

The Evolution of Flexible Integration in European Defence Policy:

Is permanent structured cooperation a leap forward for the Common Security and Defence Policy?

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Abstract

The Treaty of Lisbon contains several options for creating some degree of flexibility in the defence domain under the assumption that it will be difficult, and not always necessary, to do everything at 27: constructive abstention, the possibility of mandating a smaller group or for the most demanding missions 'permanent structured cooperation in defence' (PSCD). It is not yet clear, however, how the possession of larger military capabilities and how the will to enter into more binding commitments will be elaborated. This paper traces the debate on flexibility in the area of security and defence and addresses, in particular, PSCD and its potential application.

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**THE EVOLUTION OF FLEXIBLE INTEGRATION
IN EUROPEAN DEFENCE POLICY:
IS PERMANENT STRUCTURED COOPERATION A LEAP FORWARD
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Long before the negative Irish referendum took place, European politicians had started to look at the opportunities for future action offered by the Treaty of Lisbon. One issue that made the headlines concerns a highly sensitive policy area: defence – or rather what is called in this post-cold era, the military aspects of security. Although the treaty provisions would not challenge the legitimacy of Irish neutrality, they became a major concern during the referendum campaign. Especially in view of a possible second Irish referendum, it can therefore be expected that defence matters will receive less visibility during the French EU Presidency than initially foreseen. Nevertheless, the subject remains topical in view of the likelihood either that the Treaty of Lisbon will eventually be ratified, or that we will see a tendency towards cooperation outside the EU treaty framework, which would then also probably be inspired by ‘permanent structured cooperation’ as foreseen by the Treaty.

The French EU Presidency has floated the idea of a core of the six largest member states cooperating on defence issues. The idea as such is not new: already in 2002 the European Convention that drafted the discarded Constitutional Treaty proposed the extension of flexible forms of integration to the field of military and defence cooperation. The Treaty of Lisbon contains several options for creating some degree of flexibility in the defence domain under the assumption that it will be difficult, and not always necessary, to do everything at 27: constructive abstention, the possibility of mandating a smaller group, or for the most demanding missions “permanent structured cooperation in defence” (PSCD). It is further defined in Protocol 4 to the Treaty of Lisbon (ToL). It is not yet clear, however, how the conditions of the possession of larger military capabilities, and of the will to enter into more binding commitments, will be elaborated. Some work might be done during the French Presidency, particularly because Germany seems to have rallied to the concept. At a security conference of his SPD party, Foreign Minister Frank-Walter Steinmeier even revived the idea of a ‘European Army’ starting with a European Air Transport Command, a Council of Defence Ministers and a permanent European Defence Academy. Decisions are unlikely before the Treaty of Lisbon has been ratified by all member states. Premature action – and talk of a European Army rather than European ‘military capabilities’ – might jeopardise the adoption of the treaty. This paper traces the debate on flexibility in the area of security and defence and, in particular, addresses PSCD and its potential application.

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So far the efforts to develop European-led military capabilities have not been impressive. The Helsinki Headline Goals of 1999 have not been met and their implementation has been postponed until 2010 and probably beyond. Ambitions have been lowered to create battlegroups of some 1,500 personnel, two of which will be on quick reaction alert every six months. Is this all the European Union is able to muster from its combined forces of some million and a half?

Flexibility as a means for further integration

Conceptually, ‘flexibility’ is the catch-all term for arrangements that do not include all member states. Hard-core, variable geometry, two-speed, à la carte – all are intended to take account of differences in integrative capacity or willingness to give up sovereignty concerning matters of mutual interest across national borders. Countries always teamed up in the intergovernmental sphere outside the treaties and in some important areas like the Schengen agreement their arrangements were taken over by the EU only after they had proved to be successful. Flexibility was to square the circle between solidarity and effectiveness within the Union framework.¹

Any form of cooperation between a limited group of members is however bound to raise issues of coherence and solidarity within the EU’s larger framework. Those who cannot or will not join are likely to feel left out, and those who want to go further in their cooperation or integration do not want to be held back by stragglers. In view of the growing membership of the European Union, it was assumed that flexible integration would be an inevitable means of coping with the contrasting requirements of deepening and widening the Union and that new elements of flexibility should be added.² Over the years, we have seen several examples of limited groupings. The Benelux and the Western European Union already existed before the EEC Treaty was concluded; later we saw the emergence of the Schengen agreement for the free movement of people and goods and of the eurozone in the monetary field. On the whole, however, flexible forms of integration did not take off, primarily because the new members insisted on equality of treatment and did their utmost to avoid falling behind, while many of the old members kept their own reasons for not wanting to go too far. Moreover, the Council managed fairly well in taking decisions by consensus, even when qualified majority voting was allowed. In practice, the Council rarely voted and there was little incentive to proceed with flexible measures. In the field of security, several members feared a weakening of NATO, a sentiment that was shared by the new members from Central Europe, who were more concerned with collective defence than with the new tasks of peace enforcement and stabilisation. In fact, the old members of NATO were thinking of new tasks for the Alliance while the new members gave priority to the old NATO.

¹ Flexibility also is used in another sense: the ability to meet, by unanimous decision, an objective of the Union when the Treaty itself does not provide the legal basis. In the ToL this flexibility is no longer limited to the Internal Market and is extended to all other objectives. Art 354 TFEU replaces Art. 308 TEU, but Declaration 41 excludes legislation in the field of the CFSP. In this paper, ‘ToL’ will indicate the changes made by the Treaty of Lisbon. ‘TEU’ will refer to the final version of the new Treaty on European Union (55 articles) and TFEU to the Treaty on the functioning of the European Union (358 articles). In the final versions both treaties have been renumbered; this paper follows the new numbering.

² See, for example, Thomas Zehetner, “Flexibility for CFSP/ESDP – Squaring the Circles of Unity and Diversity”, UACES European Studies On-Line Essays, University College London, May 2006 (<http://www.uaces.org/E53Zehetner.pdf>) and Christian Deubner, *Closer Co-operation in Tomorrow’s European Union.*, Occasional Lecture Series, UCLA Center for European and Eurasian Studies, Los Angeles, Paper 7, 2006.

1. EU treaty reform on security and defence matters – An overview of developments

The Treaties of Amsterdam and Nice left a mixed heritage on security and defence matters. On the one hand Amsterdam had transferred the Petersberg principles of the WEU to the Treaty on European Union in its Article J7.2, but without the reference to the contribution to collective defence.³ This was done at the initiative of Finland and Sweden, which at that time did not want to be involved in defence against aggression, but were positive about European activities in peacekeeping and even in peace-enforcement. On the other hand the treaty mentioned the possibility of integrating the WEU in the EU, if the European Council would so decide. Such integration was taken a step further by Protocol A, which agreed that the EU and WEU would draw up arrangements for enhanced cooperation between them, within a year from the entry into force of the Treaty of Amsterdam. This happened soon afterwards at the European Council of Cologne in June 1999 when the functions of the WEU were transferred to the EU, but the situation was not clarified with respect to the treaties. For that reason, the Netherlands insisted in 2000 that the Treaty of Nice should include the formation of the Political and Security Committee in its Article 25.

1. The **Treaty of Amsterdam** envisaged the possibility of “closer cooperation”, as it was then called, in a new Article 5A (to become Article 11 in the consolidated version). Member states intending to establish closer cooperation could address a request to the Commission, which might submit a proposal to the Council to that effect or inform the states concerned of the reasons for not doing so. Authorisation would be granted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. Other members would have a right of veto by declaring that, for important and stated reasons of national policy, they opposed the authorisation; then a vote should not be taken and the Council could, by qualified majority, refer the matter to the European Council. In any case, the scope of closer cooperation was limited. It applied only to areas covered by the EC Treaty, but should not concern subjects falling within the exclusive competence of the Community; not affect Community policies, actions or programmes; not concern the citizenship of the Union or discriminate between nationals of member states; remain within the limits of the powers conferred upon the Community; and not constitute a discrimination of trade between member states or distort the conditions of competition between them.

2. The **Treaty of Nice** somewhat facilitated the establishment of enhanced cooperation in the future. The number of members required for launching the procedure would no longer be one third, but was fixed at eight (the Treaty of Lisbon would raise it to nine) and the scope was extended to the CFSP. The right of veto was dropped except for the CFSP area which would require a unanimous decision. Military cooperation was specifically excluded from the concept of enhanced cooperation. The provisions on triggering the procedure and on future participants varied across the three pillars, but were grouped together in Title VII of the Treaty.

The Treaty of Nice also added new conditions: enhanced cooperation must contribute to enhancing the process of integration within the Union and must not undermine the single market or the Union’s economic and social cohesion. It must be undertaken only as a last resort, when it

³ The WEU ministerial meeting on the Petersberg principles near Bonn of 19 June 1992 defined WEU missions as follows: “Apart from contributing to the common defence in accordance with Article V of the Washington Treaty and Article V of the Modified Brussels Treaty respectively, military units of WEU member states, acting under the authority of WEU, could be employed for: humanitarian and rescue tasks; peacekeeping tasks; tasks of combat forces in crisis management, including peacemaking”. Participation in specific operations would remain a sovereign decision of member states in accordance with their national constitutions.

had been established within the Council that the objectives of such cooperation could not be attained within a reasonable period of time by applying the relevant provisions of the treaties. In opening up the possibility of enhanced cooperation in the area of the CFSP, the stipulation was added that it should be aimed at safeguarding the values and serving the interests of the Union as a whole, respect the principles, objectives, general guidelines and the consistency of the CFSP, the powers of the European Community and the consistency between all the Union's policies and its external activities. It should relate only to the implementation of a joint action or a common position. However, it should not relate to matters having military and defence implications. The European Parliament and the other members of the Council should be kept fully informed, through the High Representative for the CFSP, of the implementation of the enhanced cooperation.

3. During the **European Convention** progress was made on several fronts. Its Defence Working Group under the able leadership of Commissioner Michel Barnier proposed a number of innovations, which by and large were accepted by the Convention, but not without substantial debates.⁴ The proposals included:

- **Updating the Petersberg missions** to include conflict prevention through early warning and confidence and security building measures; joint disarmament operations; military advice and assistance in 'defence outreach' including democratically accountable armed forces; post-conflict stabilisation; and support for the authorities of a non-member country, at their request, in combating terrorism.
- **Giving the High Representative a right of initiative in crisis management**, specifying the type of operation contemplated and the resources needed, and assigning to him/her the responsibility for coordinating the civilian and military aspects of the operation. The setting up of a relatively modest fund for financing the preparatory stage was also proposed.
- **Facilitating flexibility in decision-making and action.** The launching of an operation should be decided unanimously (with the possibility of constructive abstention), but once agreed, the implementation would be left to the participating states. Several members of the working group already proposed emulating the example of the Euro by providing a form of closer cooperation open to all member states wishing to carry out the most demanding tasks and fulfilling the requirements for them to be credible. Conditions for taking part in this 'defence eurozone' would be the 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.

The Convention working group on defence also recommended three clauses concerning solidarity: firstly, a clause 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. Secondly, a solidarity and common security clause in an annex to the Treaty to identify risks of any sort threatening the Union and the means of dealing with them; such a clause might produce a 'European security and defence union' that would also contribute to the European pillar of NATO. Thirdly, a collective defence clause for those member states wishing to share the obligation of the Brussels Treaty, thus bringing to an end the WEU by incorporating its major remaining *raison d'être* into the Union. The proponents argued that this closer type of

⁴ See Willem van Eekelen, *From Words to Deeds. The Continuing Debate on European Security*. CEPS/DCAF, Brussels, 2006.

cooperation on defence would be better within the Treaty on European Union than outside it, while the opponents thought that NATO was sufficient for this type of cooperation.

Commissioner Michel Barnier, chairman of the working group, reported to the plenary that there was no consensus in the working group on flexibility in crisis management and collective defence, but that a number of members had launched a forceful appeal to go further on these issues.⁵ He recommended that the Presidium of the Convention reflect on the relationship between possible forms of enhanced cooperation, the scope of a defence policy in which all EU member states would participate, and the necessary solidarity of all. The working group also laid the basis for the European Defence Agency, which was approved by the European Council of Thessaloniki in 2003 and lifted out of the Constitutional Treaty for early implementation.

At the end of the Convention three modalities were envisaged for action in the field of defence and security, when not all member states were prepared to implement it together:

- 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. This point would find its way into the Constitutional treaty in Art. 141 sub 5 and was elaborated in Art. III-310. It now figures in Art. 28A sub 3 ToL (renamed Art. 42 sub 3 TEU in the consolidated version).
- Those member states whose military capabilities fulfill 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. This point was made in Art. I-41 sub 6 of the Constitutional Treaty and was elaborated in Protocol 23. It figures in Art. 28A sub 6 ToL (Art. 42 sub 6 TEU).
- 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 as a possibility in the Maastricht Treaty and firmed up somewhat by the subsequent treaties. This figured in Art. 40 of the Convention draft and was 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 Intergovernmental Conference and took the form of a general solidarity clause, which will be discussed later.

4. In October 2003 an **Intergovernmental Conference (IGC)** was opened, for which the draft Constitutional Treaty was acknowledged to be “a good basis.”⁶ As will be shown here, the draft predetermined a large part of the provisions that made it into the Constitutional Treaty and later into the Treaty of Lisbon.

At the beginning of the IGC pressure was building up on the neutral and nonaligned members. The draft Constitutional Treaty oozed solidarity all over and it was odd that this was not reflected in responding to the most serious threat of all: aggression against a fellow member state. Neutral and non-aligned member states were faced with the dilemma of wanting to maintain their traditional policy, but also to restrain the others from establishing core groups from which they would be excluded. They went public with their opposition in the autumn of 2003, culminating in a joint letter of the four foreign ministers to the IGC on 5 December stating that “provisions containing formal binding security guarantees would be inconsistent with our

⁵ Doc. CONV 473/02 reporting on the session of 20 December 2002.

⁶ Declaration of Rome, CIG 3/03, 6 October 2003, retrievable at: <http://ue.eu.int/igcpdf/en/03/cg00/cg000003.en03.pdf>.

security policy or with our constitutional requirements”.⁷ They suggested a rather one-sided and non-committal formula:

If a Member State is 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.

The Italian Presidency tried several formulas in the run-up to the European Council in December 2003. The articles enabling enhanced cooperation for common defence were deleted. In their place came a general solidarity clause without any procedural follow-up on how it could be implemented. In the end, the draft Constitutional Treaty contained two different solidarity clauses.⁸

The first one was the easiest and concerned mutual support in cases of a terrorist attack or natural or man-made disaster. In the Treaty of Lisbon it has become Title VII Solidarity Clause with its sole article 188R (Art. 222 TFEU in the consolidated version). See Box 1.

Box 1. Treaty of Lisbon, Title VII Solidarity Clause

*1. The Union and its Member States shall act jointly in a spirit of solidarity if a member state is the object of a **terrorist attack or the victim of a natural or man-made disaster**. 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.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

*3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 15b(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.**

* Article 15b was inserted in the Common Provisions on the CFSP, with the text of the earlier Article 23 but with the amendment that decisions under this chapter shall be taken by the European Council and the Council acting unanimously, except where this chapter provides otherwise. For adoption of a unanimous decision, abstention is allowed by less than one third of the member states. In the version consolidated by the ToL it will become Art. 31 TEU.

This solidarity clause is a curious mixture of considerations. It refers to the mobilisation of all instruments at the disposal of the Union, including military instruments made available by

⁷ See van Eekelen, op.cit., pp.169-171 and doc. CIG 62/03 of 5 December 2003.

⁸ The word ‘solidarity’ also appears elsewhere in the treaties, e.g. as a general principle in the **preamble to the ToL**, para. 5, and in Art.3.3 in relation to economic, social and territorial cohesion, and in Art, 3.5 in terms of solidarity and mutual respect between the peoples, and more specifically on energy in Art. 122 TFEU.

member states, but in case of a terrorist attack, coordination will take place between themselves in the Council. There is neither a reference to the High Representative nor to the Commission. Yet, the future arrangements for implementation will be proposed jointly by the High Representative and the Commission. Presumably on this issue, which relates both to external and internal security and requires contacts between the military, intelligence services, police and local government, the precise competences of the President of the Commission and the other Commissioners still have to be worked out.

The second solidarity clause, relating to assistance in case of attack on a member state, is hidden in paragraph 7 of Article 28A ToL (Art. 42 TEU) in the section dealing with provisions on the Common Security and Defence Policy.

Box 2. Second solidarity clause in the Treaty of Lisbon

*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 the North Atlantic Treaty Organisation**, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.**

* The Lisbon Treaty no longer talks of the European Security and Defence Policy (ESDP), but of the Common Security and Defence Policy (CSDP). After stating that the CSDP shall include the progressive framing of a common Union defence policy” (which will lead to a common defence, when the European Council, acting unanimously, so decides) Article 42 sub 2 contained a similar caveat to that sub 7, regarding the specific policy of certain member states and the NATO obligations of others “which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework”. Two almost identical references within the same article illustrated the delicate character of EU-NATO relations. It remains odd, however, to refer to two common security and defence policies within the same paragraph.

This wording comes close to the Articles V of WEU and NATO, but is less specific by avoiding the words “military assistance”. The WEU Article V also refers to Article 51 of the UN Charter – the inherent right of self-defence, individually and collectively – but amounts to an automatic military assistance clause by stating the obligation as to “afford the party so attacked all the military and other aid and assistance in their power”. In NATO Article V of the Washington Treaty makes the assistance more discretionary by agreeing, in case of armed attack, to take forthwith “such action as it deems necessary, including the use of armed force”.

More puzzling is the ambiguity between the second and the first sentence. To what extent could a specific security and defence policy derogate from the obligation of rendering aid and assistance “by all the means in their power”? Or more specifically, could a country say: “We have the obligation, but no power to implement it”? The best explanation, though not explicitly used, would be that the obligation remains, but the way of implementing it might be different. The neutral/non-aligned would have a bilateral obligation towards their attacked partner, while the others would act through NATO or through the permanent structured cooperation that might exist at that point in time. In any case, this answer would let Austria off the hook, for that country has a constitutional impediment against joining a military alliance. More important is the fact that mutual assistance has become binding for all and is no longer an instrument of flexible cooperation. Some British authors have argued that collective defence has become a

peripheral issue, but then they underestimate the anxieties of the new members as a result of renewed Russian assertiveness.⁹

The question was not pursued further, because nobody wanted to complicate the national ratification procedures of the Constitutional Treaty. Instead, attention shifted towards more practical matters, like the formation of ‘battle-groups’.

Box 3. Battle-groups

That new concept followed the example of the autonomous EU operation Artemis in Bunia (Democratic Republic of the Congo) in 2004 where a force of some 1800 personnel had managed to stabilise the situation until a much larger UN force could be present three months later. It was the last phase of a process of leapfrogging between NATO and the EU. In 1999 the EU had formulated the Helsinki Headline Goal of 50-60,000 persons, available within 60 days and sustainable for a year. NATO responded with the NATO Response Force (NRF) as proposed by the US Secretary of Defense Donald Rumsfeld for a tri-service insertion force of 21,000 personnel (later expanded to 25,000) with real combat capabilities and available within weeks, but with a limited sustainability of 120 days.¹⁰ The EU had difficulty in meeting the Helsinki Headline Goals and postponed their realisation to 2010. The short-term level of ambition was downsized to a battle-group that would consist of some 1,500 men, with limited multinationality (varying between one and four participants) and deployable in 5 days after the political decision was taken to launch the operation. At any time two battle-groups would be on quick alert. The timeline was extremely short, because the decision-making process required several steps* to be taken.

* First, there is the approval of a Council Crisis Management Concept, followed by the definition of Military Strategic Options (MSO), and then the selection of one MSO as the basis for an Initiating Military Directive for the Operation Commander, thus triggering the operational planning phase and the development of a concept of operations (CONOPS) and an Operational Plan (OPLAN). Once the latter has been approved, a status of forces agreement signed and military units provided by the member states, the Council takes the final decision to launch the operation (see Trevor Salmon, “The European Union: Just an Alliance or a Military Alliance?”, *Journal of Strategic Studies*, Vol. 29, No. 5, October 2006, p. 837.) In the case of Artemis, this process took less than three weeks.

It was tempting to describe the battle-groups as a form of permanent structured cooperation. They constituted operationally useful units, though of modest proportions, and almost all member states took part. Yet, several questions remained: Did their military capabilities really fulfil higher criteria and who would define those? Was this a case of more binding commitments towards each other and were they organised with a view to the most demanding missions? Those questions are difficult to answer, because the battle-groups have not yet been used in the field. To a certain extent, they suffer from the same shortage of operational units as the NRF, which raises the question of whether the EU and NATO should keep forces in reserve for uncertain future missions while they have great difficulties in mounting sufficient forces for ongoing operations, as is currently the case in Afghanistan. Equally important is the question of

⁹ See, for example, Simon Duke, *The Convention, the draft Constitution and External Relations: Effects and Implications for the EU and its International Role*, Working Paper 2003/W/2, EIPA, Maastricht. Jolyon Howorth took a relaxed view in his article “The European Draft Constitutional Treaty and the Future of the European Defence Initiative”, *European Foreign Affairs Review*, Vol. 19 (2004) pp. 483-508, and regarded the clause as “common sense recognition that all will do what they can ...”

¹⁰ The NRF was built up rapidly and established a rotation schedule. It was used in assisting Pakistan after a large earthquake, but was not yet deployed for more military purposes. At a time in which the Allies found it difficult to muster enough troops for Afghanistan, it made little sense to hold forces in reserve for contingencies which might never arise.

whether forces of this limited size will ever be able to carry out the most demanding missions. And what would be their relationship with the existing multinational formations like the Eurocorps and, in future, with the formations available under the revised Helsinki Headline Goals? Moreover, it is still unclear whether, and if so how, the two battle-groups on guard will be able to operate together, or whether they are intended for two different missions at the same time.

5. Like the Convention draft and the Constitutional Treaty, the **Treaty of Lisbon** stipulates that “Member States shall undertake progressively to improve their military capabilities” (Art. 28A sub 3 ToL, Art. 42 sub 3 TEU). In spite of the strange place of the word “progressively” linking it to “undertake” rather than to “improve”, this obligation applies to all members, but their speed of implementation will vary. The remainder of the article defines the European Defence Agency (EDA) as the Agency in the field of defence capabilities development, research, acquisition and armaments, with the tasks:

- to identify operational requirements,
- to promote measures to satisfy them,
- to contribute to strengthening the industrial and technological base of the defence sector,
- to participate in defining a European capabilities and armaments policy, and
- to assist the Council in evaluating the improvement of military capabilities.

Conceptually, this combination of tasks, from requirements to R&D, production, procurement and ultimately evaluation, was a breakthrough. In practice, much remains to be desired, but at least the EDA managed to make the European defence equipment market more transparent. Being basically a ‘capabilities agency’, it would be well-placed to assist in judging the qualifications of a member country for joining the permanent structured cooperation and, subsequently, progress made in meeting the criteria.

The EDA potentially provides an important link with the non-EU members of NATO. Norway and Turkey were members of its predecessor, the Western European Armaments Group (WEAG), under the Maastricht formula so that they could “fully participate in the activities” of the WEU. So far Turkish participation in EDA has been blocked by Cyprus. The only place where the “full participation” still applies is the WEU Assembly in Paris.¹¹

2. Perspectives of flexibility in the area of security and defence

Among the new possibilities for a flexible approach in defence and security the option of Art. 28 C ToL (Art. 44 TEU) of entrusting a group of member states with an operational task would be the easiest to implement. In fact, it codifies what is happening already, as it is not necessary for all members to participate in every operation and interest in a particular mission is likely to vary. The article allows the participants, in association with the High Representative (HR), to agree among themselves on the management of the task. They will keep the Council regularly informed of the conduct of the operation and particularly of circumstances requiring amendment of the objective, scope and conditions of the mission. Presumably the HR will be their main channel for doing so.

Enhanced cooperation in CFSP is not likely to be widely used. In the first place, this is because – in the words of Andrew Duff in the European Convention – the provisions are “still hardly a

¹¹ The WEU Assembly still provides excellent reports, but is greatly hampered by the fact that it has no interlocutor on the side of the Council. The WEU Council never meets and the High Representative (also being SG-WEU) takes little interest in it.

model of lucidity” and their very existence runs counter to the Convention’s drive towards a simplification of the decision-making procedures. A second reason is the specificity of foreign affairs. This policy area has little legislation and most capitals prefer to act by consensus, particularly because those staying out will not be bound by the actions adopted in this framework. Thirdly, as we have seen, starting enhanced cooperation within CFSP will need a unanimous decision of the Council. At best, this type of flexibility might be used as a deterrent against obstruction in the Council, by showing that in the absence of a consensus other avenues will be explored, if necessary outside the treaty. Yet, foreign and security policies also entail a flexible approach almost by nature: interests vary and the degree of urgency varies accordingly. The decision to take action outside our own territory will always be selective, which makes it preferable to devise procedures among all 27 member states which allow for action by those who are prepared to become engaged and for an abstention by those reluctant to join but not wishing to prevent the others from going ahead. In this context it is interesting to note that during the Kosovo crisis in February 2008 the option of “constructive abstention” was used for the first time ever. Cyprus abstained on the Joint Actions appointing Mr. Pieter Feith as EU Special Representative in Kosovo and concurrently head of the new International Civilian Office in Kosovo, and on establishing the ESDP mission of police and judicial experts.

At the intergovernmental level we have seen several examples of groupings outside the treaty. The Contact Groups for Bosnia (made up of France, Germany, the UK, the US and Russia) and for Kosovo (where Italy managed to join after considerable diplomatic pressure) are examples of a growing role of the ‘Big Three’, much to the chagrin of Poland, Spain and (in the case of Bosnia) Italy. The same three large countries played a role in dealing with Iran on nuclear non-proliferation. Leadership of the Franco-German ‘axis’, which had played such an important role in the past for moving European integration ahead, was no longer the traditional engine, largely because it was rejected as such by the new members. On the other hand, when the three largest countries with their different views of the preferred future are in agreement, the chance of consensus among all 27 would be substantial and the need for special arrangements much less. Finally, in spite of serious differences over the Iraq war and on the battle over the Constitutional Treaty, progress in CFSP/ESDP on other matters was hardly impeded. One has to agree with Thomas Zehetner when he points to the lack of study of the role of ‘clubs’ in European affairs and the need for leadership if the EU is to become an action-oriented organisation.¹² Here the enhanced role of the High Representative will be crucial, because at the intergovernmental level initiative and leadership are bound to be weak.

Permanent Structured Cooperation in Defence Matters (PSCD) is different from enhanced cooperation in scope and intensity. It has been predetermined and blessed in advance for two specific purposes, one military and one political:

- mounting military capabilities and
- permanent commitments of the participants towards each other.

Its implementation is governed by Art. 28 E ToL (Art. 46 TEU) and Protocol 4 (see Box 4). As already mentioned, it differs from enhanced cooperation, as participation is not only a question of political commitment, but also of meeting certain objective criteria. Another difference is the possibility to start PSCD by qualified majority. According to the treaty, those member states wishing to participate and meeting the criteria shall notify their intention to the Council and to the High Representative, upon which the Council will within three months adopt (by qualified majority and having consulted the High Representative) a decision establishing PSCD and determining the list of participants. Later adherents follow the same procedure, but then only the

¹² Zehetner, op. cit., p. 33. He pleads “effective trilateralism”.

participating members vote, again by qualified majority, on their accession. If a country no longer fulfils the criteria, the Council may adopt a decision to suspend its participation. Other decisions have to be taken by unanimity of the participating members.

The wording of Protocol 4 shows again that member states were at pains to avoid any inconsistency with NATO obligations. Its preamble even states that “a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements”.¹³ It also refers to the possibility of UN requests for the urgent implementation of missions under chapters VI and VII of the Charter.

Box 4. Protocol on Permanent Structured Cooperation, Article 1-3

Article 1

The permanent structured cooperation referred to in Article 28 A(6) of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of the Treaty of Lisbon, 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 Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and*
- (b) have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, **targeted combat units** for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 28 B of the Treaty on European Union, 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.*

Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

- (a) cooperate, as from the entry into force of the Treaty of Lisbon, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;*
- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;*
- (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 multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the ‘Capability Development Mechanism’;*

¹³ Berlin Plus provided for the availability of NATO assets for EU-led operations. Deputy Saceur would be in the line of military command.

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

Article 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, inter alia, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article 28 E of the Treaty on European Union.

Source: C 306/154 EN Official Journal of the European Union 17.12.2007.

In itself, the list of criteria for participation in PSCD was impressive, but as so often, it risked being too large. Most member states could argue that they meet some of them, but hardly any would meet them all. Much attention was paid to the battle-groups, but it remains unclear whether they could be the standard for being eligible for PSCD. Battle-groups are small and intended for a short deployment. Will they be sufficient for undertaking the most demanding missions? Yet, if they are the model, almost all member states could qualify. Similar problems arise with participation in EDA. The Agency by now has a fairly good idea of available capabilities, but there are very few collaborative programmes for research and development. In fact, there are fewer projects and less money available than under the Western European Armaments Group which preceded the EDA. The notion of periodic evaluation is a good one, but will function only if progress can be measured against agreed requirements. Here NATO experience with a force planning cycle, including guidance, force proposals and national plans coming together, is far superior to the loose and voluntaristic way CFSP and ESDP have developed so far.

It also remains unclear how the political condition of more binding commitments should be measured. It appears ironic that after first deconstructing the Western European Union (WEU), which was creating 'Forces answerable to the WEU' (FAWEU), we now seem to be doing something similar, possibly with only a slightly larger group of countries, but admittedly with a better link to the procurement side. Antonio Missiroli estimated that, with the exception of France and the UK, hardly any country would qualify as a top performer in each and every functional area mentioned in the Protocol. Germany, Italy, the Netherlands, Spain and Sweden would probably meet many of the criteria, while others – e.g. Poland, Slovakia, Belgium and Portugal – may well be driven by the political incentives to raise their capabilities to an adequate level.¹⁴

A proposal recently put forward by French MP Pierre Lellouche includes a list of eight rather ambitious criteria that would make a country qualify for PSCD:¹⁵

1. To start PSCD, **obligatory participation of the largest six member states** (France, Germany, Italy Poland, Spain, UK) as a hard core is regarded as necessary to give the policy credibility. Other members should however be able to join the group at any time.

¹⁴ Antonio Missiroli, "The Impact of the Lisbon Treaty on ESDP, European Parliament Briefing Paper, January 2008, p. 16 (http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/pe389028/PE389028_en.pdf).

¹⁵ Pierre Lellouche, « 8 propositions pour donner à l'Union une défense commune », *Le Figaro*, 31 January 2008 (<http://www.lefigaro.fr/debats/2008/01/31/01005-20080131ARTFIG00515--propositions-pour-donner-a-l-union-une-defense-commune.php>).

2. Each participating country would have to spend **at least 2% of its GDP on defence**. This is clearly not the case for Germany and Spain today and other countries would also struggle to meet this criterion. Public support for substantial increases in the defence budget would be very difficult to obtain in some member states and objectively hard to justify. Moreover, it is more important to judge the quality of the defence effort than the money spent on it.
3. Members of the group would have to **abandon the current exception on military matters to the common market** (Art. 296 TEC). In contrast to today's provisions the participating countries would have to create a real common market for defence that would give preference to the European armaments industry.
4. Members would agree to the **creation of an intervention force under common command of 60,000 troops** to which each of the large member states should contribute 10,000. This criterion rightly focuses on the original Helsinki Headline goals for European capabilities and substantially exceeds the minimalistic battlegroup concept. But what about the smaller countries willing to join?
5. Participating countries would have to **'Europeanise' their foreign military bases**. This criterion is applicable to France and the UK.
6. Common **infrastructure programmes on important issues** (space, communication and information, antimissile defence) should be pursued jointly. Presumably these would be in addition to the EDA activities, which are not included in Lellouces's requirements.
7. A common **plan to protect the population in case of terrorist attacks** with non-conventional arms (chemicals, bacteriological or nuclear) should be initiated.
8. Participating countries should **agree on a common European disarmament and arms control policy**. This should include the reduction of nuclear arms, security guarantees, the creation of a European Bank for nuclear fuel, for emerging countries interested in obtaining electronuclear capacities for civil use.

Concluding remarks

By and large flexibility on defence matters did not get very far. Some areas of flexible cooperation did start outside the treaties and subsequently were incorporated into them, occasionally with an opt-out for individual member states. One could say that on the whole member states preferred inactivity to a divided Union. In the past this has not been catastrophic, because NATO provided an alternative to action, at least as long as the US was prepared to provide leadership. Increasingly, however, the EU will have to improve the coherence of its instruments and policies if it is to become the kind of global player to which its 500 million citizens would entitle it.

The understandable focus of the French suggestions on large member states highlights a problem that ambitious criteria create for those small countries that have the political will to join, but will not be able to muster sufficient capabilities to qualify. For example, the question of what kind of participation in a battle-group would be sufficient for smaller member states needs to be clarified. Possibly they could contribute in concert with neighbouring countries, as in the case of the Baltic battalion. This would mean, however, that almost every country would qualify. If criteria are to be more ambitious, counterproductive effects have to be kept in mind. Smaller countries should not be driven towards passiveness due to criteria according to which they would hardly ever qualify. If participation in PSCD is de facto left to larger member states, it would not only put the entire burden on them, but also seriously undermine the logic of traditional European integration, where each member state is given the perspective of being part of all initiatives.

Finally, the future of PSCD will depend on the vigour with which its initial proponent, France, will pursue the concept. It remains to be seen how it will match with the much talked about return of France into the integrated military structure of NATO, and with the mollified attitude that President Bush showed at the April summit of NATO in Bucharest towards European defence cooperation and autonomous operations. In the past, talk about forms of enhanced cooperation was often intended to activate the stragglers. Today, it is not quite clear what they should do to avoid being left behind. Recently, the French State Secretary for European Affairs Jean Pierre Jouyet struck a reassuring note by saying that France “would start the debate on the conditions for its implementation”, but that in any event these provisions would not be implemented before 2009. In a speech before the WEU Assembly he wanted to promote a “broad, inclusive approach taking forward as many Europeans as possible” and added that “permanent structured cooperation must not serve to create an ESDP elite. No one must be excluded.”¹⁶

So far much of the discussion has focused on capabilities, and this in the context of battle-groups. Even if taken together these do not constitute great assets. Moreover, the difference between larger and smaller countries almost disappears when the most substantial contribution is not much more than a reinforced battalion. That is also the level below which an infantry contribution should not be multi-national if it is to be militarily effective; specific contributions could be provided at a lower level. It would be more significant if PSCD could be developed in the perspective of the currently almost dormant Headline Goals 2010, which aim at 50-60,000 personnel available for a year and have a three-service character.

More important would be the question of what the political criteria of “more binding commitments towards each other” should include. Clearly, commitments will have to be pre-identified before specific operations are discussed. A first step should be agreement on the tasks countries want to perform together and on the inventory needed for their execution. More precisely, what are the “most demanding missions” of combat forces in crisis management, which seem to be our objective? A European White Book on European strategy, requirements, planning, organisation and procurement is long overdue, albeit difficult to draft.

For many countries it will be difficult to meet all capability criteria from the start and there should be a multi-annual target for reaching and evaluating them. Pooling resources would seem to be indicated, but so far countries have defined their defence plans with little attention as to what their partners are doing. Sven Biscop is right in asking what the phrase in the European Security Strategy about “share responsibility for global security” means if we have no common approach towards our planning assumptions for the number of forces trained for crisis management, long-term peacekeeping and territorial defence and of reserve personnel.¹⁷

Some progress has been made, but it is rather fragmented. While NATO and the UN have no concept for security sector reform, which is a key element in the increasingly recognised link between security and development, the EU even has two, one from the Council and one from the European Commission. The EU police contribution in Afghanistan is subject to severe criticism. Much remains to be done. The implementation of the forthcoming double-hatting of the High Representative/Vice President of the Commission and the formation of an External Action Service will be the first priority. But a more effective mobilisation of our numerous but

¹⁶ Speech of 3 June 2008. See www.assembly-ueo.eu under Press & Multimedia. M. Jouyet said that the first priority of the incoming French Presidency of the EU would be to update the security strategy for the next 10 years. He also advocated a European carrier task force, based on British and French aircraft carriers, and a common fleet of A400M aircraft for strategic transport.

¹⁷ See his interesting paper “*The Lisbon Treaty and ESDP: Transformation and Integration*”, for the Expert Seminar organised by the ÖIES and IRRi in Brussels, 28-29 April 2008.

scattered military capabilities will be essential for a credible role in an unpredictable world. The forthcoming debate on Permanent Structured Cooperation in Defence faces the difficult task of squaring the circle between effectiveness and solidarity, which is bound to be divisive. But it is worth conducting nevertheless.

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