europe also made the Europeans present wonder whether the notion of *Mitteleuropa* was being espoused again. And his assertion that the presence of American forces, which in the past had functioned as proof of close solidarity, no longer had the same priority, but was still politically meaningful, was less than generous. Equally, the audience was not impressed by the claim that active engagement in crisis management with some 7,000 German soldiers abroad legitimated the claim for a permanent seat on the Security Council.[172]

After the conference the question remained of whether the Alliance would be capable of encompassing transatlantic relations without at the same time creating new machinery for closer EU–US consultations. The old solutions of a two-pillar NATO or a European 'identity' within the Alliance never got off the ground and the increased self-assurance of the EU made them obsolete. Yet, the tide seemed to be flowing out.

After its setbacks in Iraq, the US administration has changed its tone and recognised the need for multilateral coalitions, but its fundamental attitude towards NATO remains in doubt. The charm offensive of the Bush trip to Europe of 2005 did not work. It does not make sense to say that the Alliance is valuable only if American positions prevail, even if in practice this has often been the case. For the US, NATO has been and remains the

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[172] The texts of the major speeches of the 41st Munich Conference on Security Policy were reproduced in *Europäische Sicherheit*, Vol. 54, No. 3, 2005, pp. 8-43.

primary forum for dealing with Europe, but if they want to pressure the Europeans into building better capabilities and accepting larger responsibility, they will have to accept more influence on designing a common course. The EU has an advantage over NATO in possessing economic clout and increasing cooperation in the field of justice and home affairs. In fighting terrorism most of the means will have to be non-military and the same applies to post-conflict stabilisation efforts. NATO will be able to perform some of these functions, but certainly not all. As a consequence, both the US and the EU will have an interest in establishing closer direct links than are possible within the more limited context of the Alliance.

When the European Council endorsed the European Security Strategy at its December 2003 meeting, it asked that the follow-up focus initially on four topics: effective multilateralism with the UN at its core, terrorism, the Middle East and Bosnia. In this way it met criticism that the Security Strategy was tackling too many issues at once and linked it to the method agreed at Amsterdam to adopt strategies (with unanimity) to be translated into concrete action (with majority voting, if possible). On the UN, terrorism and Bosnia the EU had a good record of common policies, but in the Middle East this had never been possible since the European political cooperation began in 1971. Participation in the 'Quartet' with the UN, US and Russia was more of a following than an initiating character, but might become more 'autonomous' in the light of the diminished status of the US in the Arab world (see Box 1).

Although agreement grew on the main threat, popular perceptions still diverged. The traumatic experience of 9/11 and the sudden realisation of vulnerability continued to have a lasting impact on domestic policy. The creation of a Department of Homeland Security was not emulated in Europe, which had learned to live with vulnerability and many forms of terrorism. Many people wondered whether al Qaeda would continue to focus on the US and thereby separate the allies or also strike in Europe and create solidarity among the victims. The attacks in the train stations of Madrid and London gave a new impulse to anti-terrorist measures in the European Union, although EU Counter-terrorism Coordinator Gijs de Vries continued to complain of the slow pace of implementation. A major difference across the Atlantic continued to be the military approach of the 'war on terror' in the US and the more society-oriented multi-layered

approach of the Europeans. In this connection the agreement on rapid action abroad, before the danger strikes at home, was somewhat surprising.

Box 1. EU and US approaches to world affairs

The differences between the EU and the US in their approach to world affairs can be summed up in a simplified manner, taking its cue from Robert Kagan in the following table:

<center>EU - US</center>

<center>*Come from*</center>

<center>Venus - Mars</center>

<center>*Seek international order through*</center>

International law	-	Powerful hegemony
Coalition deals with crises	-	Crisis forms the coalition
European Security Strategy (Solana)	-	National Security Strategy
Prevention	-	Pre-emption
Soft power	-	Hard power
Equality	-	Leadership

Source: Adapted from Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order*, New York: Alfred A. Knopf, 2003.

Conceptually, the Iraq war cast doubt on the argument that attack is the best form of defence,[173] which had been expressed in two key documents of the war on terror, both issued in 2002. The UK's *Strategic Defence Review: A New Chapter* states: "Experience shows that it is better where possible to engage an enemy at longer range, before they get the opportunity to mount an assault on the UK".[174] *The National Security Strategy of the United States* commits the US to attack terrorist organisations by "convincing or compelling states to accept their sovereign

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[173] See Adam Roberts, "The War on Terror in Historical Perspective", *Survival*, Vol. 47, No. 2, Summer 2005, p. 119.

[174] See the UK Ministry of Defence, *The Strategic Defence Review: A New Chapter*, Presented to Parliament by the Secretary of State for Defence, Cm 5566 Vol. I, July 2002.

responsibilities".[175] The implication here is that if states do not get rid of terrorists on their soil, the US will do it for them. The argument is buttressed by the more fundamental idea that lack of democracy is a principal cause of terrorism, and that a forcible intervention could lead to the growth of a more stable democratic system. Prof. Adam Roberts argued that the history of counter-terrorist operations suggests no such simple conclusion and that the choice was a false one, there being no substitute for defensive anti-terrorist and counter-terrorist activities. His third point was that the thesis was a recipe for a revival of imperialism and that military intervention must inevitably mean, in many cases, exercising external domination for a period of decades.[176] So the argument will continue.

Concerning the other major new threat, the proliferation of weapons of mass destruction, Resolution 1540 of the Security Council of 28 April 2004 broke new ground. Not only did it affirm that proliferation of nuclear, chemical and biological weapons (as well as their means of delivery) constitutes a threat to international peace and security, it was also gravely concerned by the threat of terrorism and the risk that non-state actors may acquire, develop, traffic in or use these weapons. Illegal trafficking added a new dimension to the issue of proliferation and also posed a threat to international peace and security. Acting under Chapter VII of the UN Charter, the Council decided that all states should refrain from providing any form of support to non-state actors, take and enforce effective measures to establish domestic controls to prevent the proliferation, and to report within six months to a committee of the Council consisting of all members. This resolution could be of great importance in monitoring the nuclear aspirations of Iran and North Korea and lay the basis for further action by the Security Council. It also explains why the International Atomic Energy Agency was reluctant to refer the issue of Iran's non-compliance to the Council.

Nuclear issues took an unexpected turn with the speech of President Chirac to a military audience on 19 January 2006, in which he said that French nuclear weapons could be directed at states that supported terrorism, not to annihilate them but to destroy their capability to assist

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[175] See the White House (2002), op. cit.

[176] See Roberts (2005), op. cit.

terrorists.[177] Apart from the questions this raised about possible targeting in response to which precise threat, his declaration was widely judged as inopportune at a time of delicate negotiations with Iran. Nothing would do more to whet Iran's appetite for nuclear weapons than such vague threats. Moreover, his unsolicited offer to Europeanise the French nuclear arsenal, made without any prior consultations with his partners, was hardly conducive to the formation of a common European strategy.

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[177] See Wolfgang Munchau in the *Financial Times* of 23 January 2006, "Chirac's vain threat is a strategic mess". See also the editorial comment in the *International Herald Tribune*, "A new Chirac doctrine", 24 January 2006.

7. Towards an EU Armaments Agency

The European Council of Thessaloniki in 2003 decided to lift the proposal for a European armaments agency out of the draft for a European Constitution and to implement it quickly in the course of 2004, independently from the IGC and the ratification process of the Constitution. It would not be the first time that such an intention was expressed. In fact, similar proposals had been made since 1982. The defence industry across the EU had consistently argued in favour of the creation of a European defence equipment market and, in its merger and cooperation arrangements, was miles ahead of what their governments were prepared to do. Ever since the creation of the Eurogroup in 1968 at the initiative of British Defence Secretary Denis Healey, a series of organisational structures came into being, each overtaking the previous one before it could prove its worth. The independent European Programme Group was followed by the WEAG and the Western European Armaments Organisation (WEAO); in the context of the EU the POLARM group (the Ad Hoc Working Party on a European Armaments Policy) was created; and at a more restricted intergovernmental level the Letter of Intent (LoI) group and OCCAR were established.[178] All had some value, but their output remained below expectations.

To some, this leap-frogging was intentional, as the political will seemed to be lacking to establish an effective agency, which of necessity would need to have clear decision-making procedures and sufficiently

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[178] For a fuller discussion of these developments see Willem van Eekelen, *The parliamentary dimension of defence procurement: Requirements, production, cooperation and acquisition*, Occasional Paper No. 5, Geneva Centre for the Democratic Control of Armed Forces, Geneva, January 2005. The LoI group combines the six countries with aeronautical production capabilities. The OCCAR agreement of 28 January 2001 gave legal status to the four large EU equipment producers plus Belgium in a new approach to work-sharing, evening-out over a range of common projects.

binding elements to implement them and to stay the course. The Treaty of Amsterdam was a disappointment by not making any progress except an anodyne provision that "the progressive framing of a common defence policy will be supported, as member states consider appropriate, by cooperation among them in the field of armaments".[179] This time expectations were high, but coloured by some scepticism.

The working group on defence of the Convention had proposed a European armaments and strategic research agency to make clear that its task would be more than arms procurement. During its deliberations a paper by Gisela Stuart from the UK criticised the idea of Europe-wide procurement as a step towards a 'fortress Europe' approach.[180] Her preference was for an intergovernmental defence capability development agency, designed to promote the strengthening of the defence industry and its competitiveness by coordinating national efforts in equipment, personnel and contracted-service work, while not cutting it off from the US. Others regarded a healthy EU defence industry as a necessary precondition for European defence. The Franco-British communiqué at Le Touquet on 4 February 2003 compromised on an "intergovernmental capabilities development and acquisition agency".[181] This was not the end of the story, for the European Convention changed it to a "European bureau for armaments, research and military capabilities". In the Constitution the word "bureau" was changed to "agency" and in the final phase the preparatory committee agreed on the name "European Defence Agency" (EDA).[182] In Art. III-311 of the Constitution its tasks were defined as follows:

a) to contribute to identifying the member states' capability objectives and evaluating observance of the capability commitments given by the member states;

b) to promote harmonisation of operational needs and the adoption of effective, compatible procurement methods;

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[179] See the Treaty of Amsterdam (1997), op. cit.

[180] See Gisela Stuart, Working Group VIII on Defence, Document 23 of 21 November (untitled) 2002; see also Bailes (2003), op. cit., pp. 214-18.

[181] The text of the communiqué is reproduced in Missiroli (2003), op. cit., pp. 36-39.

[182] See Art. III-212 in the Convention draft (2003) and Art. III-311 in the Constitutional Treaty (2004), op. cit.

c)   to propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the member states and management of specific cooperation programmes;

d)   to support defence technology research and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs; and

e)   to contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

The Agency's statute, seat and operational rules would be defined by the Council, adopting a European decision by qualified majority. Further provisions were:

> Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.[183]

The meeting of the GAERC of 16 June 2003 in Luxembourg, preparing for the Thessaloniki summit, had adopted two resolutions – one on "Restructuring challenges" and one on "Security of supply".[184] The former recognised the importance of maintaining a "leading edge competency in critical defence-related technologies and capabilities", but did not yet mention an agency and was limited to welcoming the Commission's intention to launch a monitoring activity with a view to analysing existing deficiencies and structural problems, and to assessing the implications of EU enlargement on the European defence technological and industrial base. The decision of the European Council was cautious: "proposals and initiatives, including also in the context of the Convention, concerning an intergovernmental agency" were welcomed, but the incoming Italian presidency only was mandated "to promote the possible creation"[185] of such an agency, taking into account the work of the Convention. The Italian presidency did not waste any time and on 4

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[183] See the Treaty establishing a Constitution for Europe (2004), op. cit.

[184] See General Affairs and External Relations Council (GAERC), Council Conclusions, Luxembourg, 16 June 2003.

[185] See the Presidency Conclusions of the European Council in Thessaloniki (2003a), op. cit.

September managed to obtain a decision of COREPER establishing an Ad Hoc Preparation Group, with participation of the Commission, and working in close coordination with the Political and Security Committee. The group could be reinforced by representatives of the EU Military Committee and the POLARM working party, meeting also at the level of national armament directors. The decision summarised the aims as set out by the European Council succinctly as follows:

> developing defence capabilities in the field of crisis management, promoting and enhancing European armaments cooperation, strengthening the European defence industrial and technological based and creating a competitive European defence equipment market, as well as promoting, in liaison with the Community's research activities where appropriate, research aimed at leadership in strategic technologies for future defence and security capabilities, thereby strengthening Europe's industrial potential in this domain.[186]

According to Brussels standards, progress was quick. On 17 November the GAERC agreed on the principles establishing the Agency (and at the same time decided to establish a 'road map' to monitor progress in the European Capabilities Action Plan) and on 28 January 2004 Javier Solana appointed Nick Witney, formerly Deputy Undersecretary in the UK Ministry of Defence, as head of the Agency Establishment Team with the task of drafting a comprehensive plan, including elements for a Council Joint Action.

On 14 June 2004 the Council agreed a Joint Action establishing the European Defence Agency with Mr Witney as its first Chief Executive. His deputy and five directors, representing the LoI countries and Belgium, were appointed soon afterwards. The budget for 2004 was €2 million, expanded to €24 million in 2005 to cover installation costs, salaries and the first studies on capability shortfalls. Long-term decisions would be taken unanimously by the Council of Ministers, but the yearly programme would be determined by qualified majority by the executive board, on which all participating countries are represented. Denmark did not join and the position of Norway and Turkey, which participated in the Western European Armaments Group as equal partners, still had to be defined. In November 2004 the WEAG ministers decided to terminate their activities in this forum by the middle of 2005.

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[186] The decision is reproduced in Chaillot Paper No. 67 (Missiroli, 2003), op. cit., p. 209.

In the light of past performance it was not surprising that the creation of the EDA was met by the usual scepticism. Much would depend on the willingness to enter into binding commitments and to stay the course during the inevitably long gestation period of armaments projects. During the negotiations, marked differences appeared on the status of the EDA. The UK had switched its position and now was in favour of a fully independent agency, but France and Germany wanted political control by the Council and the Political and Security Committee.

The EDA will not be a European version of the US Defense Advanced Research Project Agency (DARPA), which, although coming under the Department of Defense, has a broad mandate of coordination and aims specifically at integrating the military and commercial industrial bases. In the EU the two are still separated, largely because of a continuing quarrel over the competence of the European Commission and Parliament in these matters. The outgoing Prodi Commission published a Green Paper and, acting on the advice of a 'Group of Personalities' announced the creation of a European Security Research Advisory Board.[187] It saw a truly European market as crucial for strengthening the competitiveness of European industry by overcoming the current state of fragmentation of markets along purely national lines.

Ever since 1957, Art. 223 (currently Art. 296 of the TEU) had allowed each country to take "such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material". In 1958 the Council adopted a list of military goods to which this article would apply, a list that today is clearly obsolete. The Commission argued that the article should not be seen as constituting a general derogation for everything that is military, but should be justified on a case-by-case basis. The problem was complicated by the fact that many could accept more competition within the EU, but resist opening up the internal market to firms from countries that keep their own defence markets closed. In this

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[187] The announcement was made in European Commission, Green Paper on Defence Procurement, COM(2004) 608 final, Brussels, 23 September 2004(b) and European Commission, "Commission consults on more open and efficient defence procurement", MEMO/04/222 of 23 September 2004(a). Eleven major questions were asked, including whether a specific directive should create the European defence equipment market (EDEM), whether a category of products should be excluded specifically and how offset practices should be handled.

line of argument, Art. 296 should be maintained, at least as a bargaining chip for gaining access to defence contracts abroad. Commission President José Manuel Barroso still has to make up his mind in light of the answers to the questions put in the Green Paper. In the current climate, in which the Lisbon agenda for innovation and competitiveness takes central stage, the time may be ripe for substantial progress. Among the many important issues to be discussed will be the relationship between the EU framework programmes for research and the work of the new European Defence Agency, as well as the possibility of common funding for defence-related projects.

By now it has been generally accepted that progress towards a European defence equipment market (EDEM) is necessary if Europe is to remain competent and competitive in its defence industrial and technological base. No agreement exists, however, on the degree of involvement of the European Commission in defence and equipment matters. From its side, the Commission envisaged either an interpretative communication, to clarify existing provisions in order to put an end to the misuse of the exemption under Art. 296 of the TEU, or a defence directive to coordinate national procedures for the procurement of equipment for military use. As a third option, member states have tasked the European Defence Agency with exploring the possibility of a code of conduct to foster cooperation within the scope of Art. 296. By the end of 2005 the latter course was deemed the most promising.

A task force formed by the EU Institute for Security Studies concluded that none of these three instruments by itself would be sufficient for creating the level playing field necessary for an effective European market place. Accompanying measures would be required, particularly for establishing common regimes for security of supply and transfers. Therefore, it was recommended to develop the three instruments concurrently as part of a comprehensive strategy for establishing the EDEM.

In conclusion, the creation of the EDA is a welcome step in the direction of a comprehensive approach and, in spite of the haggling about its name, a true capability agency. It will be headed by the high representative, but ministers of defence will assume responsibility, thereby giving substance to their central role in building European capabilities. This restores part of the role they had in the WEU, at par with the foreign ministers, which was almost lost in the early days of the ESDP. The EDA's

role in drafting and possibly monitoring a code of conduct will not be an easy one. To some extent it might even be contradictory to another part of its mandate: the development of cooperative projects. The latter are likely to involve high-value systems with an advanced technological content, designed to strengthen specific industrial capabilities. Its participants will not cherish the idea of opening themselves to competition from companies from non-participating nations. The task force thought that, at best, this would be possible at the subcontracting level and for maintenance and in-service support contracts.

In the past, the WEAG and WEAO have had some success in bringing research, development and acquisition closer together, but the link with operational requirements has been weak. That is not surprising in view of the long lead times involved in arms procurement. Also, at the national level difficulties arise in the relationship between those responsible for planning and procurement, but procedures exist for solving problems. At the European level, there is no institutionalised defence-planning cycle, as in NATO, and no armaments planning system. Part of the problem has been the position of France, which since 1967 has not participated in the integrated military structure and defence planning and has emphasised the voluntary nature of the European method. As a result, there is a gap between the bottom-up method of making contributions and the top-down process of institution-building. The EU lacks the interface that tries to persuade countries to do more in remedying the shortfalls that have been identified together.

Perhaps NATO was, like Wagner's music in the ears of Mark Twain, better than it sounded, but it certainly was not perfect either. For decades force proposals were adjusted to what the Major NATO Commanders expected the member states to accept or even welcome. But it was a process of mutual arm-twisting, through which everyone stood up better. It worked when the threat of major aggression was real and all nations were under pressure to do more for the common defence, which would only be as strong as the weakest link. That sort of peer pressure is lacking at a time when collective defence has been replaced by expeditionary capabilities and force projection. Today, it is very difficult to quantify military needs objectively, which is a major reason for the increasing re-nationalisation of defence planning. In the European context it should be possible to take an aggregate look at what we could make available together on the basis of current inventories and future plans, and then to determine who will do

what to remedy remaining shortfalls in the short and in the long term. If the EDA manages to do that, it would be a great success, also for transatlantic relations. For EU shortfalls by and large are the same as the shortcomings in the capabilities the European allies offer to NATO. New capabilities will benefit both organisations. It is important that the European Capabilities Action Plan has been made more concrete by supplementing it with an ECAP roadmap, indicating when the shortfalls will be met. Another positive element is the central role given by the EU capability development mechanism to the EU–NATO Capability Group to coordinate programmes. But progress towards the creation of a European equipment market will not be measured by the creation of ever more new groups but by a coherent approach, dealing with the wide range of competition, export controls, common funding of research and development and determining its place within the internal market in close cooperation with the European Commission.

In the summer of 2005 both the EDA and the European Commission made themselves known.[188] The EDA announced technology demonstration studies for long-endurance UAVs, funded from its 2005 budget. National experts had identified another 10 critical technology areas that could be addressed by ad hoc cooperative projects among its members. Commissioner Günter Verheugen, responsible for enterprise and industry policy, launched four specific measures at a defence workshop:

- the mapping of the European defence technological and industrial base to support the elaboration of policy options;

- standardisation and the preparation of a handbook together with the European Committee for Standardisation (CEN) for use in defence procurement contracts;

- intra-EU transfers, i.e. simplified licensing schemes for defence products, components and intermediate goods, which today are treated like exports to non-member countries; and

- harmonised procurement rules as a central issue for the creation of a European defence equipment market.

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[188] This occurred through the EDA meeting of 6 July 2005 organised by its Research & Technology Directorate and the press release of the European Commission of 11 July 2005.

8. Justified Intervention

Prior to 1990 several interventions took place with at least partial humanitarian justification, conducted by one or two countries. The concept of 'humanitarian intervention.' implemented by a coalition of forces was developed only after the end of the cold war. Before that time Belgium had intervened in the Congo in 1960, together with the US in Stanleyville in 1964 and with France in the Shaba province in 1978. The US had intervened in the Dominican Republic in 1965, in Grenada in 1983 and in Panama in 1989. India had intervened in East Pakistan in 1971, resulting in the creation of Bangladesh. Vietnam had intervened in Cambodia in 1978, Tanzania in Uganda in 1979 and France in Central Africa in 1979. At the time, most of these cases were criticised as indefensible intrusions on state sovereignty, but ironically might have been regarded as permissible humanitarian actions today. They were not justified as such, however, and India and Vietnam implausibly claimed their interventions as cases of national self-defence. France changed its justification from providing assistance at the request of the new government to intervention on humanitarian grounds before the *coup d'état* took place.

During the 1990s intervention had a stronger normative component than during the cold war, but remained selective. Differing political interests continued to play a role, which probably was inevitable but gave rise to accusations of double standards. Yet it was clear that the international community was not ready to deal with everything that went wrong in an imperfect world. On the positive side was the marked reduction of unilateral interventions by the great powers, who attached more importance to justifying their actions in terms of widely-shared normative principles.[189]

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[189] See S. Neil MacFarlane, *Intervention in Contemporary World Politics*, Adelphi Paper No. 350, International Institute of Strategic Studies, London, 2002.

In my book, *Debating European Security*, an attempt was made to define the application of justified coercion in order to preserve or restore peace.[190] In the aftermath of the Kuwait crisis and the plight of Kurdish refugees on the snowy mountains of northern Iraq, new concepts were framed to allow for safe havens and humanitarian intervention. In Bosnia safe areas were created with a lesser degree of security and proved to be anything but safe. In Kosovo humanitarian intervention became a euphemism for tough offensive action. In Rwanda, no one acted in time to prevent horrendous killing. In the case of northern Iraq in 1991, the legal base rested on UNSC Resolution 688, which, however, did not provide explicitly for military enforcement action. The intervention was justified by the fact that Iraq had been branded a threat to peace and security, which could override the prohibition of interference in domestic affairs. When intervention was authorised in Somalia, the state had ceased to function, making the need for humanitarian relief overwhelming. In Bosnia the UNPROFOR mandate also started out as a humanitarian relief operation, but gradually acquired a wider scope. It could be argued that humanitarian aid without substantial protective action only results in further misery and violence, feeding those who may be the next victims. In any case, no intervention in itself is 'humanitarian', although its purpose is to end grave violations of human rights. The name should be changed.

Humanitarian intervention has never been a precise concept and certainly no established doctrine; every time it has had to be weighed against its potential consequences. It has also fallen victim to considerable derision. Stanley Hoffmann described it as "well-meaning, but fundamentally insufficient, often naïve and self-defeating" and Noel Chomsky ironically wrote of the "new military humanism" in Kosovo.[191]

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[190] See van Eekelen (1998), op. cit., pp. 295-99, including the Bertens Report of the European Parliament of 1994 and the criteria formulated by Ernst B. Haas in "Beware the slippery slope: Notes towards the definition of justifiable intervention" in Laura W. Reed and Carl Kaysen (eds), *Emerging norms of justified intervention*, American Academy of Arts and Sciences, Cambridge, MA., 1993.

[191] See Stanley Hoffmann (ed.), *The ethics and politics of humanitarian intervention*, Notre Dame: University of Notre Dame Press, 1996; see also Noam Chomsky, *The New Military Humanism, Lessons from Kosovo*, London: Pluto Press, 1999. I am indebted to Désirée Geerts for her thesis "Naar een recht op humanitaire interventie?", Leyden University, November 2000, and her closing sentence, "if power is used to do justice, law will follow".

The Danish Institute of International Affairs (DUPI) has provided a useful definition of humanitarian intervention, as set out below:

> Coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorisation from the UN Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law.[192]

The merit of this definition is the recognition that humanitarian action could take place with or without a UNSC mandate. DUPI developed four alternative strategies for dealing with humanitarian intervention. The *status quo* strategy relied exclusively on authorisation by the UNSC as the sole centre of decision-making. The *ad hoc* strategy allowed intervention without such authorisation in extreme cases of violation of international law. The third strategy, of *exception*, envisaged a subsidiary right of intervention, which would require new rules and criteria. Finally, the *general right* strategy would not only require an amendment of the UN Charter, but also risk opening an unrestrained 'free for all'. DUPI opted for a combination of the status quo and ad hoc strategies, with the argument that this would not affect existing international law. Intervention without UNSC authorisation would be seen as an 'emergency exit', subject to clear political and moral justification.

Among international lawyers the debate about the legitimacy of humanitarian intervention under the UN Charter continues. A recent study[193] came to the conclusion that the arguments in favour of an absolute prohibition of the use of force were more convincing than the arguments against it, and that humanitarian intervention was contrary to that provision. Equally, an explicit right of humanitarian intervention did not exist under customary international law, nor was it evolving. Nevertheless, the principle of necessity could not be dismissed out of hand as a possible justification and could be extended to a humanitarian necessity. The advantage of this course would be that it did not affect the *ius ad bellum*. A state invoking this principle would be temporarily relieved of the obligation to comply with the prohibition of the use of force, but would be

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[192] Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects*, DUPI, Copenhagen, 1999.

[193] See Gelijn Molier, *De (on)rechtmatigheid van humanitaire interventie*, The Hague: Boom Juridische uitgevers, 2003, with a summary in English.

well advised to ensure that the additional conditions formulated by leading experts are satisfied, even though their formal acceptance seemed unlikely in the foreseeable future. The Netherlands formulated these conditions in a note to parliament of 30 October 2001,[194] after having organised three international seminars on the subject, which are:

- serious and massive violation of human rights;
- reliable and objective proof from different sources of these violations or the threat thereof;
- that the government of the state in question cannot or will not take adequate measures , or is itself responsible for the violations;
- an urgent necessity to intervene;
- that use of force is the ultimate means to redress the situation;
- that the primary purpose of the intervention is to stop the violations;
- evidence that the intervention is supported by those it intends to protect;
- that the position of neighbouring countries has been taken into consideration;
- that there is a reasonable chance of success at an acceptable cost; and
- that the intervention is unlikely to lead to greater problems.

In implementing the intervention,

- its purpose should be made public at the outset;
- the use of force should be limited to what is necessary and proportional to the objective;
- the rules of the *ius in bello* should be observed;
- the consequences to the political system of the country should be limited to the objective; and
- full reporting should be effected towards the Security Council.

A new approach was followed by the International Commission on Intervention and State Sovereignty of December 2001. Co-chaired by Gareth Evans and Mohamed Sahnoun, the commission developed the concept of "the responsibility to protect" in an effort to bridge the gap between the advocates of intervention and the defenders of state

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[194] The note to the Second Chamber came in session 2001-02, Doc. 27742, No. 5, p. 10.

sovereignty. Seeing sovereignty as responsibility, the debate was turned on its head by changing the terminology from "intervention" to "protection", away from the language of humanitarian intervention.[195] Their basic principle was that, if a state is unwilling or unable to halt or avert serious harm to its population, the principle of non-intervention yields to the international responsibility to protect. With a sophisticated argumentation, the responsibility to protect was built up out of three specific responsibilities: to prevent, to react and to rebuild. Preventive options should always be exhausted before intervention was contemplated, and military action should be governed by a set of clear criteria:

1) the just cause threshold, i.e. serious and irreparable harm to human beings occurring or imminently likely to occur in terms of a large loss of life or large-scale 'ethnic cleansing';

2) the precautionary principles of right intention (best assured with multilateral operations, clearly supported by regional opinion and the victims concerned), last resort (reasonable grounds for believing that lesser measures would not succeed), proportional means in scale, duration and intensity, and reasonable prospects of success, with the consequences of action not likely to be worse than the consequences of inaction;

3) the right authority – although there is no more appropriate body than the Security Council, it should work better. In all cases its authorisation should be sought, either by members or by the secretary-general under Art. 99 of the Charter. The Council should deal promptly with the request and the Permanent Five should agree not to apply their veto where their vital state interests are not involved. If the Council rejects the proposal or fails to deal with it in a reasonable time, alternative options would be consideration by the General Assembly under the 'Uniting for Peace' procedure, or action by regional or sub-regional organisations, subject to seeking subsequent authorisation from the Security Council. In all its deliberations the Council should take into account that if it failed to

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[195] *The Responsibility to Protect* by Gareth Evans and Mohamed Sahnoun, with a supplemental volume on research, bibliography and background, was published by the International Development Research Centre, Ottawa, December 2001. Gareth Evans, a former Foreign Minister of Australia, chairs the International Crisis Group. Mohamed Sahnoun, a former senior Algerian diplomat, was Special Adviser on Africa to the UN Secretary-General.

discharge its responsibility to protect in conscience-shocking situations crying out for action, "concerned states may not rule out other means to meet the gravity and the urgency of that situation"; and

4)   operational principles, which include

   a)   clear objectives, a clear and unambiguous mandate and the resources to match;

   b)   a common military approach among the involved partners, a unity of command and unequivocal communications;

   c)   gradualism in the application of force, the objective being protection of the population, not defeat of the state;

   d)   rules of engagement reflecting proportionality and humanitarian law;

   e)   recognition that force protection cannot become the principal objective; and

   f)   the maximum possible coordination with humanitarian organisations.

In an article in *Foreign Affairs*,[196] the co-chairmen explained that their 'just cause' criteria did not cover human rights violations falling short of outright killing or ethnic cleansing (such as systematic racial discrimination or political oppression), the overthrow of democratically elected governments or the rescue by a state of its own nationals on foreign territory. Although deserving external action – including in appropriate cases political, economic or even military sanctions – these instances would not seem to justify military action for human protection purposes. On the whole, these clarifications made sense in an effort to make the main principles acceptable to a broad audience. But the rescue of own citizens in a chaotic situation should not be deleted from the scope of their proposals, because it also directly concerns the responsibility to protect. For the Europeans, rescue action constitutes one of the Petersberg tasks agreed in 1992 and, as demonstrated on several occasions, might only be executed at very short notice without the opportunity to conduct elaborate consultations or even to put it on the agenda of the UN Security Council.

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[196] See Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect", *Foreign Affairs*, Vol. 81, No. 6, 2002, pp. 99-110.

Prevention and pre-emption

Everyone agrees that prevention is better than cure, but it is tantalisingly difficult to apply effective conflict prevention. Only in Macedonia was the UN Preventive Deployment Force effective in stabilising the local situation through its mere presence, although its official mission was to prevent border incursions. Some definitions of conflict prevention are so expansive that they include virtually all development work and post-conflict peace-building. Too heavy an emphasis on the structural causes of conflict is empirically inaccurate, because social inequities and resource scarcity do not always lead to deadly conflict and sometimes lead to positive social change. The research studies for *The Responsibility to Protect* distinguished between precipitating causes versus underlying causes.[197] They stressed that ignoring the underlying factors amounted to addressing symptoms rather than the basic problem. Yet, years of development assistance has not reduced the propensity to lethal violence. So the authors reached the conclusion that the links between development and prevention were still only partially understood.

In 1992, the then UN Secretary-General Boutros Boutros-Ghali set the tone for preventive diplomacy, peacekeeping, peace-making and peace-building in his *Agenda for Peace*.[198] He identified preventive diplomacy as "the most desirable and efficient" option for managing conflicts and listed several essential capacities: confidence-building measures, early warning and fact-finding capabilities and a rapid, preventive deployment capacity. Conflict prevention was in fashion, but the results remained extremely modest. Why? Some believe that the analytic capacity to predict and understand conflicts should be strengthened as well as systematic early warning. Yet, in most cases adequate notice has been available. Similarly, member countries have sufficient operational capabilities and an increasingly sophisticated toolbox at their disposal. The problem lies in the absence of an agreed strategic framework in which many actors can be brought together in decentralised actions. Norway established a Fund for Preventive Action in 1996 to allow the secretary-general to use special envoys and special representatives in emerging conflicts. Clearly, the UN will not be capable of mounting complicated military operations on its own

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[197] See Evans and Sahnoun (2001), op. cit., p. 31.

[198] See Boutros Boutros-Ghali, *An Agenda for Peace*, United Nations, New York, 1992.

and will have to seek the help of regional organisations or ad hoc coalitions. Conversely, these organisations could do more in offering coherent force packages for UN-mandated operations. There is still too much competition among international organisations.

In the public mind, pre-emption is often regarded as implying the use of military force, but that is not necessarily so. The word literally means seizure to the exclusion of others, or more generally to forestall or to preclude. In trade and finance, and also in bridge, the practice was much more generally used than in defence and was much less controversial. The military connotation arose in cold war nuclear strategy in relation to the threat of a disarming first-strike eliminating retaliatory capabilities. The concept acquired a new relevance in the light of new terrorist methods to seek catastrophic effects in pursuit of objectives that are ill-defined and therefore hard to deter. In customary international law there are few examples of pre-emption, but traditional wisdom makes it conditional upon the imminence of the use of force by the adversary.

An early precedent exists in the Caroline case of 1837, when a schooner under a US flag supplied Canadian rebels with reinforcements to fight the British. While the ship was still on US territory, British forces captured and destroyed the Caroline. Two American crewmembers died. The British claim of self-defence was contested by the US Secretary of State, Daniel Webster, who wrote that Great Britain had to prove that

> the necessity of self-defence was instant, overwhelming, leaving no choice of means, and no moment for deliberation...[and that its forces] even supposing the necessity of the moment authorised them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.[199]

The Netherlands Advisory Committee on public international law has discussed the question of whether the Webster formula could still be regarded as valid after the adoption of the UN Charter. It traced the few cases of "anticipatory self-defence" that have occurred in recent times: the Six-Day War started by Israel in 1967 against the impending attack by its neighbours; the Israeli destruction of the Osiraq nuclear reactor under construction in Iraq; strikes by the US and UK in 1998 "to degrade Iraq's WMD capabilities"; and the destruction of the pharmaceutical factory al

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[199] See the Advisory Council on International Affairs, *Advice on pre-emptive action*, Advisory Report No. 36, The Hague, July 2004.

Shifa in Khartoum in 1998, 13 days after the terrorist attacks on the US embassies in Nairobi. The Advisory Committee found that these examples did not warrant an unequivocal conclusion about the existence of a right of pre-emptive action, nor about preventive action. Only in the case of the Osiraq reactor did the Security Council condemn the Israeli attack as a violation of the Charter. Israel contested this by claiming an existing state of war, but this was countered by others with the argument that 14 years had elapsed since the last combat action.

A larger number of cases could be cited where the use of force was threatened in case the adversary proceeded with certain actions deemed to be aggressive. Bush administration officials have quoted the Cuban missile crisis of 1962 as an example of pre-emptive action as opposed to a pre-emptive strike, as the quarantine of Cuba was to prevent a further build-up of offensive arms. Another example was the threat issued against Libya in 1989-90 to shut down a chemical facility at Rabta suspected of producing chemical weapons. In 1994 the US considered a pre-emptive strike with conventional weapons at the Yongbyon nuclear reactor of North Korea.

The new focus of the Bush administration sprang from its assessment that with the growing nexus between transnational terrorism and proliferation of WMDs, deterrence – while still applicable – might not always work and if it failed, defences would never be perfect. The first explicit mention of pre-emption came in the *Quadrennial Defense Review*, issued by the Chairman of the Joint Chiefs of Staff on 30 September 2001, only a few weeks after the terrorist attacks on the Twin Towers and the Pentagon. The report stated that the US "must deter, pre-empt, and defend against aggression" targeted against the US.[200]

President Bush first explicitly mentioned pre-emption in his speech at West Point on 1 June 2002, in which he said "if we wait for threats to fully materialize, we will have waited too long". Therefore, "Americans had to be ready for pre-emptive action when necessary to defend our liberty and to defend our lives". On 17 September the concept was elaborated in the National Security Strategy:

> The greater the threat, the greater is the risk of inaction – and the more
> compelling the case for taking anticipatory action to defend ourselves,
> even if uncertainty remains as to the time and place of the enemy's

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[200] See the *Quadrennial Defense Review Report*, Office of the US Secretary of Defense (2001), op. cit.

attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.[201]

As discussed in chapter 5, this strategy was not a unilateralist document. It focused on championing aspirations for human dignity, strengthening alliances to defeat global terrorism, igniting a new area of global economic growth through free markets and free trade. Alongside these themes were those of expanding the circle of development by opening societies and building the infrastructure of democracy and developing agendas for cooperative action with the other main centres of global power.

A basic premise was that traditional concepts of deterrence would not work against a terrorist enemy whose avowed tactics are wanton destruction and the targeting of innocents. The word 'pre-emption' appeared several times in the National Security Strategy text, as in "While the US will constantly strive to enlist the support of the international community, we will act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them from doing harm against our people" (p. 6). Further on the text states:

> The US has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security. The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action, even if uncertainty remains as to the time and place of the enemy's attack.[202]

In December 2002 the Bush administration released its *National Strategy to Combat Weapons of Mass Destruction*,

> because deterrence may not succeed and because of the potentially devastating consequences of WMD use, US military forces and appropriate civilian agencies must have the capability to defend against WMD-armed adversaries, including in appropriate cases through pre-emptive measures. This requires capabilities to detect and destroy an adversary's WMD assets before these weapons are used.[203]

On behalf of the administration some effort was made to reduce the impact of what started out as only a small part of a much wider security

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[201] See the White House (2002), op. cit.

[202] Ibid.

[203] See the US Department of State, *National Strategy to Combat Weapons of Mass Destruction*, Washington, D.C., December 2002.

strategy. US Secretary of State Condoleezza Rice clarified in a speech on 1 October 2002 that the number of cases in which it might be justified will always be small. "Pre-emptive action does not come at the beginning of a long chain of effort."[204]

Contrary to some misperceptions, the need for quick action against a clear and immediate danger is not disputed internationally, nor is it a specific policy of the Republican administration. The National Security Strategy adopted in 1999 under President Clinton already contained the sentence "We will do what we must to defend these interests, including when necessary and appropriate, using our military unilaterally and decisively".[205] Australian Prime Minister John Howard observed drily that if you believed that somebody was going to launch an attack against you and you had the capacity to stop it, then of course you would have to use it, if there was no alternative. Perhaps more interesting was the French law for the military programme 2003-08, which stated that "the possibility of pre-emptive action might be considered from the time that an explicit and confirmed threatening situation is identified".[206] In Japan, the Director-General of the Defence Agency Shigeru Ishiba said that "Once North Korea declares it will demolish Tokyo and begins preparing for a missile launch, we will consider it the start of a military attack against Japan".[207]

Pre-emption is a special case of the use of force and in most instances likely to be a unilateral action. As such it is intricately linked with the question of the legitimacy of the use of force without authorisation by the UN Security Council, which has the monopoly except in case of self-defence. If pre-emption can be linked to self-defence, there should not be a legal problem, at least not when the action is taken because the use of force by the adversary is seen to be imminent. Here lies the distinction with preventive action designed to deprive an adversary of a capability that he

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[204] Quoted in "Pre-emptive Action: When, How, and to What Effect?" by M. Elaine Bunn in *Strategic Forum*, No. 200, Institute for National Strategic Studies of the National Defense University, Washington, D.C., July 2003. The other quotes are also reproduced in this issue.

[205] Quoted in "Force, Pre-emption and Legitimacy" by Walter B. Slocombe, *Survival*, Vol. 45, No. 1, Spring 2003, pp. 117-30. Mr Slocombe served as US Undersecretary of Defense for Policy from 1994 to 2001.

[206] This refers to French *Loi* no. 2003-73 of 27 January 2003.

[207] The Japanese statement by Defence Agency Director-General Shigeru Ishiba was reported on 25 January.

might someday have or to forestall a potential action in the future. In effect, the problem boils down to the question of whether the right of self-defence includes the right to move against weapons of mass destruction while it is still possible to do so. Elaine Bunn pointed out that the threshold for preventive action will be much higher than for pre-emption based on the presentable intelligence of an imminent threat. In this connection the change in the EU strategy from pre-emptive engagement to preventive engagement is odd, but can be explained by the European culture of endorsing crisis prevention easily, without associating it with military force.

Walter Slocombe argued that it was too simple to say that "force as a last resort" is an absolute principle.[208] After their experience in the Balkans, many Europeans would agree with him, because early action would have prevented a terrible process of escalation. Ms Bunn noted the irony that the more imminent the threat is, the easier it will be to justify pre-emption politically, but the harder it will be to make it operationally decisive, because the enemy would have prepared his defences.[209] Once a rogue state has achieved a serious WMD capability, it will be very difficult, if not impossible, to eliminate it. Conversely, when the threat is less imminent, world opinion would be against military action, even though at that stage it would be more effective in eliminating or postponing the threat.

International terrorism is a special case and action against it does not fall in the category of pre-emption. The US is 'at war' with al Qaeda, which struck the first blow. The US has declared that it will regard countries giving sanctuary to terrorists as subjects to military attack, just as much as the terrorists themselves. That raises sovereignty issues, but these relate to the conduct of this non-traditional war and not to pre-emption. The invasion of Iraq was different, because the US had a short-term and a long-term objective. They wanted to remove the weapons of mass destruction (which subsequently appeared to be no longer there) and to prevent Saddam Hussein from acquiring them in the future. Their basic approach was the fear that with Saddam Hussein remaining in power the situation in the Middle East would deteriorate even more and that the only confident way of eliminating his WMD programmes was to replace his regime. This meant that regime change not only became a political objective, but also the

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[208] See Slocombe (2003), op. cit.

[209] See Bunn (2003), op. cit.

preferred military option. That peace-building was more complicated than war-winning dawned painfully when it was too late to do much about it.

In Secretary of State Daniel Webster's formulation it was the *necessity of self-defence* that must be instant and overwhelming and, in Mr Slocombe's argument such a necessity could exist without an immediate prospect of attack. Thus, the right of anticipatory self-defence presupposed a right to act *while action is still possible.* All this would have been more convincing if in fact WMDs had been found. The debate on pre-emption remained inconclusive and shifted back to the (il)legitimacy of the use of force without authorisation by the UN Security Council.

In 1990-91 the UNSC had adopted Resolution 661 allowing the use of "all necessary means" to expel Iraqi forces from Kuwait. It could be described as a fig leaf resolution, barely enough to cover the subject and leaving entirely open the way in which the member states would respond. In this case it provided legitimacy to the ad hoc coalition that assembled massive force under US leadership. General Normal Schwarzkopf was successful in giving every participant a useful role, the Saudis a partial command function and the French a dashing run on the flank.

In the Kosovo crisis of 1999, NATO provided its own legitimacy in the light of flagrant Serbian violations of human rights. Recourse to the UNSC in all probability would have met a Russian veto and perhaps also a Chinese one. Relations with Russia deteriorated and up to the present day Kosovo remains a sore point in Moscow's foreign policy. The question of whether under all circumstances a mandate from the UNSC is necessary remains on the table. In the West, Germany is the most insistent, while the US is leading the argument that such a policy would leave the decision on intervention in the hands of Russia or China (or both). The Charter does not provide for the situation in which the UNSC is unable to perform its function of primary responsibility for peace and security. During the Korean war, the possibility of a Uniting for Peace resolution by the General Assembly was opened in 1950 and again in the Suez crisis in 1956 and the Congo in 1960, but has never been used in recent times. The great increase in membership would make it difficult to muster a two-thirds majority for such delicate issues as the use of force in a climate of a paralysed Security Council. Yet it might have been successful in the Kosovo case.

International law differs from national law in many respects. It is less binding, because it is only gradually able to impinge on national sovereignty and is less precise. It is the result of compromises in

international conferences where some of the participants have an interest in preserving ambiguities. And it lacks enforcement mechanisms. In some cases international agreements are concluded under the express condition that they are politically binding as a guideline for action, but not legally binding. Within the UN the Security Council has primary responsibility for peace and security and the monopoly in legitimising the use of force, except for the 'inherent right' of self-defence. If the UNSC agrees, military action becomes legal, if not it is illegal. From a legal and a democratic point of view, this causes several problems. In the first place, what is right becomes dependent on the outcome of a negotiating process (particularly among the permanent members) that is sometimes described as judicious, diplomatic war-fighting. A second issue is that the UN depends entirely on the will of its members for the implementation of its resolutions. The third problem rests on the composition of the Council, where members are proposed by regional groupings without any regard for the capacity of the chosen countries to contribute to the implementation of the resolutions they vote for. Finally, there is the lack of democracy. The UN is the least democratic organisation European countries belong to. The majority of the members are not democratic, there is no parliamentary dimension and the principle of 'one country, one vote' distorts the link between vote and responsibility. That is one of the reasons why the General Assembly is no longer regarded as a body that might be able to act under the Uniting for Peace procedure in cases where the Security Council becomes deadlocked.

In theory the UNSC could take preventive and even pre-emptive action in a situation that it has declared a threat to peace and security, but is most unlikely to agree to do so. In practice, it only deals with a crisis once violence has erupted, which in many cases will be too late, especially when weapons of mass destruction are involved. So the problem boils down to the question of how we can avoid extension of the right of self-defence to such a degree that it would legitimise preventive strikes in any number of volatile regions and lead to a world where the unilateral use of force would become the rule rather than the exception.

When is it right to fight?

After the publication of *The Responsibility to Protect*, which he co-authored, Gareth Evans continued his laudable quest for criteria of legitimacy. He took up the distinction between legality and legitimacy first used by the

Sweden-sponsored Kosovo Commission in 1999.[210] In that case the NATO intervention may not have been legal in the absence of UNSC authorisation, but in the view of the Kosovo Commission it was legitimate after balancing out some 14 'threshold' and 'contextual' principles. Mr Evans took the argument a step further and in fact turned it upside down, by saying that UNSC actions should not only be legal, they should also be legitimate. And to enhance legitimacy he repeated the criteria for action published in *The Responsibility to Protect*, relating to the seriousness of the threat, proper purpose, last resort, proportional means and balance of consequences. He had a point in saying that legitimacy helps breed legality and that a technically illegal action that is widely perceived as legitimate (as in Kosovo) does far less damage than action that is considered neither legal nor legitimate. So legitimacy certainly is an important element and the five criteria should spur the Security Council into assuming responsibility, but the criteria will not provide a full answer concerning how to act when in spite of their fulfilment the UNSC still remains unable to agree on a resolution. In addition, as already mentioned, a problem remains with the 'last resort' criterion, for in several recent cases escalation of the crisis could have been prevented if military action had been taken earlier. If better analysis and early warning are to be meaningful, they should also include the possibility of rapid military action to stem the crisis. The example of the EU-led Operation Artemis in the Democratic Republic of Congo demonstrated the need for quick intervention before the UN was able to put together a peacekeeping force. It also showed how the UN can cooperate with a regional organisation.

This line of thinking by Gareth Evans impacted on the report of the 16-member High-Level Panel on Threats, Challenges and Change under the chairmanship of the former Prime Minister of Thailand, Anand Panyarachun, in which he also participated.[211] It was transmitted to Secretary-General Kofi Annan on 1 December 2004 and contained an impressive analysis and 101 recommendations to make the UN effective, efficient and equitable in providing collective security for all in the 21st century. Its main aim was to put forward a new consensual vision of

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[210] The Sweden-sponsored Kosovo Commission was co-chaired by Richard Goldstone and Carl Tham, Oxford, 2000. The article by Gareth Evans, "When is it Right to Fight?" appeared in *Survival*, Vol. 46, No. 3, Autumn 2004, pp. 59-82.

[211] See United Nations, UN General Assembly Doc. A/59/565, 29, *0460231*, UN, New York, November 2004(c).

collective security resting on three basic pillars: today's threats recognise no national boundaries, are connected and must be addressed at the global, regional as well as the national levels. The panel adopted a very broad definition of threats to international peace and security as "any event or process that leads to large-scale mortalities or lessening of life chances and undermines states as the basic unit of the international system". In clustering them, economic and social threats were put first, followed by inter-state conflict, internal conflict (including genocide), nuclear, radiological, chemical and biological weapons (in that order), terrorism and transnational organised crime. Of all the threats in these categories, those that were distant should not become imminent and those that were imminent should not become destructive.

In approaching the issue of UN reform, the panel found it as important today as it was in 1945 to combine power with principle and stated: "Recommendations that ignore underlying power realities will be doomed to failure or irrelevance, but recommendations that simply reflect raw distributions of power and make no effort to bolster international principles are unlikely to gain the widespread adherence required to shift international behaviour". A note of regret was struck in the observation that the glimpse of renewed collective security immediately after the terrorist attacks of 11 September 2001 lasted only months and that both states and international security organisations had failed to keep pace with fundamental changes in the security climate in which smaller and smaller numbers of people are able to inflict greater and greater amounts of damage, without the support of any state.

The panel reached the stern conclusion that the biggest source of inefficiency in our collective security institutions has simply been an unwillingness to get serious about preventing deadly violence. The biggest failures of the UN in dealing with civil violence have been in halting ethnic cleansing and genocide, with Rwanda and Kosovo as examples, to which recently Darfur could be added. Collective instruments have often been hampered by a lack of compliance, erratic monitoring and verification, and weak enforcement. Early warning can only be effective when it leads to early action for prevention, and monitoring and verification work best when they are treated as compliments, not substitutes, for enforcement.[212]

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[212] Ibid., see paras. 32-39 on effectiveness and efficiency and para. 87 on internal conflict.

Part three of the report dealt with collective security and the use of force and started with the question, "What happens if peaceful prevention fails?" Then effective collective security may require the backing of military force, starting with the rules of international law, if anarchy is not to prevail. It should distinguish among situations in which a) a state claims to act in self-defence; b) it is posing a threat to others outside its borders; and c) the threat is primarily internal and the issue is the responsibility to protect a state's own people. Under the first condition (a), the most difficult question would arise when the preventive strike is in response to a threat that is not imminent, and under the second condition (b) when a state appears to pose a threat, but there is disagreement in the Security Council as to what to do about it. In answering these questions, several important points were made. There should be credible evidence of the reality of the threat, taking into account both capability and specific intent, and the military response should be the only reasonable one in the circumstances. The principle of non-intervention in internal affairs could not be used to protect genocidal acts or other atrocities, which could properly be considered a threat to international peace and security and as such provoke action by the Security Council. When governments are unable or unwilling to protect their own citizens, that responsibility should be taken up by the wider international community, but force, if it needs to be used, should be deployed as a last resort. The panel endorsed the emerging norm that there is a collective international responsibility to protect. It also repeated the argument made by Gareth Evans that the effectiveness of the global collective security system depended ultimately not only on the legality of decisions, but also on the common perception of their legitimacy; they should be made on solid evidentiary grounds and for the right reasons, morally as well as legally. The Security Council should always address "at least" the five basic criteria of legitimacy proposed by Gareth Evans and Mohamed Sahnoun in *The Responsibility to Protect*. The panel advised that the Council should embody them in declaratory resolutions and member states should subscribe to them.

Among the many constructive recommendations – perhaps too many to expect successful implementation – an important point was made on post-conflict peace-building:

> When peacekeeping operations are deployed to implement peace agreements, they must be equipped to repel attacks from spoilers. Contingency plans responding to opposition should be an integral part of the mission design; missions that do not have the troop

> strength to resist aggression will invite it. In some contexts, opposition to a peace agreement is not tactical but fundamental.[213]

Therefore, the secretary-general should recommend and the UNSC should authorise troop strengths sufficient to deter and repel hostile factions.[214]

The panel also presented criteria for membership of the Security Council, but could not agree on a model for its enlargement and listed two options, both extending membership to 24 and giving 6 members to each of the 4 regions of the world. In their view, reforms of the Security Council should meet the following principles:

a) They should, in honouring Art. 23 of the Charter of the United Nations,[215] increase the involvement in decision-making of those who contribute most to the UN financially, militarily and diplomatically – specifically in terms of contributions to the UN's assessed budget, participation in mandated peace operations, contributions to voluntary activities of the UN in the areas of security and development, and diplomatic activities in support of UN objectives and mandates. Among developed countries, achieving or making substantial progress towards the internationally agreed level of 0.7% of GNP for official development assistance (ODA) should be considered an important criterion of contribution.

b) They should bring into the decision-making process countries more representative of the broader membership, especially of the developing world.

c) They should not impair the effectiveness of the Security Council.

d) They should increase the democratic and accountable nature of the body.

On membership, model A envisaged the creation of six new permanent seats plus three new two-year seats. Model B did not provide for new permanent seats, but created a new category of eight four-year renewable-term seats and one additional two-year non-renewable seat. In

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[213] Ibid.

[214] Ibid., para. 222.

[215] Art. 23 states that in selecting the 10 non-permanent members, "due regard [is] specifically paid to the contribution of members of the UN to the maintenance of international peace and security and to the other purposes of the Organisation, and also to equitable geographical distribution".

both models preference should be given to the top three contributors in their region, either in terms of their contributions to the regular budget or to the voluntary budget, or as troop contributors to UN peacekeeping operations. Under each criterion three countries could qualify, so each region would have a maximum of nine candidates for permanent or longer-term seats. In 2020 a review should take place, which should include the contribution of permanent or longer-term members "from the point of view of the Council's effectiveness in taking collective action to prevent and remove new and old threats to international peace and security".[216]

Many countries expressed support for the view that the Council should be more representative and take account of the changing geopolitical situation during the 60-year history of the UN, but the choice of new members proved very divisive and even threatened to derail the entire reform package. Brazil, Germany, India and Japan formed a 'gang of four' drafting a joint resolution, but Japan met Chinese hostility, Germany opposition from Italy and Spain, Brazil from Argentina and the African countries could not agree on South Africa and Nigeria and claimed a seventh seat, for which Senegal declared itself a candidate. The Middle East was left out of any deal. For a while the debate was compounded by the claim of granting the veto to the new permanent members as well, which would be a recipe for ineffectiveness of a Council already encumbered by its increased size.

The panel's effort to establish criteria for a seat on the Security Council was laudable, but its chances for success were not bright. How would the three criteria interact in making a choice, and would another enlargement of the Council really be conducive to the increased legitimacy of its resolutions? A Security Council of 24 members would certainly lead to the caucusing of smaller groups and not only of the permanent five who currently do much of the preparatory work. In addition, both options would substantially reduce the chances of the smaller countries, such as the Scandinavian ones or the Netherlands, to ever serve on the Council in spite of their substantial contributions to the budget and the activities of the UN. The main question, however, related to the primary function of the Security Council. Should it be regarded as a general executive board, in which case financial contributions could play a role in the selection process, or should it be limited to proper security issues? In this respect the report blurred the

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[216] See paras. 249-55 of UN General Assembly Doc. A/59/565 (2004), op. cit.

issue, by regarding hunger, poverty, disease and pollution as great threats to mankind. That cannot be contested, but the question remains to what extent the Security Council should deal with all of them and project itself above all other activities and agencies of the UN.

The panel did not deal explicitly with that distinction, but implicitly took away some of the glamour of the Security Council by proposing a peace-building commission and a peace-building support office to identify countries that are under stress and risk sliding towards state collapse and to assist in the planning for transitions from conflict to post-conflict peace-building. The panel recommended that the commission should meet in different configurations, to consider both general policy issues and country-by-country strategies, and be chaired for at least one year by a member approved by the Security Council. In addition, a new post should be created for a deputy secretary-general responsible for peace and security. Neither recommendation seems self-evident. The peace-building commission would not be able to do much without the involvement of the Security Council, and the same applies to the new deputy secretary-general, who should not take away a core function from the secretary-general. Moreover, how should one classify a state as 'sliding towards collapse' and persuade it to attend a meeting of the commission? On the early warning function the commission would compete with the Security Council, but post-conflict stabilisation would be a different matter.

In general, however, the report made excellent reading and contained some gems of blunt speaking. In connection with the Commission on Human Rights the panel was concerned that in recent years "States have sought membership of the Commission not to strengthen human rights, but to protect themselves against criticism, or to criticise others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns." The notion of the 'responsibility to protect' is an imaginative way out of the dilemma of the state sovereignty of misbehaving states, even if it is not made fully clear who is responsible (the members of the international community or the UN Security Council?). Presumably both, but then it should be remembered that the Security Council can authorise states or groups of states to intervene, but cannot oblige them to do so. In fact, the entire report was predicated on the normative character of the UN Security Council and did not refer to the use of force undertaken directly by the UN Security Council as originally envisaged in the Charter. Further, for peacekeeping operations

the United Nations Security Council was seen solely as an organising body that authorised operations undertaken by member states.[217]

A major criticism of the report came from Mats Berdal in the periodical *Survival*.[218] He felt that those favouring reforms should first diagnose what was wrong with the Security Council today and then explain how their proposals would remedy those failings. The report did not make clear how peace and security would be better served by an enlarged Council, which risked becoming unwieldy and less likely to reach consensus.

Appearing virtually simultaneously with the High-Level Panel's report was the UN's *Human Development Report 2004*, which devoted chapter 4 to "Democratising security to prevent conflict and build peace".[219] It underlined not only the important point that building a functioning state requires a basic level of security, but also made the human development case for democratic civil control of the security sector. In democratic systems there should also be an obligation for policy-makers and security forces to be accountable to the public for their decisions and for their use of public resources. Such wording was a refreshing change from past practice where the subject of security-sector reform was usually treated as a separate topic unconnected with the overall issue of development.

Kofi Annan responds

The UN Secretary-General Kofi Annan responded comprehensively to the High-Level Panel and the major UN conferences in the economic, social and related fields following up the Millennium Summit and preparing for the new summit of September 2005. His report, *In larger freedom: Towards development, security and human rights for all*, was not as blunt as that by the High-Level Panel, but endorsed most of its recommendations and infused

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[217] See Natalino Ronzitti, *The Report of the UN High-Level Panel and the Use of Force*, Instituto Affari Internazionali, Rome, 2005.

[218] See Mats Berdal, "The United Nations: Introspective – The UN's Unnecessary Crisis", *Survival*, Vol. 47, No. 3, Autumn 2005, pp. 7-23, with extensive references. Mr Berdal also criticised the paucity of ideas on the reform of the other principal organs of the UN.

[219] See United Nations, *Human Development Report 2004*, UN Development Programme, New York, July 2004(a).

them with a greater sense of urgency.[220] He even talked of a "fork in the road", which was not fully warranted by the largely evolutionary character of the recommendations. Repeating the aim of his inaugural speech eight years earlier "to perfect the triangle of development, freedom and peace", he now added the need for new mechanisms of accountability – of states to their citizens, of states to each other, of international institutions to their members and of the present generation to future generations. "The business of the September summit must be that promises made are promises kept."

Mr Annan showed his political sensitivity by harking back to the Four Freedoms enunciated by President Franklin Roosevelt in his State of the Union message of 6 January 1941. The secretary-general's report came six weeks before the world commemorated that 60 years ago the most devastating world war had ended; it also sought to connect with the moral and material contribution of the US towards that outcome. Freedom would be the key in those celebrations and the secretary-general gave it new significance by joining freedom from fear and freedom from want with the freedom to live in dignity, thus underlining the intricate relationship between security, development and human rights.

Under the heading "Freedom from fear" Mr Annan complained that on the security side, despite a heightened sense of threat among many, we lack even a basic consensus, while implementation, where it occurs, is all too often contested. He made a long, perhaps even overly long, list of proposals: "We must act to ensure that catastrophic terrorism never becomes a reality. This will require a new global strategy, which begins with member states agreeing on a definition of terrorism and including it in a comprehensive convention." The strategy should be based on five pillars: it must aim at dissuading people from resorting to terrorism or supporting it; it must deny terrorists access to funds and materials; it must deter states from sponsoring terrorism; it must develop state capacity to defeat terrorism; and it must defend human rights. In his view, it was time to set aside debates on so-called 'state terrorism'. The use of force by states was already thoroughly regulated under international law and the right to resist occupation must be understood in its true meaning: "It cannot include the right to deliberately kill or maim civilians". Following the High-Level

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[220] United Nations, UN General Assembly Doc. A/59/2005, UN, New York, 21 March 2005.

Panel's call for a definition of terrorism the secretary-general wrote that it should include "any action intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organisation to do or abstain from doing any act".[221] On a different aspect he proposed to create a special rapporteur to report to the Commission on Human Rights on the compatibility of counter-terrorism measures with international human rights.

The section on "Reducing the risk and prevalence of war" followed the High-Level Panel's suggestion to create an intergovernmental peace-building commission and office with the following functions:

> [to] improve UN planning for sustained recovery, focusing on early efforts to establish the necessary institutions; help to ensure predictable financing for early recovery activities, in part by providing an overview of assessed, voluntary and standing funding mechanisms; improve the coordination of the many post-conflict activities of the UN funds, programmes and agencies; provide a forum in which the UN, major bilateral donors, troop contributors, relevant regional actors and organisations, the international financial institutions and the national or transitional government of the country concerned can share information about their respective post-conflict recovery strategies, in the interest of greater coherence; periodically review progress towards medium-term recovery goals; and extend the period of political attention to post-conflict recovery.[222]

As to the composition of this new body, it was proposed to have a core set of members of the Security Council and a similar number from the UN's Economic and Social Council (ECOSOC), along with leading troop contributors and the major donors to a standing fund for peace-building. In its country-specific operations national or transitional authorities should be involved as well as relevant regional actors and organisations, again with troop contributors (where applicable) and the major donors to the specific country.[223]

These proposals deviated from the High-Level Panel in giving an important role to the ECOSOC and in eliminating any early warning functions from the mandate of the peace-building commission. Mr Annan

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[221] Ibid., para. 91.

[222] Ibid.

[223] Ibid., paras. 115-19.

focused on the 'gaping hole' in the UN machinery arising from the fact that no part of the system effectively addressed the challenge of helping countries with the transition from war to lasting peace. He sought to rebut early criticism of the proposal with an explanatory note stressing that the formal prerogatives of the principal organs of the UN should not be altered.[224] Nevertheless, the thinking behind the proposal would have an impact. The report's proposed sequential reporting to first the Security Council and then, depending on the state of recovery, to ECOSOC, was aimed at "predictable, effective mechanisms for continued support so that early transition from the Security Council is possible".

Such transition would have the advantage of removing the subject from the agenda of the UNSC and thereby from the possible use of a veto by the permanent members. By scratching early warning from the mandate, there should be less concern for duplication with the Security Council, but the issue of prevention would come back in connection with the risk of war-torn countries relapsing into violence. Therefore, post-conflict peace-building was called a critical form of prevention, by reducing the risk of conflict through efforts to build state capacity, especially in the area of the rule of law. Furthermore, the report advised that the new commission should have a link with the international financial institutions in order to ensure predictable financing for early recovery activities and to review progress towards medium-term recovery goals, thus ensuring extended political attention to post-conflict recovery.

Another institutional change was the proposal to replace the existing Commission on Human Rights by a smaller human rights council, directly elected by the General Assembly by a two-thirds majority and functional either as a principal organ of the UN or as subsidiary body of the General Assembly. The first option received wide support in the West, for it would place the Council at the same level as the Security Council and ECOSOC, but obviously would require careful delimitation of the competences of each of the three principal organs. A clear advantage would be that a council could sit permanently, while the current commission sits only six weeks in the year.

The section on "Use of force" was short and covered only five paragraphs. Nevertheless, it made some important points on the

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[224] Explanatory Note of the Secretary-General to the President of the General Assembly of 19 April 2005.

disagreement concerning pre-emptive action to defend against imminent threats, preventive use against latent or non-imminent threats and the right or obligation to rescue the citizens of other states from genocide or comparable crimes. The report stated that imminent threats are fully covered by Art. 51 dealing with self-defence and added that "Lawyers have long recognized that this covers an imminent attack as well as one that has already happened". Where threats were not imminent but latent, the Charter gave full authority to the Security Council to use military force (including preventively) and to preserve international peace and security. Mr Annan was not seeking alternatives to the Security Council as a source of authority, but wanted to make it work better. He argued that when considering whether to authorise or endorse the use of military force the Council should come to a common view on:

- how to weigh the seriousness of the threat;
- the proper purpose of the proposed military action;
- whether means short of the use of force might plausibly succeed in stopping the threat;
- if the military option is proportional to the threat at hand; and
- whether there is a reasonable chance of success.

By endeavouring to make the case for military action in this way, the UNSC would, in the words of the secretary-general, add transparency to its deliberations and make its decisions more likely to be respected, by both governments and world public opinion. He therefore recommended that the UNSC adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorise or mandate the use of force. Such a procedure might indeed add transparency to the debates in the UNSC and provide a logical agenda covering the crucial issues, but obviously the questions posed would not necessarily lead to identical answers. The Council should take on such responsibility, but no procedural provisions could replace the lack of consensus.

From the start of the exercise it was clear that consensus would be difficult to achieve, especially when the issue of the composition of the UNSC hijacked the agenda. The document adopted on 14 September 2005 did not satisfy anyone. The *Financial Times* described the outcome on major issues as "abandoned, delayed, avoided or fuzzed".[225] The North–South

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[225] As noted in the *Financial Times* of 15 September 2005.

division had become even more acute with the Third World reacting against what it saw as 'new humanitarianism', aimed at interference in its internal affairs. The definition of terrorism remained a stumbling block and nothing could be achieved on non-proliferation of WMDs. The resolution was long on development and contained a pledge to make concrete efforts towards the target of 0.7% of GNP devoted to official development assistance. In para. 22a, members resolved to adopt by 2006 and implement comprehensive national development strategies to achieve the internationally agreed development goals and objectives. Part III on peace and collective security reiterated the "call upon States to refrain from organising, financing, encouraging, providing training for or otherwise supporting terrorist activities and to take appropriate measures to ensure that their territories are not used for such activities" in para. 86. The Peacebuilding Commission would begin its work before the end of the year, but was reduced to an intergovernmental advisory body acting on the basis of consensus. Its standing Organisational Committee would consist of members of the UNSC, members of the ECOSOC elected from regional groups and, giving due consideration to countries having experienced post-conflict recovery, top providers of assessed and voluntary contributions, and top providers of military personnel and civilian police to UN missions. A Peacebuilding Fund would be established on the basis of voluntary contributions and a small peace-building support office would assist the commission (paras. 97-103).

Part IV dealt with human rights and the rule of law and contained a section on "responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" in paras. 138-140.[226] Member states accepted this responsibility and recognised that the international community, through the UN, also had the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations. The resolution added:

> In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with the relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

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[226] See United Nations (2005), op. cit.

In spite of all the caveats this statement constituted an important step in dismantling absolute notions of sovereignty. It should help in dealing with intra-state conflict and make the mounting of peace-support operations easier. The resolution also made a specific reference under the heading of "Peacekeeping" to the efforts of the EU and other regional entities to develop capacities such as those for rapid deployment, standby and bridging arrangements and gave support to the development of a 10-year plan for capacity-building with the African Union.

9. The Question of 'What For?' under Different Scenarios

During the 1990s, the work of the EU was capability-driven. To some the assumed lack of capabilities was an excuse for not focusing on European contingencies. What use would autonomous action be if the capabilities were clearly inadequate? This argument was carried too far, because with armed forces totalling some 2 million men and women for the enlarged EU, a number of operations would be feasible. This would not include a 1990 Kuwait operation or that of 1995 in the Bosnian crisis or of 1999 in Kosovo, but then these were American scenarios implemented with US forces. Alternative actions were not considered.

The 'what for?' question became increasingly relevant for military and political reasons. Without a reasoned answer, no country would be able to quantify its defence needs. Prior to 1989, defence planning had yardsticks of opposing forces and commitments to defend precise geographical sectors. After the fall of the Berlin wall, no one could provide uncontested arguments for the optimum size of their army, navy and air force. Only the acceptance of obligations to participate in multinational forces could introduce a new element of sustainable commitment. In order to be convincing, however, multinational force packages need some basis in probable scenarios, preferably fairly specific, but at least generic if too much precision raises questions of political sensitivity in parliamentary debates at home or in diplomatic relations abroad. In any case, it will be necessary to know in advance, at least for planning purposes, which country might be prepared to participate in what type of operation. Otherwise the time would be lacking for adequate preparation of the command function and the arrangements for transportation, communications and logistics.

On the political side, governments and parliaments will have to be aware of the circumstances and conditions under which they might be prepared to send their forces abroad. This decision will always be a sovereign national decision with a considerable degree of selectivity. It is most unlikely to ever become the subject of a majority vote, even in the most integrated form of a European Union. As a consequence, there has to be a measure of redundancy in planning multinational operations, for national commitments cannot always be relied upon. But the more national interests converge and military cooperation grows closer, the more the likelihood of consensus about necessary action and the stronger the moral pressure to show solidarity.

The measure of parliamentary involvement in national decisions on the despatch of forces for peace-support operations varies considerably. The Netherlands have developed a "review framework",[227] which contains a non-exhaustive checklist of aspects that may be included in the analysis, such as:

- an assessment of the political context of the conflict;
- the political attitudes of the parties in the conflict;
- the issues at stake in the conflict and the motives of the parties;
- the character of the conflict (intra- or inter-state) and the risks of spill-over;
- (previous) negotiations, international efforts and mediation;
- whether or not an agreement is in force, and if so, the extent to which it is respected;
- a political risk analysis of the existing situation considering future developments;
- the role of the military operation in the political process; and
- the humanitarian, political and economic situation, along with refugees, reconstruction, rule of law, disarmament and elections.

A simpler, but basically similar approach was given by the British Prime Minister Tony Blair in 1999,

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[227] An English translation is contained in the work of Major Marc Houben, *International Crisis Management: The Approach of European States*, Routledge Studies in Governance and Change in the Global Era, Abingdon: Routledge, 2005, pp. 259-64.

> First, are we sure of our case?…Second, have we exhausted all diplomatic options?…Third, are there military operations we can sensibly and prudently undertake? Fourth, are we prepared for the long term?…And finally, do we have national interests involved?[228]

After studying successful and unsuccessful efforts at crisis management, Michael O'Hanlon, with remarkable foresight of the consequences of the crises in Afghanistan and Iraq, drew some additional conclusions:

> intervention for humanitarian purpose[s] should not be attempted in countries or regions where it could make wider war involving major powers likely…humanitarian interventions should not seek to defeat very strong armies supported by mass movements…interventions should usually not be undertaken in highly populous countries unless an indigenous security force can be quickly salvaged and enlisted in policing work.[229]

Major Marc Houben has analysed crisis-management procedures in nine European countries, ranging from the "dominant government" in the UK and France, the "dominant parliament" in Germany and Italy, and the "imperative of consensus" in Denmark and Italy.[230] Belgium and the Netherlands are discussed under the heading "Changing the rules" to indicate the *de facto* change of political rules and practice as the result of the traumatic experiences of both countries in Rwanda and Srebrenica in the mid-1990s. His research focused on the question of how national behaviour influences the effectiveness of the coalition of states involved in a crisis-management operation, and studied how and why states precondition their participation and whether the quality of national decision-making improves when a government has formalised these preconditions in advance. He concludes that parliamentary involvement in the deployment of armed forces has increased in most countries. The national decision-making process has changed because of the growing number of actors involved, which requires national governments to spend more time and energy on building and sustaining sufficient levels of support at home.

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[228] The quote is from Mr Blair's speech at the Economic Club of Chicago, 22 April 1999; see Michael O'Hanlon, *Saving Lives with Force: Military Criteria for Humanitarian Intervention*, Washington, D.C.: The Brookings Institution Press, 1997, p. 5.

[229] See O'Hanlon (1997), *supra.*

[230] See Houben (2005), op. cit.

Parliaments have two instruments at their disposal for influencing policy decisions *ex ante*: a constitutional requirement or convention of parliamentary consent before a decision can enter into force, and the power of the purse. Major Houben concludes, however, that a well-developed *ex post* accountability mechanism results in a larger parliamentary impact on policy, primarily because of its deterrent effect.[231] This impact may be diluted when parliament is co-opted fully into the substance of its policies. In Germany, the two work together so closely that the dividing line between the executive and legislature becomes blurred and no *ex post* evaluation takes place. In the cases of Belgium, Denmark, Germany, the Netherlands and Norway, the emphasis is on the *ex ante* part. In the UK this is minimal, hence the emphasis on *ex post* evaluation. In France, Italy and Spain, parliamentary involvement is even more minimal, both before the decision is formalised and in the evaluation process. In France the power of the purse is exercised only in the approval of the *loi du programme* for a five-year period.

On the research questions posed, Major Houben concludes that with a review framework in place, parliamentarians know where and what to look for and are generally able to obtain better information and to enhance their expertise. On the question of whether parliamentary involvement leads to risk-averse decisions, his conclusion was that only France, Spain and the UK are outspoken in their willingness to take risky decisions and apparently have a larger 'risk-absorption' capacity. These countries are also the only three among those examined where the executive can take decisions single-handedly and enforce them on the political system. This does not mean that those countries are less interested in conducting crisis-management operations multinationally. All countries of Western Europe have recognised the advantages of multinational operations. For the smaller countries they provide the necessary economies of scale and the reduction of risk as the result of the risk-sharing. Multinationality makes it easier to obtain broad support and facilitates decision-making and, although large coalitions may lose on decisiveness and tenacity, the European view is decidedly in their favour. Only in the formation of the NATO Response Force and the EU battle groups have some limits been put on the multinationality of war-fighting elements, which by and large should be provided by one or two countries in order to maintain their effectiveness as insertion forces in a hostile environment.

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[231] Ibid., pp. 251-53.

Modalities for action

In the European Constitution, the Petersberg tasks have been further defined to include the use of both civilian and military means and to extend to joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks. They entail conflict prevention and peacekeeping tasks and conflict-prevention, including peace-making and post-conflict stabilisation.

Several modalities for action are envisaged. The best contingency obviously would be a unanimous decision to start an operation in which all members would participate in the implementation, if necessary with a system of rotation. The decision has to be unanimous, but countries may apply constructive abstention, which distances them from the decision, but does not form an obstacle to it being taken. The Council may also entrust the execution of a task, within the Union framework, to a group of member states "in order to protect the Union's values and serve its interests".[232] These states "which are willing and have the necessary capability of such a task" in association with the minister of foreign affairs shall agree among themselves on the management of the task. They shall keep the Council regularly informed of its progress, and do so immediately, should the completion of the task produce major consequences or require amendment of the objective, scope and conditions.

The third modality is permanent structured cooperation among those member states whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions. Basically it is a form of closer cooperation, which generally is excluded from the ESDP, but with the limitation that an operation in the Union framework cannot be started by this smaller group and continues to require the unanimity of all members. A special protocol contains the provisions governing permanent structured cooperation.

In her preface to the report of an independent task force published by the EU Institute for Security Studies under the title *European defence, a proposal for a White Paper*, its director, Nicole Gnesotto, wrote that there were two reasons to believe that the ESDP will continue to grow

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[232] See the Treaty establishing a Constitution for Europe (2004), op. cit.

substantially in the years to come.[233] The first was the deterioration of the international context with crises remaining in the Balkans, Africa, the Caucasus and Moldova, but especially in the Middle East. Whether they liked it or not, Europeans would not be able to avoid this international disorder, especially at a time when security had become a major concern of its citizens. Her second reason concerned American insistence that their allies do more, either bilaterally or in the context of international frameworks.

The idea of a white paper along the lines issued by many national governments was not new, but it was not possible to agree on charging an intergovernmental group with this task, or even on a formal request to the Institute. The European Council in Laeken on 15 December 2001 did not get further than a "Declaration on the operational capability of the common European security and defence policy"[234] and a report by the Belgian presidency, which included a statement that the Institute "will work in particular on a publication on European Defence in the framework of the Petersberg tasks" in order to improve the way public opinion was informed. The Institute did so by means of an independent task force.

The members of the task force shared the basic assumption that "even though the use of force is neither the first nor the only way to deal with regional or international crises, the EU must have at its disposal a certain level of forces at a certain state of readiness and operational efficiency, if only to widen its range of options when faced with a crisis and to facilitate decision-making at the highest political level".[235] In itself this assumption said little of the level of the forces and equipment needed. Moreover, the group was confronted with a growing tension between two types of military requirements: on the one hand, the ability to provide very mobile, flexible and rapid forces for expeditionary intervention; on the other, the necessity to deploy and sustain for a very long period substantial peacekeeping forces for crisis management. Even if the risk of escalation

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[233] See Nicole Gnesotto, *European defence, a proposal for a White Paper*, EU Institute for Security Studies, Paris, May 2004 (all publications of the EU Institute for Security Studies are accessible on its website www.iss-eu.org).

[234] See European Council, Presidency Conclusions of the Laeken European Council of 14-15 December 2001(b), SN300/1/01, REV 1, Brussels, 2001.

[235] See Gnesotto (2004a), op. cit.

was taken into consideration, the second category was less of a fighting force than the first and required other skills, training and equipment.

The task force developed five scenarios to serve as broad descriptions of potential missions, from which guidelines for planning and procurement could be deducted:

1) a large-scale peace-support operation;

2) a high-intensity humanitarian intervention;

3) regional warfare in the defence of strategic European interests;

4) prevention of an attack involving weapons of mass destruction; and

5) homeland defence.

Scenario 1 ranges from modest and uncontroversial monitoring and truce supervision to large-scale multi-dimensional deployments like the Implementation Force in Bosnia (IFOR) and KFOR, which have been a constant of the post-World War II security landscape. For this kind of operation the report did not reveal serious shortfalls. In line with the recommendations of the UN Brahimi report, the EU is able to deploy an operation within 60 days, setting up a mission headquarters within 15 days. The most pressing challenge was seen to be that of deployable and secure command, control and communications. Nevertheless, it was noted that an emphasis on peace-support operations can have high opportunity costs, in the sense that they might substantially reduce the ability to perform satisfactorily in scenarios involving high-intensity force projection.

Scenario 2 aims at fielding and, if appropriate, leading a force capable of stopping an emerging genocide, without an overly severe limitation on geographical location, given the global range of precedents like Bosnia, Rwanda and East Timor. Emphasis is on speed and momentum with follow-on forces exercising a *de facto* international protectorate. Prolongation of the international presence would make it a peace-support operation under scenario 1. The report made the valuable observation that in political terms there is a built-in obstacle against timely action: as long as nothing serious has happened, intervention can hardly be justified, and if crimes are already being committed it may be politically possible to intervene, but by then it may be too late to save lives.

Operational assumptions are that the intervention requires special operations forces, supported by tactical air forces for close air support and offensive air support, and air- and sealift. The force should be able to carry out counter-insurgency operations in a rural environment (cordon, search

and destroy), to establish and control safe areas, to deny and guarantee movement as appropriate, to wage a 'hearts and minds' campaign, to offer military assistance to international governmental organisations and NGOs, and to bring humanitarian relief. Given the urgency of action a lead-nation approach recommends itself, as was the case for Operation Artemis in the Ituri province of the Democratic Republic of Congo.

The task force signalled a number of shortfalls in this scenario. The most serious again was secure and deployable command, control and communications, but now also theatre surveillance and reconnaissance, target acquisition and human intelligence. For a relatively limited deployment the available sea- and air-lift would be sufficient. The EU countries would lack highly mobile forces and special operations forces for unconventional warfare, however, as well as support and attack helicopters. The overall conclusion of the task force was that "the shortfalls, while significant, could be corrected through the reallocation of funding and changes in organisational priorities, with limited impact on the overall level of defence spending".[236]

Scenario 3, regional warfare in the defence of strategic European interests, could be termed a 'peace-enforcement operation', although of a particularly muscular variety. The task force felt that future regional wars could affect European Union interests in two very important but rather different ways. First, they would be affected by directly threatening European prosperity and security, for instance by interrupting oil supplies or other flows of goods and services, or by massive increases in the cost of energy, or through the forced emigration of war-threatened populations. In this scenario a regional power attacked a neighbouring country, which then asked the European Union and the United States for help under Art. 51 of the UN Charter. Second, the impact could be felt by its effect on Europe's ties with the US. Not participating in a crisis that clearly affected European Union interests would seriously impact on that relationship. In the aftermath of the Iraq war, the latter argument may not be shared as universally as it was before. Even earlier, the reasoning went along separate paths. Some talked about 'not less America, but more Europe', which is consistent with close transatlantic ties. Yet others wanted to build up Europe as a counterweight to the US, which is less consensual and, in the short term, not a realistic objective. Therefore, it seems more

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[236] Ibid.

constructive to insist on Europe becoming able and willing to shoulder larger responsibilities, which will extend beyond its own continent.

Today, only the US would be able to provide the framework for regional warfare. The report concludes that EU countries would not only suffer from all the shortfalls mentioned under the previous scenarios, but also early warning and distant detection, carrier-based air power, precision-guided munitions and stand-off weapons. They would have insufficient combat search and rescue, air-to-air refuelling, theatre ballistic-missile defences, battle damage assessment, psychological warfare units, transport helicopters and even medical units. Logistical capabilities were unlikely to sustain the operation for the required period. Building a European-led variant of this scenario would require defence spending increases far in excess of what might be expected in a 'baseline scenario'.

Scenario 4 deals with the prevention of an attack involving weapons of mass destruction, particularly in the hands of non-state groups or irregular groups whose affiliation with any given state is not admitted. A case in point was the Taliban regime in Afghanistan and the Operation Enduring Freedom. Contrary to the war in Iraq, this operation was of limited size. In fact, it was a combination of large-scale unconventional warfare and medium-scale, broad-spectrum naval and air operations. In the autumn of 2001, the US deployed some 6,000 soldiers to Afghanistan, which was, the task force noted, fewer than the UK sent to the Falklands in 1982. These were supported by a US CentCom force array in the broader theatre of operations of some 60,000, which is not more than the EU's Helsinki Headline Goal.

In theory such an operation would be possible for the EU, but the task force concluded that it would best be conducted in coordination with the US. European countries would have enough special forces, but at present seemed unable to sustain them over a longer period. Moreover, it was unlikely that most of them would perform well in difficult terrain and under the threat of chemical, biological, radiological or nuclear (CBRN) weapons. In addition, the EU lacked strategic intelligence assets and medium- and long-endurance UAVs.

Homeland defence as a concept was unfamiliar to Europeans, who used to conceive of defence as closely connected with their own independence and territorial integrity. Ever since President Ronald Reagan's Strategic Defense Initiative and the subsequent plans for defences against ballistic missiles they feared a decoupling of American and

European security concerns. Nevertheless, terrorism also presents new military tasks to them, mostly in support of civil authorities. In scenario 5, the aim is to protect facilities that intelligence sources consider to be targets of an impending terrorist attack, and to limit the consequences of such an attack once it occurs. Neither contingency is a Petersberg task, but the European Constitution, which still has to be ratified, includes a solidarity clause among member countries for terrorist attacks or natural calamities.

Planning assumptions included protection of the four largest airports, the two biggest harbours, the 10 most critical power plants, the 10 most critical chemical plants and all the capitals of EU member states, including the seat of the EU in Brussels. The EU must provide light infantry as a back-up to national police forces to help protect essential infrastructure and to assist in securing the external borders of the EU. For consequence limitation national forces should assist in the maintenance of law and order. The French emergency plan *Vigipirate Renforcé* was mentioned as an example. Under this heading also comes effective quarantining of areas in which 'ring vaccination' is necessary in order to treat all of the affected population without having to divert scarce resources if the epidemic could not be contained.

Civil protection is a national responsibility, but most EU nations lack the means to deal with the consequences of attacks by weapons of mass destruction. To deal with catastrophic terrorism there is a need for more special operations forces or counter-terror units.

The task force concluded with a series of findings and proposed ways of correcting deficiencies, such as:

1) The EU cannot deploy land forces quickly and cannot sustain them, owing to the shortage of committed, deployable, combat-ready forces.

2) The Union has no agreed system of force packaging, which severely restricts deployability and sustainability.

3) The Union is capable of conducting a wide range of operations, including high-intensity warfare. Yet, it runs a relatively high risk of casualties among engaged forces and collateral damage.

4) Out-of-area warfare and new roles and missions, such as counter-insurgency and counter-terrorism, require a new doctrinal approach and new training methods. But the Union has no conceptual approach to force transformation in the sense of shifting from

traditional platform-centric warfare to network-centric warfare, as demonstrated in the US-led operations in Afghanistan and Iraq. A European doctrine centre was thought necessary, possibly within a European Defence College.

5) The EU cannot provide the operational framework for large-scale operations. There are sufficient operational headquarters, but technical shortfalls for operations in distant places.

6) The growing military-technical gap between the US and most of the European allies raises questions about interoperability.

7) The Union has limited capabilities for strategic decision-making and crisis management, partly as a result of the weakness of Europe's military space programme.

Remedies could consist of 'bottom-up' specialisation through unilateral concentration on a specific type of force; niche capabilities; co-financing of national capabilities; and developing collective capabilities in the fields of command, control and communications (C3), intelligence, surveillance, target acquisition and reconnaissance (ISTAR), logistics, combat search and rescue, air-to-air refuelling, suppression of enemy air defences, air defence systems, all-weather precision-guided munitions (PGM) and stand-off weaponry. More radical remedies would be 'top-down' specialisation, which implies combining capabilities for collective use and entails a collective decision-making process or a supranational authority, or setting up a standing nucleus force and permanent operation headquarters. The latter could be organised at the level of the battle groups, which are the new focus of the European Rapid Reaction Forces, to consist of 1,500 troops complemented by air and naval components. Finally, research and development activities should be better funded and coordinated. Comparing the scenarios, the report gave priority to homeland defence: civil protection, medical supplies, logistics and emergencies must be coordinated at the European level and the post of a European coordinator was deemed a necessity.

The mission record

The first time European countries together took responsibility for stability outside their own continent was during the Iran–Iraq war, when in 1987 mines appeared in the Gulf, threatening international passage and the supply of oil. The WEU coordinated the mine-clearing operation. The same happened during the Kuwait war when the European role was limited to

naval action, this time in enforcing a UN embargo against Iraq. France and the UK provided land and air forces to the US-led coalition, and Italy sent air forces, but these were not coordinated in a European framework.

During the Yugoslav crisis in 1992, the WEU began to implement the UN embargo on Serbia with a naval flotilla (parallel to a NATO flotilla and later integrated with it) but extended this with police and customs officers on the Danube when oil supplies appeared to get through on the river. In 1994 the WEU supplied the police contingent to the EU administrator of the Mostar district of Bosnia. In 1997 the WEU sent a Military Assistance Police Element (MAPE) to Albania after the country was ravaged by the upheaval following the financial collapse of the pyramid system.

Between 1999 and 2001, at the request of the EU, the WEU Demining Assistance Mission in Croatia (WEUDAM) provided support in clearing anti-personnel mines to the Croatian Mine Action Centre.

On 24 March 1999 NATO initiated air operations against military targets in the remainder of the Federal Republic of Yugoslavia after its representatives had failed to sign the interim peace agreements on Kosovo. On 10 June Mr Milosevic agreed to withdraw his troops and the next day KFOR troops entered Kosovo. NATO would remain in charge of the Kosovo operation up to the present, but in Bosnia and Macedonia the EU gradually took over. On 13 November in Marseilles the WEU Ministerial Council transferred its crisis-management functions to the EU, but for a while NATO remained in the lead. The Operation Essential Harvest for collecting arms from Albanian fighters in Macedonia in August 2001 still consisted of 400 troops deployed by NATO, as well as the subsequent Amber Fox, which protected the election monitors, but the following March the European Council in Barcelona announced its willingness to take over NATO's operations in the republic. At the same time the EU took over from the UN International Police Task Force in Bosnia, the first ever EU operation. On 31 March 2003 the EU launched the Operation Concordia in Macedonia, consisting of 350 lightly armed personnel. It was expected to last for six months, but was later extended until 15 December 2003, when it was succeeded by a 200-strong police mission under the name Proxima to help develop domestic police forces.

On 12 June 2003 the EU started Operation Artemis in the Democratic Republic of the Congo in order to stabilise the situation in Bunia, the capital of the Ituri province before the UN was able to assemble a peacekeeping force. It involved 1,800 military personnel with France as the lead nation

and lasted until 1 September when full responsibility was handed back to the Mission of the UN in Congo (MONUC). The EU decided in December to continue its activities in the form of the police mission EUPOL Kinshasa to support the setting up of an international police unit.

The EU took a further step in the Balkans when NATO decided at the Istanbul summit of June 2004 to terminate its SFOR operation in Bosnia and transfer it to the EU. SFOR became EUFOR under Operation Althea with a force strength of some 7,000 personnel. Commemorating the 10th anniversary of the Dayton agreements, the European defence ministers decided in November 2005 to keep the force at that level during 2006.

In addition to the military and police missions on 16 July 2004 the EU launched the EUJUST Themis for Georgia, consisting of 10 civilian legal experts and designed to support the authorities in addressing urgent challenges in the criminal justice system and in developing a coordinated approach to the reform process. Somewhat similar was the EUJUST LEX Rule-of-Law Mission to Iraq, agreed on 21 February 2005 and made operational by 1 July, to train some 770 judges, investigating magistrates, senior police and penitentiary officers at a cost of €10 million over a period of one year.

In the wake of the tsunami that wrought havoc in the Aceh province of Indonesia it became possible to end the longstanding battle between the government and the Free Aceh Movement (GAM) with a Memorandum of Understanding signed on 15 August 2005. After a Joint Action decision by the Council on 9 September, the EU – together with Norway, Switzerland and the countries from Asean – rapidly deployed the Aceh Monitoring Mission, which became operational on 15 September, the date on which the decommissioning of GAM armaments began as well as the relocation of the 'non-organic' Indonesian military and police forces. The first phase of these two programmes was completed on 27 September, so that the agreed 'allocations' to former GAM combatants could start on 12 October.

In 2005 the EU slowly became active in Palestine. Since 4 January police experts headed by a British chief superintendent were deployed to the region, but not as an EU force. An exchange of letters on 20 April between Ahmed Qurei, the Palestinian Prime Minister and Marc Otte, the EU Special Representative to the Middle East Peace Process, led to the creation of the EU Coordinating Office for Palestinian Police Support, housing the four officers in the interior ministry in Ramallah and a satellite office in Gaza City. They produced a three-year development programme

consisting of transformational and operational plans and serving as a "blueprint for building a modern, democratic and accountable police service and as a framework for donor assistance".[237] More spectacular was the involvement of the EU in the opening of the border between Gaza and Egypt at Rafah after the Israeli withdrawal from the strip. Israel wanted to keep control of the external border, but yielded after intervention by US Secretary of State Condoleezza Rice. The agreement, which took effect on 25 November 2005, allowed Israeli access to television monitors, but the actual monitoring of the security forces of the Palestinian Authority would be done by a 60-strong EU police force.

The EU also enhanced its role in the Moldova area. At the request of the presidents of Ukraine and Moldova, the EU agreed to provide 50 border guards plus 19 staff from 1 December 2005 for a period of two years to monitor the entire border between them, including the border between Ukraine and Transnistria. These guards will have the right to make unannounced visits, open containers and visit offices where border-formalities are conducted. Their purpose is to counter the smuggling that allegedly keeps the Transnistrian authorities in the saddle, but which they deny. Consequently, Tiraspol did not object to the EU mission. The agreement was concluded outside the OSCE and the negotiation mechanism that includes Moldova, Russia and Ukraine, with the EU and the US as observers. Equally, it did not affect the presence of 1,200 peacekeepers in a zone of 10 kilometres on both sides of the Moldovan–Transnistrian border, one-third of whom are Russians. Politically the conflict remains frozen, but the regime in Tiraspol might find it harder to continue past practices.

As High Representative, Mr Solana made increasing use of EU special representatives. Those on the spot obviously had a better grasp of the situation and also avoided micro-management by the Brussels institutions. At the time of writing such personalities were functioning for Kosovo, Macedonia, Central Asia, Sudan, Moldova, the Middle East Peace Process, the South Caucasus, Afghanistan, Bosnia-Herzegovina and the African Great Lakes region. In addition, personal representatives of the secretary-

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[237] European Council, EU Council Secretariat Factsheet PAL/02 (update 2), Brussels, 8 July 2005(b).

general/high representative were appointed for the issues of non-proliferation of weapons of mass destruction and for human rights.[238]

Energy security

The scenarios discussed in the previous section will be a useful tool for force planning. Yet they still say little about the possible causes of conflict the EU might have to deal with or about the regions in which they will become apparent. We have seen the priorities in the EU security strategy document: terrorism, WMDs, failed states and their connection with organised crime. But it did not answer the question of to what extent the protection of our more specific interests will warrant the use of force. Two cases spring to mind: the security of energy supply and the threat to safe passage through international waters, as the result of either state action or piracy. Outside the EU, the availability of drinking water might also be a source of tension. Energy is a necessary component of economic growth and as such takes a special place among other commodities. An Adelphi Paper of the International Institute of Strategic Studies was devoted to initiatives to "improve resource governance in the interest of peace".[239] It included diamonds, minerals and timber in its analysis next to oil. Starting with an analysis of the 'resource curse', which tends to result in economic underperformance and governance failure in both underdeveloped and developed countries, the paper discussed recent attempts to curtail the link between resources and armed conflicts. It concluded that while in the past UN sanctions have generally been used as an economic leverage to promote negotiations or policy changes, they are increasingly aimed at putting targeted belligerents 'out of business' by prohibiting the commodity exports upon which they rely economically. The logic of sanctions has thus evolved from containment and influence to policing, but the enthusiasm of member states to engage in implementation measures has been limited and mainly related to naval embargoes. The author of the Adelphi Paper even suggested "earlier and stronger imposition of targeted sanctions, and peacekeeping mandates allowing for the military capture and supervision of resource production sites". Given the current emphasis on sovereignty among the developing countries, such measures seem

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[238] For further information, see http://www.ue.eu.int, Council of the European Union, Foreign Policy.

[239] See Philippe Le Billon, *Fuelling War: Natural Resources and Armed Conflict*, Adelphi Paper No. 373, International Institute for Security Studies, London, 2005.

unlikely to be acceptable to them, even if they are torn by rebellion, war-lordism or outright conflict with envious neighbours.

The UK has already made the security of energy supply an autonomous objective of its foreign policy, spurred on by a shortage of natural gas after the country became a net importer. During a decade of very cheap gas the issue of energy security was neglected.[240] The Netherlands is also in the process of upgrading the importance of energy security as a foreign policy objective. Its realisation could take different forms: cooperation with oil- and gas-producing countries; the promotion of stable development; the encouragement of an investment climate that overcomes the shortfalls of the past and guarantees sufficient levels of exploitation in the future; the prevention of interruptions in the transport of oil and gas, especially in pipelines and sea-lanes; and finding a response to the fast-growing global energy demand in a way that is sustainable and at the same time takes climate issues into account. All these possibilities impact on relations with the countries in the regions concerned, but also on transatlantic relations.

The first oil crisis of 1973 highlighted European dependence on the import of energy. The Netherlands and Portugal suffered an Arab oil boycott, together with the US, South Africa and Rhodesia. At that time oil accounted for 62% of primary energy use and 97% of that oil had to be imported, largely from the Middle East and North Africa. The Copenhagen summit of December 1973 called for a diversification strategy in terms of energy carriers and the countries of origin. At American initiative an energy conference was called in Washington in February 1974, which led to the establishment of the International Energy Agency (IEA) and the 1974 Agreement on an International Energy Program (IEP), which was to promote "secure oil supplies on reasonable and equitable terms" and to take "common effective measures to meet oil supply emergencies by developing an emergency self-sufficiency in oil supplies".[241]

The IEA was an initiative of Henry Kissinger and had both an economic and a political purpose. By establishing it within the OECD the

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[240] "Strength in diversity – Energy security lies in having many sources and types of fuel", *Financial Times*, 25-26 November 2005.

[241] See the International Energy Agency, Agreement on an International Energy Program of 18 November 1974 (as amended) (retrievable from http://www.iea.org/Textbase/about/iep.pdf).

US was assured of an important role and hoped to prevent the Europeans from pursuing a separate producer–consumer dialogue. Nevertheless, the IEA was unable to start a fertile dialogue of its own and several countries began to pursue bilateral deals. France did not sign the IEP until 1992, along with Finland. The agreement requires solidarity at a time of a supply disruption: countries that are less affected must come to the assistance of those who suffer more severely. The test of this solidarity in the event of a serious disruption is yet to come, but the obligation is less pertinent to modern times, because new types of threats such as instabilities in a producer country or terrorist acts and major accidents are outside its application. Moreover, there is no crisis mechanism for natural gas.

The European Community had already agreed on stockholding provisions for oil before the IEP was concluded. Currently, the European Commission wants to go a step beyond the IEP rule of 90 days of oil consumption and increase stocks to 120 days. The problem lies deeper, however. The IEA system basically depends on a free market with plenty of oil, which only requires arrangements for crisis situations. Today's reality is different. International companies have access to only some 30% of the available oil. The rest is tied up in bilateral arrangements. This poses the question of to what extent the IEA arrangements should be complemented by a more active EU energy policy. In the European Constitution energy was made a shared competence of the EU and the member states. Art. III-256 put the subject in the context of the internal market and the need to improve the environment. More specifically, the objectives of the Union were to:

- guarantee the functioning of the energy market;
- guarantee the continuity of energy supply; and
- stimulate energy-efficiency, savings and the development of new and sustainable energy.

Art. III-256 stipulated in sub 2 that European legislation would not affect the right of a member state to determine the conditions for the exploitation of energy resources, its choice among different sources of energy or the general structure of its energy sector. Art. III-234 in the section on environment made this prohibition less absolute with a *passerelle* clause allowing a unanimous decision to move to majority voting on measures that could have significant influence on these choices. But prior to that a large part of energy policy would remain within the domain of the member states.

Among the producing countries Russia and the Central Asian republics are increasing their exports and benefit greatly from the high energy prices. This region possesses one-third of the proven world reserves of gas. One of the challenges for the EU will be to enter into a constructive structural relationship with them without having to forego the fundamental values and objectives of its policies. This challenge acquires a new dimension with the factual re-nationalisation of the Russian energy sector. The EU will show modest growth in its oil imports, compared with other parts of the world (from 13.6 million barrels per day to 14.4 million in 2010, 15.3 million in 2020 and 15.6 million in 2030). Demand for natural gas, on the other hand, is expected to increase greatly, also for environmental reasons, which means looking for new suppliers. The gas reserves of the Middle East have hardly been developed, but the large finds in Qatar already make it an interesting partner for the supply of liquid natural gas. In comparison to oil, gas is less easily diverted to other destinations, which makes a reliable long-term contractual relationship important for both the consumer and supplier.

Security of supply also is closely connected with the choke-points in transit: the Bosporus, the Suez, Bab el Mandab, Hormuz, the Strait of Malacca and the Panama Canal. Thought will have to be given to responses to their possible blockage or closure. Supplier countries will have little interest in a prolonged interruption of their deliveries. For temporary stoppages, the IEA and EU stocks might be sufficient to cope with the situation and to act as a deterrent against political blackmail. The general conclusion, however, should be that the world will be much more vulnerable to terrorist action anywhere in the chain of production, transport and refinery.

Core groups

Ever since Karl Lamers and Wolfgang Schäuble raised the issue in 1994 the debate on European security has included the possible formation of a core group of countries willing to proceed further with defence cooperation. Several core groups already existed, which had emerged outside the treaties: the WEU, the European Monetary System and the Schengen agreement for the free circulation of persons. The latter two were brought within the orbit of the Treaty on European Union, so why not do the same thing in other areas?

The debate on flexible integration produced an impressive but confusing range of concepts. Some talked of a two- or multi-speed Europe, others of variable geometry, an *á la carte* Europe, differentiated integration, *abgestufte* integration, concentric circles, a hub-and-spoke Europe, exclusion of the uncooperative and the afore-mentioned terminology of flexible integration and core groups. Three variables could be applied to all of the concepts: time (permanent or temporary), space (which group of states) or matter (general or specific policies). All of the concepts were marked by an inherent tension between the notions of inclusiveness and effectiveness. Throughout the debate, some thought them essential for making progress, while others feared that they would lead to a break-up of the European Union.

The European Council summit held in Turin in March 1996 took a first step by asking the following Intergovernmental Conference to

> examine whether and how to introduce rules either of a general nature or in specific areas in order to enable a certain number of Member States to develop strengthened cooperation, open to all, compatible with the Union's objectives, while preserving the *acquis communautaire*, avoiding discriminations and distortions of competition and respecting the single institutional framework.[242]

This examination led to a proposal to choose between three models of flexibility: multi-speed (a core group able to pursue policies further, but with the others following later), variable geometry (a permanent separation between a core and the less developed states) and *á la carte (*pick and choose while maintaining a minimum number of common objectives).[243] Variable geometry could be agreed without treaty change, while the others would require an IGC and a new treaty. Obviously, the European Commission was dead-set against the *á la carte* model, which threatened to unravel the *acquis* and the internal market in particular. The idea of a hard core or a directorate going faster on matters across the board was soon swept off the table, which left the models applying to specific policies. The defensive approach of most of the participants resulted in a debate about

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[242] See European Council, Presidency Conclusions of the European Council in Turin, 29 March 1996.

[243] See Helen Wallace, "Flexibility: A tool of integration or a restraint on disintegration?", ch. 10 in Karlheinz Neunreither and Antje Wiener (eds), *European Integration after Amsterdam*, Oxford: Oxford University Press, 2000.

disallowing what should not be done, rather than allowing what should be done. All participants wanted strict rules regulating flexibility.[244]

As a result, the 1997 Amsterdam Treaty opened the possibility of enhanced cooperation, but under stringent conditions and only in the area of the first pillar. In the CFSP the option of constructive abstention was introduced, by which a country could abstain and would then not be bound by the decision. Amendments at Nice in 2001 relaxed the criteria for enhanced cooperation and removed the veto of members opposed to the measure. A minimum of eight members would be required to institute it. Enhanced cooperation would also become possible in the field of CFSP, but only for the implementation of a joint action or a common position, which meant that on the policy as such the veto would be maintained. It would not be applied to military matters.

Under the assumption that a Union of 25 members or more would need a measure of flexibility in order to remain effective, the European Convention discussed several new modalities and included them in the draft Constitution.[245] The most innovative was the permanent structured cooperation (the word 'permanent' was added during the IGC) for those member states whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions. The detailed arrangements were set out in Art. III 312 and Protocol 23. The underlying logic was both political and military: political to give the Union a tool to make coercive diplomacy more credible; military in order to make more effective use of available defence budgets by restructuring, pooling and harmonising European defence policies and resources. The difficulty was that national sovereignty and collective effectiveness are uneasy bedfellows.

The criteria for joining the permanent structured cooperation were not made fully clear. Starting this form of cooperation would be done by qualified majority vote, but how would the capabilities and willingness of the prospective members be judged? My own view was to ask the European Defence Agency for its advice on application, as part of its

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[244] See Alexander Stubb, "Negotiating Flexible Integration in the Amsterdam Treaty" (2000), op. cit. I am indebted to Flor Dinis de Araújo Avelino for her well-researched master's thesis at Leyden University, "The Able, the Willing and the Sovereign: Analysing Flexible Integration in the ESDP", January 2005.

[245] See the previous sections on the Barnier report and other changes in chapter 5.

function as a 'capability agency'. The new modality was intended as a special form of enhanced cooperation recognised in advance by the Constitution, thus circumventing the prohibition of regular enhanced defence cooperation enshrined in the Nice Treaty. It met with considerable resistance, particularly from the new member states and the non-aligned who feared being excluded from a closed club.

To a certain extent their preoccupations were alleviated by the creation of battle groups in the context of the ESDP. As it worked out, all members wishing to join were enabled to participate in a group, but that did not yet amount to structured cooperation as such. The battle groups were the vanguard of European Rapid Reaction Forces, in most cases consisting of one or two countries, able to be deployed quickly and to establish a presence before the main forces – either the Helsinki Headline Goal units of 50-60,000 or a UN force – had arrived. They did not replace the Headline Goals, which were reformulated for the period up to 2010 and focused on qualitative aspects, but were important in moving away from the voluntary bottom-up process of force generation. The method of the Headline Goals was to define needs, which then had to be advertised for contributions from the member states. Such a system was bound to create shortfalls in the more difficult or expensive tasks. It was envisaged that the battle groups would be based on comprehensive criteria and the pledged units would have to undergo a process of certification of their capabilities, similar to that of the NATO Response Force, in order to ensure a credible force. How that would be done was another matter, because so far certification has been left to the lead nation. The application of some common criteria will be necessary to prevent the battle groups from becoming a motley bunch of dispersed units. In any case, the fact that the battle groups are pre-planned multinational units (and in some cases provided by a single country) cannot be sufficient reason to regard them as permanent structured cooperation. Their rapid reaction capability is an important qualitative improvement, but in itself says little about the willingness of states to enter into more binding commitments towards each other. That is another argument for committed scenario-planning.

If the Constitution does not enter into force, nothing would prevent the battle group programme from going ahead, but under the current Nice Treaty permanent structured cooperation would not be allowed. It would be possible for the Council to decide a joint action in which only a limited number of member states participate, but only if there is unanimity or

members apply constructive abstention. This could only be done on a case-by-case basis and therefore could not qualify as permanent cooperation. Consequently, under the Nice regime permanent structured cooperation could only be formalised outside the EU Treaty framework, and under present circumstances this does not seem probable. It has to be remembered that even under the Constitution as amended by the Intergovernmental Conference the decision to take military action would be subject to unanimity. So a core group could not act on behalf of the Union as a whole without an express and unanimous mandate.

As far as other core groups are concerned, it is not easy to envisage areas in which they could function without affecting the internal market. Perhaps some elements of environmental or taxation policies might be eligible. Cooperation on defence procurement has already been lifted out of the draft Constitution and implemented through the European Defence Agency. The possibility of core groups, therefore, will serve mainly as an incentive for difficult partners to participate in the search for a compromise. If they do not, they risk being excluded from the mainstream. Of course, nothing prevents informal core groups from emerging, as has happened already. The Franco-German axis has functioned as such for many years, as have other preparatory meetings among like-minded members. We have seen meetings of the founding six, the Visegrad four, the Nordic countries, the 'net contributors' and 'Schengen Plus'. The last variant of enhanced cooperation outside the EU Treaty was the 'Schengen III' agreement signed at Prüm on 25 May 2005 among the old six EU member states minus Italy but plus Austria and Spain. The agreement has the objective of strengthening cooperation in combating terrorism, transborder crime and illegal immigration. The signatories expressed the hope that others would join and the agreement could be inserted into the legal framework of the Union. It represents an interesting formula to watch.

American scenarios

While Europeans were planning scenarios with enhanced military capabilities, Americans were confronted with the need to consider scenarios that focused less on traditional 'war winning' objectives and allowed for stabilisation and reconstruction. Experience in the Balkans had shown that military operations in themselves tended to be rather short, but had to be followed by a prolonged phase of stabilisation and nation-building. During the follow-up the military still had to perform their role of

'deterrence by presence' and, if necessary, of forceful action, but nation-building would be effective only through close civil-military cooperation.

Almost at the same time as the report of the task force of the EU Institute of Security Studies, the Center for Technology and National Security Policy (CTNSP) of the US National Defence University published a report on stabilisation operations with scenarios for force-sizing.[246] One of its major points was that the very rapid defeat of the enemy military meant that the US must be ready to field the resources promptly – ideally concurrently – with the end of major combat. This could only be done if planning for the stabilisation and reconstruction operations was integrated into planning for the conflict from the beginning and if the right skills were in the theatre to begin operations concurrently with the surrender or collapse of the enemy military. In the past the relatively long duration of major combat was supposed to allow time to plan for reconstruction operations and to begin them as the conflict wound down. The new challenge was to fill the gap between the major combat mission and nation-building by a stabilisation and reconstruction mission.

It is still too early to judge reactions to this thesis. It would be a drastic departure from the Powell doctrine developed at the time of the 1990 Iraq war, which aimed at massive intervention, doing the job militarily and leaving as quickly as possible. Yet, the report underlined that successive post-cold war US interventions have become increasingly more ambitious and include regime change. Rapid and decisive military victory did not guarantee a peaceful post-conflict stabilisation environment and, historically speaking, five to seven years were needed for successful nation-building.

The CTNSP report advances the key judgement that there is no standard model of a stabilisation and reconstruction (S&R) scenario upon which to base US force planning. Much would depend on the magnitude of the operation, which is largely determined by the size of the country and the difficulties encountered. Therefore, the ambitiousness of US goals would be a key consideration. Nevertheless, the report formulated far-reaching recommendations. It proposed to create two joint military headquarters to organise units critical to the S&R mission and to field two

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[246] See Hans Binnendijk and Stuart E. Johnson (eds), *Transforming for Stabilization and Reconstruction Operations*, National Defence University, Washington, D.C., 2004.

division-equivalents with joint assets, organised to be flexible, modular, scalable and rapidly deployable, with four brigade-size groups that include military police, civil affairs staff, engineers, and medical and Psyops personnel, supported by a tactical combat capability. A multi-agency, civilian rapid-response capability should be established to deploy with the S&R forces and prepare for the transition from S&R (under military control) to the nation–building mission (under civilian control).

On the equipment side, high-priority items were wireless and land-based communications for civilian/military interoperability, unmanned systems, non-lethal weapons, detection devices for urban operations and course-of-action analysis and planning tools. Special attention was paid to unmanned vehicles for surveillance and threat neutralisation. In Iraq, two levels of UAVs were used, the high-altitude Global Hawk and the medium-altitude Predator. For detailed local surveillance further deployment of low-level UAVs would be required, including small systems such as Dragon Eye and unmanned ground vehicles for going into buildings and caves. Wide area coverage could reduce manpower requirements.

In the US a similar concern was expressed by the Heritage Foundation in its recommendations for "winning the peace".[247] Essential principles for post-conflict operations should be to eliminate the regime but preserve the governmental structure, and to formulate a vision of the end-state and a plan that will accomplish it. Such operations should be multilateral, if possible, but "without compromising US national objectives". Within the US many different agencies should be involved.

In the meantime, NATO had been working on its Defence Capabilities Initiative aimed at filling by and large the same deficiencies, but was at least initially handicapped by listing too many improvement areas and as a consequence suffering from a lack of priorities. More significant was US Secretary of Defense Donald Rumsfeld's proposal for a NATO Response Force, which would have real fighting capabilities in a network-centric environment and be able to act as an 'insertion force' in the early stages of a conflict. The NRF would have some 24,000 personnel, all European, with the US performing some enabling functions such as transport, satellite intelligence and communications. To the Pentagon this force was the last opportunity for the Europeans to show that they were

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[247] See the Heritage Foundation, *Backgrounder No. 1859*, Washington, D.C., 13 June 2005(b).

serious about NATO. Yet to many Europeans, the proposal raised questions about its compatibility with the Headline Goals. These questions became more acute when the EU was moving towards battle groups, consisting of some 1,500 personnel, also available within less than two weeks. The battle group concept was supported by the experience in the Bunia crisis in the Ituri province of the Democratic Republic of Congo, where the only autonomous EU operation thus far took place in the summer of 2003. Under French leadership the EU secured the situation for two and a half months until the UN was able to take over.

NATO was quick in implementing the NRF concept. On 14 January 2005, the NRF-4 led by the German/Netherlands Corps HQ and consisting of some 18,000 personnel went on standby, the largest rotation so far. Other high-readiness headquarters available to NATO are the Turkish, Italian, Spanish, the British-led Allied Rapid Reaction Corps (ARRC) and the five-nation Eurocorps, rotating every six months. They operate under the Allied Joint Force Command (JFC) in Naples (for NRF-4), Brunssum and Lisbon, which take annual turns. The land component of NRF-4 is grouped around the Dutch-led multinational 43 Mechanised Brigade of more than 4,000 troops, including soldiers from Denmark, France, Germany and Norway. According to the NATO Military Committee document MC 477 of 10 April 2003, the NRF is to be a stand-alone force for crisis response, able to sustain itself for a month (or longer if re-supplied) in five main scenarios:

- conducting a non-combat evacuation;
- supporting consequence-management operations such as deploying chemical, biological, radiological or nuclear protection capabilities following a chemical or nuclear incident or deploying engineers, medical, logistical and force-protection capabilities during a humanitarian crisis situation;
- deploying crisis-response operations including peacekeeping and peace enforcement (the latter requiring the full NRF package);
- aiding counter-terrorism operations; and
- carrying out embargo operations.

The Mechanised Brigade could be deployed either as an initial entry force to facilitate the arrival of a larger follow-on force, or as a demonstrative force package to show resolve. In a further development, the NRF-7 should reach its full operational capability by mid-2008.

The command arrangements looked fairly complicated; the air component would be led by the AIRSOUTH HQ in Izmir and the maritime by the UK Maritime Forces Battle Staff. Moreover, there appeared to be disagreement over when and where to deploy the NRF. France was reported to insist on deployment primarily to deal with new crises, while others would allow it to also be used to reinforce existing operations.[248] Another problem was the financing, because – as in the EU – the principle of costs lie where they fall was followed, meaning that all parties had to pay for their own expenditures, which could result in an uneven burden for some and a free ride for others. At least NATO had the advantage that its headquarters and infrastructure were commonly funded, but it was overtaken by the EU in defining the common costs of an operation.

On account of the terrorist attacks in the US, many of the questions posed by the QDR of 2001 remained unanswered. In the meantime, the preparation of the QDR for 2006 has begun with the publication of the National Defense Strategy of the US by Secretary Rumsfeld in March 2005. His foreword started with "We live in a time of unconventional challenges and strategic uncertainty" and the body of the text commenced ominously with "America is a nation at war".[249] Europeans had no qualms about the first phrase, but difficulty in comprehending the second. They feared a siege mentality in dealing with a long-term phenomenon, which, if it was a war, could not be won and certainly not by military means alone. On substance the strategy repeated the principles of 2002: to assure allies and friends, to dissuade potential adversaries, to deter aggression and counter coercion, and to defeat adversaries. Like its predecessor it was not a unilateralist document. Its aim was to preserve and extend peace, freedom and prosperity throughout the world. "International partnerships continue to be a principal source of our strength." And "our military presence abroad comprises tailored and increasingly rotational forces operating in and from four forward regions – Europe, Northeast Asia, the East Asian Littoral, and the Middle East-Southwest Asia. Complemented by our capabilities for prompt global action, our forces overseas help assure partners." The new global posture would use main operating bases, forward operating sites and a diverse array of more austere cooperative

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[248] See Joris Janssen Lok, "NRF on track for full capability but its purpose remains a matter of debate", *Jane's International Defense Review*, Vol. 38, No. 1, 2005, pp. 60-65.

[249] See Office of the US Secretary of Defense, *The National Defense Strategy of the United States of America*, Washington, D.C., 1 March 2005.

security locations. A new approach would be followed to preposition equipment and stocks in critical regions and along key transportation routes in order to enable worldwide deployment. This should be increasingly "joint" in character. New legal arrangements would be sought, "consistent with our partners' sovereign considerations", to maximise US freedom to deploy its forces as needed, conduct essential training with partners in the host country and support deployed forces around the world.

The National Defense Strategy of 2005 recognised that the US militarily predominates in the world in traditional forms of warfare and that potential adversaries accordingly shift away from a traditional military challenge towards asymmetric capabilities and methods, such as:

- irregular challenges coming from those employing unconventional methods to counter the traditional advantages of stronger opponents;

- catastrophic challenges involving the acquisition, possession and use of WMDs or methods producing WMD-like effects; and

- disruptive challenges coming from adversaries who develop and use break-through technologies to negate current US advantages in key operational domains.

These categories overlap. Iraq and Afghanistan presented both traditional and irregular challenges, while al Qaeda posed an irregular threat, but actively sought catastrophic capabilities; North Korea constituted at once traditional, irregular and catastrophic challenges.

The word "pre-empt" appeared only once in the document, under the heading "Defeat adversaries". The strategy was intended to provide the US president with a broad range of options:

> These include preventive actions to deny an opponent the strategic initiative or pre-empt a devastating attack; combat operations against a capable and organised military, paramilitary or insurgent adversary; and stability operations that could range from peacekeeping to substantial combat action.[250]

Under "Implementation guidelines" it was said that "allowing opponents to strike first – particularly in an era of proliferation – is unacceptable", which was followed by the words from the 2002 National

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[250] Ibid.

Strategy that the United States must defeat the most dangerous challenges early and at a safe distance, before they are allowed to mature.

The document was specific in listing eight major terrorist vulnerabilities:

- ideological support – the key to recruitment and indoctrination;

- leadership;

- foot soldiers – maintaining a regular flow of recruits;

- safe havens – the ability to train, plan and operate without disruption;

- weapons – including WMDs;

- communications and movement – including access to information and intelligence;

- the ability to travel and attend meetings, as well as command and control; and

- access to targets – the ability to plan and reach targets in the US and abroad.

In the run-up to the new *Quadrennial Defense Review* for 2006 the Pentagon has announced its intention to consult a number of allies bilaterally (including the UK and the Netherlands) and multilaterally with NATO. In contrast with earlier documents, it will start with determining an optimum mix of capacities, organised around core challenges and core capabilities, before decisions are taken on the overall strength of the armed forces.

After the visit of President Bush to Europe in February 2005, our preliminary conclusion is that the US is again attaching importance to multilateral organisations, but remains uncertain about the ability and willingness of the Europeans to play more than a regional role, limited to the European continent and its immediate periphery. Signals from Washington remain ambiguous. The conservative Heritage Foundation wrote that the nations of Europe are good partners in the war on terrorism, in the war in Afghanistan and in the Balkans and that US policies must build on this.[251] Europe would remain the foundation of all major defence

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[251] See the Heritage Foundation, *Mandate for leadership: Principles to limit government, expand freedom, and strengthen America*, Washington, D.C., 2005(a). This quote and the following three are from the contribution by John C. Hulsman, pp. 104-09. Another contribution, by Jack Spencer and Baker Spring, advocated maintenance

alliances, with the UK remaining as the cornerstone of American strategic thinking. Yet, the same paragraph continued by stating that "a Europe in which national sovereignty remains paramount is in the best interest of the US" and in view of the many problems within the EU its members

> must be regarded, and encouraged to act, independently in order to support US priorities and national interests. To achieve this goal, the United States must ensure that NATO remains the pre-eminent transatlantic security organization while impressing upon its European allies that the current disparity in capability is not politically sustainable.

And a few pages later: "A Europe exercising supranational imperatives regarding foreign and security policy could hamstring American efforts to form politico-military coalitions".

The Heritage Foundation advocated pressing for increased NATO flexibility, centred on the use of the Combined Joint Task Force mechanism. Politically, it was interesting to note this reversion to an idea launched in 1994 by President Clinton at the NATO summit. Then it was intended to cut across the NATO command structure and to make European-led operations possible. Its revival had a different purpose, similar to the constructive abstention in EU decision-making: "member states would not have to participate in a specific mission if they did not feel their vital interests are involved, but their opting out of a mission would not stop other NATO members from intervening if they so desire". That is still a bridge too far for the Alliance, for it would mean that a group of members would act on behalf of the Alliance even if full political support is not forthcoming. A coalition of the willing within the Alliance has not been possible in the past and at the meeting of the Ministerial Council in Vilnius in 2005 this idea, proposed by the Netherlands foreign minister, did not get anywhere. It ran counter to the perception of indivisible security, which was particularly important to the new members. If all agree on the political decision, there is no problem to entrust the mission to a smaller group, but if not, a coalition of the willing outside the Alliance would seem the only possibility. NATO does not have the ambition of conducting an overarching foreign policy.

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of robust defence budgets (3.5% of GDP was regarded as sustainable) and the focus of military interventions in situations that threaten vital American interests and require the unique and decisive capabilities that only the US can provide.

Apparently, the US was still regarding the EU as what Klaus Naumann described as an "unbalanced power".[252] This raises the question of whether in the eyes of the US the EU will ever be able to overcome its present deficiencies and become capable of effective decision-making and of maintaining forces technically able to fight alongside their American allies. Or will the CFSP remain a declaratory policy-producer without any military significance? This question is being asked on both sides of the Atlantic.[253]

In a study for the Center for Technology and National Security Policy of the National Defense University, three authors proposed a new and comprehensive military framework to help guide NATO improvements in the years ahead.[254] They envisioned a pyramid-like structure of future forces and capabilities in five critical areas: a new NATO special operations force, the existing NATO Response Force, high-readiness combat forces, stabilisation and reconstruction forces, and assets for defence sector development. In their view, the US would provide one-third of the necessary forces with the Europeans being responsible for two-thirds. This would be a viable proposition for the Europeans because it would require only 10% of their active military manpower, plus investments in such affordable assets as information networks, smart munitions, commercial lift, logistical support and other force enablers. If NATO succeeded in creating these forces for power projection and expeditionary missions, it would possess a broad portfolio of assets for a full spectrum of operations against such threats as terrorism, WMD proliferation and cross-border

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[252] The expression was used by General Klaus Naumann (Ret.) in ″Implementing the European Security and Defense Policy: A practical vision for Europe″, *Bulletin*, Vol. XI, No. 3, the Atlantic Council of the United States, August 2000.

[253] Kori N. Schake wrote a constructive article in August 2001 under the title *Do European Union defense initiatives threaten NATO?*, Strategic Forum No. 184, Institute for National Strategic Studies of the National Defense University, Washington, D.C. She concluded that the extent of European dependence on the US poses a greater threat to American interests than what might develop if the EU becomes a more independent actor in defence policy. Although the ESDP was not responsible for the divergence among NATO militaries it could aggravate existing problems among them.

[254] See Hans Binnendijk, David Gompert and Richard Kugler, "A New Military Framework for NATO", *Defense Horizons*, No. 48, Center for Technology and National Security Policy, Washington, D.C., March 2005.

aggression. In addition, it was proposed to create two additional pyramids, one in the US and one in Europe. The US pyramid should be anchored in a new, smaller American presence in Europe that could help the Europeans and NATO towards transformation, while also providing a viable US strike force similar to the NATO Response Force. The EU should field the battle groups, a European Rapid Reaction Force and stabilisation and reconstruction assets that could contribute to common transatlantic missions.

An interesting feature of the pyramid concept is the possibility of sequential use. A crisis intervention could begin with special operations forces targeting enemy positions, as occurred in the early stages of the Afghanistan operation. Next, NATO could deploy the brigade-size NRF to establish a foothold, defeat access-denial threats and conduct initial strikes. Then, NATO could deploy the larger High Readiness Force to conduct major combat operations aimed at winning the contest in this key stage of war-fighting. Afterwards, NATO could deploy the S&R Force to stabilise the situation and begin reconstruction until peace is restored and civilian assets can be deployed to complete the reconstruction phase. At this juncture, NATO assets for defence and security sector development could begin helping the new government to preserve safety and security while building democracy. Such a sequential process is not the only or even the most likely way to use the full spectrum of forces, but is useful in understanding the different roles involved.

The study also asked the very relevant question of how many forces NATO would really need to be well prepared for expeditionary missions outside Europe. Today a total of 57 European divisions are available to NATO, of which 25 are High Readiness Forces and 12 are 'deployable' High Readiness Force divisions (made up of 36 brigades). Rapid deployment, however, would only be possible for the equivalent of one or two divisions. In the view of the authors, NATO would be adequately prepared if, in addition to the NRF, it had a rapidly deployable European force of 5-6 divisions (15-18 brigades), 275-325 combat aircraft and 50-60 naval combatants. Joining up with one or two US divisions plus air and naval assets, these forces would create a powerful NATO capacity for expeditionary warfare.

The implementation of these proposals would make eminent sense for the US, but is much more problematical for the Europeans – for several reasons. The smaller the forces, the more nations would like to keep them

flexible and the stronger their resistance to exclusive tasking will be. EU countries are already providing the bulk of forces for the operations in the Balkans and in Africa and have gained considerable experience in peace-support operations. What they lack, on the whole, is real war-fighting experience, but their forces are built on the assumption that if they are trained for the high spectrum of violence, they will also be able to deal with the lower levels. In the American case, this has been less true and training for stabilisation duties has been insufficient. Moreover, the Netherlands' experience in Srebrenica has shown that the borderline between peacekeeping on the one hand and peace enforcement and protection on the other is volatile and subject to rapid escalation.

Most countries possessing modern armed forces still have the ambition to be able to fight alongside US forces, yet see the capability gap widen. They would resist seeing part of their forces being relegated to peacekeeping duties alone, for fear that sooner or later they might no longer be able to do anything else. On the other hand, the earlier reliance on precision-guided weapons to defeat the enemy at arms length without substantial casualties has suffered a rude shock in Iraq. Feet on the ground remain as relevant as ever, certainly in asymmetric warfare. The 'revolution of military affairs' lost much of its steam in a world that gives priority to combating terrorism, because that fight cannot be carried out by military means alone.

Not all countries would object to specialisation in the lower end of peace-support duties. Several Scandinavian countries, which have long-standing experience in peacekeeping during the cold war, are moving in that direction. Equally, both in the battle groups and the NATO Response Force, some smaller countries are looking for 'niche' capabilities to contribute. Obviously this would involve a fairly detailed division of labour and guarantees that the planned contributions would actually be forthcoming. One field where consensus seems to exist on the need to do more concerns special forces. This is a growth area for operations both in asymmetric warfare and in anti-terrorist actions at home and abroad.

An international study group formed by the Washington-based Centre for Strategic and International Studies (CSIS) followed a broader approach and made a total of 50 recommendations.[255] Among the most

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[255] The group was chaired by retired Generals Klaus Naumann and Joseph Ralston. See Michele Flournoy et al., *European Defense Integration, Bridging the Gap between*

relevant was the need to set active defence-planning targets, not less than 25% for research and development, not more than 40% for personnel, along with a common fund of some 0.17% of defence budgets for operations (amounting to a total of $1 billion). The European Capability Action Plan should be moved to the new European Defence Agency, which should be given a budget of some $200 million and a link should be established with Allied Command Transformation in Norfolk. It was felt that NATO needed a new strategic concept, since the current one dated from 1999. (That was debatable; given the persisting differences of view the time may not be ripe for such an undertaking.) Another important point highlighted was the need to 'de-conflict' NATO and EU operations when both want to be active in the same place. Indeed, the situation has become paradoxical: the EU is supposed to act autonomously only when NATO as a whole is not engaged. Yet, Darfur became the scene of an unsightly argument as to whether the NRF or a battle group should be deployed, while both were made up of European units.

The major problem with the proposals of both the National Defense University and the CSIS reverts to the earlier question put in this book: What for? Obviously, without capabilities geared to probable scenarios, the EU and NATO would have little relevance. But Europeans see the primary function of their military forces as rendering their political objectives more credible, while the US primarily trains them for war-winning. Nevertheless, this should not detract from the fact that no other region of the world has more to offer the US in terms of political and economic cooperation and even the legitimacy of its operations than the EU. Yet, the gap is growing and anti-Americanism has increased a great deal during the Bush presidency. With so many divergent opinions on a host of issues impacting on modern society, doubts are rising about the often-professed community of values and every constructive effort to restore that community is worthwhile.

Enlargement

Both NATO and the EU followed the same type of conditions in their enlargement strategies, but did not consult about them. The EU adopted the Copenhagen criteria in 1993, to foster:

Strategy and Capabilities – A CSIS Initiative for Renewed Transatlantic Partnership, Centre for Strategic and International Studies, Washington, D.C., October 2005.

- stable institutions that guarantee democracy, as well as the rule of law, human rights and the protection of minorities;
- a functioning market economy, able to withstand competition and market forces; and
- the ability to assume the responsibilities of membership and the acceptance of political, economic and monetary union.

NATO initially outlined its eligibility criteria in the 1995 *Study on NATO Enlargement*:[256]

- a functioning democratic system and a market economy;
- treatment of minority populations in accordance with OSCE guidelines;
- resolution of all outstanding disputes with neighbours and a commitment to the peaceful settlement of disputes generally;
- a military contribution to the Alliance and willingness to achieve interoperability with other members' forces; and
- democratic-style civil-military relations.

The language of these checklists was deliberately imprecise and calls for exact statements on what was expected and required under these headings were studiously ignored. The EU had the *acquis* of some 80,000 pages to point at, but in both cases these criteria were only pre-conditions for membership and the final decision on membership would be a political one. NATO even explicitly stated that there was no fixed list of criteria; it would invite new members according to the "judgement of whether doing so will contribute to security and stability of the North Atlantic area at the time such a decision is made".[257]

The conclusions of the study by the Centre for European Security Studies were quite sobering: neither the Czech Republic, nor Hungary or Poland was particularly well prepared for NATO membership on the eve of the 1997 Madrid summit, although Poland was better prepared than the other two.[258] Even at the time of formal accession their progress left much

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[256] See NATO, *Study on NATO Enlargement*, Brussels, September 1995.

[257] Ibid.

[258] See Centre for European Security Studies, *Organising National Defences for NATO Membership: The Unexamined Dimension of Aspirants' Readiness for Entry*, Harmonie Paper No. 15, CESS, Groningen, 2001.

to be desired, especially in the area of military organisation. By contrast, Bulgaria, Romania and Slovakia had reached the same level of the three incumbents by September 2001. Estonia, Latvia and Lithuania – the so-called 'start-from-scratch' countries – were better prepared than most and offered well-educated and well-trained forces that had a lot of experience in working with NATO member states. The study showed a disappointing score for the military preparedness of Slovenia. In the end, the Prague summit of November 2002 invited all seven countries to join the Alliance. For other aspiring members, mainly other countries of former Yugoslavia and Albania and perhaps also the former Soviet republics, Partnership for Peace offered a prospect for closer links, with a Membership Action Plan as the next step.

For the EU, accession negotiations were conducted by the European Commission, which issued detailed yearly reports on progress made in some 30 chapters. These reports judiciously combined praise for progress with sometimes severe criticism, but never arrived at a negative conclusion. Among the most worrying conclusions was the prevalence of corruption in Hungary and Latvia, it even being 'endemic' in Poland. This raised eyebrows in the member states, but did not prevent a positive conclusion on the admission of all 10 candidates by 1 May 2004. Subsequently, the European Union has limited the status of candidate membership to Bulgaria and Romania, who signed accession treaties for entry in 2007 with the possibility of a delay of one year, and Turkey and Croatia, with whom accession negotiations started in 2005. In the case of Turkey, the negotiations are expected to last at least 10 years and no guarantee has been given as to their ultimate outcome. For other countries on the periphery, both to the east and south, a policy document was developed that envisaged closer links but did not offer a prospect of membership.

By May 2004 NATO counted 26 members and the EU had 25. The non-EU members of NATO were the US, Canada, Norway, Turkey and Iceland and for the next two or three years Bulgaria and Romania. The EU members that did not simultaneously belong to NATO were: Austria, Finland, Ireland, Sweden, Cyprus and Malta. Denmark, Cyprus and Malta took a special position by not joining in the European security and defence policy. The fact that membership of the two organisations differs makes joint EU-NATO meetings at ambassadorial level interesting for some, but tedious for others, who have to sit there with two representatives. In that respect the joint ministerial meetings are more useful.

Relations with Russia

Twenty years ago a book of this kind would have said much about Russia or the Soviet Union as it then was. With President Mikhail Gorbachev coming to power, the security prospects were changing, but his call for a 'common European home' did not appeal to everyone. Some of its occupants seemed noisy brutes, which one would prefer to keep at a distance. Nevertheless, it was difficult to imagine European security without an answer to the question of what role Moscow would play. That question is still with us today. For quite a while our concern has been more with Russia's weakness than its strength, and the jury still is out on a verdict of whether President Vladimir Putin is a weak or a strong leader, able to move his country around. He has turned the country towards a system of managed democracy with a strong role for the president along with a weakening of all other institutions. A state-driven society and economy is dominated by an energy-political complex reminiscent of former military-industrial complexes. Mr Putin has strengthened state control of the media and converted elections into a means of legitimising the decisions made by the elites.[259] Equally worrying are his recent moves to strengthen control of the commercial sector generally, beyond the 'strategic' sectors such as energy, along with the bill before the State Duma to give officials new powers to control non-governmental organisations, including foreign ones.

Mr Putin has gradually managed to increase his grip on the former Soviet republics of Central Asia at the expense of American influence. He seems to have realised that good relations with the US are possible, but has failed to use the NATO–Russia Founding Act and subsequently the NATO–Russia Council to the full of their potential. Equally, he must consider his western border with the EU the best he can have, but apparently cannot resist the traditional reflex of throwing his weight around in what used to be called the 'near abroad'. Recent examples of 'pipeline politics'[260] have not only put question marks around his motives

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[259] See Nicolay Petrov, "Quid Russian Democracy?" in Michael Emerson (ed.), *Democratisation in the European Neighbourhood,* Centre for European Policy Studies, Brussels, October 2005.

[260] *Le Monde* condemned Russia's cutting off of the gas deliveries as being "the first declaration in the twenty-first century", 2 January 2006. The *Frankfurter Allgemeine Zeitung* was equally critical in writing that the former Soviet Union did not resort to these measures because it was a military power, but that the Russia of President

with regard to his neighbours, but also concerning his reliability as an energy supplier. His dealings with Ukraine and Moldova cannot but increase Western efforts to diversify energy dependence. In dealing with the frozen conflicts in Transnistria, Abkhazia and Nagorno-Karabakh, Russia has not moved away from the old Soviet concept of 'correlation of forces', which considered power relations as a zero-sum game: if NATO increased its membership, Russia must be losing. Russian policies in Moldova and Georgia seemed focused more on destabilisation than a new constructive relationship. These matters may come to a head when NATO starts considering a new step in the enlargement process. But the most enigmatic question for some time to come will be the future of the Russian president himself. Will he play musical chairs with Aleksandr Medvedev and become chairman of Gazprom or will he move to a constitutional system with a strong prime minister?

On 10 May 2005 the EU and Russia signed four 'roadmap' documents at their summit in Moscow defining 'spaces' for their long-term relationship. These spaces relate to the common economic space; freedom, security and justice; external security; and research, education and culture. Altogether some 400 action points were listed. In the economic field the terms 'harmonisation' and 'convergence' were used frequently, but it was left unclear as to who should harmonise on what. The Centre for European Policy Studies was not impressed and regarded the four spaces as the "proliferation of the fuzzy".[261] Their point was that the EU, having a well-defined corpus of laws, norms and values, did not have a clear model for exporting these beyond suggesting weak and fuzzy derivatives of the enlargement process. No mention was made of free trade, not even as a long-term objective, which gave the impression that Russia would be bent on continuing protectionist practices.

Putin belonged to the category of semi-developed, raw-material economies that could only exert influence by threatening to do damage to others. The *Financial Times* wrote that Russia had crossed a dangerous borderline. The cut of energy supplies, which also led to lower pressure in Central European countries, did not last long and was resolved by an obscure deal involving deliveries from Turkmenistan.

[261] See Michael Emerson, *EU-Russia – Four Common Spaces and the Proliferation of the Fuzzy*, CEPS Policy Brief No. 71, Centre for European Policy Studies, Brussels, May 2005(a).

On external security there was an interesting reference to "dialogue and cooperation in the settlement of regional conflicts, *inter alia* in regions adjacent to EU and Russian borders". Apparently, the EU had originally advanced the wording of a 'common neighbourhood', which was rejected by Moscow because it impinged on its notion of 'near abroad'. The EU presidency's press release talked explicitly of the continuing frozen conflicts, but that detail was not reciprocated by the Russian side.[262] More positive was the Russian position in efforts to persuade Iran to refrain from nuclear proliferation. Russia supported efforts by the foreign ministers of France, Germany and the UK (in Brussels referred to as the 'Three Tenors') and offered to provide uranium enrichment on Russian territory.

The enlargements of NATO and the EU have brought both organisations closer to the borders of Russia. They have enhanced stability in an area that otherwise would have been a grey zone on the edge of Western prosperity. Ultimately, this should also be in the interest of Russia, provided it accepts the independence of the new republics and former satellites. The fact that NATO's first and only invocation of Art. V was not directed against Russia will help in accepting the new NATO. The OSCE and its Office of the High Commissioner for National Minorities has assisted in restraining nationalist impulses against Russian minorities, which was a precondition for creating an environment of mutually beneficial economic relations. The current boom in oil prices eases Russia's financial problems, but could also weaken the motivation for real reforms in an economy that has traditionally been dependent upon the export of raw materials. A visitor to rural Russia is still appalled by the prevailing poverty and the backward state of its infrastructure.

The coalescence of external and internal security

In peace-support missions the role of the military abroad resembles the functions that the police exercise at home. They are there to preserve law and order; they deter by their presence; and they are prepared and willing to act forcefully if necessary for the implementation of their mandate. This does not mean that their mission could be left to the police, because the situation might escalate and require fighting forces. At the same time, some police or paramilitary forces will be useful to deal with riot control and the arrest of war criminals or, in the reconstruction phase, to train indigenous

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[262] Ibid.

forces. After an intervention a military presence will be required for a long time to provide an umbrella of security under which a new process of state-building has a chance of success. Generally, the maxim still applies that peacekeeping is not necessarily a soldier's job, but only soldiers can do it.

Do the military still have a job to do at home when collective defence has a low priority? They have a latent task as a back-up for the police in emergency situations and calamities, but are reluctant to enter a slippery slope of 'mission creep' that would keep them from proper soldiering. The civilian side looks askance at a domestic role of the military personnel, who are not trained in the checks and balances pertaining to the preservation of law and order at home. Conversely, in many countries the public has more confidence in the army than in the police and other security services, which might be more prone to corruption and undue pressures. Yet, if the peacekeeping task abroad increasingly resembles what the police are doing at home – aimed at deterring by presence with the capability and the will to act when necessary – there is little reason to keep them away from domestic involvement, particularly when terrorism strikes.

Fighting terrorism at home implies both the availability of intelligence about international networks and the ability to use force rapidly and decisively. Governments have to issue new guidelines for 'who does what, when and how' and efficient communication among all concerned. The number of authorities involved is high and the introduction of a new layer of coordination is problematical in terms of the time needed to take action. The US has created the Department of Homeland Security, but its performance in the calamity of hurricane Katrina has not been impressive. In Europe most countries want to maintain a balance between ministries of justice and home affairs and to apply the lines of command used under normal conditions to exceptional circumstances as well.

Security in the age of terrorism acquires a specific human dimension.[263] Protection of the individual citizen is a fundamental duty of the democratic state. It is made more complex and difficult when the threat of terrorism looms large and creates an atmosphere of fear and uncertainty. It also reinforces the concept of 'human security', which was advanced

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[263] See *State and human security in the age of terrorism: The role of security sector reform*, a compilation of presentations made at the second joint seminar of the UN Office at Geneva and the Geneva Centre for the Democratic Control of Armed Forces, held on 26 January 2004 in Geneva, UN, September 2004(b).

prior to the attacks of 2001 in response to human suffering in post-World War II conflicts. The Canadian Foreign Minister Lloyd Axworthy was a major proponent, convinced that it was more important to address threats to individuals than to nation states. On his initiative the UN Commission on Human Security drew a number of wide-ranging conclusions in the spring of 2003, which went far beyond the traditional notions of security and also dealt with fair trade, minimum living standards, access to health care and basic education and even an equitable system of global patent rights. To some, this range was too wide, because the recommendations, if followed up, would alleviate much that currently is wrong or unfair in the world. Nevertheless, it was symptomatic of a new approach to security, which had seen its first success in the banning of anti-personnel landmines. On military security, the report started with the protection of people in violent conflict, recalling the fundamental norms of international humanitarian law.[264] This was followed by the protection of people from the proliferation of arms, including the spreading of small weapons and light arms, and supporting people on the move. The fourth point proposed the creation of human-security transition funds for post-conflict situations, judging the availability of financial means an indispensable tool for political and physical reconstruction. A concrete result of the report was the inclusion of small arms and light weapons and their transfers as a major item on the agenda of the Geneva Disarmament Conference.

The tendency away from collective defence and towards peace-support operations had another, quite different effect on the position of servicemen and women in society. Their role as 'guardian soldiers' has already been mentioned. In addition, they have come to be regarded as 'citizens in uniform', in principle entitled to the same fundamental rights as their civilian colleagues. The Parliamentary Assembly of the Council of Europe adopted a recommendation on the right of association for members of the professional staff of the armed forces on 3 September 2002. It argued that with the abolition of conscription, military personnel were becoming increasingly 'regular employees' with the ministry of defence as their employer. Consequently, they should be fully eligible for the rights of employees established in the European Convention on Human Rights and the European Social Charter. The recommendation accepted an interdiction of the right to strike, but specifically mentioned the right to negotiate on salaries and conditions of employment and the right to be members of legal

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[264] Ibid.

political parties. Civil rights in the armed forces may only be restricted to the extent irrefutably necessitated by their military assignment.[265]

The European Organisation of Military Associations (EUROMIL) has been active in this field by defending the social rights of service personnel, particularly *vis-à-vis* the EU and NATO.[266] It provides a list of core elements that may become part of a common European military law and prepares a handbook on multinationality. The growing number of multinational units is an obvious impulse to harmonise labour regulations for the military.

EUROMIL also commented on the draft Constitution proposed by the European Convention, based on the verdict of the European Court of Justice that EU social legislation also applies to members of the armed services. That raised the question of whether the articles in the EU Charter of Fundamental Rights relating to freedom of expression and association would also apply to military personnel (specifically, Arts. 11 and 12 in the Charter adopted as a political document at the Nice European Council in 2000, which became Arts. II-71 and 72 in the Constitution). The answer was negative as long as the restrictions had been made by law. Therefore, an amendment was proposed stipulating that any limitation could only apply if it is considered to be indispensable to maintain member-state functions. The European Code of Police Ethics made the same point in a slightly different manner: restrictions "may only be made when they are necessary for the exercise of the functions of the police in a democratic society".[267]

It should be recalled that the EU Charter, which will not become legally binding as foreseen in the Constitution but retains its political character as adopted by the Nice European Council, concerns the relations between the EU citizen and EU institutions. As at present it seems unlikely that the EU will produce legislation affecting the position of service personnel, their protection will mostly remain a national matter.

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[265] See "Promoting democratic values within the security sector", ch. 25 in *Parliamentarian Oversight of the Security Sector, Handbook for Parliamentarians No. 5*, Geneva Centre for the Democratic Control of Armed Forces and the Inter-Parliamentary Union, Geneva, 2003, pp. 149-58.

[266] See *Social policy for servicemen in Europe: Fundamental principles of the European Security and Defence Policy subsequent to Nice*, EUROMIL Publication No. 1, European Organisation of Military Organisations, Brussels, 2001.

[267] See the Council of Europe, Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics, 19 September 2001.

Conclusions

The door to the future is barred
by a thousand guardians of the past.
Jacques Klein

The words of Jacques Klein were spoken in the context of his efforts as the UN's special envoy in Bosnia. Many will sympathise with him, for progress in the Balkans has been painfully slow. At least people are not killing each other on a massive scale, but a retreat of the international community would risk a relapse into violence. In the wider world the perception of most Europeans will not be optimistic either. They remember the brutalities in Rwanda, Chechnya and the Democratic Republic of Congo and keep their fingers crossed about stabilisation in Iraq. Yet, even in Sub-Saharan Africa the number of casualties has declined. Archbishop Desmond Tutu welcomed the 2005 report on *War and Peace in the 21st Century* prepared by Andrew Mack and the Human Security Centre of the University of British Columbia in Vancouver[268] as a "rare message of hope": since the end of the cold war the number of cases of genocide in the world had fallen by 80% and the number of mortalities owing to armed conflict even more dramatically. What are the causes of this positive trend? First was the end of the cold war that had kept authoritarian regimes in power and paralysed peace-making. Most important was the conscious effort of the international community to establish the conditions under which peace had a chance. After a decline in the mid-1990s the number of soldiers abroad on peace-support missions is at record height. Many of the forces contributed have come from European countries. After bickering over strategic priorities, a new consensus has emerged on the threats posed by terrorism and the

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[268] See Human Security Centre, *Human Security Report 2005, War and Peace in the 21st Century,* Human Security Centre, University of British Columbia, Vancouver, 2005 and Oxford: Oxford University Press (forthcoming).

proliferation of weapons of mass destruction as the most dangerous.[269] In development policies a more coherent approach has been followed by emphasising good governance and the link between security and development.

At the political level the outlook for democracy in what has come to be known as 'Wider Europe' has been transformed within the space of one year. The Rose, Orange and Cedar revolutions have repelled the pervasive pessimism about the conditions of phoney democracy and the absence of genuine reform on the periphery of the EU.[270] Yet, nothing in these encouraging developments is irreversible. Even in the new democracies that have entered NATO and the EU we have seen a disturbing failure of reforming governments to be re-elected, but at least the people have become aware of the possibility to change their destiny. By contrast, in 'old Europe' a mood of discontent is giving scope to renewed nationalism and scepticism about the premises of European integration. Paradoxically, positive appreciation of the European project now emanates from others outside our continent.

Jeremy Rifkin's interesting book on *The European Dream* noted several differences between the EU and the US.[271] Rather than commemorating a noble past, the EU sought to ensure that the past would not be repeated. With its concept of multi-layer governance, later clarified by the principle of subsidiarity, the EU became the first post-modern institutional process. Indeed, it was more of a process than a final destination, and much progress was possible precisely because the ultimate goal remained undefined. In spite of romantic notions of the past, Europe never existed, certainly not within the scope of the present EU, so it had to be created. In that respect the argument that a European *demos* does not exist is not very relevant. The same could be said of the origins of many present states. A community feeling is not an absolute, but rather a dynamic factor, which can grow or diminish over time. Moreover, a strong community feeling is not a precondition for the development of a political system, but on the contrary, its result. This view does not ignore the constraining effect that

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[269] See the interview with Gareth Evans, President of the International Crisis Group, in *Le Monde*, 19 October 2005.

[270] See Michael Emerson (ed.), *Democratisation in the European Neighbourhood*, Centre for European Policy Studies, Brussels, 2005(b).

[271] See Rifkin (2004), op. cit.

the still-embryonic community feeling has at the European level, but this effect should not lead to the fatalistic conclusion that democratic reform only makes sense when a real European identity has developed. We are doing our best to foster nation-building elsewhere, so it would be strange if we deny such developments within our Union, which already possesses some of the symbols and joint activities that are the make-up of a new identity.[272] As to the notion of 'post-modern', it is best explained by Robert Cooper as not resting on a balance of power among the participants, but on the rejection of force and the respect for self-enforced rules of behaviour.[273] Without qualification that might sound naïve, but Cooper carries the argument further by describing the challenge to the post-modern world as getting used to double standards. Among themselves, Europeans may operate on the basis of laws and cooperative security, but when dealing with the jungle outside, they might need to revert to the rougher methods of an earlier era.

The paradox, however, of European integration is that its architects are the nation states, whose very existence is based on the exclusive control of their territory and people. Would there be more to be gained than lost in sacrificing a degree of national sovereignty in return for a greater measure of security and opportunity? As Jeremy Rifkin observed, at each turning point in the 50-year development of the Union, the nations and peoples of Europe have narrowly voted 'yes' to a rewriting of the political contract, conferring more authority on the Union, while giving up an increasing share of their national sovereignty in the process.[274] That process might now be stalling. According to opinion polls the majority of our peoples remain in favour of European integration, although many replace it with the word 'cooperation', but few would admit to having European dreams. The need of the moment seems to be a bottom-up effort of showing people that an effective EU makes a difference to their life and future. The new member states have no difficulty in understanding that, but people in the

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[272] I am indebted to Ben Crum for his contribution "Vertegenwoordigende democratie in de Europese Unie: Een verkenning van de institutionele mogelijkheden" [Representative democracy in the EU: An exploration of the institutional possibilities] in *Nederland en de Europese grondwet*, WRR study, Amsterdam: Amsterdam University Press, 2003.

[273] See Robert Cooper, "Why we still need empires", *Observer*, London, 7 April 2002.

[274] See Jeremy Rifkin (2004), op. cit.; the quotes are from pp. 200-01.

old member states have become immune to explanations of the blessings of Europe. In fact, detailed explanations tend to increase their opposition and unease. Here lies a task for responsible political parties. As long as every member state sees the balance of plusses and minuses responding to its vital interests, there is a future.

With or without a Constitution?

The debate on the future of Europe has suffered a great setback by the rejection of the Constitution in at least two countries. The immediate effect of the stalemate will be a reluctance to embark on any courageous project. Many countries seem to be thrown back on nationalist reflexes and the awareness of the necessity of the European approach, whether through integration or cooperation, will have to be rebuilt from scratch. Paradoxically, globalisation is accompanied by fragmentation and people seem to be growing more parochial at a time when it should be clear that no one can manage alone anymore. The debate has been too inward-looking, centred on immediate cost benefits, and should be turned towards the new external challenges.

It will not be easy to make the institutional progress necessary to cope with the growing demands of a larger Union in a world of increasing complexity and interdependence. The argument has always been between two schools: those who believe that it would be futile to attempt to reach agreement on the *finalité politique*, but that incremental progress would continue to be made as the necessity of new transborder cooperation became evident, and those who saw the need for clarity in the 'who does what and how' framework, particularly in an enlarging Union. Both schools had their merits, but the policy of small steps in practice had the effect of eroding public support for the underlying vision, especially in the founder member states.

Only Germany has by and large kept its sense of history and adjusted to it, which prompted German Foreign Minister Joschka Fischer to start the debate on Europe's destiny. His speech at the Berlin Humboldt University of 12 May 2000 has been criticised for coming either too soon or too late, but was inspired by concern that the citizen might turn against Europe and resume the nationalist reflexes of the past. The only trouble was that his thoughts were overly inspired by German solutions for governing a complex country, and could not stand up to the combined challenge of criticism and international developments. He had to give up

his advocacy of a core group when it caused complications in the negotiations with Poland, and wavered over majority voting in the area of CFSP. His trial balloon to make a vice-president of the European Commission chairman of the General Affairs Council did not rise because his chancellor did not support it. Under Chancellor Schröder Germany distanced itself from the US to an extent that made many wonder whether NATO would survive. He wanted to be *auf gleicher Augenhöhe* – at the same eye level – and followed a line of national pride and moral superiority that served him well during the previous elections but on the whole avoided hard commitments. His major mistake came during the Iraq crisis, when as a member of the Security Council Germany categorically said it would never join the use of force, even if the Council were to sanction it.

The Constitution would have finally given the EU the instruments and capabilities to back up its foreign policy objectives. Some of them may survive because they do not require treaty changes. The question remains, however, as to whether the Union would have the will and the guts to use them. Progress has been careful but tangible. The record of past and present missions is discussed in the previous chapter. Most are of limited size, but Operation Althea in Bosnia includes 7,000 personnel, succeeding NATO's SFOR under the Berlin Plus arrangements.[275]

The European Convention was remarkable in turning itself into a kind of joint constituent assembly, combining national and European parliamentarians as well as representatives of national governments, who ultimately would have a final round among themselves in an Intergovernmental Conference. In this respect it was different from a national *constituante*, like its illustrious example in Philadelphia in the creation of the United States of America, where the entire negotiating process took place within the convention. This time the government representatives had an early warning role in declaring certain propositions unacceptable, but were also negotiating among themselves and keeping the forthcoming Intergovernmental Conference in mind. In the plenary sessions some of them indicated what would be rejected, as in the 'red

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[275] While the EU has taken over responsibility for peacekeeping operations, NATO maintains a headquarters in Sarajevo to assist the country with defence reform. It also carries out some operational tasks in coordination with the EU, such as counter-terrorism and assistance with apprehending persons indicted for war crimes. See Bailes (2005), op. cit., p. 64, note 116.

lines' of the British. It created an element of distortion among the positions of the participants, but it also kept a sense of realism in the debates.

As a precedent for managing treaty changes the Convention proved its utility. It was a unique experience for all participants, but also for the outside world, through its open and public debate on the why, where and how of European integration. The three avenues of approach dealt with institutional clarity and simplification, the definition of the role of the EU in the world, and, prompted by the emergence of catastrophic terrorism, internal security. Owing to delays caused by the Iraq crisis, insufficient time could be spent on the current policies of part III of the Constitution, which were largely left untouched. With the privilege of hindsight, it would have been better if these had been presented in an annex, which might also have increased the chances of a simplified amendment procedure. Now everything remains subject to ratification procedures, unless *passerelle* clauses enable modification through a unanimous decision of the Council.

Changes were limited to a substantial increase of the number of issues to be decided by qualified majority voting, which became the general rule and subject to co-decision by the European Parliament. New was the acceptance of a legal personality for the EU as a whole, which had not been possible in the Amsterdam Treaty of 1997. On defence more elaborate articles had been added, including one comparable to a collective defence obligation. The question of leadership of the EU had been resolved in a complicated and ambiguous manner, like most progress in the Union. Three captains on the ship was not the best recipe for a steady course, and questions remained concerning the relationship between the president of the European Council and the presidencies of the sectoral councils acting under a team arrangement. A problem for the new foreign minister concerned the role of the other commissioners dealing with subjects touching on external relations. Nevertheless, it was worth trying. Europe can only function with collective leadership and does not resemble a single state. In fact, it is much more of a super-partnership than a super-state. The prerogatives of the semi-permanent president of the European Council had been curtailed to pushing the multi-annual agenda proposed by the Commission and agreed by the Council and the European Parliament, and to representing the Union 'at his/her level', i.e. in meetings with the presidents of countries such as the US and Russia.

For the rest, the unexpected agreement on a foreign minister should be given substance by making him/her responsible, with the right of initiative, for the conduct of foreign policy through an integrated diplomatic service of the EU. This would do away with the dual representations currently existing in international organisations. The new double-hatted responsibilities might be helpful in relations with Washington, which has always clamoured for a single EU telephone number. Much of it could be implemented without ratification of the Constitution, except the double-hatting. In theory, Spain could make Javier Solana its member of the Commission, but this could be opposed by the legalistic argument that a commissioner is prevented from having other jobs. Unfortunately, new doubts have been cast about this major innovation, which would substantially enhance the coherence of the EU's role in the world. In analysing the prospects for the 2005 UK presidency it was said that the period of reflection on the Constitution was a relief to the Blair government "in light of initial British opposition to some central elements of the Constitutional Treaty, notably the establishment of an EU Minister of Foreign Affairs".[276] The six-monthly presidency might have some merit in the legislative field, but is an impediment to an active foreign policy. As High Representative for CFSP, Mr Solana has had far fewer difficulties with the Commission than with the successive presidencies, but he shall have to endure more as he is unlikely to become the 'Even Higher Representative' as foreign minister.

All this cannot be done in a purely intergovernmental framework of cooperation. Political will needs some form of majority voting. At the Amsterdam European Council in 1997 a separation was made between those strategies that would require unanimity and those for which implementation could be accomplished through majority decisions. This concept has never been implemented. Some regard majority voting on foreign affairs unthinkable and refuse to go beyond 'constructive abstention', which does not hold up a positive decision, but does not bind the abstainer to its implementation. This modality has never been used either. In the middle of the Convention a paper by the French and German foreign ministers accepted QMV for the CFSP; however, the proposal was abandoned after the Iraq crisis. The UK has remained adamantly opposed.

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[276] See Richard Whitman and Jake Benford, *Opportunity in Crisis? Prospects for the UK EU Presidency in 2005*, EU Reform Spotlight 2005-05, Bertelsmann Stiftung, Gütersloh and Center for Applied Policy Research, Munich, 2005.

The purpose of voting should not be to put countries into a minority position, but to make progress on a course, which, although not deemed the preferred way by all, is nevertheless one that everyone could live with. In the WTO's Uruguay round it took six difficult sessions before a vote was taken on the EU's negotiating position. In most cases consensus will be possible if there is a will to compromise. Ministers in the Council are not pushing for a quick vote, because next time they themselves might be in the minority. But the possibility of a vote at the end of the road changes the game. The knowledge that one cannot block progress can trigger a change in tactics, to join in the debate and work towards a compromise. That is easier said than done. So a first step in this direction might be the definition of certain levels or subjects where QMV could be practiced.

Some have argued that the president of the European Commission should chair the European Council or the GAERC. The Constitution leaves that possibility open, but its value is doubtful. It would follow the example of NATO where the secretary-general chairs all sessions of the Council, at ambassadorial, ministerial and heads of government levels. But in the EU the Commission is the initiator of policy and has to be able to defend its proposals in front of the Council. That position does not fit easily with the role of a chairman, who has to work for a compromise. During the Convention the two incumbent commissioners were not in favour of such a change. The proposal to elect the president of the Commission by the European Parliament and have the choice confirmed by the European Council – the reverse of the procedure endorsed in the Constitution – was not supported by many Europarliamentarians, the reason being that it would politicise the function unnecessarily. An intermediate solution might be a shortlist drawn up by the Parliament from which the European Council chooses the president of the Commission.

The European Parliament emerged as the big winner from the Convention, in spite of the fact that some large countries have little love for this democratic institution. With the virtual application of the rule of co-decision for all issues where QMV has been applied in the Council, the parliamentarians could no longer complain about a democratic deficit, at least not in the field of legislation. In general, the European Parliament has always made clever use of the competences attributed to it, but this has not resulted in a higher standing of its members in the political debate in their home countries, which remains dominated by national issues. Perhaps this is because on many European policy matters the differences between the

parties are not that great and are not reflected in domestic politics until much later when European Union directives have to be translated into national legislation. That could be an argument for politicising Europe more, but ultimately the EU can only progress if people take a long-term view of their national interests and remain willing to compromise. Political debate should not end in polarisation, either nationally or internationally. We shall have to analyse more seriously the conditions under which our democratic ideals can actually be reconciled with the increasing transnational interdependence in every field of international relations.[277]

On substance the Constitution introduced a number of important changes in the area of CFSP. The Petersberg tasks of humanitarian and rescue missions, peacekeeping and the role of combat forces in crisis management (including peace enforcement), were extended to include conflict prevention and disarmament operations. Two solidarity clauses appeared, one in case of a terrorist attack or natural disaster and one in case of aggression against a member state. Countries whose military capabilities fulfil higher criteria and which have made more binding commitments to one another with a view to the most demanding missions could establish permanent structured cooperation within the EU framework. And finally, an armaments agency was created to define common requirements, pursue research and technology, promote joint procurement and, at the end of the cycle, evaluate progress and existing shortfalls. On the face of it, all together this represented gigantic progress.

How would it work in practice? The solidarity clause in case of armed attack was a compromise. The Convention had not been able to go beyond making this the subject of closer cooperation, which in effect would have meant the continuation of Art. 5 of the WEU Treaty with its automatic military assistance clause. During the Intergovernmental Conference the Italian presidency proposed extending it to all members, but only during the subsequent Irish presidency was it possible to find a compromise acceptable to the neutral or non-aligned member states. The Italians had a point in saying that solidarity was incompatible with neutrality. In earlier discussions, Austria, Finland and Sweden had been accused of bad faith in entering the Union, which by then had agreed upon the prospect of a common defence policy. Ireland had accepted it at Maastricht, but later,

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[277] See Alfred van Staden, "De paradox van het referendum", *Internationale Spectator*, Vol. 59, No. 6, June 2005, p. 294.

after its negative referendum on the Treaty of Nice, managed to obtain an assurance from the European Council of Seville of remaining able to continue its traditional security policy. All four countries wanted to maintain their status of being free from military alliances. They could not be persuaded by the argument that the EU was no military alliance as such, but a community of destiny that had to include some military capabilities in a much wider spectrum of assets and instruments. Nevertheless, the compromise in the Constitution was real progress, even if it remained ambiguous on its possible implementation. All had assumed an obligation to render assistance to the aggressed partner, but some would do it collectively and some individually. The solidarity clause removed an anomaly (and also possible guilt feelings).

As the Constitution is unlikely to be salvaged, the period of reflection will have to produce some alternatives and go beyond vague talk of bringing the Union closer to the citizen. The European Parliament in collaboration with national parliaments could formulate a common template for debate, focusing on issues that are of manifest interest to the citizens and the obvious necessity of doing things together on an increasing spectrum of problems that exceed national boundaries. What are the purposes of European integration during a time of globalisation? And what decisions should be taken at the European level? Apparently President Chirac envisages a *rendez-vous institutionnel* during the Austrian presidency of the first semester of 2006 and Austrian Chancellor Wolfgang Schüssel has also talked of organising a broad debate. Others doubt its utility before the French presidential elections of 2007, which have led Germany's new Chancellor, Angela Merkel, to suggest an extension of the reflection period until 2007, when her country will assume the presidency.

Without a Constitution, most progress could be made in the intergovernmental areas, especially in the CFSP and ESDP, provided the political will is there. According to Eurobarometer polls, 82% of Europeans are in favour of an independent EU foreign policy and even 67% for an EU foreign minister. The question is whether they would also be prepared to pay for it. In a 2003 survey, Eurobarometer equally found much support for European defence, but this enthusiasm was not matched by eagerness to provide the necessary funds.

In any case, the reflection pause should not stall the CFSP. Several improvements could be implemented, for they are largely in the intergovernmental area of cooperation and would not require treaty

changes. The European Defence Agency for defining capabilities and promoting cooperation on research and defence procurement can go ahead, for it has already been lifted out of the proposals by the Convention. The institutional innovations probably could not materialise, as with the foreign minister providing a personal union between communitarian and intergovernmental competences. Such a failure certainly would hamper the attempt of the Union to play a larger role on the world scene, because it would not be able to effectively combine the available communitarian and intergovernmental instruments. The ensuing stalemates might lead to renewed efforts to form core groups, moving ahead outside the framework of the Treaty on European Union. A mitigating factor on this tendency, however, would be the negative vote by the French, previously the champions of an *avant garde*. With what kind of France would a core group have to work*?* Moreover, most of the new member countries attach such importance to transatlantic relations and are so concerned about equality among all members, that they would be reluctant to follow French 'multipolar' frameworks, even if Paris no longer uses that word.

The outgoing head of Javier Solana's Policy Unit, Christoph Heusgen, has listed a number of practical but modest steps to make the best of a bad situation.[278] Formally, while the high representative cannot yet chair the foreign ministers' council, large parts of the agenda could be entrusted to his leadership. A step in this direction has been set by Mr Solana's chairmanship of the Political and Security Committee when it meets with the NATO Council. The same could be done in the political dialogue with non-EU countries. Very important is close cooperation with the European Commission. Mr Heusgen mentioned the joint visits to Africa by Mr Solana and the Commissioner for Development, Louis Michel, along with his own practice of inviting representatives of the Commission to sessions of his Policy Unit.

Even more important is the wider question of how to maintain the momentum in a larger Union. If Europe is in a pause, it should not be equated with immobility. The European bicycle is not very good at a *sur place*. More analysis will be needed of the reasons why people have become disenchanted and what they might be willing to accept. Doing the same

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[278] See Christoph Heusgen, "Nach den gescheiterten Referenden: Was wird aus dem Aussenminister der Union und dem Europäischen Auswärtigen Dienst?", *Integration*, Vol. 4, 2005, pp. 336-40. In the Policy Unit every member state accredits one official.

things as the Constitution, but under a different guise, might alienate people even more. But their reasons for voting 'no' are so varied that a common denominator will be difficult to find. That is the problem with a referendum that leaves only a simple yes or no choice. Apparently, a majority of the 'no' voters is not opposed to the European Union, but found the Constitution a bridge too far, according to a Eurobarometer survey.[279] In the Netherlands they complained of insufficient information of what it was all about. Almost a fifth of them were worried about a loss of sovereignty and 13% complained about the cost of Europe for taxpayers. While the French widely supported the general notion of a constitution, the Dutch were far less convinced. Peculiarly enough, 65% of all respondents thought that the rejection of the European Constitution would allow for renegotiation in order to put greater emphasis on social aspects and to better defend Dutch interests. Both responses fit uneasily with the complaint of insufficient information, but might indicate that renegotiation could be a credible option. Whether this would also be acceptable to the growing number of countries that have already approved the Constitution is another matter, just like the question of what other compromise might survive a second round of ratifications and possible referenda.

The Bertelsmann Stiftung has put its hand to drafting amendments to the Treaty of Nice in such a way that the innovations of the Constitution could be saved. They focus on the institutional improvements: the minister of foreign affairs, team presidencies, the semi-permanent president of the European Council, the double majority for QMV and co-decision for the European Parliament, mechanisms of differentiated integration and structural improvements such as the legal character of the Charter of Fundamental Rights, the *passerelles* and the solidarity clauses. It is a useful initiative that merits implementation if governments have the courage to try again. A drawback of this course of action would be the loss of a consolidated treaty that is readable for those who make the effort and simplifies the multitude of current procedures. We may have to live with that, but we should be aware of the risk of de-constructing the remarkable consensus reached during the Convention by creating new divisions between large and small states, rich and poor, new and old, and disrupting the balance between the institutions.

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[279] See European Commission, *The European Constitution: Post-referendum survey in The Netherlands*, Flash Eurobarometer, Fieldwork: 02/04 June 2005, Brussels.

Several points of a future consensus have already emerged. First, the text should be much shorter, possibly limited to part I of the Constitution dealing with institutions and competences. The long and awkward part III, which did not do much more than describe existing policies, did not add much; it also suffered from the lack of an easier revision procedure than the earlier parts. Second, the word 'constitution' should be avoided, as it created the impression of the EU being a super-state (nevertheless, the European Parliament stuck to this terminology). Third, throughout the member states there is support for applying the subsidiarity rules without a formal treaty provision. National parliaments could do that immediately when new Commission proposals appear and thereby increase their involvement in EU affairs at an early stage of deliberations. Subsidiarity is primarily a political question, as a strict distinction between national and EU competences would be difficult to draw. The sooner parliaments realise this, the better it will be for familiarising them and citizens with the EU agenda. Equally, it could be decided to have public meetings of the Council when it debates legislation, to adopt improvements in the comitology, to use the *passerelle* clause for applying QMV in the field of justice and home affairs, and to elaborate upon the people's initiative (requiring a million signatures, which would not be an insurmountable barrier if use of the Internet is allowed).

In the absence of governmental initiatives, the only activities have come from the European Commission and the European Parliament. The Commission published its *Plan D for Democracy, Dialogue and Debate*.[280] In the European Parliament a proposal for a resolution by Andrew Duff and Johannes Voggenhuber envisaged a new attempt by 2007 to be ready before the European elections of 2009, using the Constitution as a starting place. Their resolution was adopted in amended form by the European Parliament on 19 January 2006.[281] It made the point that without the Constitution the success of enlargement would be endangered, because the Treaty of Nice could not provide a viable basis. Moreover, the institutional provisions of Nice would have to be revised after the EU membership had reached the number of 27, which meant that without further changes enlargement would have to come to an end after the accession of Bulgaria

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[280] See European Commission, *Plan D for Democracy, Dialogue and Debate*, COM(2005) 0494 final, Brussels, 13 October 2005(d).

[281] The Resolution adopted by the European Parliament on 19 January 2006 was Res. 2005/2146 (INI).

and Romania.[282] The main proposal of the resolution was to convene an Interparliamentary Forum of national and European parliamentarians in the spring of 2006, prior to the European Council of June and to draw conclusions from the process not later than the second half of 2007 so that new provisions could enter into force before the European elections of 2009. The Forum should focus on questions concerning the aims of integration; the role of the EU in the world; the future European social and economic model in the light of globalisation; the definition of the borders of the Union and the strengthening of freedom, security and justice; and the financing of the EU.

The reactions from the member states were diffused, to say the least. There was much talk of regaining the confidence of the citizens and a broad debate, but no action was taken. The incoming Austrian presidency seemed to wish to revive the Constitution and to bring it in from the cold by developing a 'road map' for the reflection period (if that was the right metaphor, albeit frequently used for any conceivable process) and the remainder of the ratification process, but also made clear that it could not be a 'miracle healer'. Chancellor Schüssel wanted to ask the people to formulate the questions.[283] In Germany, Chancellor Merkel wanted to draw conclusions during her presidency in the first semester of 2007. In France presidential hopeful Nicolas Sarkozy proposed a slimmer version of the Treaty, based on parts I and II of the rejected Constitution, which would not have to be put to another referendum. The Netherlands government did not make any proposals and only stated that it would not re-submit the Constitution, even if somewhat embellished, to another popular vote; its first priority was to raise the effectiveness of the Union in order to show that it served the interests of the citizen. Taking all these reactions together, the procedure adopted by the European Parliament seems to be the most realistic, for it asks relevant questions and incorporates the options suggested by Germans and French. To have a better chance of success it would be advisable to drop the word 'constitution'.

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[282] This argument is valid, but could be circumvented by agreeing the necessary changes in terms of the size of the Commission and voting rights in the subsequent accession treaties.

[283] See the *Financial Times* article, "Schüssel learns a new tune as Europe takes centre stage" (a reference to the Sound of Europe event planned for January 2006 in Salzburg) in the supplement on Austria, 25 October 2005.

As long as the Constitution remains in doubt, the WEU Treaty with its automatic military assistance clause will remain in force, even though the functions of the organisation have all been transferred to the EU. The last activity to be moved was cooperation on military procurement, which has been assumed by the new European Defence Agency. The research cell is expected to follow in the spring of 2006. The only remaining field is the parliamentary dimension of the WEU Assembly, now baptised the Inter-parliamentary European Security Assembly, which continues to play a useful role as long as the European Parliament is denied a competence in intergovernmental subjects such as the CFSP. The Assembly is the only place where national parliamentarians can discuss security and defence issues in a European context. If this problem is not resolved, parliamentarians of member states paradoxically would be better off in the NATO and OSCE assemblies than in an EU framework. A possible way out would be to create a mixed body of national and EU parliamentarians to deal with the intergovernmental aspects of European integration, but neither the member states nor the European Parliament seem inclined to push for this solution. The meetings of the COSAC (consisting of representatives of national committees for European affairs) once per presidency cover the entire range of EU activities and do not perform the consensus-building function of joint work on reports and resolutions. They do not close the gap between national responsibility for the ESDP and the need for European-level expertise.[284]

Judging from past practice, the consensus-based development of the CFSP on the whole has worked fairly well, sometimes even better than the outcome of communitarian dossiers. In spite of all the difficulties, every year has seen some progress, especially in the security and defence field. The EU has accepted wider responsibilities and is running an increasing number of operations. In this respect the old metaphor of 'watching the grass grow' is applicable: at any given moment little seems to move, but at the end of the week the lawn has to be mowed. On some issues, particularly those relating to the Middle East, no agreement has been possible, but in these complicated areas a solution has eluded everyone else, too. The reduced leverage of the US on the countries of the region

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[284] For attempts made during the presidencies of the Netherlands and Belgium of 2001 see van Eekelen (2000), op. cit. COSAC it is attended by a small delegation from the European Parliament.

might enhance the possibilities for a European role as shown by the sudden involvement of EU monitors on the border between Palestine and Egypt.

The weak points of the CFSP remain money and effective crisis management. For 2006 the European Parliament agreed to raise the budget from €60 to €100 million, a small sum in comparison with the other programmes, but that is the consequence of denying the Parliament any say on the substance. From its side the Commission asked for €500 million for research alone, underlining the importance of good cooperation with the European Defence Agency (which itself is not financed from the EU budget but from national contributions). Nevertheless, the capabilities for relevant operations are there and all members want to contribute. As a result, the envisaged permanent structured cooperation will probably not be pushed. For the time being we have to be content with exploring the limits of intergovernmentalism. One of the most important steps would be a continuous effort of the high representative and the commissioner for external relations to make joint proposals to the Council and to forge their representations abroad into a single external service.

Strategic thinking

Few people think of a linear battlefield any more. In most cases, the military will have to operate in small units in the midst of an uncertain population. 'Crisis response' is the NATO term that encapsulates peacekeeping and, when the opponent does not yield, it becomes 'peace enforcement'. An even wider term is 'peace-support operations', which also includes reconstruction and peace-building. In an ideal model, civil war is followed by outside military intervention, emergency aid and finally reconstruction. Unfortunately, crises have a tendency to last and intervention is no guarantee against a relapse into violence. Consolidation and reconstruction require a long-term commitment, as we have seen in Bosnia and Kosovo.

None of the international organisations is very good at crisis management. In fact, few manage anything except trying to limit escalation as much as possible. As we have seen, in most cases the UN is unable to conduct military peace-support operations. Only in the eastern Democratic Republic of Congo do we see robust peacekeeping. The UN does not do forced entries and has never fielded more than 20,000 troops in any single operation. Where these thresholds must be surpassed, NATO, the EU or an

ad hoc coalition is needed.[285] The OSCE became increasingly paralysed by Russian complaints of double standards and an exclusive focus on the area of the former Soviet Union. NATO is withdrawing from European operations and conducts its participation in Afghanistan solely with European units. Meanwhile, competition with the EU grows and gives rise to talk about de-conflicting operations and an 'inverted' Berlin Plus agreement, i.e. that the Alliance could make use of European assets. No wonder that the academic community is contemplating the lack of 'functional security' as a result of the inadequate functioning of the international organisations.

Lawrence Freedman has made the point that the EU has exercised soft power without really trying. It has derived power from its very existence rather than from an active foreign policy. Candidates for membership were prepared to be judged against its standards of liberalised markets and democratic government. Foreign policy has remained largely reactive and many initiatives appeared designed to discourage the Americans from taking bolder steps. Freedman draws the unpleasant conclusion that given the limited stock of hard and soft power available on both sides of the Atlantic, and uncertainty about whether the spread of democracy is really a strategic vision rather than a noble aspiration, there seems to be little choice but to deal directly with regimes of doubtful character and legitimacy.[286]

The ESDP aims at conferring upon the EU the ability to take collective decisions relating to regional (and on occasion wider) security and to deploy a range of instruments to conduct peacekeeping and, if necessary, peace enforcement – preferably with a legal mandate – as a distinctive European action. Progress has been real, but Europe has found it difficult to develop strategic thinking as a basis for its policies. The focus on capabilities cannot escape the question of 'what for?' The European security strategy has made a laudable effort, but falls short of a guideline for day-to-day policy decisions and defence planning. At a given moment it will have to be further refined in a kind of white paper setting out common objectives

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[285] See James Dobbins, "New Directions for Transatlantic Security Cooperation", *Survival*, Vol. 47, No. 4, 2005, pp. 39-54. He calls the UN the nation-builder of first resort.

[286] See Lawrence Freedman, "The Transatlantic Agenda: Vision and Counter-Vision", *Survival*, Vol. 47, No. 4, 2005(b), pp. 19-38.

and the practical measures to implement them. The task force convened by the EU Institute of Security Studies has produced an interesting sample that is discussed in chapter 8 under European scenarios. In 2005 work started on a more specific strategy for Africa, where the EU is assisting the African Union and already has liaison offices in Addis Ababa, Khartoum and the Darfur region. The Belgian Minister for Development Cooperation, Armand de Decker, a former President of the WEU Assembly, has proposed the creation of an EU-African Union peacekeeping training centre as part of this strategy.

Hand in hand with these multilateral processes, national governments should do a number of things:

- update their security concepts and policies and specify their defence needs on the basis of a reasoned threat assessment;

- define their level of ambition for participation in international peace-support operations and specify them in terms of units, skills and readiness for rapid deployment;

- gear personnel and equipment levels to these ambitions, including training, logistical support and cooperative arrangements. Preferably multinational force packages should be formed, trained and ready to deploy as soon as the political decision to join an operation has been taken. The battle groups are a step in this direction, but lack the size and the combined weapons to be effective, except in a few African contingencies;

- coordinate through both NATO and the EU to ensure more attention is given to the acquisition plans of allies and partners in order to avoid duplication and to remedy shortfalls more systematically; and

- obtain public support for the defence effort by applying the democratic principles of 'reveal, explain and justify'. There are far too many variations in national practices for democratic control of the security sector.

These questions are becoming particularly relevant as military strategy is entering what is called "fourth generation warfare",[287] using all available networks – political, economic, social and military – to convince the enemy's political decision-makers that their strategic goals are either

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[287] See Thomas X. Hammes, "War evolves into the fourth generation", *Contemporary Security Policy*, Vol. 26, No. 2, 2005, pp. 189-221.

unachievable or too costly for the perceived benefit. This strategy does not attempt to win by defeating the enemy's military forces, but combines hard and soft power. It is the antithesis of the high-tech short-war approach the Pentagon still appears to be following and seems more appropriate to the Europeans.

Apart from these general considerations a number of political and military questions have to be answered conjointly before a government decides to participate in a peace-support operation. As early as 1995, a few weeks before Srebrenica was overrun by the troops of General Ratko Mladic, the Netherlands formulated a list of 14 points that had to be taken into consideration during the process of decision-making. It was a checklist that boiled down to three criteria: the Netherlands' interest in joining the operation, its military feasibility in a multinational context and widespread support by public opinion.[288]

In a recent book, General Sir Rupert Smith listed two sets of questions to be asked in developing an operational plan. The first set was sought to define the desired outcome and the efforts needed to achieve it. The questions included those such as: Who are we opposed to and what are their desired outcomes? Are we seeking order or justice, and if it is justice, who is it for? Are we going to deal with their present leaders or should we change them partly or entirely? Are we using their laws or ours? To whom will the task of administering the state fall to, them or us? And what are we prepared to threaten or promise to achieve our objectives?

When the crisis moves from confrontation to war, the second set of questions has to be considered: How do we show that our threat is credible and that we are prepared to escalate the level of violence if necessary? How do we demonstrate that our desired outcome is more in the opponent's interest (and that of their people) than us carrying out our threat? And how do we ensure that our promises appear credible in the eyes of our opponent? And so on. From his own experience, Sir Rupert Smith concluded that the true institutional difficulty was to bring all the agencies concerned to answer all these questions coherently.[289]

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[288] See van Eekelen (1998), op. cit., p. 293.

[289] See Rupert Smith, *The utility of force, the art of war in the modern world*, London: Allen Lane, 2005. The sets of questions are on pp. 384-85. Sir Rupert Smith commanded the UN forces in Bosnia in 1995 and served as Deputy SACEUR in 2000-02.

Another set of lessons can be formulated after the unfortunate experience in post-conflict stabilisation in Iraq, where following a very successful military campaign the country lost its 'immune system':

- long-term success should be built up by means of quick impact projects that have immediate effect in the battle for hearts and minds;

- if living conditions do not improve the local population will lose its positive opinion about the military presence;

- basic utilities should function within a period of, say, 100 days if political credibility is to be maintained;

- at the beginning of a reconstruction phase, money and markets have to be available with a minimum of administrative red tape and with the assistance of civilian experts; and

- 'local ownership' is essential for the sustainability of reconstruction projects. Therefore, the transfer of financial means and authority by the intervening party to local authorities is the only way to maintain legitimacy of the intervention.[290]

In combating terrorism, the US and Europe are moving closer together. After the attacks in Madrid and London, Europeans have realised the seriousness of the threat, but still have difficulty with the war image fostered in Washington, because it suggests that the problem could be solved by military means and disrupts the fabric of democratic society. It distorts the balance between freedom and security and risks leading to discrimination of minority groups originating in Muslim countries. While Europeans have lived with terrorism of varying intensity, the shock of 9/11 has had a greater impact on the American perception of terrorism abroad and coloured their approach to the Israeli-Palestinian problem. As American politics was recast around security issues and the war on terror, the European electorate continued to focus on economic issues, mainly unemployment.[291]

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[290] I am indebted to Major Marc Houben for his experience as liaison-officer with the Coalition Provisional Authority (South) in Basrah. Houben made an interesting comparison of the approach of European states towards international crisis management and pointed at the increasing problem of 'constraint management', as most countries put limitations on the tasks their force-contributions will perform.

[291] See the International Institute of Strategic Studies (2005), op. cit., p. 139.

If terrorism is the main threat, the value added by NATO is not self-evident, except when it would be able to define the military tools needed in the fight against it. The EU will be a valuable partner of the US and new lines of information and consultation will have to be opened up. For everyone the new close relationship between internal and external security will have an impact on the organisation of their military, police and other instruments of law, order and crisis management. The US has created the Department of Homeland Security and the EU is giving new impetus to their cooperation in the areas of justice and home affairs, which will be less comprehensive, but nevertheless a powerful incentive for joint action.

In dealing with the present, one should keep in mind how past terrorist campaigns have ended. On that point, Adam Roberts has given us important indications:[292]

- an awareness on the part of the terrorist movements that they are being defeated politically or at least are not making gains;
- the recognition by governments that organise or assist terrorism that they must renounce this method of pursuing a cause, as Libya did in 2003;
- the holding of genuine multi-party elections;
- the amelioration of conditions in order to weaken the strength and legitimacy of their support;
- a shared awareness of stalemate, giving both sides a possible incentive to reach a negotiated or tacit settlement involving mutual concessions;
- sometimes terrorist campaigns wind down rather than end; and
- in some cases the combatants, or at least a proportion of them, may be retrained, as in Guatemala in the mid-1990s.

Prof. Roberts concluded that it does not make sense to give terrorists more credit than they deserve, for example by stressing their potential for strategic effect. In his view, an important aim must not be the capture of every last terrorist leader, but their relegation to a status of near-irrelevance as life moves on, long-standing grievances are addressed and people can see that a grim terrorist war of attrition is achieving little and damaging their own societies.

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[292] See Roberts (2005), op. cit., pp. 119 and 122.

On 1 December 2005 the EU Justice and Home Affairs Council adopted the European Counter-Terrorism Strategy, "the European Union's strategic commitment to combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice".[293] The strategy covered four strands of work: to prevent, protect, pursue and respond. It contained several innovations and was remarkable in its stress on cross-pillar connections. According to the strategy, once per presidency a high-level political dialogue should be held between the Council, European Parliament and Commission to ensure inter-institutional governance. COREPER is to monitor progress with regular follow-up and updates by the Counter-Terrorism Coordinator (currently Gijs de Vries from the Netherlands) and the Commission. In addition to the European Arrest Warrant, a new instrument has been created – the European Evidence Warrant – enabling member states to obtain evidence from elsewhere in the EU to help convict terrorists. Joint investigation teams should be established where necessary for cross-border investigations. Under the heading "pursue" the point was made that the threat assessments of the Joint Situation Centre should be integrated into policy-making on counter-terrorism. Under the heading of "respond", key priorities are to agree EU crisis-coordination agreements and the supporting operational procedures, and to revise the legislation on the Community mechanism for civil protection. All in all, this represents tangible progress in a most sensitive area.

Transatlantic troubles

Over the past 15 years, NATO and the EU have had their ups and downs, usually in opposite proportions. After the demise of the Soviet Union, the future of NATO was in doubt and the EU was in ascendancy, until the sobering experience of Bosnia, which could only be resolved by American intervention. The same experience repeated itself in Kosovo. Afghanistan started as a unilateral action of the US, but the International Security Assistance Force (ISAF) came under the UN and was led by NATO. In 2005 the US changed course and wanted to merge the ISAF with its own Taliban-chasing Operation Enduring Freedom. Several allies found that difficult because of the different nature of the two operations and hesitated about putting them both under an American commander while US forces

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[293] See European Council, European Counter-Terrorism Strategy, Doc. 14469/4/05 REV 4, Brussels, 30 November 2005(c).

were being reduced and replaced by others. American leadership, if Washington still wants to exert it, does not come naturally to the Europeans any more, certainly not when there is no corresponding force contribution. In Iraq, the EU has not been involved, but NATO has managed to play a minor role in training the new security forces. At the same time, the EU has demonstrated step by step that it has been able to take over NATO activities in the Balkans, starting with the intention of the Seville European Council of July 2002 to assume responsibilities in Macedonia.[294]

In fact, on our own continent there has been 'more Europe' without harming the Alliance. The 2004 NATO ministerial session in Istanbul settled the transfer of SFOR in Bosnia to EUFOR, the first sizeable European operation with some 7,000 personnel, working under a UN mandate and the Berlin Plus arrangements with NATO. The problem lies more in a global role of NATO and the architectural ambitions of the EU. As previously noted, the US ambassador to NATO, Nicholas Burns, exploded after the UK had agreed on a (small) EU headquarters, calling this "the most serious threat to the future of NATO" instead of showing appreciation for British efforts at damage limitation.[295] Since then, Washington has appeared to be more relaxed. Transparency has improved and in the relations between NATO and the EU an institutional accommodation has been found, which seems to have prevailed over political unease and ill will. One might question the efficiency of the regular joint meetings of the NATO Council and the Political and Security Committee, because most countries sit there with two ambassadors and one of them may regard it as a waste of time. In that respect, the recently instituted joint meetings at ministerial level are more useful, as well as close contacts between the two bureaucracies. The test will come in a crisis when decisions will have to be taken on which organisation is going to act. The example of Darfur has not been edifying, where the US wanted to coordinate air transport through SHAPE and some Europeans favoured the coordination centre at the Eindhoven airbase.

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[294] Anand Menon has analysed the cumbersome start of this initiative with the UK blocking the deployment of an EU force and France subsequently trying to block the requested extension of the NATO force. See his article "From crisis to catharsis: ESDP after Iraq", *International Affairs*, Vol. 80, No. 4 , 2004, pp. 611-48.

[295] See Fuller (2003), op. cit.

Is Europe doing enough? At first glance the obvious answer is no. With more personnel under arms than the US, the output in fighting power is too small. Ever since the end of World War II, Washington has been pushing the European allies to do more. In the Soviet era, the burden-sharing debate was painful, because European defences clearly would not have been able to withstand a massive Soviet attack. Even that debate was difficult to quantify, because the percentage of GDP spent on defence was only a rough indicator of tangible capabilities and did not take the quality of training and equipment sufficiently into account. Today, such arithmetic is even more difficult as the numbers of forces despatched by European countries are only a small proportion of total capabilities. Deployability is what is lacking.

The EU Institute of Security Studies has taken the initiative to give new substance to the concept of burden-sharing, taking a broad view and including not only force contributions, but also official development assistance and other international efforts.[296] Then European performance acquires a better light with the EU providing 55% of total ODA, although very few countries meet the agreed objective of 0.7% of GDP. The US did better by providing almost twice the humanitarian assistance as the EU. In SFOR in Bosnia the European contribution has always been larger than that of the US (with France having the largest contingent in 2002, but Germany in 2005 when the operation was taken over by the EU as with Althea). Those figures are useful in showing that the EU is doing more than in the past, but say little about their comparative effectiveness. More work will have to be done on measuring input and output. A Clingendael study has done so for six of the smaller EU countries and measured them according to their operational capabilities for carrying out stabilisation operations, education and training, their organisation, research and development, and finance.[297] Who will determine the overall burden and establish criteria, and how will contributions in one area match gaps in another? On defence planning and the monitoring of member countries' fulfilment of their targets for the Defence Capabilities Initiative, NATO is still ahead. In the

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[296] See Gustav Lindstrom, *EU-US burdensharing: Who does what?*, Chaillot Paper No. 82, EU Institute of Security Studies, Paris, September 2005.

[297] See Theo van den Doel, *The Usability of the European Armed Forces: Measuring Input and Output to Military Effectiveness*, Clingendael Netherlands Institute of International Relations, The Hague, November 2004. He selected and defined input and output factors and convergence criteria.

end, only solid achievements will have an impact on how others will perceive the policies of the EU. In US-EU relations the military factor is bound to retain much of its weight and consequently will continue to be an important measure of mutual appreciation and solidarity.

Are Europeans and Americans still capable of effective solidarity in a major crisis? Is it conceivable that the US would not join in if European security really is threatened? Probably not. But then, serious old-fashioned crises within Europe are unlikely to occur. Instead attention is focusing on the impact of crises outside our continent. Samuel Huntington thought of the clash of civilisations in a geopolitical context, but today it occurs more visibly within our own cities. So the question is what the Europeans could handle themselves, or in other words, what the limits of European force projection will be and whether they are sufficiently organised to deal with calamities at home.

The NATO Response Force was pushed by Washington as a challenge to the Europeans that they continued to believe in NATO as a military organisation at the time they were developing their security and defence policy. As Philip Gordon remarked, the plan seemed to be working. Even France has committed 1,700 troops and senior French officers have obtained command positions.[298] Conversely, France has remained difficult in consultations concerning NRF deployment and has limited EU-NATO meetings to Berlin Plus contingencies, thus excluding consultations on terrorism and weapons of mass destruction. The NRF will be fully operational in 2006 and include: a land component with forced-entry capability; a naval task force of one carrier battle group, an amphibious task group and a surface action group; an air component capable of 200 combat sorties per day; and finally, special forces on call.

The Americans will ask to what extent NATO will go global or what coalitions of the willing are likely in the pursuit of common interests. As Neil MacFarlane has shown, recent interventions have had a stronger normative component more similar to the 1990s than to those of the cold war era. He noted a reduction in the frequency of unilateral intervention by the great powers and their growing reluctance to intervene without justification in terms of widely shared normative principles. That

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[298] This point was noted in Nicole Gnesotto (ed.), *EU Security and Defence Policy – The First Five Years (1999–2004),* EU Institute for Security Studies, Paris, August 2004(b), pp. 215-19.

assessment might be less strong after the Iraq war, but he also pointed out that historically speaking the 'absolutisation' of sovereignty and the interpretation of the principle of non-intervention that developed during the cold war had been atypical.[299]

Having peace in Europe, we have to decide what to do with it. Is our society so averse to taking risks that it will be reluctant to send forces to dangerous places? And if not, are we going to follow where the Americans want to be going? The response to that question would change the nature of an Alliance built up during 50 years of collective defence. Today, in each crisis the member states have to make up their mind whether to join the action or not. Joining peace-support operations never is an automatic process, but is inherently selective. In this respect the call for a new transatlantic bargain, always heard when relations are in trouble, has become more difficult to respond to. The historic bargains of the past – never formalised and never perfect – brought a US commitment to provide its European and Asian partners with security and access to American markets in return for a reliable partnership and the acceptance of US leadership within an agreed politico-economic system.[300] More specifically, in Europe the American nuclear guarantee was set against a credible conventional effort by the Europeans. What would a new bargain consist of in terms of mutual obligations in a joint effort to solve common problems? Lord David Hannay made common sense in proposing the initiation of a quiet dialogue to identify the gaps and weaknesses in existing US–EU relations and how best to plug them.[301] When policy options are considered, as much analytical common ground as possible should be established as well as ways to reconcile them.

Currently, we see competition between NATO and the EU in conducting non-Art. V (i.e. peace-support) missions. Kosovo remains the only NATO operation inside Europe. US forces are being reduced and moved to the new member states. In Asia the ISAF headquarters are run by NATO, but only with European soldiers. US efforts to merge the ISAF and

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[299] See S. Neil MacFarlane, *Intervention in Contemporary World Politics*, Adelphi Paper No. 350, International Institute for Security Studies, London, 2002.

[300] See G. John Ikenberry, "America's Imperial Ambition: The Lures of Pre-emption", *Foreign Affairs*, Sept/Oct. 2002, pp. 44-60.

[301] See David Hannay, "A new dialogue can bind America to Europe", *Financial Times*, 27 April 2005.

Operation Enduring Freedom have failed so far. All this raises the question of under what conditions our nations are prepared to envisage military action in this 'unbrave' new world, regardless of the geographical dimension. And how could we arrive at a division of labour when both NATO and the EU are willing to engage in non-Art. V missions? We have come a long way from the maxim that the EU would act only when NATO as a whole is not engaged. Today there is even talk of 'de-conflicting' the two. Would a new strategic concept help in clarifying the situation? On previous occasions this has been a tedious job, but the fact of working together ultimately created a bond among the participants in the exercise. If we can expect sufficient political will to reach a common understanding, it might be given a try. If not, a declaration of common values and objectives could be more constructive. Paradoxically, if consultations function satisfactorily there is less need for a strategic concept, but if they do not, a new one will be very difficult to achieve.

In transatlantic relations, a Union willing to assume larger responsibilities, outside Europe as well, would become a more credible partner to the US, although it remains to be seen whether "our past saviour and increasingly confusing partner and friend"[302] would recognise this sufficiently. In any case, the US cannot maintain the contradictory position of supporting European integration and at the same time opposing a more independent position. Clearly, the EU will not become a 'peer competitor' of the US in any politico-military sense. The purpose of the European security and defence policy is not to oppose the US, but to enhance Europe's influence through an asset that might increase European autonomy. At best it will be a correction mechanism in international power relationships, and even that might be too far-fetched.

All of us will have to draw lessons from Afghanistan and Iraq and reassess the difficult task of post-conflict stabilisation. The new focus of the EU on battle groups will provide the means for early action, but work remains to be done on how groups will operate together if an operation requires more than one, how joint operations with combined weapons will be organised and how many peace-support operations could be sustained at the same time. The battle groups do not fully answer demands for the creation of an EU force, but – in the words of the IISS *Strategic Survey 2004/05* – have "the virtue of furnishing relatively discrete units that can be

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[302] These words are taken from Patten (2005), op. cit., p. 27.

assembled individually".[303] That does not do justice to the willingness of almost all EU member states to bring at least part of their forces up to standard and submit them to certification. It is true that their size is limited and that the EU has not worked out how different battle groups should operate if more than one is needed for an operation. This is related to the question of who should provide the reserves necessary in case of escalation or a more prolonged operation. Then the Helsinki Headline Goals could be called upon or the NATO Response Force. The same question of reserves is topical for the support of UN operations, where ideally the Europeans (and NATO) should make joint contributions.[304]

For the time being, the issue of an EU headquarters seems to be on the back burner as the Berlin Plus arrangement (applied to the operations Concordia and Althea) and the compromise of September-December 2003 (on an EU cell in SHAPE and liaison arrangements) seem to work adequately. The same probably applies to permanent structured cooperation. The current emphasis is on practical cooperation, such as the French initiative to pool together sea and air transport. Pooling will also be important to avoid an unnecessary duplication of investment. In a way, this is the opposite of task-specialisation, which may make it more attractive for countries afraid of becoming overly dependent upon the capabilities of others. The units put into a pool of, say, aircraft or helicopters, would have common bases, but could be used for national purposes as well. Simultaneously, transport needs should be assessed realistically and not be solely concentrated on air transport. During the Iraq war, 95% of US transport was carried out by sea. In the next few years European requirements should be linked to the transport needs of the battle groups, which are only useful if they can intervene quickly. The same will be true for the NATO Response Force, although its transport is supposed to be assisted by American assets.

On the US side, the Iraq experience may lead towards a better appreciation of the values of multilateralism. The persistent use of the term

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[303] See the International Institute of Strategic Studies (2005), op. cit., p. 139.

[304] The NATO *Review* of Summer 2005, (now only available on the website, retrieved from http://www.nato.int/docu/review/previous/previous_en.html) contained an interesting debate between Peter Viggo Jacobsen versus David Lightburn on "Should NATO support UN peacekeeping operations?" (see the section on Debate). There was no fundamental disagreement, but Lightburn did object to a general commitment to all 18 ongoing UN missions.

'coalition forces' already indicates that Washington wants to create the impression of a multilateral operation. The best scenario would be a UNSC resolution after the Iraqi elections and the formation of a government, mandating a stabilisation force to which European countries could more easily contribute. The continuing high level of violence and suicide bombers has made such a force very unattractive. Nevertheless, failure to restore stability and establish democracy in Iraq would have far-reaching consequences, not only in the region, but also for transatlantic relations. In any case, success will require much more consultation, in both the EU and in NATO, and in closer EU–US contacts on our policy objectives. Unfortunately, the EU stumbled just at the moment that the Bush administration was beginning to acknowledge its existence and even its virtues.

Whither Europe?

Without a consolidated basic treaty the EU will continue to grope for its future and its place in the world, and will always repeat the same fundamental debate on every new policy issue. Valéry Giscard d'Estaing had hoped for a Constitution that would last for 50 years, but that was unlikely from the beginning. It might have worked if the Constitution had been limited to the first 60 articles, but certainly part III with its detailed policy areas would have had to be reviewed much sooner. The fact that revision of that part remained as difficult as the more fundamental parts I and II was a negative aspect of the final product.

The catalyst in the debate was obviously the impending enlargement with 10 new members and more to come. Any purist would have preferred the 'deepening' – in the sense of institutional clarity – to have preceded the actual 'widening' of the membership. That proved to be politically impossible. The imperative of enlargement to foster stability throughout a part of Europe that had twice been the cause of a world-wide conflagration prevailed over other considerations. These countries, which had suffered communist oppression, could not be refused any longer by their free brethren who had consistently urged them to become democratic first and then fulfil the entire gamut of the Copenhagen criteria of 1993. Enlargement was probably most difficult for France, which saw the new members as strengthening either German influence in Central Europe or the Atlanticist camp, and under President François Mitterrand France had tried to confer an intermediate status of membership upon them. In Paris

the stability argument won, reinforced by the consideration that a Germany firmly embedded within the European Union geographically would be more at ease with itself – and less dependent on American backing – than a country on the dividing line between a prosperous West and a poor and disorganised East. In the process both countries tried, for different reasons, to establish a good relationship with Russia. Their problem, however, was that Russia still had little to offer except opposition to the US intervention in Iraq and remained pre-occupied with its domestic situation.

Others suspected the UK of ulterior motives in propagating enlargement in order to avoid deepening. The point has merit, certainly in the domestic debate within the country, but should not be exaggerated. Every enlargement has been accompanied by some deepening, but after the 2001 summit in Nice the prevailing question was whether it was sufficient to keep the larger Union governable. At St Malo in 1998 the British came closer to Europe, leaning on their diplomatic expertise and military assets, but wanted to keep the second pillar of the CFSP intergovernmental, without the possibility of majority voting. Apparently they had doubts about the possibility of swaying European decisions their way. Under the Treaty of Nice, the possibility of enhanced cooperation was opened in the field of CFSP and the Constitution added modalities for security and defence. Their implementation hangs in the balance. The careful assumption of larger responsibilities in the Balkans seems a good omen that, in spite of many differences, the EU remains capable of common actions.

Most observers seem to agree that a Europe of 25 member states will need more flexibility. Yet, the experience of the Convention and the IGC shows that the new members are extremely suspicious of any schemes that might leave them out of the loop or infringe on their equal status. Moreover, they are not the cause of fundamental divergences of view; there the culprits are the old member states with their perennial debate on the future of the European Union. Flexibility could take different forms, applied to either the tempo of integration or its scope. Variable geometry, integration by sector or a Europe *à la carte* could be on the menu, but so far flexibility or enhanced cooperation seems to be more a deterrent for those lagging in the mainstream than a method that will be regularly used. Of course, we see several examples in daily life: the euro, the Schengen agreement (which moved to a third agreement among the old six member states of the EU minus Italy, but with Austria and Spain, in their agreement

of 27 May 2005 at Prüm), the automatic military assistance clause of the WEU and Denmark opting out of the security and defence policy. And indeed, it is a tribute to the EU that it could become a network of different procedures and heterogeneous constructions that has furnished flexible responses to different requirements.

That might happen again in the future, but the question is whether new cases could arise easily and where – certainly not where the internal market is concerned. Defence industrial cooperation might be a suitable area; however, the new European Defence Agency could provide the umbrella under which everyone might find a place. Permanent structured cooperation could be another, but not as the closed shop originally envisaged. The criteria for participation are not as hard as they might seem and it is not clear where the functional military requirements end and the political commitments start. Some effort will have to be made to arrive at objective criteria and the new European Defence Agency could play a role in their definition and application. At the moment, all the member states except Denmark and Malta are interested in showing willingness to contribute to peace-support missions through the battle groups. The first test to be applied to their offers is the degree of immediate usability and deployability. To go further it will be necessary to clarify what the additional commitments towards each other might entail and how binding they would be. The Iraq crisis has consigned the more ambitious projects to the dustbin and, as Philip Gordon remarked, will keep us divided until we have found a collective interest in stability.[305]

Neither NATO nor the EU has conducted ground warfare operations and it is an open question as to whether they would be capable of doing so in an out-of-area contingency. Both organisations depend on the willingness of member states to make forces available for a specific operation they could not train for. It is very hard to prepare for unfocused power projection and the US standard for unspecified missions would be several notches too high for its allies. Moreover, NATO has lost the link between multinational headquarters and assigned forces. It has the great advantage of generally accepted, standing operating procedures and rules of engagement and did a good job in Bosnia, Kosovo and Afghanistan in the consolidation phase. But that does not mean that it will be capable of expeditionary warfare. The NATO Response Force is a step in that

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[305] See Philip Gordon, *Financial Times*, 2 June 2005.

direction, but there is no certainty that it will ever be used. The same thing could be said of the EU battle groups, but at least one of them has functioned, albeit *avant la lettre.* For the US, NATO is a toolbox from which to pick and choose if deemed useful and does not seem to be the instrument of choice for scenarios outside Europe. Yet, Washington tries to convince its allies to go global. The Europeans do not see NATO primarily as a war machine any longer and prefer it to be a security organisation with military capabilities linked to the only remaining super power. Under those circumstances, NATO is becoming a looser Alliance, which adapts to the enemy of the moment. If that is true, the EU–US relationship needs to be reflected within the Alliance and notions of a two-pillar system may acquire new meaning. Not as a European identity, because that notion could only work if all members of the EU are also members of NATO, but as a close and permanent consultation mechanism.

If we focus too much on coalitions of the willing, we are in danger of moving away from the effective multilateralism our strategy is espousing and undermining the notion of the indivisibility of security. That applies to both NATO and the EU. Rather than abstract architectures it seems necessary to deal with some very practical questions: To what levels of commitment are we prepared to see the ESDP develop, and how much are we prepared to spend on it? What size of force packages are needed for a credible EU force-projection capability? Or more facetiously, where are all the enemies we need these tasks for? What are the limits to the deployment of the NATO Response Force and the EU battle groups? In other words, let us focus on the things we are capable of doing, rather than harping continuously on the things we would not be able to do. Institutionally, the Political and Security Committee has brought continuity to the CFSP and avoided the theoretical debates that have sometimes marred the meetings of political directors in the Political Committee of the European political cooperation. It has managed to gradually incorporate security issues in its work, which in the times of the EPC had been left to the WEU.

If there is any lesson from our experience in Bosnia and Kosovo, and recently in Darfur, it is that one cannot stop ethnic cleansing with soft power alone. The war in former Yugoslavia was the failure of non-military conflict resolution. This legacy might return to haunt us. That is why the step-by-step assumption of responsibilities in the Balkans is wise and in accordance with what public opinion is capable of accepting. There is a curious paradox in public attitudes towards the military. During the cold

war they supported the defence budget on the assumption that if force levels were adequate they would not have to be used. Today, defence outlays are supported only if the military are seen to be useful and do a good job in peace-support operations.

During the early 1990s, blue berets or blue helmets were the emblems under which peacekeeping operations were carried out, but they hardly ever fired a shot and it did not take long to realise that the UN were not capable of sizeable enforcement measures. The pendulum swung back to the green helmets of national forces. An interesting suggestion was made by Jean-Marie Guéhenno in his foreword to Chaillot Paper No. 78 to link battle groups and the UN Strategic Reserve.[306] This could break the deadlock in inter-institutional relations, where all the parties want to do everything on their own. But a drawback would be that tying forces down to a specific role would affect their autonomous character.

The role of defence as a vital function of the state has changed dramatically over the past 15 years – at least for the countries of Western Europe, which are no longer concerned about the threats of aggression to their independence and territorial integrity. The old members worry about new threats, but the new members situated closer to Russia still have the old ones in mind. Together they wonder what the enormous increase in the American defence budget will be used for. The events of 11 September, when commercial aircraft were turned into weapons of mass destruction have increased scepticism about national missile defence. Equally, the revolution of military affairs and the ensuing transformation efforts have proved of little use in post-war consolidation and reconstruction in Iraq. Asymmetric warfare could not have come as a surprise. Ever since military historian Liddell Hart advanced the 'indirect approach' it has been the preferred way for an opponent, certainly if that opponent is faced with a redoubtable arsenal like that of the US. The challenge today is how to use the military in situations where the problem is only partly military. There lies an opportunity for the EU with its spectrum of instruments. Nevertheless, some military capabilities will remain necessary.

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[306] See Martin Ortega (ed.), *The European Union and the United Nations – Partners in effective multilateralism*, Chaillot Paper No. 78, EU Institute of Security Studies, Paris, June 2005.

A changing defence organisation

The process of reorientation and reorganisation that started after 1989 has gone a long way, but is still far from complete. While the fight against terrorism is making new demands on the military, it is also provoking resistance to giving up the more traditional skills and capabilities. At the same time, the coalescence between internal and external security and the call for increased transparency and accountability make it necessary to review some fundamental questions if the defence organisation is to function harmoniously:

1) How will integral defence-planning be affected?

2) Who is responsible for operational guidance?

3) What is the position of the chief of the defence staff (or general staff according to the name given to the top military officer)?

4) Who exercises the control function?

5) How can we ensure that the general interest of the defence organisation prevails over the interests of the individual services?

6) What is the relationship between the central organisation of the defence ministry and the services?

7) How does consultation with other government departments take place and what subjects are covered?

Further, much centres on the position of the chief of the defence staff (CDS). The CDS combines many functions by being the senior adviser to the minister of defence, the 'corporate planner' of the department and the highest military commander. An almost impossible combination, the role requires careful definition of these responsibilities and the appointment of deputies for the functions of planning and operations. The planning function entails the setting of priorities among the wishes of the different services and incorporating them in a plan covering all activities of the department, not only those directly linked with the individual services. On the basis of this plan budgets will be allocated. Yet, by then it may be too late to exert real influence on running projects, which consideration militates for drawing up a medium-term framework programme that allows for periodic review. If the CDS primarily functions as a chairman of the service chiefs without some hierarchical authority, the corporate plan is unlikely to be more than a compilation of service plans. If, on the other hand, the CDS is able to set individual priorities – subject of course to

ultimate approval by the political authorities – his/her working relations with colleagues is at knifepoint.

This renders the relationship particularly delicate, because the CDS depends on information from below to judge the quality, deployability and sustainability of the units that the post-holder might wish to use in an operational capacity. 'Jointness' could help in overcoming this problem, but unfortunately in most services promotion is made within their own organisation and not in the more distant place of a defence staff where service loyalties have to be subordinated to the general interest.

Another question to be posed is: Who functions as the main player opposite the CDS? Is it the secretary-general of the department or the official responsible for finance and budgeting? And in which forum will final arbitration take place? Different answers are given, relating to the specificity of the matrix that is inherent in a system where functional and operational lines cross. Within each service the functions of operations, personnel, equipment and financial control have their own domain and a decision has to be made as to how the authority of the chief of staff of a service relates to directives that are coming through functional lines from the central organisation. For several decades, the Netherlands suffered from a matrix organisation that provided for interminable discussion among all concerned, but failed to define how a decision should be arrived at. That has been remedied by giving the chief of staff both planning and command functions, and reducing the role of the services to supplying the forces needed for the operations engaged in.

Waves of reform

In almost all European countries waves of reform have followed each other in close array since 1991. Each wave has brought the conscription model closer to its end. Three different waves can be distinguished:[307]

1) The downsizing wave of 1990-95 was predominantly cost-motivated and capitalised on the 'peace dividend'. The duration of military service was shortened, heavy ground-war equipment sold or disposed of and barracks closed.

2) The NATO-oriented phase of internationalism and professionalisation of 1996 to 2000-01 was provoked by the wars in former Yugoslavia and the Kuwait crisis. It was characterised by a

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[307] See Haltiner and Klein (2005), op. cit.

conceptual and strategic transformation of the military in order to face an expanded spectrum of tasks, along with a changing competence and recruiting profile. National defence strategies lost further significance in favour of a much wider security strategy – wider in both a geographical and a functional sense. Partnership for Peace extended the notion of 'security through participation' to the entire continent. Since the number of eligible conscripts started to exceed the needs of the services, arguments of fairness and burden-sharing militated in favour of a complete suspension of the draft.

3)   The third wave of reform, currently taking place since 2000-01 aims at structural modularisation and flexibilisation, combined with a comprehensive professionalisation. The US started with the revolution of military affairs and translated it into the doctrine of transformation directed at network-centred warfare. The Major NATO Command at Norfolk was turned into the Allied Command Transformation to push this concept throughout the Alliance. Its implementation was slowed down by the Iraq crisis and its renewed emphasis on 'feet on the ground', but no one doubts the value of applying modern technology to military operations.

In a survey of some 30 European nations, Karl Haltiner and Paul Klein identified a surprisingly high number of common trends and tendencies. They all seem to converge on a common process of demilitarisation of European societies through a lowering of the ratio of persons and resources raised for military purposes. The political position of the armed forces changes accordingly and their social position comes under pressure unless the consensus behind their new duties of peace-support provides a new underpinning. Looking at the impact of the successive reform waves, the two authors highlighted a number of distinct observable trends that are of paramount importance for the future position of the armed forces, towards

- the constabularisation and internationalisation of the armed forces;
- the demilitarisation of societies;
- a feminisation of the armed forces, especially for military operations other than war;
- the civilisation and re-militarisation of the military;
- a widening civil-military gap; and

- a renaissance of the control issue as a result of the downsizing, the decline of conscription and professionalisation, which might lead to increased tensions between political and military elites.

Most of these trends are self-explanatory, but the fourth one, concerning civilisation and re-militarisation, deserves further elucidation. What was meant concerned the development, on the one hand, of armies as multi-functional organisations, which increasingly follow economic and financial criteria of efficiency and introduce civilian expertise, especially in logistical functions. Guard duties are being transferred to private security companies and catering services provide meals for entire brigades. Conversely, the actual military combat capabilities are concentrated in downsized organisational cores, which are likely to develop their own role models and military virtues. This could lead to isolation of the military in society, which in turn would give more importance to democratic control of the armed forces, not only in Eastern but also in Western Europe. A much broader question concerns the willingness of modern societies to run risks on missions that do not immediately concern the defence of their own territorial integrity and independence. And if they do not, the utility of their armed forces will be called into question.

The need for direction

No one could deny that an EU of 25 member states is a historic achievement within the short time-span of 15 years. Europe is no longer a fault line of history. The EU has become a different place and has achieved what the founding fathers had uppermost in their minds: never again war. During the 1950s, that meant never again war between France and Germany; today it signifies democracy, stability and in the words of the Constitution, "unity in diversity" throughout our continent. In this respect enlargement has been the best result of the CFSP, in close cooperation with the entire spectrum of instruments at the disposal of the Union. In the words of Chris Patten, the EU has been an outstanding agent and sustainer of regime change, rather more effective than America for all its flamboyant attachment to the notion.[308]

The carrots of membership or special arrangements were also proof of the value of soft power, especially when exercised close to home. That should not be an issue. More important is the question of where the power,

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[308] See Patten (2005), op. cit., p. 141.

hard or soft, really lies and how it will be exercised. What do we want to accomplish through the enlarged Union in a new neighbourhood? Will it be possible to continue the process of transcending ethnic and religious identification within our own societies and in our external relations? Could the EU act as a conduit in reconciling the West and the Islamic world and assume a larger role at a time when American influence is low? That would be an even greater challenge than dealing with the security threats of the new century. Unfortunately, with the Constitution in limbo, the idea of a European Union as a semi-coherent unit with a balanced mix of communitarian and intergovernmental activities is at risk.

The time does not seem ripe for core groups. The new member states are keen to avoid arrangements they would be unable to join. The neutral or non-aligned states are prepared for some solidarity clause relating to common defence against aggression. Yet, most expect some flexibility to become necessary in an expanding Union. Several modalities present themselves. An institutionalised coalition outside the TEU with its own institutions is becoming increasingly difficult and would have little room for manoeuvre. It might be revived inside the European Parliament where Karl von Wogau, Chairman of the Subcommittee on Security and Defence, advocates a European defence union on the pattern of the monetary union. He took up the notion launched by President Chirac and Chancellor Schröder in January 2003. To a former secretary-general of the WEU this idea raises a smile, for the EU in 1998 just assumed the functions of the Western European Union. Do we want to resuscitate the WEU? Probably not.

The second option would be enhanced or reinforced cooperation in defence, which has been eased somewhat by the Nice Treaty and extended to the area of CFSP. The question here will be whether inside the group some measure of qualified majority voting would be allowed. So far the UK has resisted this. In the Constitution the mode of permanent structured cooperation emerged, but remained limited to general participation in the battle groups, which might help in providing rapid reaction units but says little about strengthening commitments concerning their use. The main limitation of structured cooperation rests in the fact that the decision to engage in an operation on behalf of the Union remains the prerogative of a unanimous decision by all the members. It should be noted that the proposals for this new form of enhanced cooperation seem to have overtaken suggestions for the creation of a 'European security council'.

The third possibility is a leading coalition, either informal or with a measure of commitment, within the treaty framework of the EU, which prepares joint positions before decisions have to be taken. In the past the Franco-German axis has functioned as such and developed bilateral institutions to work out these agreements in a give-and-take mode. On occasion this procedure has caused severe irritations among the other members and proven counter-productive. Its acceptability to the other (particularly smaller) member states might be greater if the UK were to join in. On foreign and defence issues that might be easier than on subjects relating to the other pillars. This concept would come perilously close to a directorate and it is interesting to note that President Chirac has taken pains to reject the idea of a *directoire.*[309] In foreign affairs it has to be recognised that some countries are able to play a larger role than others, but EU policies only have merit if they are indeed 'common'. That will take time as the development of policy initiatives within the EU is a slow and complicated process. In reality, bodies such as contact groups or the EU-3 on the Iranian problem emerge outside the TEU structure, sometimes even without involving the high representative. The test of the CFSP will be the degree to which it can transcend the level of diluted compromises of generalities and act with determination and stamina.[310]

A friend compared the present situation to a crisis in a tennis club, which is not about tennis but about the statutes, the structure of the clubhouse and the contribution of the members. The comparison is even more complicated by the fact that some of the members prefer to play different games: communitarian on what used to be the central court with initiative for the Commission to propose new rules, co-decision by the Council of Ministers and the European Parliament and the application of the law by the Court of Justice, and an intergovernmental game on separate courts without any clear rules for foreign policy or justice and home affairs. The foreign minister was a device to keep the two courts within one club. Moreover, we need an initiator of policy – preferably the Commission, as it is the best guarantee for all, large and small alike, that European interests are defined that overarch national ones. Unfortunately, the tide is not with

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[309] See "Europe needs strength and solidarity", *Financial Times*, 26 October 2005. The version in the *NRC Handelsblad* was a bit longer and appealed to Europe to remain faithful to its values and social model.

[310] See John Löwenhardt, *Stuck in the Middle*, Clingendael European Paper No. 2, 2005, Netherlands Institute of International Relations, The Hague, p. 40.

the Commission, but the high representative could assume a similar initiating role in his field of competence. The resistance of governments is at odds with public opinion, which overwhelmingly supports a greater role for the Union in the world, at least in the abstract sense. Whether they will also accept the consequences of their conviction by giving up some national influence remains more doubtful.

Dominique Moïsi has sketched three negative scenarios and one positive one.[311] Europe should resist the Venetian temptation of acquiescing in its decay, aspire to more than a Magna Helvetia and counter "the revenge of nationalism". Instead, we should aim at finding a compromise between the different visions of Europe, based on an enlightened view of our self-interests mixed with a reasonable dose of idealism and pursued by new leadership in the founding member states. Indeed, the drive for European integration seems to be fading among the old members – with the exception of the Belgian premier Guy Verhofstadt with his plea for a United States of Europe – but could be revived by the expectations of the new. The year 2005 did not end badly, with a compromise on the financial perspectives, which is always the most difficult point on the agenda. On no other item is the zero-sum character of the negotiations so blatant, i.e. 'if you pay less, I'll have to pay more'. Prime Minister Blair will be remembered for his leadership in saving the Union from utter stalemate. He also managed to disprove the conventional wisdom that the EU only takes decisions at the very last moment. After all, in 50 years of integration and cooperation, Europe has become a better place.

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[311] See Dominique Moïsi, "Europe must not go the way of decadent Venice", *Financial Times,* 13 July 2005.

GLOSSARY

ABM	Anti-Ballistic Missile Treaty
ACA	Armaments Control Agency
ACLANT	Allied Command Atlantic (NATO)
ACTORDS	Activation Orders
AIRSOUTH	Headquarters, Allied Air Forces Southern Europe (NATO)
ARRC	Allied Rapid Reaction Corps (NATO)
ASEAN	Association of South East Asian Nations
ATHENA	Financing mechanism through the contributions of member states, based on a percentage of GDP
AWACS	Airborne Warning and Control System
Benelux	Belgium, the Netherlands and Luxembourg
C4SI	Command, Control, Communication, Computers, Surveillance and Intelligence
CAP	Common agricultural policy (EU)
CBRN	Chemical, biological, radiological or nuclear
CentCom	Central Command (US)
CFSP	Common foreign and security policy (EU)
CIC	Capabilities Improvement Conference
CivPol Unit	UN Civilian Police Unit
CJTF	Combined joint task force
CME 02	Crisis-management exercise in 2002 (EU)
COARM	Council Working Group on Conventional Arms Exports (EU)
CODUN	Council Working Group on Global Disarmament and Arms Control (EU)
CONOP	Council Working Group on Non-proliferation (EU)
COPO	Comité politique [Political Committee of Political Directors from capitals that coordinated the European political cooperation]
COREPER	Comité des representants permanents [Committee of the EU Permanent Representatives]
COSAC	Conference of Community and European Affairs Committees of Parliaments of EU member states
CSBM	Confidence and security-building measures
CSDP	Common security and defence policy
CSIS	Centre for Strategic and International Studies
CTNSP	Center for Technology and National Security Policy
DCI	Defence Capabilities Initiative (NATO)
DCMs	Deployable communication and information modules

DUPI	Danish Institute of International Affairs
ECAP	European Capabilities Action Plan
ECOSOC	Economic and Social Council
EDC	European Defence Community
EDEM	European defence equipment market
EEC	European Economic Community
EPC	European political cooperation
ESDI	European Security and Defence Identity
ESDP	European security and defence policy
EU	European Union
EUFOR	EU Military Force in Bosnia and Herzegovina
EUJUST Themis	EU's first Rule of Law Mission (carried out in Georgia)
EUMC	EU Military Committee
EUMS	EU Military Staff
EUPM/EUPOL	EU Police Mission
EUROFOR	European multinational force of Southern Members of the WEU
EUROMARFOR	European Maritime Forces of Southern Members of the WEU
FAWEU	Forces Answerable to the WEU
FHQ	Force headquarters
FRY	Federal Republic of Yugoslavia
GAERC	General Affairs and External Relations Council (EU)
GAM	Free Aceh Movement
ICBM	Intercontinental ballistic missiles
IFOR	Implementation Force in Bosnia
IGC	Intergovernmental Conference (EU)
IISS	International Institute for Strategic Studies
IPTF	International Police Task Force in Bosnia (UN)
ISAF	International Security Assistance Force in Afghanistan (UN-NATO)
JFC	Joint Force Command (Allied) (NATO)
KFOR	Kosovo Force (NATO)
KLA	Kosovo Liberation Army
MAPE	Multinational Advisory Police Element, Albania (WEU)
MilRep(s)	Military Representative(s) (NATO)
MONUC	Mission of the UN in the Democratic Republic of Congo
NAC	North Atlantic Council (NATO)
NATO	North Atlantic Treaty Organisation
NBC(R)	Nuclear, chemical and biological (radiological)
NPA	NATO Parliamentary Assembly
NRF	NATO Response Force
OCCAR	Organisation Conjointe de Coopération en matière d'Armement [Organisation for Joint Armament Cooperation]

ODA	Official development assistance
OSCE	Organisation for Security and Cooperation in Europe
PfP	Partnership for Peace
PGM	Precision-guided munitions
POL/MIL	Police and military
PSC	Political and Security Committee (EU)
PU	Policy Planning and Early Warning Unit (EU)
QDR	Quadrennial Defense Review (US)
QMV	Qualified majority voting
S&R	Stabilisation and reconstruction
SAC	Standing Armaments Committee (WEU)
SACEUR	Supreme Allied Commander Europe (NATO)
SACLANT	Supreme Allied Command(er) Atlantic (NATO)
SFOR	Stabilisation Force in Bosnia (NATO)
SHAPE	Supreme Headquarters Allied Powers Europe (NATO)
SHIRBRIG	Multinational brigade for UN operations
SIPRI	Stockholm International Peace Research Institute
SMART concept	Supporting human rights, monitoring, advising, reporting and training
SPD	Social Democratic Party (Germany)
TEU	Treaty on European Union
UAV	Unmanned aerial vehicle
UN	United Nations
UNHCR	UN High Commissioner for Refugees
UNMIK	UN Mission in Kosovo
UNPROFOR	UN Protection Force (in Bosnia-Herzegovina)
UNSC	UN Security Council
UNSCOM	UN Special Commission, for inspections in Iraq
UNTAG	UN Transition Assistance Group
WEAG/WEAO	Western European Armaments Group/Organisation (WEU)
WEU	Western European Union
WEUDAM	WEU Demining Assistance Mission in Croatia
WMD	Weapons of mass destruction
WTO	World Trade Organisation

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Annex 1. The European Union Military Staff Organisation*

1.   Introduction

At Helsinki, the EU member states decided to establish within the Council, new permanent political and military bodies enabling the EU to assume its responsibilities for the full range of conflict prevention and crisis management tasks defined in the EU Treaty, the Petersberg tasks. As provided in the Helsinki report, the EUMS, "within the Council structures, provides military expertise and support to the CESDP, including the conduct of EU-led military crisis management operations". For this purpose, the Terms of Reference of the European Union Military Staff (EUMS) are defined as below.

2.   Mission

The Military Staff is to perform "early warning, situation assessment and strategic planning for Petersberg tasks including identification of European national and multinational forces"' and to implement policies and decisions as directed by the European Union Military Committee (EUMC).

3.   Role and Tasks

- It is the source of the EU's military expertise.
- It assures the link between the EUMC on the one hand and the military resources available to the EU on the other, and it provides military expertise to EU bodies as directed by the EUMC.

- It provides an early warning capability. It plans, assesses and makes recommendations regarding the concept of crisis management and the general military strategy and implements the decisions and guidance of the EUMC.

- It supports the EUMC regarding situation assessment and military aspects of strategic planning,† over the full range of Petersberg tasks, for all cases of EU-led operations, whether or not the EU draws on NATO assets and capabilities.

- It contributes to the process of elaboration, assessment and review of the capability goals taking into account the need, for those Member States concerned, to ensure coherence with NATO's Defence Planning Process (DPP) and the Planning and Review Process (PARP) of the Partnership for Peace (PfP) in accordance with agreed procedures.

- It has the responsibility to monitor, assess and make recommendations regarding the forces and capabilities made available to the EU by the Member States, on training, exercises and interoperability.

4.   Functions

It performs three main operational functions: early warning, situation assessment and strategic planning, in addition to the functions below.

- Under the direction of the EUMC it provides military expertise to EU bodies and, in particular, to the Secretary-General/High Representative [SG/HR].

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† Preliminary definitions:

Strategic planning – planning activities that start as soon as a crisis emerges and end when the EU political authorities approve a military strategic option or a set of military strategic options. The strategic process encompasses military situation assessment, definitions of a POL/MIL framework and development of military strategic options.

Military strategic option – a possible military action designed to achieve the POL/MIL objectives outlined in the POL/MIL framework. A military strategic option will describe the outline military solution, the required resources and constraints and recommendations on the choice of the operations commander and OHQ.

- It monitors potential crises by relying on appropriate national and multinational intelligence capabilities.

- It supplies the Situation Centre with military information and receives its output.

- It carries out the military aspects of strategic advance planning for Petersberg missions.

- It identifies and lists European national and multinational forces for EU-led operations coordinating with NATO.

- It contributes to the development and preparation (including training and exercises) of national and multinational forces made available by the member states to the EU.

[The modalities of the relation with NATO are defined in the relevant documents:]

- It organises and coordinates the procedures with national and multinational HQs including those NATO HQs available to the EU, ensuring, as far as possible, compatibility with NATO procedures.

- It programmes, plans, conducts and evaluates the military aspect of the EU's crisis management procedures, including the exercising of EU/NATO procedures.

- It participates in the financial estimation of operations and exercises.

- It liaises with the national HQs and the multinational HQs of the multinational forces.

- It establishes permanent relations with NATO according to "EU/NATO Permanent arrangements" and appropriate relations with identified correspondents within the UN and OSCE, subject to an agreement from these organisations.

a)   Additional functions in crisis management situations are:

-   It requests and processes specific information from the intelligence organisations and other relevant information from all available sources.

-   It supports the EUMC in its contributions to initial Planning Guidance and Planning Directives of the Political and Security Committee (PSC).

- It develops and prioritises military strategic options as the basis for the military advice of the EUMC to the PSC by –
  - defining initial broad options;
  - drawing as appropriate on planning support from external sources that will analyse and further develop these options in more detail;
  - evaluating the results of this more detailed work and commissioning any further work that might be necessary; and
  - presenting an overall assessment, with an indication of priorities and recommendations as appropriate, to the EUMC.
- It can also contribute to the non-military aspects of the military options.
- It identifies in coordination with national planning staffs and, as appropriate, NATO, the forces that might participate in possible EU-led operations.
- It assists the operation commander in technical exchanges with third countries offering military contributions to an EU-led operation and in the preparation of the force generation conference.
- It continues to monitor crisis situations.

b) Additional functions during operations are:
- The EUMS, acting under the direction of the EUMC, continuously monitors all the military aspects of operations. It conducts strategic analysis in liaison with the designated operation commander to support the EUMC in its advisory role to the PSC in charge of the strategic direction.
- In the light of political and operational developments, it provides new options to the EUMC as a basis for EUMC's military advice to the PSC.

5. Organisation

- It works under the military direction of the EUMC to which it reports.

- The EUMS is a Council Secretariat department directly attached to the SG/HR; it is composed of personnel seconded from the member states acting in an international capacity under the statute to be established by the Council.

- EUMS is headed by the DGEUMS, a three-star flag officer, and works under the direction of the EUMC.

- In order to cope with the full spectrum of Petersberg tasks, whether or not the EU has recourse to NATO resources, the EUMS is organised as in Annex 'A'.

- In crisis management situations or exercises, the EUMS could set up Crisis Action Teams (CAT), drawing upon its own expertise, manpower and infrastructure. In addition, it could, if necessary, draw upon outside manpower for temporary augmentation to be requested from the EU Member States by the EUMC.

6.   Relations with third countries

- The relations between the EUMS and the non-EU European NATO members and other countries, which are candidates for accession to the EU will be defined in the document on the relations of the EU with third countries.

Annex 2. The EU's External Action Principles[*]

1.   The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter and international law.

    The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations, which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2.   The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

a)   safeguard its common values, fundamental interests, security, independence and integrity;

b)   consolidate and support democracy, the rule of law, human rights and international law;

c)   preserve peace, prevent conflicts and strengthen international security, in conformity with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

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[*] This text is extracted from Art. III-283 of the Treaty establishing a Constitution for Europe, CIG 87/04, 6 August 2004 (Art. III-193 of the Convention draft).

d)   foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

e)   encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

f)   help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

g)   assist populations, countries and regions confronting natural or man-made disasters;

h)   promote an international system based on stronger multilateral cooperation and good global governance.

3.   The Union shall respect the principles and pursue the objectives listed in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the Union Minister for Foreign Affairs, shall ensure that consistency and shall cooperate to that effect.

Annex 3. Working Document No. 2 Working Group VIII on Defence, European Convention

Wim van Eekelen
19 September 2002[*]

1.   In the Maastricht Treaty the notion of 'defence implications' (which were left to WEU to elaborate) remained ambiguous. In fact, neither the EU nor WEU dealt with defence in the sense of defence of national independence and territorial integrity. Apart from naval embargoes in the Gulf and in the Adriatic all operations were of a modest scale and involved police and customs officers. It would have been better to refer to 'operational' or 'military' implications of the CFSP. The Amsterdam Treaty did not correct this ambiguity. In Nice collective defence was expressly left to NATO. Of course, the WEU Treaty in its Art. V contained an automatic military assistance clause, but WEU never became an organization to implement this commitment.

2.   In discussing defence the working group should discuss three aspects.

A)   Should the growing solidarity among members of the EU also find expression in a collective defence commitment, possibly in a protocol to be signed by those members willing to subscribe to it?

B)   What military capabilities are deemed necessary for supporting the CFSP/ESDP and how should these be organized and deployed?

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[*] This Working Document was submitted to the European Convention, Working Group VIII on Defence, by Wim van Eekelen, 19 September 2002.

C)   Is it now possible to create an armaments agency, starting with standardization of the equipment of the Headline Goal capability of 50-60,000 men and linking it with the technological and industrial policies of the EU?

3.   Military cooperation in the EU has suffered from a lack of strategic vision of European interests and from the difference between the traditional legislative process with directives, etc. and the much more time-sensitive requirements of crisis management. Both disadvantages will take time to overcome. So far the 'strategies' of the EU have been insufficiently precise to serve as guidelines for military cooperation.

4.   The statement that the Headline Goals (HLG) should be able to carry out even the most demanding of the Petersberg tasks has led to criticism of the existing gaps in the European capabilities. It seems important to redress this feeling of European inadequacies by progressively defining what the EU would be able to do, rather than focusing on what it is and will be unable to do. Clearly, a comparison between the HLG of 50-60,000 men (even if multiplied to be sustainable for a year) and the much greater potential of the combined military forces of all members of NATO will always put the EU at a disadvantage.

5.   A practical step-by-step approach would be to develop possible scenarios, starting at the periphery of Europe, and request member countries which contribution they would in principle – for planning purposes – be prepared to make. Then it would be possible to plan force packages, their command arrangements as well as transport, logistics and communications, and exercise them. That would also be the best way to discover deficiencies in the force packages. Until now, however, the scenario approach has met political problems (notably in Germany) because of reluctance to consider hypothetical situations. Nevertheless, a rapid reaction capability will only be effective if some degree of advance planning is allowed.

6.   A very important part of the Headline Goal decision is the addition of a police component of 5,000 men. This fits in with the experience in former Yugoslavia that after the initial intervention to restore peace, the role of the military is an umbrella function under which political reconstruction can take place. Civil-military is of the essence and the restoration of civil society depends more on the functioning of police, judges and jails than on military activities. At the same time peace support is changing the role of the military. Increasingly it functions abroad in the way the police do at

home: it deters through its presence and is ready to act if the peace is disturbed. The role of the military changes to that of a 'guardian soldier' (the expression comes from the Swiss Gustav Däniker) and ministries of defence become ministries of international security. The EU will be well-placed to respond to this new security environment, because it favours the combined use of all the instruments at its disposal.

7.   This does not mean that the traditional military skills are becoming less important. On the contrary, events have proven the possibility of rapid escalation from peacekeeping to self-defence and the need for offensive action. European forces need to be prepared for those contingencies. The real questions remain the 'what for' and 'how much is enough'. Expenditure in terms of a percentage of GDP is too rough a yardstick if the resulting forces remain focused on territorial defence and are not able to participate in intervention- and force-projection type operations. Moreover, the Headline Goals of 50-60,000 men will absorb only a part of national defence budgets. Although some countries will have to spend more to make a credible contribution, it will be more important to spend differently and to introduce a system of common examination and evaluation in order to assess the quality, readiness and relevance of the national commitments.

8.   With the creation of an EU military staff and a military committee the EU has mirrored the NATO structure. One might question the wisdom of parallel structures at a time when political and military elements have become more intertwined than ever before. The architecture might work, however, if the Council, after deciding to start an operation, allows the Political and Security Committee (PSC) to act on its behalf in the day-to-day work of crisis management and if the PSC develops a dear link with and sufficiently flexible mandate for the field commander.

9.   European armaments cooperation is not a success story. Some progress bas been made in the consolidation of the armaments industry, first in promoting national champions, now focusing more on trans-border mergers and cooperation. In EUCLID pre-competitive research was promoted, including the competence to conclude contracts. The overall picture remains dispersed, however, with WEAG/WEAO, OCCAR and LoI working on separate tracks. The latter two are basically work-sharing arrangements covering a number of concrete projects subscribed to by a limited number of countries (instead of previous arrangements on a project-by-project basis). Crucial steps will be:

a)   the combination of national research and development budgets for common projects, preferably with a common budget.

b)   the recognition in the Treaty of the European Union that the preservation of a defence industrial and technological base is an interest of the Union as a whole.

c)   focusing cooperative projects on potential synergies. The large transport aircraft is an example (even though the quantitative needs for possible European operations have not been defined). Standardization of equipment for the HLG is another, where commonality would be both militarily effective and industrially economically efficient.

d)   enhancing competition among EU members, which does not necessarily mean opening up the armaments market to non-EU countries which keep their own markets closed.

10.   Decision-making: The dispatch of forces into an actual operation is likely to remain subject to the agreement of national governments (and in many cases also of national parliaments). This does not mean, however, that the entire process of decision-making has to remain intergovernmental and unanimous. In the first place a distinction has to be made between the start of the operation and its conduct in the field: while for the decision to start an operation consensus is desirable, insistence on unanimity for the follow-up would be a recipe for inaction. Therefore, the possibility of 'constructive abstention' should be envisaged, which does not bind the abstaining country to implement the decision. In any case, participation in the initial political decision does not mean that forces will be contributed to its implementation. This will depend on the nature of the operation, its planning and national capabilities. The conduct of the operation probably will not involve all members of the EU and therefore will have to provide a special role for the contributors. The notion of a "coalition of the willing" can also apply within the EU (or NATO) and is not limited to an ad hoc crisis management operation outside institutional structures. This means also that there is no clear rationale for excluding the possibility of 'reinforced cooperation' from the field of security and defence, provided the requirements of transparency and open-endedness are preserved.

11.   As a new and potentially autonomous actor in the field of security the EU has a chance to develop a broad concept of security. The European Council of Göteborg (June 2001) adopted a programme for the prevention of violent conflict which made conflict prevention and early warning a

priority to be integrated in the entire spectrum of the CFSP and using all its instruments. At the beginning of each presidency the regions requiring priority attention would be indicated. A weak point in the programme is the lack of a reference to crisis management, which is to be explained by the reluctance of the formerly 'neutral' members of the EU. Their reluctance could be overcome by the formulation of a Strategic Concept which defines the 'what for?' of the ESDP and the Headline Goals and the conditions governing the possible use of force. Such a concept would develop the notions of comprehensive security, including conflict prevention, democracy building and economic development and also cooperative security with neighbouring regions, but – in order to be credible – should also contain a military capability underpinning the policies of the Union.

12.   The pillar structure of the EU is not conducive to a comprehensive approach. Apart from other weaknesses, the military cooperation is not yet fully integrated and the ambiguities of Maastricht have not been resolved. The time-urgency of crisis management requires new procedures such as the High Representative chairing the Council when it needs to discuss CFSP/ESDP matters and the PSC in an actual crisis. This is no role for a six-monthly presidency. Double-hatting the High Representative with the Commissioner for External Relations has the attraction of bringing the military and civilian aspects closer together. Nevertheless, the fact that the Commissioner is a member of a collegiate body and therefore bound by its decisions remains an obstacle. A first step could be to allow each to be present in the fora of the other, i.e. the High Representative to attend the meetings of the Commission when external relations are discussed.

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