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The Parliamentary Dimension of CFSP/ESDP **Options for the European Convention**

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Preface

The creation of the European Security and Defence Policy (ESDP) is among the most prominent developments of recent years on the European scene. When the ESDP becomes operational, the »parliamentarisation of ESDP« will become a crucial issue. Strangely enough, this subject has attracted so far only limited attention – even in the Convention. In order to contribute to the debate, this research paper has been drafted.

The study is the result of a research project carried out collectively by a group of European political scientists and legal experts submitted for the European Parliament (Directorate-General for Research) under Contract No. IV/2002/01/01. The particular aim has been to present options for a parliamentary dimension of the CFSP and ESDP. In order to achieve the purpose of presenting viable policy options in the final shape of precise treaty articles, the study presents a set of twelve options for three kinds of scenarios projecting the future development of the EU.

The executive summary and the final report including concrete proposals for treaty articles are the key results of this study. Since the proposed procedures as well as the treaty changes – indicating possibilities for institutional and procedural arrangements – have to be based upon thorough analysis of parliamentary participation in security and defence policy, five annexes have been attached:

In turn to present an overall picture, in annex I a historical overview of the developments in European foreign and defence policy was drafted. A brief description of basic structural outlines seemed inevitable regarding the latest debates and – more explicitly – the outlines in discussion for future possibilities and opportunities.

Beyond treaty regulations, there are also informal practices of information and mutual exchanges of views between the European Parliament and other bodies. Accordingly, in annex II a major work has been undertaken in investigating the channels of interaction at the European level.

The analysis of the role of parliamentary participation in security and defence matters is also related to the involvement of national parliaments. Hence, in annex III the national parliamentary level is explored regarding the preparation, adoption, implementation and control of foreign, security and defence policies. This part of the study has been undertaken primarily in a comparative perspective, including the United States of America.

Annex IV finally assesses the strength and weakness of parliamentary involvement in foreign, security and defence politics in view of legitimacy as the ultimate aim and, more concrete, voice, scrutiny, transparency and accountability.

The study has been organised as an interdisciplinary and cross-national analysis. To discuss the analytical approach and preliminary results along a common checklist, two meetings with the »core team« were held in Brussels at the 19 September and the 3 December 2002. This group of experts produced numerous ideas and suggestions, which afterwards have been revised, sorted and applied to the study scheme. Preliminary results also have been discussed with Members of the European Parliament in the session of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy at 3 December 2002.

This study has taken full advantage of the participating contributors and experts. Each of them has dealt for many years with CFSP and ESDP pooling different national backgrounds. Whereas Finn Laursen, David Allen, Gunilla Herolf, Olivier Rozenberg and Saskia Matl have contributed not only but foremost to the Member States perspective, Udo Diedrichs, Christopher Hill, Elfriede Regelsberger and Ramses A. Wessel have guided the study with their vast

experience in CFSP/ESDP issues. In addition, Ramses A. Wessel has drafted the treaty articles.

Besides them, the study would not have been carried out without the enthusiastic engagement of Martin Sümening and Jana Fleschenberg who took care for establishing the necessary databases and editing the study.

Since the time schedule of the study was particular tight, mistakes and incoherence might not have been avoided. Nevertheless, we look forward that it offers useful and inspiring options though no one-and-only solution can be presented.

Jürgen Mittag

Wolfgang Wessels

Executive Summary: The parliamentary dimension of CFSP/ESDP

I. Challenges for the European Parliament

Recalling that

- ⇒ the Common Foreign and Security Policy (CFSP) now constitutes a key element of the European construction while remaining a cornerstone of the national foreign policy of the member states;
- ⇒ the creation of the European Security and Defence Policy (ESDP) is one of the most prominent and relevant developments in the European Union in the last few years;
- ⇒ the ESDP has still to be fully institutionalised and made operational;
- ⇒ the parliamentary dimension of ESDP – and the role of the EP – is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of a presidency;
- ⇒ the European Convention is supposed to make a statement on how a more coherent common foreign policy and defence policy should be developed;

Regarding that

- ⇒ the need for public support will be of crucial importance when the ESDP becomes militarily operational;
- ⇒ although CFSP and ESDP work by »special rules« due to the need for discretion and classification connected with foreign and defence policy, the need for democratic accountability in this policy field is of fundamental importance if the actions and activities of the EU are to be accepted and supported by the citizens;
- ⇒ Parliaments at both the European and national level are crucial for granting »legitimacy« and thus play a special role in ensuring public support;

Stressing that

- ⇒ in spring 2002 around 71% of all EU citizens were in favour of a common security and defence policy compared to only 16% against;
- ⇒ because this support has been constant over time, the EU can base its activities on a broad though diffuse general public approval for foreign, security and defence policy;

Taking into account that

- ⇒ foreign, security and defence politics is one of the remaining areas in which the national governments prevail as key players;
- ⇒ for the foreseeable future, defence budgets and operational military decisions are likely to remain within the competence of the national governments and parliaments;
- ⇒ the rights and performance of national parliaments in foreign, security and defence policy vary greatly in their intensity and effectiveness among EU countries;
- ⇒ each national parliament is finding it increasingly difficult to control the EU's security and defence policy;

Criticising that

- ⇒ for achieving the objectives of the Union in world politics (Article 11), the present constitutional and institutional status quo is highly insufficient;

- ⇒ there is an increasing democratic deficit within ESDP since neither the parliaments of the Member States nor the European Parliament are adequately involved in the new CFSP/ESDP structures and procedures;
- ⇒ the European Parliament's role in foreign and defence policy issues remains restricted – mainly due to its constitutional weakness vis-à-vis the Council and the Member States;

Considering that

- ⇒ parliamentary participation has to be upgraded for ESDP activities;
- ⇒ the European Parliament is a key institution which should also play a notable role in foreign, security and defence issues;
- ⇒ the debate within the Convention and beyond has not yet reached a high enough level, and as a result crucial points and vital issues are not yet at the top of priorities;
- ⇒ strategies must take into account different time scales: short term within the status quo, medium term within a incrementally reformed EU Constitution and long term within a perhaps federal»finalité« of the EU evolution;
- ⇒ at the current stage of the debate in the Convention several options out of a set of different strategies need to be discussed.

II. Options of the EP for a parliamentary participation within CFSP/ESDP

1. Constitutional provisions

A mayor requisite is a strong and firm constitutional basis. Starting from the present treaty provisions, the European Parliament should focus on a *substantial revision of Article 21 TEU*, the only article providing rights for the European Parliament in CFSP/ESDP (Title V). Since the objective of Article 21 is limited to the “Common Foreign and Security policy”, a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP.

Such a provision should reduce the artificial distinction between CFSP and ESDP procedures. In particular, a proper definition of ESDP – that goes beyond the Petersberg tasks – should be added to the Treaties. Within the “preliminary draft structure of the Constitutional Treaty” (skeleton of the presidium), such a revised Article 21 has to be extended on both “external actions (B.IV)” and “defence (C)”.

In addition, the EP should insist that »defence« includes provisions strengthening mutual solidarity which will lead to a collective defence clause.

(- > **Article 11, 17, 18.1 and 21 EU in part III below**)

2. Participation in appointment procedures

The European Parliament should be involved in the *appointment process* of leadership positions in CFSP/ESDP. A say in the appointment of top positions will become more significant, especially in view of any proposals made in the Convention which lead to a new allocation of responsibilities in CFSP/ESDP.

A first step would be the need to consult the EP along the lines of the ECB-investiture (Article 112.2.b TEC – AV) when nominating the High Representative, the chairpersons of the EUMC and CIVCOM or special envoys.

An optimal step would be to establish the assent procedure as presently applicable for the European Commission (Article 214.2 TEC – AV). If the Convention/IGC opts for

the abolition of the rotating presidencies and extending the term of European Council presidencies, then the EP should also gain assent powers for this new form of presidency.

(- > *Article 18.5 EU and 207(2) EC in part III below*)

3. Provision of information to and consultation of the European Parliament

In cases where the EU employs its CFSP/ESDP instruments (common strategies, common positions, joint actions), the *European Parliament should be fully informed and/or consulted at an early stage*. The EP should have the right to request information – if necessary for only a restricted circle of Members. It should be given the powers, which enabled it to mandate the appearance of the High Representative and/or the Presidency. The current Article 21 states that the EP is restricted to “be[ing] kept regularly informed (...) of the development of the Union's foreign and security policy”. This needs to be revised in order to ensure that the EO is supplied with substantial and timely information about each single case, at all stages, in all policy fields and by all bodies – including the political and security committee PSC.

As to the essential right of information, there must be an improvement in the links between the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Council and its associate bodies. The EP should claim to reinforce the inter-institutional agreement of November 2002 in terms that the *access to confidential information* related to foreign, security or military actions not only becomes possible for the »security committee« but is actually guaranteed.

(- > *Article 21 EU in part III below*)

4. Involvement in non-military and military measures

Regarding legal acts taken in CFSP/ESDP, the EP must not only have the possibility of formulating its own position, but should also have the right to ensure its position on all non-military EU legal measures will be given appropriate consideration. Hence, the European Parliament should claim more distinctive competences in terms of a *legally binding consultation in non-military crisis management*. In addition, consideration should be given to the right of ex-ante information in military crisis management. Thus, the new »security committee (see below) of the EP would be informed before any deployment or utilisation of the rapid reaction forces.

(- > *Article 21 EU in part III below*)

5. Enhanced co-operation

The powers of the European Parliament should be equivalent to normal procedures in cases of enhanced co-operation also if they are extended to military and security issues.

6. CFSP/ESDP budget

The European Parliament should demand a revision of the rules concerning the way the budget for foreign actions is drafted. Currently, operations “having military or defence implications” have to be financed by the Member States. Extending the Council (of Foreign Ministers) decision of 17 June 2002, which features categories of expenditures in ESDP, the EP should stress that *common costs* (including both operational and administrative costs) should no longer be financed jointly by the Member States but *by the EC budget*. This would provide the parliament with an instrument of control that it can exert through its right to participate in the drafting of the EC budget.

The long-term objective should be the inclusion in the EC budget of the costs of all EU activities for CFSP and ESDP purposes.

(- > **Article 28 EC in part III below**)

7. International agreements

The European Parliament should become *involved in all international agreements, which fall under Article 24 (TEU – AV)*. Revised treaty provision could be set up that are similar to the powers granted under Article 300.3 TEC: “The Council shall conclude agreements after consulting the European Parliament (...)” In cases that establish a specific institutional and budgetary framework, “agreements (...) shall be concluded after the assent of the European Parliament has been obtained.”

(- > **Article 24 EU in part III below**)

8. Internal organisation of the European Parliament

The division of labour within the European Parliament should also be discussed. In order to reflect the evolving working structures of the Council, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy *might be divided into two different committees*: one covering the field of foreign policies and one focusing on defence and security matters. The »security committee« should consist of representatives of both the defence and foreign committee. In addition, the policy field of human rights might either be merged with the Committee on Development and Cooperation (DEVE) or become a separate committee.

9. Co-operation with national parliaments

The EP should improve dialogue and co-operation with national parliaments in order to increase access to information and broaden support for its work.

This can be achieved through the setting up of a *policy-oriented sub-COSAC related to foreign, security and defence issues*.

A more preferable option might be *a specialised joint parliamentary forum* for foreign, security and defence policy, which would be organised by and held at the European Parliament. This forum would be held on a regular basis and be convened jointly by the chairmen of the national foreign and defence committees and the members of the EP’s committee(s) on foreign and defence matters. In emergency situations, this forum might delegate up to three of its members into the »security committee«.

More general communication between national parliamentarians and MEPs can be ensured by either the »European Congress«.

(- > **Modification of Protocol (No 9) in part III below**)

10. »Bench-marking« for national parliaments

Since the rights of national parliaments in foreign, security and defence policy differ substantially, national parliaments might enter into a benchmarking exercise looking at *minimum standards for best practises* of national legislatures in foreign, security and defence policy.

11. The role of the WEU provisions

The WEU has become a comparatively »inactive« organisation. Thus, the EU should acquire the residual functions of the WEU. Though the WEU Parliamentary Assembly (the interim European Security and Defence Assembly) has refused to accept the institutions’ demise, the *mandate of the Western European Union and its Parliamentary Assembly should come to an end*.

12. The relationship with NATO

The relationship between the EU and NATO is a key element for CFSP and ESDP. The *EP should therefore improve its links* with the US Congress and the relevant parliamentary bodies of other NATO Member States. In addition, communication with other existing bodies such as the Parliamentary Assemblies of the OSCE, the Council of Europe should be reinforced through the involvement of MEPs.

III. Recommendations for revisions and amendments of treaty articles

Based on these options, the following proposals could be used for an amended TEU, TEC and the protocol on the role of national parliaments (changes in bold). Taking up the present preliminary outline, the proposals might also be transferred into a new constitutional treaty. In addition, a proper definition of foreign, security and defence policy is attached.

TITLE V

PROVISIONS ON A COMMON FOREIGN, SECURITY AND DEFENCE POLICY

1. The Union shall define and implement a common foreign, security **and defence** policy covering all areas of **this policy**, the objectives of which shall be:

[etc.]

2. The Member States shall support the Union's **foreign, security and defence** policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

[etc.]

[Articles 12-16 unchanged]

Article 17

1. The common foreign, security **and defence** policy shall include all questions related to the security of the Union. [...] **This policy** might lead to a **collective** defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain member States, which see their common defence **policy** realised in the North Atlantic Treaty Organisations (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

[etc.]

Article 18

1. The Presidency shall represent the Union in matters coming within the common foreign, security **and defence** policy.

[...]

5. The Council may, whenever it deems necessary **and after the assent of the European Parliament has been obtained**, appoint a special representative with a mandate in relation to particular policy issues.

[Articles 19 and 20 unchanged]

Article 21

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign, security **and defence** policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept informed **on a continuous basis** by **the High Representative for the common foreign and security policy**, the Presidency and the Commission of the development of the Union's foreign, security **and defence** policy.

The Council shall consult the European Parliament before taking any decision – not having defence implications – on the basis of the procedure laid down in Article 23.

The European Parliament may ask questions of the Council or make recommendations to it. **The Council shall give an appropriate and prompt response. [Acting by absolute majority of its component members, the European Parliament may demand that the High Representative for the common foreign and security policy join a debate on any issue falling under this Title. The High Representative shall adhere to this request.]** The **European Parliament** shall hold an annual debate on progress in implementing the common foreign, security **and defence** policy.

[Article 22 unchanged]

Article 23

Without prejudice to Article 21, decisions under this Title shall be taken by the Council acting unanimously. [...]

Article 24

1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this Title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency after consulting the European Parliament. In case of establishing a specific institutional framework, agreements shall be concluded after the assent of the European Parliament has been obtained. [...]

[Article 25 unchanged]

Article 26

The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign, security **and defence** policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on be-

half of the council at the request of the Presidency, through conducting political dialogue with third parties.

Article 207(2) EC

[...]

The Secretary-General, High Representative for the common foreign and security policy, and the Deputy Secretary-General shall be appointed by the Council, acting by a qualified majority, after the assent of the European Parliament has been obtained.

Article 27

The Commission shall be fully associated with the work carried out in the common foreign, security **and defence** policy field.

Article 28

[...]

2. Administrative expenditure which the provisions relating to the area referred to in this Title entail for the institutions shall be charged to the budget of the European Communities.

3. Operational expenditure to which the implementation of those provisions gives rise, **including common costs of the Member States arising from operations having military or defence implications**, shall also be charged to the budget of the European Communities.

[delete the remaining part of par. 3]

4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

Modification of Protocol (No 9) annexed to the Treaty on European Union and to the Treaties establishing the European Communities, on the role of national parliaments in the European Union (1997)

[...]

I. INFORMATION FOR NATIONAL PARLIAMENTS OF MEMBER STATES

[...]

II. THE CONFERENCE OF EUROPEAN AFFAIRS COMMITTEES

[...]

III. COOPERATION BETWEEN THE EUROPEAN PARLIAMENT AND THE NATIONAL PARLIAMENTS ON TITLE V OF THE TREATY ON EUROPEAN UNION

1. Taking into account their shared responsibilities under Title V of the Treaty on European Union, the European Parliament and the national parliaments may organise special meetings, in the framework of COSAC or otherwise, to ensure that their combined influence is exerted as effectively as possible. They may agree to keep each other informed on any matter of foreign, security and defence policy in which they have a shared interest.

2. In emergency situations, including operations which have defence or military implications, the European Parliament and the national parliaments may establish a joint committee consisting of the members of their respective foreign and defence committees

with a view to discuss the development of the situation and to allow for the possible formulation of common positions.

3. Common positions adopted by the joint committee referred to in the previous paragraph shall in no way undermine the competences national parliaments enjoy under their respective national constitutions.

{Definitions}

In these draft articles, foreign policy relates to all external policies of the Union that are not covered in the context of CFSP by the (current) Treaty establishing the European Community or by Title VI of the (current) Treaty on European Union and that do not fall under the definitions of either security or defence policy.

Security policy relates to the non-military external policies of the Union, including the EU positions in the OSCE; the policy of disarmament and arms control; nuclear non-proliferation issues; and the economic aspects of security, in particular armaments cooperation, control of the transfer of military technology to third countries and control of arms exports.

Defence policy relates to the external policies of the Union involving military operations, including humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking and peace enforcement.

Collective defence (the term is used in stead of the term »common defence«) refers to a mutual obligation (currently) laid down in Article V of the modified Brussels Treaty (WEU Treaty).

Options for the participation of the European Parliament in CFSP and ESDP

“The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.”

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1. Options for the parliamentary dimension of CFSP and ESDP

The creation of the European Security and Defence Policy (ESDP) belongs to the most prominent and relevant developments in the European Union during the last few years. The European Councils of Cologne, Helsinki and Nice have intensively promoted the elaboration of this »high politics« sector. However, ESDP is still to be fully institutionalised; i.e. new bodies such as the Political and Security Committee (PSC, new Article 25 TEU), the EU Military Committee (EUMC) or the Committee for non-military aspects of crisis management (CIV-COM)¹ have yet to find their role and position in the EU's institutional structure and establish links and settle relations with the existing bodies.

The need for public support and thus a parliamentary dimension will become a crucial factor when ESDP becomes militarily operational. Parliamentary participation could either be ensured by the national parliaments or by the European Parliament. In general, national parliaments have never had the same degree of control over foreign and defence policy as they have over domestic policy. Even if one ignores that the involvement of national parliaments varies considerably, they are left with mainly a symbolic formal influence. From the European (Union) level, the general weakness of parliaments in security and defence policy is even more apparent, since neither the national parliaments nor the European Parliament have substantial parliamentary control on foreign, security and defence policies.

Based on the historical developments in CFSP and ESDP (annex I), the inter-institutional set-up at EU level (annex II), the national parliamentary provisions (annex III) and the analysis of these arrangements in view of democracy and accountability (annex IV), this final report of the study submits distinctive options for consideration by the European Parliament and its Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET). These options are embodied in an executive summary, which includes concise proposals for treaty provisions to be included in any future treaty covering this policy sector, with special reference to the work of the Convention on the Future of Europe and the subsequent Intergovernmental Conference scheduled for 2004/05.

1.1. The need for parliamentary engagement

Of major relevance – especially for the debate in the Convention – are issues such as legitimacy, democracy and identity. The democratic perspective should not be ignored even if CFSP and ESDP have to operate by »special rules« due to the confidential nature of foreign and security policy documents. Legitimacy is of major importance if the people are to accept CFSP and ESDP. The fundamental assumption for the following approach is that in view of the Balkan crisis, the citizens of Europe and the political class alike are the first to point to and to criticise the shortcomings and deficits of formulation, presentation and implementation of CFSP/ESDP. Thus, it becomes clear that issues linked with CFSP and ESDP reflect vital interests of the Union and its Member States. The support for CFSP has been constant over the years. According to Eurobarometer 57 in spring 2002 nearly 64% of all EU citizens have been in favour of the principle of a common foreign policy, while 20% were against it. A common security and defence policy also attracted strong support. 71% of the respondents declared themselves in favour compared to 16% against. Eurobarometer shows that the highest levels of support are in Italy, Germany, Spain and the BeNeLux countries. On the other side the rates in Ireland and the United Kingdom show a more sceptical view.²

¹ See report on the ESDP, Brussels 4 December 2000, No. 14056/2/00 and Council decision of 22 January 2001 on setting up the Political and Security Committee, Official Journal, L 27, 30.01.2001; Decision of the Council setting up the Military Committee of the European Union, Official Journal, L 27, 30.01.2001 and Decision of the Council on the establishment of the military staff of the European Union, Official Journal, L 27, 30 January 2001.

² See Standard Eurobarometer 57, June 2002 and the in-depth assessments in annex IV.

Legitimacy is one of the most challenging issues facing the European Union. The notion of the »democratic deficit« is a key term and has for decades been one of the core issues in the European discourse.³ In this context, however, the specific nature of the EU – and especially of CFSP and ESDP – should be taken into account. Quite often, rather general assessments are made about the democratic nature of the EU. Frequently, political representatives and academics, regardless of whether they are »federalists« or »intergovernmentalists« transfer to the institutions of the EU standard doctrines and theories on parliamentary democracy developed for nation states. Quite often, this is done in a fairly unreflected way, as if the »optimal amount« of democracy is clearly defined, and as if alternative forms of international cooperation might not create even larger gaps of democratic accountability and responsiveness. The democratic deficit argument quite often concentrates on the strong or weak potentials of the EP: The Parliament is understood (in the federal view) as the key EU institution which will either lead to a new democratic quality for the Union or which documents the basic impossibility of the entire EU system to turn into an »ordinary« democratic system. In contrast, intergovernmentalists stress the role of the nation states and see the basis for any legitimacy as being based upon national parliaments. Strengthening the EP by means of institutional or procedural reform would not, from an intergovernmentalists view, pave the way to any kind of a democratic system. Instead, one should concentrate on the legitimising function of national parliaments.

While we should be extremely cautious against using criteria that are too simplified for the legitimacy debate and the democratic deficit, we should be careful not to make »naïve« assessments and propose »simple institutional« remedies. This study will therefore not contribute to one single overall solution with regard to reform of the existing treaties, since many of the current institutional arrangements of the EU have proved successful as seen in the »special« mixed institutional set-up of Member States and community bodies that have proved a successful way of handling ongoing ambiguities.

1.2. »Scenarios« for shaping CFSP and ESDP

Therefore, the presentation of institutional and procedural options for the parliamentary dimension of CFSP and ESDP is linked to three scenarios, which refer to the prospective developments of the EU, and several criteria ranging between a rather weak or strong degree of parliamentary influence.⁴ These models are focussed on the Brussels level, but also form one of those links which demonstrate the EU as a dynamic multi-level system;⁵ in other words they should also be regarded with a view towards the effects on the evolution of the national »end« of the system. Accordingly, it will be assumed that not only the European Parliament, but also national parliaments are constantly adapting and adjusting the possibilities and arrangements for parliamentary activity in CFSP and ESDP affairs.⁶

In particular the following three scenarios will be discussed:

³ See Thomas Banchoff/Mitchell P. Smith: Introduction, Conceptualizing legitimacy in a contested polity, in: Thomas Banchoff/Mitchell P. Smith (eds.): Legitimacy and the European Union, London/New York 1999, pp. 1-23 and Andrew Moravcsik: Reassessing legitimacy in the European Union, in: Journal of Common Market Studies 4 (2002), p. 603-624.

⁴ See for such an approach also the contribution by the member of convention, Alain Lamassoure: The European Union: four possible models, 3 September 2002. (CONV 235/02). See also the work of Andrew Duff: European Futures. Alternative Scenarios for 2020, London 2001.

⁵ See Markus Jachtenfuchs/Beate Kohler-Koch: Regieren im dynamischen Mehrebenensystem, in: Markus Jachtenfuchs, Markus/Beate Kohler-Koch (eds.): Europäische Integration, Opladen, 1996, S. 15-46.

⁶ See for such an approach Wolfgang Wessels: Wird das Europäische Parlament zum Parlament? Ein dynamischer Funktionenansatz", in: Albrecht Randelshofer/Rupert Scholz/Dieter Wilke (eds.): Gedächtnisschrift für Eberhard Grabitz, München 1995, pp. 879-904.

- ⇒ short-term adaptation: a »status-quo«-scenario
- ⇒ medium-term adaptation: a »gradual communitarisation«-scenario
- ⇒ long-term adaptation: a »federal foreign and defence policy«-scenario

These three scenarios contribute to the extensive discussions on the future of the European Union, which were triggered by the Fischer speech at the Humboldt University in 2000.⁷ The succeeding proposals (particularly those from the heads of government) and the Laeken Declaration of the European Council⁸ provided a crucial boom in the long history of conceptual controversies about the European Union's »finalité politique«.⁹

The configuration of these scenarios is primarily deduced from systematic reflections on European integration. Scenarios are in some way heuristic and ideal-types and do not gain subsistence in this distinct manner. However, scenarios or models might prove helpful in order to classify the wide-ranging approaches of the debate. Based on these three scenarios, possible options for institutional arrangements as well as potential revised procedures will be discussed and offered.

Table 1.: Overview on scenarios discussed

SCENARIO	STATUS QUO	GRADUAL COMMUNITARISATION	FEDERAL FOREIGN AND DEFENCE POLICY
SUBJECTS			
constitutional base / objectives of Art. 21 (see chapter 2.1)			
appointment procedures (see chapter 2.2)			
information and control (see chapter 2.3)			
legal acts (see chapters 2.4)			
enhanced cooperation (see chapter 2.5)			
budgetary competencies (see chapter 2.6)			
international treaty making (see chapter 2.7)			
role of AFET (see chapter 3)			
role of national parliaments (see chapter 4)			
cooperation with other organisations and bodies (see chapter 5)			
general aspects of reforms in CFSP/ESDP (see 6.1-6.6)			

Formulation of articles

⁷ See Joschka Fischer: Speech of the German Minister of Foreign Affairs at a ceremony marking the 50th anniversary of Germany's accession to the Council of Europe Berlin, 9 October 2000 (http://www.german-embassy.org.uk/speech_by_foreign_minister_jos.html). See also Christian Joerges/Yves Mény/Joseph Weiler: What kind of constitution for what kind of polity? Responses to Joschka Fischer, Florence 2000.

⁸ See European Council: Laeken Declaration, Annex to the Presidency conclusions, Laeken December 14/15 2001 (http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm).

⁹ See for an general overview on concepts in integration history Wilfried Loth: Entwürfe einer europäischen Verfassung. Eine historische Bilanz, Bonn 2002.

1.2.1. Short term: Super power but no super state – the »status quo«-scenario

Taking into account the Nice Treaty amendments and the conclusions of the European Council, a first scenario is based on the status quo, on a careful or restricted approach for further communitarisation and the ambiguous legal and political groundwork of current CFSP/ESDP arrangements. As shown above, the EU's second pillar is primarily characterised by an inter-governmental pooling of national resources – in assumption of the sovereign nation-state being the authoritative actor in cross-border interaction.¹⁰ A further intergovernmental assumption sees the EU and its institutional set-up as products of a general strategy by national governments and their administrations to gain and to keep influence vis-à-vis other countries. Following this logic of competition, the preferred option is that Member States and their elected governments remain »the masters of the treaties« since they are the only actors qualified to do so.¹¹ In contrast to other policy fields in the first pillar such as EMU and certain policies belonging to the field of Justice and Home Affairs, treaty changes have not yet moved CFSP to the level of supranational communitarisation.¹² In particular, the defence and security dimensions of CFSP are dominated by intergovernmental patterns. Member States have only agreed to pool resources in CFSP/ESDP affairs in a loose form because they are part of »high politics« (thus the most crucial element of policies and politics), where national sovereignty remains very strong.¹³

From the assumptions of this school of thought we could expect that the founding text(s) of the Union will still be an international treaty with the heads of government as architects of the treaty. The institutional triangle between European Commission, European Parliament and Council is and will not be balanced because it prefigures a dominance of the latter.

Although other intrastate actors participate in the process of political decision-making, arrangements are often made either outside the current institutional framework or are characterised by unanimity. Subsequently, decision-making in this field of policy will continue to suffer from the potential of being blocked. Alternatively, the development of a »directoire«¹⁴ of large states or several other models of flexibility could be anticipated. However, this is not to say that the development of ESDP will be extinguished as intergovernmentalism has the potential to work, at least in the long run. However, in terms of democratic accountability and transparency the current CFSP/ESDP policy cycle cannot be considered acceptable. Democratic participation and control remains primarily institutionalised in the Member States through the national parliaments.

1.2.2. Medium-Term: Incremental adaptation – the »gradual communitarisation«-scenario

A second scenario refers to a process of gradual communitarisation. It postulates an incremental, pragmatic or step-by-step development. This scenario takes into account statements from the Convention about the current incremental debate on the reform of the EU. The community method is considered as a continuation of the current largely functional path of

¹⁰ See German Constitutional Court 1993: Judgement of 12 October 1993, in: Andrew Oppenheimer (ed.): *The Relationship between European Community Law and National Law: The Cases*, Cambridge 1995. See generally Kenneth N. Waltz: *Theory of International Politics*, Reading 1979.

¹¹ See Bundesverfassungsgericht: Urteil über die Verfassungsbeschwerden gegen den Vertrag von Maastricht, Judgement of 12 October 1993, in: Andrew Oppenheimer (ed.): *The Relationship between European Community Law and National Law: The Cases*, Cambridge 1993. For the term see also Hans Peter Ipsen: *Zehn Glossen zum Maastricht-Urteil*, in: *Europarecht* 1 (1994), pp. 1-21.

¹² See for such a statement Tony Blair: *Europe's Political Future*, Speech to the Polish Stock Exchange, 6. October 2000, (<http://www.fco.gov.uk/news/speechtext.asp?4913>).

¹³ See Stanley Hoffmann: *Obstinate or Obsolete: the Fate of the Nation-State and Case of Western Europe*, in: *Daedalus* (1966), pp. 862–915.

¹⁴ Joseph Janning: *Dynamik in der Zwangsjacke – Flexibilität in der Europäischen Union nach Amsterdam*, in: *integration* 4 (1997), pp. 285 - 292, here p. 290.

integration. The evolution of »real patterns« in the »living constitution« show a trend towards an intensive use of institutions and procedures to produce an increasing output which also becomes more differentiated. Although many supranational elements of the institutional framework have remained largely »dead letter«, this scenario is even applicable for the second pillar.

The basic theoretical background of the community method scenario is based on the idea of a functional, institutional and procedural spill-over: a process which refers “to a situation in which a given action, related to a specific goal, creates a situation which the original goal can be assured only by taking further actions, which in turn create a further condition and need for more action, and so forth.”¹⁵ In view of this approach, the revisions of the European treaties are the legally sanctioned products of spillover processes, which provide the EU institutions with more exclusive powers for shaping outputs that are binding for the Member States. Therefore, the development of policies such as the European Union’s external relations in the Common Commercial or External Monetary policy has led to pressure for further cooperation in CFSP or even ESDP affairs.

It is the »Monnet strategy« which has been followed from the beginning of the community project in the 1950s. Advocates of the community method promote a strengthening of the current institutional triangle. In particular, this scenario proposes options to link the strengthening of the (European) Council and/or Presidency with a stronger role for the EP – secured through majority voting and an independent Commission. Nevertheless, the scale of options within this scenario varies considerably, particularly due to the very heterogeneous positions of the EU Member States. This analysis of both dimensions demonstrates that political attentions as well as personal resources have shifted to Brussels, while national resources are not yet communitarised as in other policy fields. The external influence of the Union (and its perception by third parties) will thus be based on the current system, whereby the domestic and foreign policies of the individual Member States might reinforce and strengthen the common EU policies.

From the assumptions of this school of thought we could expect that committees with national civil servants will serve to extend at least the formal legitimacy of the nation state, even though the locus of de facto decision-making has already shifted to communitarised bodies outside national control. In terms of democratic accountability, the legitimacy of CFSP/ESDP actions would not remain restricted to the national level. Instead, it would be reinforced through supranational community institutions comprising a mix of the national and the EU level.

1.2.3. Long-term: Towards a European federal foreign and defence policy – the »federal«-scenario

The third scenario is based on the assumption of a move towards the idea of a federal constitution: a »saut qualitatif« towards a new European foreign policy structure. It is therefore a long-term vision that would require fundamental and complete reforms and would lead to a truly common European state model. In this context, the study will present a set of proposals for explaining the EP’s role towards full-fledged parliamentary participation – similar to the US Congress model. Such a federal scenario would include a clear division of competences, a decentralisation of power, a European constitution that would feature a set of fundamental rights and an institutional structure with a two-chamber parliament and an elected government.

¹⁵ Leon N. Lindberg: *The Political Dynamics of European Economic Integration*, Stanford 1963, p. 10. See also Robert O. Keohane and Stanley Hoffmann: *Institutional change in Europe in the 1980s*, in: Robert O. Keohane and Stanley Hoffmann (eds.): *The new European community, Decisionmaking and Institutional Change*, Boulder 1991, pp. 1-39.

This federal scenario is based on the assumption that the overall dynamics of the EU System and the difficulties of the present institutions and procedures will create sufficient incentives for the heads of government to take a decisive step towards some kind of supranational or federal set of rules for running an efficient and effective CFSP/ESDP. Challenges and shocks from the international system will be perceived as pressures to push national politicians towards a federal »finalité politique« – perhaps at the beginning by means of incremental steps. Proposals in this sense are already being presented by some national politicians or political parties and, indirectly, also by the heads of governments questioning in the Laeken declaration: “Does Europe not, now that [it] is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples?”¹⁶

According to federalist thinking, national actors’ struggle for access, voice and veto powers, e.g. for the most extensive control possible of the Brussels arena, has not been, is not and will not be successful.¹⁷ Committees of national civil servants (especially COREPER and the PSC) are seen as serving only national interests and thus constituting a major obstacle to the proper institutional balance, which would be mandatory to guarantee efficient, effective, and legitimate integration policy with regard to CFSP/ESDP matters.

From the assumptions of this school of thought we could expect that Member States’ institutions and actors will become increasingly marginalised and substituted by EC/EU bodies. Such Member State institutions will be transformed from arenas for national actors into autonomous bodies replacing national influence. Each change of the treaty (constitution) would increase the role of supranational institutions and decrease the veto powers of Member States. The behavioural pattern of the Council of Ministers would be dominated by the use of articles, which would allow for qualified majority voting. The evolution of a »true will« of the »European people« and the desirable path to a federal union would therefore require a considerable increase of the European Parliament’s rights and powers.¹⁸ Federalism assumes a legitimate supranational order, in which the EP formulates far-reaching policy agendas, articulates ideals and brokers strategies for the deepening of the integration process. The EP would thus become a relevant actor or even the key institution in the constitutional set-up of the (future) EU government.

In this perspective the third scenario pictures a trend towards a further »Brusselisation« and ever closer political co-operation in foreign, security and defence affairs. More and more policy aspects of security and defence policy will be included, both in military as well as a non-military crisis management and defence. A federalist scenario’s objective is to have an institutional structure, which takes into account the dual legitimacy of the EU as a Union of states and a Union of peoples. Thus, democratic participation (and, consequently, legitimacy) can be achieved at the supranational, national and regional levels. Strengthening the *external* capacity of the EU is based on finding common solutions to common problems and speaking with one voice on the world stage. In this system, the EP would play a key role, ensuring a strong parliamentary dimension to ESDP.

Despite this completely federal Union seeming at present to be far from realistic (especially in terms of CFSP/ESDP), this scenario does prove helpful, as some of the federalist elements are

¹⁶ European Council 2001, op. cit., p.1.

¹⁷ See Richard Mayne and John Pinder: *Federal Union: The Pioneers, A History of Federal Union*, London/New York 1990, pp. 214-215; John Pinder: *European Community: the building of a Union*, Oxford/New York: 1995.

¹⁸ See Altiero Spinelli: *Manifest der europäischen Föderalisten*, Frankfurt a.M. 1958; Heinrich Schneider: *Föderale Verfassungspolitik für eine Europäische Union*, in: Heinrich Schneider and Wolfgang Wessels (eds.), *Föderale Union – Europas Zukunft? Analysen, Kontroversen, Perspektiven*, München 1996, pp. 21-50.

part of the wider discussions and can be incorporated while not embracing the final idea of a federation.¹⁹

1.3. The scope of options and the legal character

The strengthening of parliamentary involvement in the European policy-cycle is a core element in the debate about reform, which is taking place in the Convention on the future of European Union. It is argued that parliaments are of extraordinary political importance since general support in a Member State for the EU is closely related to the role played by its parliament(s). Parliaments are generally regarded in democracies as a key to ensuring legitimacy since in most systems they are the only body directly elected by the people. In the EC/EU-system, the European Parliament is the only institution, which gains its legitimacy in this way. The question of how far and by which means stronger parliamentary cooperation can be obtained is discussed with a large amount of controversy. The following four general options summarise the range and level of options both for the EP and national parliaments in general, as well as for CFSP and ESDP in particular.²⁰

- ⇒ strengthening the competences of the European Parliament in decision-making and controlling as well as improving appointment competences
- ⇒ enhancing the participation- and control rights of national parliaments in the European policy-cycle
- ⇒ establishing a body of national parliaments at EU level
- ⇒ improving the cooperation structures between the national parliaments and the European Parliament

All aspects of the parliamentary dimension of CFSP and ESDP will be discussed along the lines of these four models of possible parliamentary engagement. Hence, the various options for CFSP and ESDP will be discussed firstly along the three scenarios, secondly in view of the options for parliamentary involvement and thirdly in regard to all four phases (preparation, making, implementing and controlling) of the policy cycle.

In addition to these three aspects (1. scenario, 2. parliamentary involvement and 3. policy-cycle) a fourth feature will be introduced which will refer to the legal character of the suggestions. In order to present the EP with a widespread range of possibilities for how to achieve its positions, the proposed options will be combined with recommendations on the legal character of the prospective changes. In this context, it is important to distinguish between the following methods:

- ⇒ Treaty amendments (primary law)
- ⇒ legal decisions (secondary law)
- ⇒ Inter-institutional agreements («soft law»)
- ⇒ Internal rules (rules of procedure)
- ⇒ Informal agreements

Due to their legally binding character, treaty amendments are the most important. Even if the legal basis for the EP were limited, it might be a starting point for further arrangements. By considering a restricted set of legal and real indicators of integration, we can identify recurrent patterns, which hint to a process of a *de facto* stronger involvement of national and EC actors.

¹⁹ As existing examples of federative elements in the EU the common currency and the European Central Bank have to be taken into account.

²⁰ See in this context also Andreas Maurer: Optionen und Grenzen der Einbindung der nationalen Parlamente in die künftige EU-Verfassungsstruktur, SWP-Studie, Berlin 2002, p. 5.

This happens in some form of »Brussellisation« for joint activities and pressure in the international system – without necessarily implying a direct »communitarisation« in strict legal terms.

Legal decisions are also of high importance since the creation of bodies such as the Political and Security Committee (PSC), the Military Committee (EUMC) and the Committee for non-military aspects of crisis management (CIVCOM) is based on a legal act by the Council.

In the legal hierarchy of EC/EU, inter-institutional agreements are binding, but not in the same way as treaty articles. These agreements aim to give concise expression to the Treaty on European Union. Internal rules are legally binding – but only for the institution that incorporates them.

Informal agreements are not legally binding. Nevertheless, they can hold high political significance by offering incentives and constraints. Furthermore, they can gain particular importance in the long run. If long-term goals or strategies based on informal agreements are, step by step, amended or even transposed to the formal institutional and procedural provisions, they can create crucial opportunity structures.

Very generally, the basis for all of the following observations, statements and recommendations should be to highlight and emphasise the collective nature of European Security and Defence Policy and to ensure that ESDP becomes more legitimated.

2. Reform options regarding the parliamentary dimension of CFSP/ESDP

Parliaments are of essential political importance. Since parliaments are the only body directly elected by »the People(s)«, they are regarded as a core of legitimacy in democratic systems. Democracy through parliamentary involvement remains important, even when a lot of the information and documents involved in foreign and security policy are of a confidential and sensitive nature.

Since legitimacy is of major importance for CFSP/ESDP, a more direct involvement of the European Parliament in foreign and security affairs must be achieved, including a revision of rules governing the CFSP/ESDP policy-cycle from decision preparation to decision implementation and control. Without neglecting the (primary) role of national parliaments in foreign and defence issues, the competences of the European Parliament needs to be reinforced in order to reduce a legitimacy gap. This is essential for the credibility of CFSP and ESDP. It is insufficient to rely on the indirect legitimacy of national ministers who are elected or appointed by their respective national parliaments, which are in turn elected by the citizens.

The current institutional arrangements where responsibilities are split between the Council, the presidency and the European Commission, between COREPER, the PSC and the High Representative of the CFSP have been criticised as inefficient and insufficiently democratic. Furthermore, the division of control and scrutiny of the respective actors (the classic instrument of parliamentary involvement in foreign and security affairs) between national parliaments and the European Parliament has been called into question. In order to reinforce the credibility of the European Parliament and take into account the priorities of the overwhelming majority of European citizens – who believe that foreign and security policy should be part of EU competences – several proposals for a parliamentary dimension of CFSP and ESDP will be introduced:

2.1. Legal references of European Parliament competences in CFSP and ESDP

The »Nice« version of the TEU includes references to ESDP only in Article 17 (TEU – NV) and in Article 25 (TEU – NV). Since the objective of Article 21 TEU is »merely« the »common foreign and security policy«, a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP. Still, Article 17 defines that CFSP »shall include all questions relating to the security of the Union, including the progressive framing of a defence policy, which might lead to a common defence, should the European Council so decide«. This provi-

sion should be re-formulated in a more precise manner as to facilitate a distinction where necessary between provisions on CFSP and ESDP. In particular, the term ESDP should find its way into the Treaties proper.

The discussion on such an issue should contribute to a more general (public) debate on the question: "What is foreign, security and defence policy about"? Is there, in practice, an applicable division between the aspects of CFSP and the features of ESDP, or is this merely artificial? Are these two areas mutually interwoven, rendering a division superfluous, or are they separable? Finally, should one take into account the involvement of interior issues, human rights affairs and development aspects or should they be excluded from the set-up of CFSP/ESDP?

1) According to the status quo scenario, the lack of »parliamentary« references is regarded as only a minor problem. However, since the parliamentary dimension of the ESDP is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of a presidency, the EP might in this scenario claim a larger role through insisting its will and its right for a more profound participation. This might be achieved as a minimum in specific wording. The connection of EP to ESDP in at least a declaration by the European Council might stress the participation of the European Parliament in this new policy area and link it more closely to democratic principles.

In addition, the European Parliament might put forward the idea of producing a »White Paper« on ESDP: Such a »paper« could then take into account the parliamentary dimension of European security and defence policy.

2) Even taking a pragmatic view about future developments in foreign and security matters, it appears necessary to extend the existing treaty provision in the second pillar to the emerging ESDP. Thus, all parts of Article 21 should be amended in the way that the objective is more clearly defined. In the view of the European Parliamentarians, it might prove helpful to distinguish between security targets, e.g. the Petersberg tasks, and other general defence matters. Following such an approach, the Petersberg tasks should not be reduced to peacekeeping but also include peace enforcement as outlined by UN Secretary General Boutros Ghali.²¹ Amending Article 21 with regard to the incremental option would mean that the EP contributes to the security aspect but is excluded from defence policy that is executed by the Member States.

If we follow the preliminary draft proposal by President Giscard, then the revised Article 21 has to be extended on both external actions and defence. Nevertheless, if a clause of mutual assistance is included in the Treaty (see below), then the EP (via its rights of information) should also be engaged in any case of invoking it.

3) If a truly European view eventually develops into the aspired »finalité politique«, the entire Title V TEU would have to be revised. Several references to parliamentary involvement would have to be included. In particular, Article 21 would have to be amended in two ways: Both security and defence policy would be inserted leading to the participation of the EP in foreign and security policies as well as defence. A new version could be drafted that read: "The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy »including defence« and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency, the High Representative and the

²¹ United Nations Secretary-General Boutros Boutros-Ghali published in June 1992 »An Agenda for Peace« which stimulated the debate about the role of the international community in securing peace in the world.

Commission of the development of the Union's foreign and security policy »including defence«".²²

2.2. Participation of the EP in »appointments« and electoral functions

The function of appointment is generally based on the principle of parliamentary majorities that exert their influence through the instrument of the election of the respective head of the government or its cabinet. In the EU, the Commission can be characterised only to a limited degree as a »government«. The appointment function has been developed in a fairly restricted way. Nevertheless, the EP's approval of the president of the Commission followed by the entire Commission (Article 214 TEC) can be evaluated as a first step towards such an appointing function. By means of the »hearings« (not yet legally recognised in the EC Treaty) of the individual Commissioners, the EP has succeeded at least on a small scale in expanding its authority.

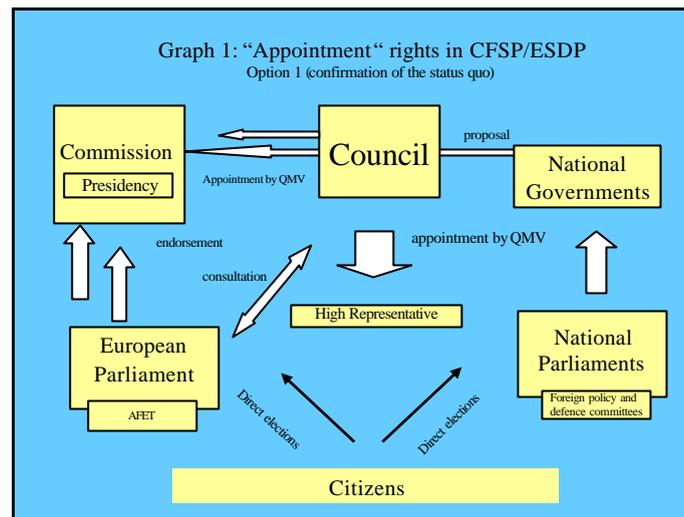
1) With regards to CFSP/ESDP affairs, a careful adaptation would include a slight enhancement of the EP's competences. Currently, the EP is not involved in the nomination or appointment of the High Representative. One possibility to achieve a better role for the parliament would be to introduce Parliament's involvement in the appointment of the High Representative. Hence, the EP should refer to the example of the EC treaty provisions concerning the European Central Bank. The president of the ECB, as well as the vice president and the other members of the executive-board, is appointed after consultation with the European Parliament. The same provision might be adopted in appointing the High Representative. Consequently, the wording could run as follows: "The High Representative of the CSFP will be appointed by common accord [or QMV since with the Nice treaty it is introduced for the appointment of the Secretary General of the Council] of the Governments of the Member States at the level of heads of state or government, on a recommendation from the Council, after it has consulted the European Parliament (...)".

An alternative solution, being discussed at present, would entail the appointment of the High Representative by the European Council, preferably as deputy President of the Commission but without being bound to the body's collegial discipline and with a specific right of initiative on foreign and security policy (which would derive also from the role of Commissioner).²³ In this case, the EP would at least be consulted before the High Representative is appointed.

Another aspect of the debate is the involvement of the European Parliament in the appointment of the special envoys. According to a careful adaptation, the EP should at least be consulted before the appointment of special envoys is decided.

²² See for further amendments of Article 21 in order to improve information and control competences chapter 2.6 below.

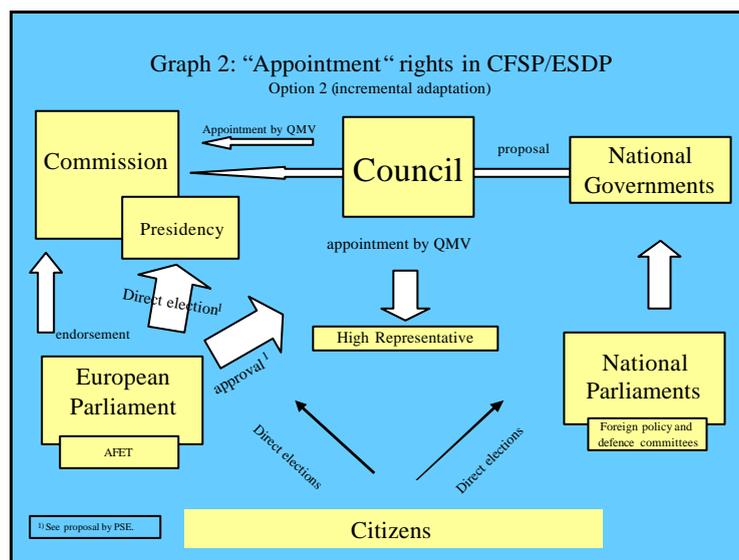
²³ See Hannes Farnleitner and Gerhard Tusek: A Common Foreign Policy for the EU, Contribution to the Convent, 13 August 2002 (CONV 224/02).



2) With regard to the perspective of an incremental adaptation of the treaties, the competences of the European Parliament in CFSP and ESDP have further to expand. The European Parliament should demand not only to be involved in the approval of the European Commission, as it does currently, but should also have a direct role in the appointment of the High Representative. In this case, the High Representative might be appointed along the same lines as the European Commission.

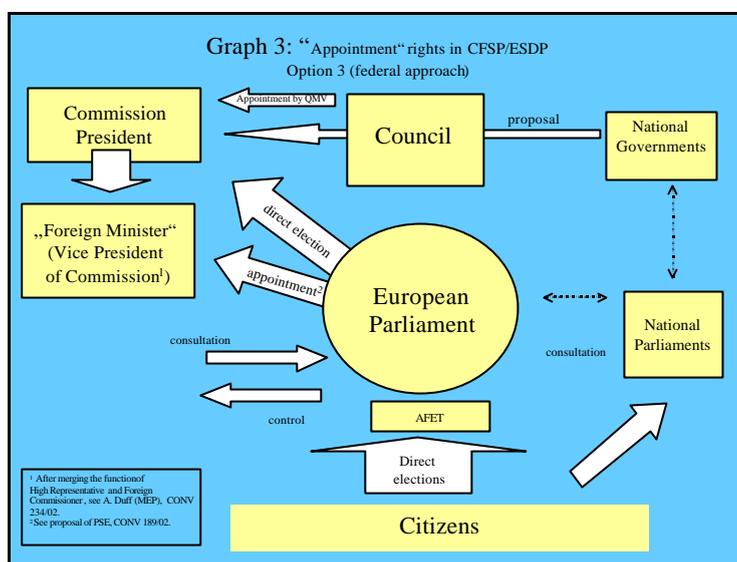
There is also an alternative for this treaty provision. In view of a more straightforward formulation, the provisions of the Treaty with regard to Article 207.2 might run as follows: "The Secretary-General and Deputy Secretary-General shall be appointed by the Council, acting by qualified majority after the assent of the European Parliament." In any case, the High Representative should be answerable to the European Parliament. This can be achieved by a amendment of the treaties including such a provision in Article 21.

In view of an incremental adaptation, the EP should also claim the right to take part in the appointment of the special envoys. Thus, an amendment of Article 18.5 might be necessary.



3) As already pointed out, if in the long run a far-reaching reform is to be achieved then the functions of the High Representative for CFSP and the Commissioner in charge of external relations ought to be combined into a single position. The institutional connection between the Council and the Commission resulting from this »fusion« of actors would strengthen the coherence of the various elements of EU foreign policy and might lead to a more efficient and

co-ordinated external representation of the Union. In view of a federal solution and a personal union between the High Representative and the »Foreign« Commissioner as vice president of the Commission (responsible for foreign, security and defence policy), the EP should have the right of electing the individual holding this position.²⁴ This right might include the obligation that the respective holder of the position is accountable to the EP for his actions.



To be in keeping with the »real« federal aims, a change in the mode and order of electing the presidency of the Commission should also be undertaken. The proposal of a candidate should not derive from the heads of government but from the majority in the plenary of the EP.²⁵ Regarding the special envoys, the EP should be an equal partner in the appointment process of the special envoys thus giving its assent.

2.3. Information and control rights of the EP in CFSP/ESDP affairs

Under the »Maastricht« TEU, additional rights of control for the EP were introduced in the EC pillar, such as bringing a matter before the ECJ (Article 227) and the use of committees of inquiry (Article 193). It remains to be seen whether the first negative experiences with the BSE committee of inquiry (concerning document insight, summons of national parliamentarians or civil servants) might be put in perspective in the future. Nevertheless, following a traditionally liberal position, the EP takes a significant position in controlling Council and Commission due to the overall non-parliamentary-system structure of the EC/EU.

With regard to CFSP/ESDP the constellation is even more intricate. In the year 2000 the High Representative, following a Council decision,²⁶ took several decisions in the field of security

²⁴ See election programme of the German Social Democratic Party (SPD), printed in: Frankfurter Allgemeine Zeitung, 9 August 2002.

²⁵ See Bündnis 90/Die Grünen (Germany): Electoral programm 2002, quoted in: Frankfurter Allgemeine Zeitung 9 August 2002.

See also the position of SPE, in: Für einen Erfolg des Konvents zur Zukunft Europas, Unsere wichtigsten Vorschläge, Strasbourg, 2 July 2002. See as example for the position of the EPP: A constitution for a strong Europe (adopted at the EPP Congress in Estoril, 18 October 2002), http://www.eppe.org/archive/Constitution_EN_1992.asp.

²⁶ In a COREPER meeting in July 2000, a majority of Member States decided to categorise all documents containing information on military or non-military crisis management. Public access is now refused to documents classified as top secret, secret, or confidential, whereas access to all other documents is granted or denied according to the previous rules.

and defence policy that were intended to protect secret or confidential information.²⁷ In reaction to this »Solana Decision«, the European Parliament made serious plans to take the Council before the European Court of Justice and claim its right for appropriate information. In July 2002 the situation was eased when a draft agreement was discussed that aimed to ensure that the EP would be informed appropriate about EU defence and security policy.²⁸ This agreement between the EP and the Council was concluded on 20 November 2002. Although it remains to be seen how the agreement works, it promises to be a substantial step forward compared to the current provisions of Article 21 in terms of timing, scope and quality of information.²⁹ Especially significant is the provision that a »security committee« will be created (Article 3.3. of the agreement) comprising four MEPs and the chairman of AFET, and which will be informed “of the content of the sensitive information”.

1) In consideration of the status quo scenario, the information rights of the EP will not be substantially amended due to the confidential nature of foreign policy. The recent arrangements are regarded as the optimum for the parliamentary ability to monitor CFSP and ESDP vis-à-vis the Council.

The first EU military exercise, the Crisis Management Exercise (CME), took place from 22 to 28 May 2002. The Member States and many European institutions took part in the simulation, as well as the main international players (as observers). The exercise was designed to test the decision-making system in a crisis situation. Though this prototype of European military exercise was considered a success, the European Parliament obtained hardly any detailed information. In view of the new arrangements (Inter-institutional agreement of November 2002) the EP’s access to such confidential information might improve. Nevertheless, the EP has to ensure a genuine evaluation of the new arrangements.

In addition, it must question whether the present arrangements of intelligence sharing and the relatively small size of the Policy Unit are sufficient to deliver quality information assessments for EU action. Hence, the Parliament should propose initiatives for guaranteeing better information by discussing and addressing the Policy Unit and other bodies in the Council framework.

2) A pragmatic development might include that a distinction be made between the formal and informal information competences of the EP. Referring to the informal information competences of the European Parliamentarians, the key question would be: »(How) can a culture of informal participation evolve?« In this respect the links of the EP’s AFET with the Council and its bodies would have to be improved at all stages of the policy cycle. This might also lead to the establishment of links between Parliament and the PSC, which are currently insufficient. Pragmatic channels of collaboration will probably depend on the national background of AFET Parliamentarians and the respective political directors of the EU Member States. In addition, MEPs should even seek ties and channels to the EUMC and especially the chair of the EUMC.

In view of formal information rights, it should be considered necessary by the EP to pursue an improvement in the flow of information from the Commission, the Presidency and the High

²⁷ Decision of Secretary-General/High Representative of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council (OJ C 239, 23 August 2000, p. 1).

²⁸ By letter of 22 July 2002 the President of Parliament referred to the Committee on Constitutional Affairs a draft for an inter-institutional agreement between the European Parliament and the Council with reference to access of the European Parliament to sensitive information of the Council in the field of security and defence policy. The conference of Presidents had approved this document on 13 June 2002. See also See report (by Elmar Brok) on an inter-institutional agreement between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy and on amendments to the Rules of Procedure (2002/2130(ACI).

²⁹ See Inter-institutional Agreement of 20 November 2002, (2002/C 298/01).

access to documents classified as sensitive.³¹ Secondly, for those documents categorised as confidential, an individual insight of single parliamentarians should be available.

The inter-institutional agreement, concluded in November 2002, is very close to this proposal. According to Article 3.1 of the agreement, “the President of the European Parliament or the Chairman of the European Parliament’s Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy may request that the Presidency of the Council or the Secretary General/High Representative convey information for this committee on developments in European security and defence policy, including sensitive information (...)”.³² A special committee led by the chairman of AFET and four members designated by the Conference of Presidents, will be informed by the Council Presidency or the High Representative on the content of sensitive documents. After that, the information shall be handled according to four different options. They can be made available to the chairman of AFET (3.3.a) the members of AFET (3.3.b), they can be discussed in AFET (3.3.c) or they can be more widely distributed if the information considered sensitive has been expunged.³³

This agreement is a promising step forward in access to information for the European Parliament. Parliamentarians should work to ensure that in two years time a thorough investigation of the agreement (see Article 4.3 of the agreement) will enable the EP to push for amendment of Article 3.1 so that the European Parliament “may (not only) request” information but that the EP has to be informed (in any case) at least in the formation of the newly established »security committee«. In addition it should be discussed, if even the »top secret« information, which is currently excluded, might be included in the agreement.

Moreover, the exchange of information between the national parliaments and the EP (see below) would improve the parliamentary dimension of CFSP and ESDP.

3) From the federal perspective it would be desirable to enhance the EP’s role by strengthening its formal rather than informal rights. The EP should claim that in order to gain a more comprehensive view of developments. It needs to obtain access not only to decisions that the Councils intends to adopt but also to all other information related to foreign, security or military actions. The possibility of the EP achieving more efficient and democratic legitimacy for foreign policy is restricted by the current Article 21 and its passage stating that the EP shall, be restricted to “be[ing] kept regularly informed” on the “development” of the Union’s CFSP..

Since the High Representative – or a body on entrust by him – is in charge of planning the military operation of the Rapid Reaction Forces while the External relations Commissioner is responsible for non-military action, it should be up to each single case who will be accountable to the European Parliament. Following this claim, a revised Article 21 TEU might read as follows: “The European Parliament shall be informed by the responsible actor at every stage and of all aspects on the Union’s foreign, security and defence policy considered necessary by the Parliamentarians.” To achieve this purpose, in practical terms the formal procedures of oral and written questions would have to be improved in order to guarantee a timely and serious response to the procedure.

Another point to be taken into consideration is the control by the EP of the special envoys. The Parliament should at least obtain the right to survey in written questions the activities of the envoys. Finally, the European Parliament should insist on an »observer« status in all Council meetings taking decisions about CFSP and ESDP affairs. Such participation by the EP would be reasonable in order to secure a supply of reliable information. However, such a

³¹ Currently, documents will be classified as top secret, secret or confidential. See more comprehensively in this context Isabelle Ioannides: *The European Rapid Reaction Force: Implications for democratic accountability*, BICC paper 24, pp. 20.

³² Inter-institutional Agreement of 20 November 2002, (2002/C 298/01).

³³ See *ibid.*

solution might also be problematic due to the discrepancy between higher expectations that are combined with such a right of the EP on the one hand, and the realistically to-be-expected marginal influence of the EP on the other.

2.4. *»Legal« participation of the EP*

To carry out legal acts in CFSP/ESDP, parliaments generally must not only have the possibility to formulate their own position on all proposals for EU legal measures but also be able to approve or to reject what the executive has proposed. From the view of the European Parliament there are currently five principle legal procedures: simple procedure (without any involvement of the European Parliament), consultation, co-operation, co-decision and assent. However, the EP cannot make use of any of these parliamentary options, since CFSP and ESDP are primarily intergovernmental. As this policy field is related to its specific nature, a simple transfer of rules is difficult and even risky.

As shown above, the simplest option to reduce the inconsistency of the Union's institutional design in CFSP and ESDP affairs would be to dismantle the current pillar system. Such an option would make it possible to *»upgrade«* the European Parliament to an active participant in decision-making in foreign, security and defence matters.

1) With regard to the short-term scenario, any direct legal competencies for the EP are far from realistic. Consequently, the European Parliament should insist exclusively on better information – especially from the Council. In this way, the EP might gain a means towards some influence by developing public pressure. Consequently, the EP should seek to place the topic of democratic accountability of ESDP on the wider agenda. This kind of influence is an indirect one, but legal decisions could be shaped by it (see below).

In addition, the EP might claim that the number of current various legal instruments in CFSP/ESDP should be decreased as it is a rather complex legal system: there are for instance general guidelines and principles as well as common strategies (taken by the European Council), joint actions and common positions either with QMV or with unanimity, (institutional) decisions and declarations (not yet incorporated in the treaties). In order to reduce complexity and to achieve a better awareness as well as a higher transparency, the use of only the key instruments would seem to be desirable.

2) According to a step-by-step approach (and in the case where all current CFSP/ESDP instruments are kept) the European Parliament should touch especially upon the civil aspects of CFSP/ESDP. Until the Brussels plenary session on 9 and 10 April 2002, the EP had always stressed the supremacy of the non-military aspects of ESDP.³⁴ Although this view has been softened, the focus of EP participation in decision making should be related to these non-military aspects as they are defined in Annex I of the Presidency Report in Feira on strengthening the Common European Security and Defence Policy and in Annex 2 to Annex IV of the Helsinki conclusions. It has, nevertheless, to be admitted that a clear distinction between civil and military means proves difficult and that a non-military action might turn into a military one.

In addition to the already existing possibilities of legal participation, the involvement of the European Parliament ought to be extended in a way that it will be consulted on all non-military questions of CFSP and ESDP. This right should also include existing actions of civil crisis management such as preventive diplomacy measures: for instance a stability pact.³⁵

³⁴ See for instance the report on security and defence policy of the European Parliament of 30 November 2000.

³⁵ Additional and reinforced parliamentary control is exercised by the EP via its own functions within the first pillar for civil crisis management.

Table 2: Instruments in CFSP/ESDP according to the incremental option (option 2)

LEGAL ACT WITHIN TEU	COUNCIL	EP'S INVOLVEMENT
general guidelines and principles	unanimously (European Council)	no participation
common strategy	unanimously (European Council)	assent by reinforced majority (2/3)
joint action on military issues = deployment of rapid reaction forces	unanimously	ex-ante information (of »security committee«)
joint action on non-military issues	QMV	Consultation
common position	QMV	information
(declaration)	QMV	information

These non-military legal acts (as well the military ones) should be taken regularly as joint actions. In this context, the EP should also claim that all non-military joint actions should be taken in the Council by QMV – irrespective of whether they are based on a common strategy or not.

Participation of the EP in military decisions will be less topical – at least in the long run.³⁶ In this area the decisive parliamentary role should be carried out by national parliaments. Nevertheless, the European Parliament or its bodies, especially the newly established »security committee« (see below) should be given an early insight into planned legal proposals or actions. In particular, EP should be informed prior to operations (joint actions) of the rapid reaction forces (RRF).

In addition, the parliament should work towards incorporation in the treaties the instrument of declaration and thus provide it with a legal basis. Due to its ad-hoc character, the EP should not be involved in the decision process of the Council acting by QMV. Instead it should be informed of the background and circumstances surrounding the respective declaration.

3) With regard to the federal scenario, the European Parliament might acquire an even more significant role in military aspects of CFSP/ESDP. In such a case of shifting competencies to the European level, the key question is: »who decides if and how to go to war?« Although such a right of the EP might cause difficulties in terms of a coherent and efficient and in-time reaction to crisis, and though the national parliaments also have to be included in the process (see below), the involvement of the European Parliament is absolutely essential since it is the only body directly legitimated at the European level.

Hence, the current provisions might be changed in a way that in cases of military crisis management the Council may act unanimously after consulting the European Parliament. Due to the confidential and urgent character of military actions, the new »security committee« should be allowed to act on behalf of the EP. This implies a change to the rules of procedure of the European Parliament.

EP rights must also be reinforced in the civil dimension of crisis management. In this case, the Council may act unanimously only after having received the assent (by a reinforced majority) of the European Parliament. Though things will be made even more complicated, it seems appropriate that the EP (or the respective body) votes with a 2/3 majority. The same procedure might apply for the instrument of common position. Nevertheless, it should be taken into

³⁶ See Matjaz Nahtigal (Slovenian government representative in the Convention), who claims that a “gradual communitarisation is needed”, first the “civil dimension of the EU foreign policy – including crisis management by non-military means”. 22 April 2002 (CONV 39/02).

consideration that this might lead to a less »streamlined« and coherent formulation of common positions.

In the long run and in view an enhanced ESDP, a role might even be considered for the Parliament to be involved in decisions surrounding the deployment of military forces. Hence, the EP might not only be consulted but might also give its assent.³⁷

Table 3: Instruments in CFSP/ESDP according the federal option (option 3)

LEGAL ACT WITHIN EU	COUNCIL	EP
general guidelines and principles	unanimously (European Council)	(general debate in the EP)
common strategy	unanimously (European Council)	assent by reinforced majority (2/3)
joint action on military issues = deployment of rapid reaction forces	unanimously	ex-ante consultation of »security committee« and ex-post information of EP
joint action on non-military issues	QMV	assent by reinforced majority (2/3)
Common position	QMV	assent by reinforced majority (2/3)
(declaration)	QMV	information

2.5. The impact of enhanced cooperation

Another aspect of decision-making procedures that must be considered is that of enhanced cooperation. »Flexibility« has always played a distinctive role in integration history and enhanced cooperation has attracted increased attention since its inclusion in the »Amsterdam« TEU.³⁸ However, due to the resistance of some Member States (led by the United Kingdom), the second pillar remained excluded from closer or enhanced co-operation.³⁹ In the second pillar, so as to provide a kind of safety net, only the option of a »constructive abstention« was introduced (Article 23.1 TEU – AV). The Treaty of Nice extended enhanced co-operation for the second pillar but with several restrictions. The veto option that has been deleted in the first and third pillar will remain valid for the second pillar and may thus prevent enhanced cooperation from the very beginning. Furthermore, enhanced co-operation will not be applicable for those issues involving military or defence implications.⁴⁰

According to Article 45 (TEU – AV), the European Parliament plays no particular role in enhanced co-operation. The Council and the European Commission shall just regularly inform it about developments in enhanced co-operation. Nevertheless, forms of flexibility are indispensable for the further development of CFSP and ESDP in general. The perspective of enlargement means that this will become increasingly the case. We can take up several of the

³⁷ See Jo Leinen (MEP Germany): *Verfassung der Europäischen Union, Contribution to the Convention*, 23 October 2002, www.joleinen.de/dokumente.html. It can also be argued about the right of co-decision according to article 251 TEC – or a yet to specify modification of co-decision. See in this respect proposal by CAP (Janis A. Emmanouilidis/Franco Algieri): *Stärkung außenpolitischer Kohärenz und Handlungsfähigkeit*, February 2002. http://www.cap.uni-muenchen.de/konvent/spotlight/Spotlight_2-02_d.pdf.

³⁸ See generally Claus Giering/Josef Janning: *Flexibilisierung als Option deutscher Europapolitik*, in: Heinrich Schneider/Mathias Jopp/Uwe Schmalz (eds.) *Eine neue deutsche Europapolitik? Rahmenbedingungen – Problemfelder – Optionen*, Bonn 2001, pp. 667-693.

³⁹ Flexibility was introduced in Amsterdam as closer co-operation but renamed with Nice to enhanced co-operation.

⁴⁰ See Elfriede Regelsberger: *Die Gemeinsame Außen- und Sicherheitspolitik nach »Nizza« – begrenzter Reformeifer und außervertragliche Dynamik*, in: *integration 2* (2001), pp. 156-166.

related issues currently under discussion, particularly a differentiation between flexibility »inside« and »outside« the treaties.⁴¹

1) According to a limited change of the treaties, the current status quo will in no way be substantially changed. This indicates according to Art. 27b (TEU – NV) that defence or military matters remain excluded: “Enhanced cooperation pursuant to this title shall relate to implementation of joint actions or a common position. It shall not relate to matters having military or defence implications.” Flexibility will just take place outside the treaties and remains inapplicable for defence and military issues. The potential of the EP achieving more influence on developments in armament affairs remains very low. The only option is to make use or to improve the communication channels to national parliaments (see below) in order to secure better access to information.

2) A slight adaptation of the treaties will be closely linked to reduce flexibility outside the treaty. Since the European Parliament has neither influence nor even any information rights on the developments or decisions taken in the framework of bodies outside the treaties, it should claim that flexibility would be carried out within the treaties. Hence, the provisions for flexibility should also be made applicable for defence policy. In such a case, it should be discussed if (according to Article 27.d (TEU – NV)) the European Parliament will just be “kept fully informed of the implementation of enhanced cooperation (...)” or if the rights of the European Parliament should be equivalent to normal procedures in cases of enhanced cooperation that are extended to military and security issues.

To this end, instruments of cooperation in the defence industry e.g. developments such as the Western Armaments Group (WEAG) in the framework of the WEU or the creation of the Organisation Conjointe de Cooperation en matière d’Armement (OCCAR), should be incorporated in the TEU. »Schengen« might serve as a blueprint for this endeavour. In such a case, non-EU states might be given an association status.

The EP should reject the idea to establish a »security and defence union« as an independent actor outside the treaties but which is linked to the European Union.⁴² However, the idea to implement a security and defence protocol (as promoted in the popular Fischer/Villepin proposal) within the treaties might be a workable compromise.⁴³

3) As pointed out above, the use of flexibility as a »last resort« should be avoided both generally and in relation to CFSP/ESDP matters. Nevertheless, in order to achieve an operational ESDP, flexibility might be indispensable.

Thus, enhanced co-operation must be applied in the decision-making stage and should not merely be limited to the implementation of joint actions. An explicit link might also be established to CFSP »common strategies« as a general framework for enhanced co-operation.⁴⁴

Possible procedures for such a »regulated flexibility« could be achieved through changing the provisions of the Nice Treaty regarding “enhanced cooperation” (Article 27 TEU – NV). The

⁴¹ See in this respect especially Udo Diedrichs/Mathias Jopp: The application of the Concept of Enhanced Cooperation to CFSP/ESDP and arms industry, unpublished paper and Antonio Missiroli: CFSP, defence and flexibility, Chaillot papers 38, February 2000.

⁴² See for such an approach Reimund Seidelmann; Perspektiven und Optionen für die Kompetenz- und Mittelverteilung zwischen EU, NATO und den Mitgliedstaaten, in: Erich Reiter/Reinhard Rummel/Peter Schmidt (eds.): Europas ferne Streitmacht, Chance und Schwierigkeiten beim Aufbau der ESVP, Hamburg 2002, pp. 195-221.

⁴³ See the German-Franco proposal by Joschka Fischer and Dominique de Villepin, 22 November 2002 (CONV 422/02). See also Lamberto Dini, (MP Italy): Contribution to the Convention, 26 September 2002, (CONV 301/02).

⁴⁴ See Marta Dassù/Antonio Missiroli, op. cit. See in this context as well the proposals for enhanced cooperation and arms procurement with the aim to set up a common defence industrial base.

instruments of enhanced co-operation would be extended onto questions with military and security policy dimensions.⁴⁵ The passage that enhanced cooperation should not apply to “matters having military and defence implications” (Art. 27b TEU – NV) should be eliminated. Additionally, the provisions of Art 27e (TEU – NV) should be amended since such time periods are not appropriate in urgent foreign and security cases.

The adaptation of convergence criteria that is also discussed in view of CFSP and ESDP should be rejected due to the own logics of this policy area.⁴⁶

2.6. Participation of the EP in the budgetary aspects of CFSP/ESDP

Currently, in CFSP/ESDP budgetary affairs there exists a difference between »administrative« expenditures which are part of the EC budget and »operational« expenditures, which will also be financed by the EC budget unless the Council decides otherwise by unanimity. “Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except (...) cases where the Council acting unanimously decides otherwise.”⁴⁷

The inter-institutional arrangement of 6 May 1999 has made parliamentary rights even more tangible: “Whenever it adopts a decision in the field of CFSP entailing expenditure, the Council will immediately and in each case send the European Parliament an estimate of the costs envisaged (‘financial statement’), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements.”⁴⁸ This is a very strong form of accountability since it requires the Council to communicate immediately to the EP an estimate of the envisaged costs.

However, there is one remarkable exception: “Operations having military or defence implications”, have to be financed by the Member States.⁴⁹ Hence, according to Article 28.3 TEU, military expenditures will not be funded out of the Community budget. The EU Treaty does not allow military operations to be charged to the Community budget.

As a result of such an arrangement for (military) ESDP affairs, it “is left up to the discretion, goodwill and generosity of individual countries, which have the additional option of abstaining (Article 23.2 TEU – AV) and thus not paying for common missions”.⁵⁰ All things considered, the European Parliament has budgetary rights as for instance regarding police missions but no budgetary powers in the military area because of the absence of a common European defence budget.

1) From the perspective of restricted adaptations, the current treaty provisions will not be amended. Treaty rights do not appear vital since the EP has already achieved a remarkable *ex ante* control via its budget rights on non-military issues. An efficient dimension to parliamentary influence in ESDP requires approval and information rather than increased budgetary rights. Hence, institutional-related discussions on the budget should be left out. Budget debates might lead to more strategically orientated decisions, but do not necessarily increase the influence of the EP. Consequently, the current inter-institutional agreement will remain valid.

⁴⁵ See the so-called Berlin Draft. Proposal by Günther Gloser/Michael Roth, 18 November 2002, (<http://www.constitutional-convention.net/archives/000698.html>).

⁴⁶ See proposal of the Seminar on Defence for the Members of the Convention, Brussels 7 November 2002, (CONV 417/02).

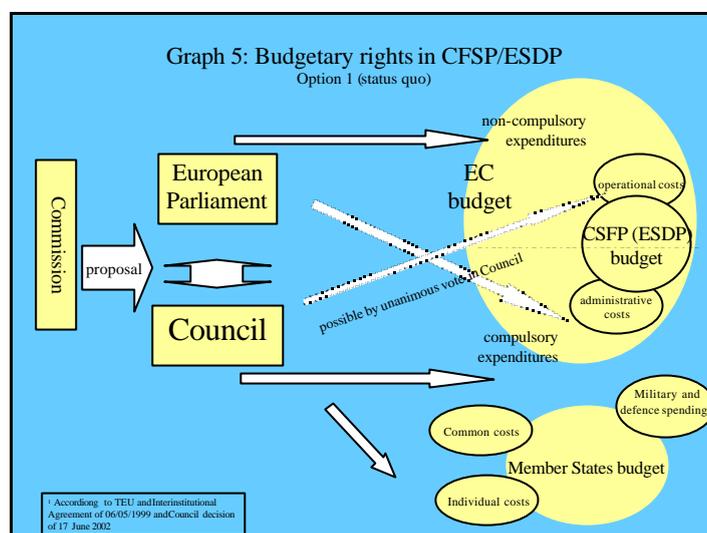
⁴⁷ Article 28.3 (TEU – AV).

⁴⁸ Inter-institutional arrangement of 6 May 1999. See Official Journal of the European Communities C 172/9.

⁴⁹ The respective contributions are referring to the national GDP.

⁵⁰ Marta Dassù/Antonio Missiroli: More Europe in Foreign and Security Policy: The Institutional Dimension of CFSP, in: *The International Spectator* 2 (2002), pp. 79-88.

The compromise reached by the Council and the European Parliament for 2003 on the increased budget can be regarded in this way as sufficient.⁵¹ According to this, the EP will be informed in time on the use of the additional funds. Each year before June 15, the Council will submit a document to the parliament, outlining the main aspects and basic choices for CFSP, including financial implications for the EU's General Budget.



Nevertheless, the European Parliament will support an operational ESDP. Hence, it seems essential that the EP focus its claims on increasing ESDP expenditures in military crisis management out of the EC budget. Though resistance of some Member States is to be expected, it might be reasonable to start with small projects that lead to a-step-by-step growth.

2) In view of the incremental adaptation scenario, the European Parliament should apply for participation, with the Council, on all parts of the budget of CFSP *and* ESDP. There are two options to achieve this aim:

Firstly, a combination of budgetary powers of EU and Member States might be appropriate. This might be based on a modified version of the Council decision of 17 June 2002.⁵² According to this Council (of Foreign Ministers) decision, there will be two categories of costs in ESDP: firstly, either common costs of the Member States, consisting of funds such as those for transport, administration or public relations of the staff quarter. Secondly, individual costs, which will be taken separately by each Member State according to its own expenses. This Council based solution can be considered as a compromise between countries ready to »merge« their defence expenditures and those disposed to adopt NATO's »costs lie where they fall« principle.⁵³ The expenses for the transport and accommodation of troops will be decided on a case-by-case basis.

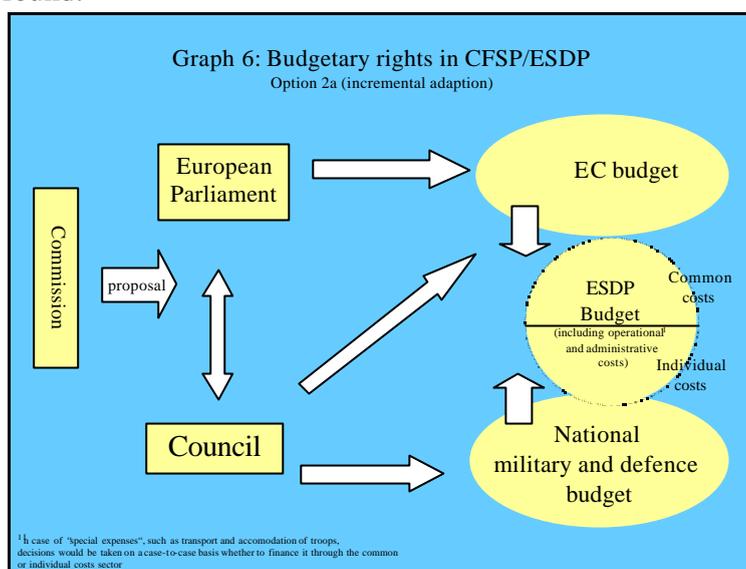
Based on this accord, the EP should stress that the common costs, including both operational and administrative costs, should no longer be financed jointly by the Member States but by the EC budget. Hence, Article 28.3 (TEU – AV) has to be amended. In practical terms, this might be carried out by a decision by the EP at the beginning of the budgetary procedure that will decide on the overall costs, which will then be distributed by the Council amongst the

⁵¹ It was agreed to increase the budget allocated to the actions undertaken under the Common Foreign and Security Policy (CFSP) in order to secure the financing of the EU Police mission in Bosnia from January 2003 (see Council decision of 18/19 February 2002 on an EU police mission (EUPM) in Bosnia-Herzegovina). Money was also secured for staff recruitment in the EU institutions from candidate countries as of next year.

⁵² See Note of the Council to the European Council with regard to the Presidency Report on European Security and Defence Policy, 22 June 2002. (10160/2/02 REV 2) (COSDP 188).

⁵³ See G. Gasparini: Observatory on European Defence, June 2002.

members. In this regard, the EP would have at least an indirect impact on ESDP financial matters. Nevertheless, a definite solution for the transport and accommodation of the troops would need to be found.



An alternative way to deal with budgetary questions might be found in view of a clearer differentiation between expenditures. Accordingly, the funding of Petersberg task should be covered by the EC budget, while all other military budget lines will remain the responsibility of the Member States. The EP should be involved in deciding on the Petersberg tasks – thus, it should emphasise that in any case a revision of Article 28 (TEU – AV) is necessary.

Following these two alternatives, an amendment of the inter-institutional agreement of 6 May 1999 is indispensable. The agreement has to be enhanced on ESDP matters. Consequently, the agreement might be changed in the following way: “Whenever it adopts a decision in the field of CFSP or ESDP entailing expenditure, the Council will immediately and in each case send the European Parliament an estimate of the costs envisaged (‘financial statement’), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements.”⁵⁴

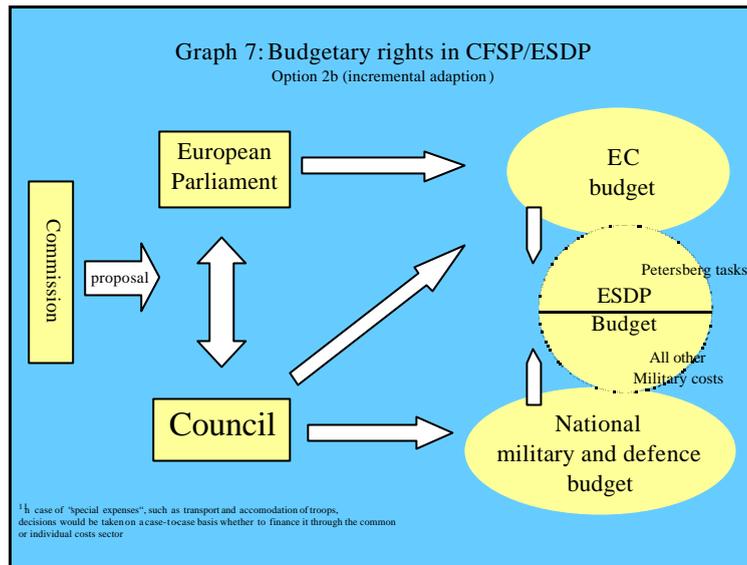
Closely related to budgetary questions in CFSP/ESDP are considerations on the establishment of a European armaments agency and a common European military budget for research and procurement (see below).⁵⁵ The European Parliament should continue to request that Member States increase their budget for security and military research, development and equipment.⁵⁶ The credibility of ESDP will depend very much on the ability of the EU to acquire necessary equipment and resources – especially if the European Union wants to carry out autonomous operations as outlined in Cologne and Helsinki.

In addition, the EP should demand that any action decided by enhanced cooperation, particularly those referring to defence issues (thus amending the current provisions on enhanced cooperation) should be financed by the EC budget. Such a budgetary arrangement might strengthen the perception of a collective responsibility and might act as a deterrent to »free-riding«.

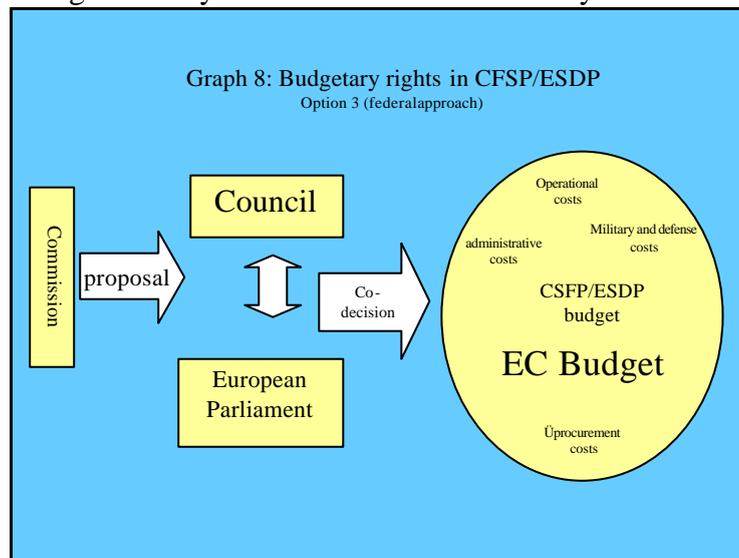
⁵⁴ Inter-institutional arrangement of 6 May 1999. See Official Journal of the European Communities C 172/9.

⁵⁵ Comparable proposals have been made by Philippe Morillon, head of the EP delegation for relations with NATO parliamentary assembly.

⁵⁶ See Motion for a resolution by Catherine Lalumière on the establishment of a common European security and defence policy with a view to the European Council in Feira, 3 May 2000.



3) A fundamental reform of the CFSP/ESDP budget would suggest that any action in this field would be covered by a system of common funding.⁵⁷ Thus, a total revision of Article 28 (TEU) would be necessary. This approach would go beyond Member States financing their own forces contributions on a »costs lie where they fall basis«. Instead, all costs in this context should be financed out of the EC budget. This will make it necessary to acquire the consent of the European Parliament.⁵⁸ The financing of military action from the budget would therefore make the budget a catalyst towards further community action.



In practical terms, it has again to be considered whether the EP's decision on the budget should be taken on a general basis or on a case-by-case basis including EP participation in the budget of each single action. In order to attain a working and efficient ESDP the general approach might be more appropriate. With the aim of achieving such a solution, the EP should at a minimum claim that the inter-institutional agreement of May 1999 be amended in order to strengthen EP's role.

⁵⁷ See Jo Leinen (MEP Germany): Verfassung der Europäischen Union, Contribution to the Convention, 23 October 2002, www.joleinen.de/dokumente.html.

⁵⁸ See Alain Lamassoure: The European Union, Four Possible Models, Contribution to the European Convention, 3 September 2002 (CONV 235/02).

In addition, the European Parliament should request the right to prevent opt-outs by Member States in financing military operations since such opt-outs would weaken the legitimacy of ESDP. On the other hand the EP will establish legitimacy for action thanks to its role as the final controlling authority of the EC budget.

2.7. Participation of the EP in international treaties

The Single European Act provided the European Parliament with the right of assent for all association agreements including conclusion of financial protocols. This right attracted special attention when the European Parliament hesitated to approve the Customs Union with Turkey (1996) and blocked the conclusion of financial protocols with Turkey, Israel, Morocco and Syria. Consequently, EU enlargement has been subject to the EP's assent. In 1994 the European Parliament was for the first time in a position to accept or refuse the membership of a candidate country when the admission of Sweden, Finland and Austria was debated. Nevertheless, the European Parliament has so far obtained no competences to decide upon, or participate in any agreement under Title V.

1) Following the status quo model in the development of CFSP/ESDP, the competences for parliamentary participation will not be substantially changed. Nevertheless, Parliament should claim that its information rights according to Article 21 TEU would also include a right to information about the international agreements taken under Title V.

2) The view of a slight adaptation of the treaties is closely linked to a higher involvement of the EP in the preparatory stage of international treaties. Consequently, the European Parliament would be more involved in those international agreements that fall under Title V. Thus, Parliament would claim that it is involved as it is in EC procedures. Hence, the EP would demand the right to become involved in all international agreements, which fall under Article 24 (TEU – AV). Revised treaty provisions might be set up for the powers of the EP in Article 300.3 TEC: “The Council shall conclude agreements after consulting the European Parliament (...). The European Parliament shall deliver its opinion within a time limit, which the Council may lay down according to the urgency of the matter.”

3) As to the »European (federal) ideal, a full parliamentary involvement would include that the European Parliament might, through the assent procedure, take part in any treaty with a third country. To this end, the European Parliament would be able to influence more intensely the institutional and procedural revisions of CFSP and ESDP.⁵⁹ A revised treaty provision might be set up amongst the parliamentary powers in Article 300.3 TEC: “Agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.”

3. The involvement of AFET in all stages of CFSP/ESDP policy cycle

While it is reasonable for the general aspects of CFSP (and ESDP) to be discussed in the plenary, it seems difficult to apply such an understanding to individual actions or declarations. It seems necessary to differentiate more specifically whether the Parliament in its entire composition should be involved or whether it should be the foreign and defence specialists who are addressed.

⁵⁹ See proposal by the PSE, op. cit. (CONV 189/02).

Of course, fundamentals such as the biannual work program or the presidency report might be part of an overall plenary session, while single actions should be part of the Committee's work. Otherwise, parliament would neither be able to deliver its opinion with the necessary rapidity (particularly in view of operations of the rapid reaction forces) nor be able to ensure the degree of confidentiality that the Council considers as necessary. Nevertheless, it might be discussed if the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) should continue to act in the same structure as it has in the past.

3.1. The overall Committee structure

As the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) covers an extremely wide range of policy fields, the internal committee structure of the EP should be revised in order to provide a more efficient way of coping with the heavy workload.

1) With regard to CFSP/ESDP and the status quo scenario the overall committee structure should not be changed substantially. However, the heavy workload of the Committee should be reduced. AFET is concerned to a large degree with questions of enlargement but this part of committee work will inevitably subside. Considering the status of enlargement and in view of the applications, the current candidate countries will in the near future no longer be part of the EU's external relations, but an integral part of the Union. Hence, the work of AFET could move on to focusing and concentrating more effectively on foreign and security aspects. Nevertheless, it should be discussed whether AFET should also co-ordinate the work of the inter-parliamentary delegations and the joint parliamentary committees as well as the cooperation committees and the ad hoc delegations.⁶⁰ The work area of AFET is even more extensive when we consider that these inter-parliamentary delegations also discuss economic and trade matters.

2) With regard to an incremental adaptation, AFET should reduce its workload by a better division of tasks. This might be achieved by a subdivision of tasks into several subcommittees. The EP has in the past had such structures including several sub-committees and it might prove helpful to return to this set-up. Substantial debates as well as improved in-depth insights, especially in defence policy, might only be achieved if work on security and defence issues becomes a substantial element of the day-to-day work of the committee.

3) As to the vision of a »European« federation, a complete revision of the EP's committee structure would seem desirable. Since foreign, security and defence matters include very different aspects, AFET should at least be divided into two different committees: one covering the field of foreign policies and one focussing on defence and security matters. The policy field of human rights might either be merged with the Committee on Development and Cooperation (DEVE) or become an independent committee. The latter might be more useful in view of the political and legal situation in some candidate countries and the growing salience of human rights issues in foreign affairs. Human rights will apparently attract more attention in the near future than it has in the past in the EU 15. In any case, the adopted Committee structure should lead to parallels with the Council formations (see above). This would, however, not rule out joint meetings of the respective foreign and defence committees.

In addition, with regard to its capacity in the collecting and selecting of information on ESDP topics, a noteworthy administrative secretariat unit of its own should be set up in order to assist the committee.

⁶⁰ See EP's Rules of Procedure, Chapter XX and XXI.

Finally, it is crucial that the EP is able to select Parliamentarians with a »broad view« in foreign and defence matters so as to ensure a »level playing field« of EP members and top-level decision-makers in the Council and Commission.

3.2. The role of AFET

The role of the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) should be increased in all stages of the CFSP/ESDP policy-cycle due to the growing relevance of the Second Pillar to the wider development of the EU. The number of non-public sessions might therefore need to be increased. This might at first glance mean a decline in transparency. On the other hand an increased capacity to restrict access might enhance the possibility of AFET gaining increased access to sensitive data.

1) In a short-term view of the status quo option, the Committee should concentrate on converting informal rights of information into legal provisions. The (informal) quarterly meetings between the High Representative of the CFSP and AFET might be held in a more formal way by setting them on a regular basis. This might be achieved by creating an inter-institutional agreement, or perhaps through a treaty amendment (of article 21), which will require consultation between the High Representative and the respective EP committee to take place at least four times a year.

2) In an incremental adaptation scenario, the committee would have to become more directly involved in the decision making-procedures with an inter-institutional agreement being the minimum to ensure progress. The following procedure might therefore be incorporated:⁶¹ Proposals for decisions of the Council should be passed, without delay, to the Parliament via the respective Committee. In urgent cases, Council representatives and the committee bureau could meet on an informal basis. This might be necessary before and after a Council meeting at which foreign, security or military policy actions had been on the agenda. In addition, the Council presidency or the High Representative for CFSP should attend committee meetings at least once a month. At such meetings there should be a time for the committee to question the High Representative on subjects agreed beforehand. Finally, in cases of urgency, the Committee could hold an »extraordinary meeting« independent of the parliamentary calendar.

3) A long-term view would suggest a more forceful enhancement of the committee's competences. The committee should stress its involvement in controlling Council decisions. It must be appreciated that sudden international developments sometimes require the Council or the PSC to take positions at a very short notice and this does not always occur when the Parliament is meeting. Consequently, it is important to set up a »fast-track channel« for the Parliament to reach a decision in such circumstances. This might be achieved by conferring all of the above-mentioned information and consultation rights on the foreign and/or defence committee.

4. Options regarding national parliament's involvement in CFSP and ESDP

Suggestions for giving national parliaments more say in the EC/EU policy-making process are generally related to the idea of »democratising« the Union. Within the EU national parliaments have lost considerable power to control their own executives since the executives often come together as a »legislature« within the EU's Council of Ministers.

⁶¹ Proposal of Thomas Grunert in the context of evaluating the Maastricht treaty provisions on CFSP, op. cit.

For several years, three models for improving national parliament's involvement have been under discussion:⁶²

- (a) the introduction of a provision within the EC/EU Treaty framework guaranteeing national parliaments some unilateral control mechanisms vis-à-vis their respective governments
- (b) the introduction of direct participatory or control powers for national parliaments within the legal framework of the EC/EU and
- (c) the formal upgrading of existing multilateral scrutiny by bringing together representatives of the European Parliament and national parliaments in a joint body

At present, a multitude of institutional proposals are under discussion that seek to reinforce the role of national parliaments in CFSP/ESDP affairs. Frequently, these proposals reject the institutionalisation of democratic control-functions of national parliaments at the European level. Two main types of institutional models are the focal point of the discussion: on the one hand the arrangement of a »new« second chamber consisting of national parliamentarians⁶³ and on the other hand the creation of a subsidiarity committee, consisting of both national delegates and members of the European Parliament. However, these proposals have led to a large number of questions. In particular, both models might in the long run lead to the development of a third chamber at the »Brussels« level. This might further complicate an already complicated decision-making structure.

The most important questions surrounding the role of national parliaments are: Where could and should parliamentary control start from: at the national, at the European level, or both? Where will it be most efficient? Another problem lies in national control over areas subject to enhanced use of QMV: How can any given national parliament hold »its« national minister responsible if he or she personally voted against a common action but was overruled by the QMV majority within the respective group⁶⁴? Finally, it has to be taken into account that there are no existing European »standards« which define the participation competencies of national parliaments; e.g. relatively high influence in Scandinavia, Benelux, Germany, but low in the United Kingdom and France.⁶⁵

4.1. Improving inter-parliamentary co-operation between the EP and the national parliaments

Basic parliamentary involvement in ESDP affairs is a question of »access« to efficient and comprehensive information channels. In practice, a lot of information has to be obtained from the national level, especially in the case of foreign and security policy.⁶⁶ This situation means that parliaments at the national level and the EP at the European level must work closely together. As MEPs and national parliamentarians address the same actors in the Council – either in their capacity as representatives of national governments or as representatives of the Council of Ministers – it appears appropriate to look for a joint monitoring.⁶⁷

⁶² See generally Andreas Maurer: National Parliaments in the European Architecture. From Latecomers' Adaptation towards Permanent Institutional change?, in: Andreas Maurer/Wolfgang Wessels (eds.): National parliaments on their way to Europe: Losers or Latecomers?, Bonn 2001, pp. 27-76, here p. 58.

⁶³ See among others: Gisela Stuart: Mandate of the Working Group on National Parliaments, 30 May 2002 (CONV 74/02).

⁶⁴ See Birkinshaw/Ashiagbor, op. cit.

⁶⁵ See: The role of national parliaments in the European architecture, Contribution to the Convention by the Praesidium, 31 May 2002 (CONV 67/1/02 REV 1).

⁶⁶ See Hubert Hänel: The complementary role played by the national and European parliaments, 10 September 2002 (CONV 255/02).

⁶⁷ See generally Andreas Maurer: National Parliaments in the European Architecture. From Latecomers' Adaptation towards Permanent Institutional change?, in: Andreas Maurer/Wolfgang Wessels (eds.): National parliaments on their way to Europe: Losers or Latecomers?, Bonn 2001, pp. 27-76, here p. 58.

Yet, established links between the EP and national parliaments are currently very loose and there is the danger of a duplication of monitoring activities. So far, COSAC has not developed into a real body for multi-level scrutiny and still faces major problems with the actual exchange of information on policy areas. Day-to-day politics is largely unaffected since COSAC acts mostly as a central tool for communicating institutional aspects of the EC/EU framework. Moreover, the exchange of information is not always shared equally. The two COSAC meetings a year are regarded primarily as a channel to keep national parliamentarians generally informed about Europe but not the other way round.⁶⁸

1) Following the short-term model of a limited adaptation in the development of ESDP and its parliamentary dimension, the overall parliamentary co-operation would not be changed. Parliamentary control would remain primarily at the national level. EP rights would therefore not be increased.⁶⁹

National parliaments remain first and foremost limited to their national area, displaying only limited interest in a formalised collaboration at the European level. Hence, the involvement of national parliaments will only be achieved through better policy-oriented inter-parliamentary cooperation with the respective specialised national parliamentary committees.

In this regard, existing mechanisms for exchange may be used more extensively and to their full potential: On the one hand, the national parliaments might ensure that their national EC/EU Committees are more focussed and used more efficiently. On the other hand, the European Parliament might make better use of its inter-parliamentary network with the parliaments of the Member States as well as with those of the applicant countries, in order to facilitate at an early stage the spread of more coherent information on CFSP/ESDP proposals in CFSP and ESDP.⁷⁰ Moreover, the informal channels of national and European Parliamentarians might be stressed by using personal and party connections.⁷¹

The EP must resist the creation of a new institution consisting only of representatives of the national parliaments, such as proposed by the WEU assembly.⁷² This is especially the case if the new institution is intended to gain the exclusive parliamentary scrutiny competence over ESDP. In view of democratic accountability and transparency such a new body would just increase complexity and weaken the role of the European Parliament.

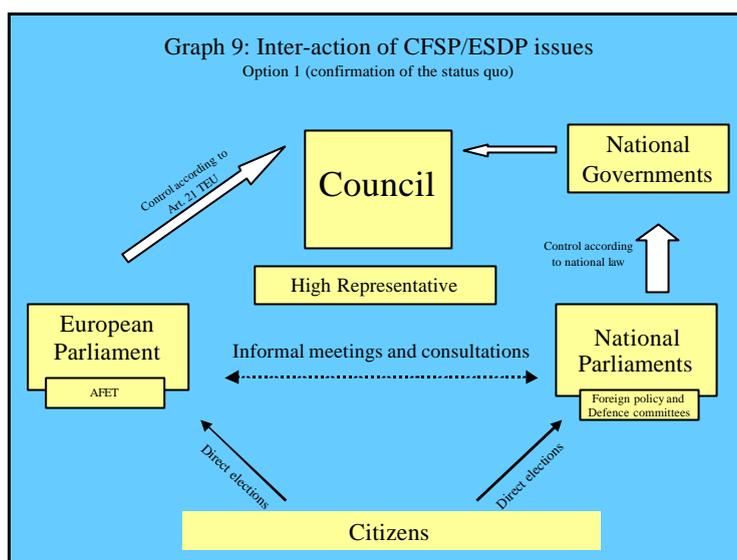
⁶⁸ See Andreas Maurer/Wolfgang Wessels: National Parliaments after Amsterdam: From slow adapters to national players?, in: Andreas Maurer/Wolfgang Wessels (eds.): National parliaments on their way to Europe: Losers or Latecomers?, Bonn 2001, pp. 425-475, here 457 ff.

⁶⁹ See for such an approach Huber Haenel: The complementary role played by the national and European Parliament, Contribution to the Convention, 10 September 2002, (CONV 255/02).

⁷⁰ See Maurer/Wessels, op. cit. for an overview on joint and bilateral committee meetings.

⁷¹ See Gisela Stuart, op. cit. (CONV 74/02).

⁷² See particularly the Report by the Assembly of the Western European Union on: The role of national parliaments in the European Union and more specifically in the ESDP – a contribution from the Assembly to the Convention, 4 June 2002. (A/1778)



2) According to a pragmatic approach, the »COSAC« option would be preferred. According to current Danish proposals,⁷³ a permanent European inter-parliamentary forum, or a parliamentary conference,⁷⁴ might be set-up along the lines of the »Conference des Organes spécialisés en Affaires communautaires« (COSAC) in which the European Parliament would be represented alongside the national parliaments.⁷⁵

The current discussion in the Convention has raised the possibility of establishing several »specialised« or »sub«-COSACs. A specialised COSAC for foreign, security and defence policy might ensure more efficient and better performance in day-to-day-policies than the current COSAC is able to offer. A standing secretariat, however, should be avoided since this might lead in the long run to the institutionalisation of such a body, a prospect which both the EP and the German Bundestag wish to avoid. Instead better co-ordination would be achieved by replacing the present COSAC troika with a »permanent lead group« of five or six Member States. This new COSAC forum would also decide on new rules of procedures. Instead of the current principle of unanimity to adopt a proposal⁷⁶, a simple majority would be sufficient. The COSAC forum might legally be based either on an inter-parliamentary agreement between the EP and the national parliaments or on a protocol of the revised treaties, or even included in the treaties.⁷⁷

An alternative to the »COSAC« solution might be the formation of a parliamentary conference as a specialised new parliamentary network for foreign, security and defence policy, and which would be organised by the European Parliament. This parliamentary conference would meet at the invitation of the European Parliament.

This parliamentary conference would be held on a regular basis and be convened jointly by the chairmen of the national foreign and defence committees and the members of EP's committee(s) on foreign and defence matters. Under certain conditions, representatives of the Parliamentary Assembly of NATO might also be involved.

⁷³ See XXVII COSAC Copenhagen, 16-18 October 2002, Contribution addressed to the Convention on the Future of Europe, the EU's institutions, the national parliaments and the Presidency, <http://www.cosac.org/eng.next/contribution.html>.

⁷⁴ See Armin Laschet: Parliamentarisation of the European Security and Defence Policy, Geneva Centre for the Democratic Control of Armed Forces (DCAF), working paper No. 82, August 2002, p. 6.

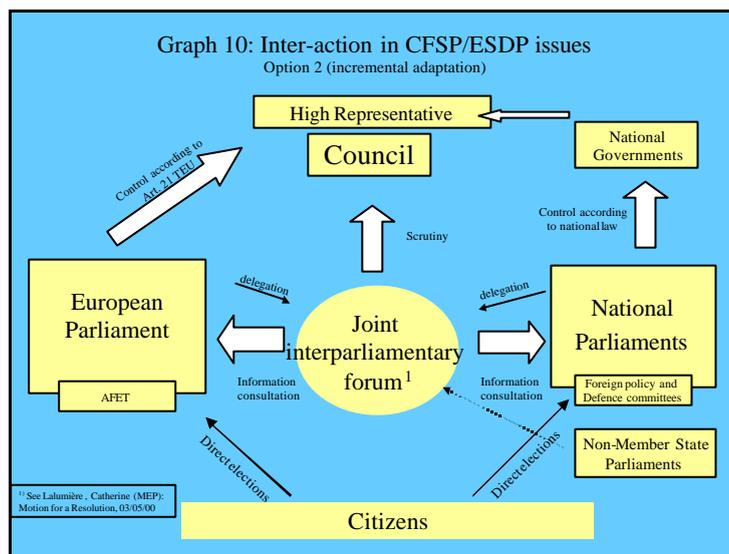
⁷⁵ See Heather Grabbe, Preparing the EU for 2004, op. cit.

⁷⁶ See Rules of Procedure of COSAC, 14.3.

⁷⁷ To change the name of COSAC – as it was introduced in the final report of the working group IV on the role of national parliaments – is mainly symbolic but might be useful in order to achieve a better understanding of the people as well as to underline the growing importance of the body. See in this respect also the contribution of the XXVII COSA in Copenhagen (16-18 October 2002) to the Convention.

It could act as a link between the EP and national parliaments bringing together the chairpersons of the foreign affairs and defence committees, effectively reinstating the existing multi-level-elements of other EU policy areas and incorporating players from these different levels. The basis for this parliamentary conference is the current semi-annual sessions held by the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy with the chairpersons of the national foreign and defence committees. The special task of this conference would be the co-ordination of information and consultation about crisis management operations.

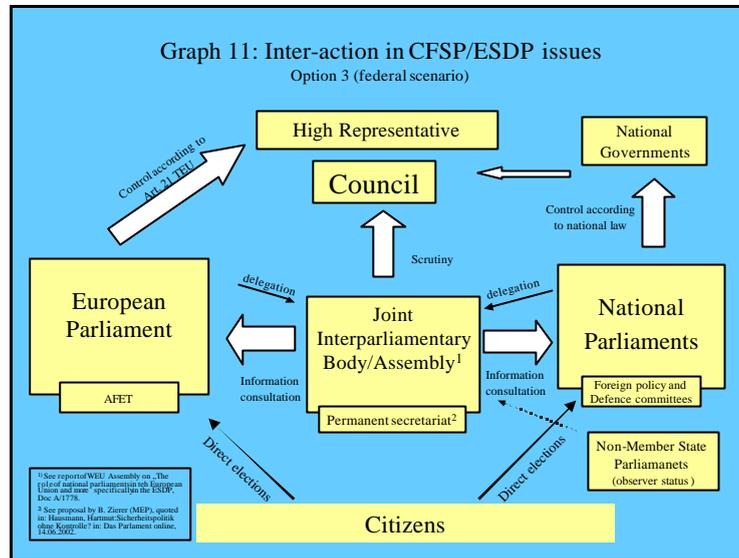
Thought would have to be given to whether or not there should be an increase in the number of parliamentarians attending this parliamentary conference, with consideration given to including politicians from opposition parties. This idea could, however, lead to efficiency problems. If the body is too big then it might be inflexible and unable to react quickly. Such a large forum might become the so-called »European Congress« as outlined by Giscard and others. In the discussions of the Convention, there was a good deal of support for this idea especially in view of giving such a body particular rights in CFSP or ESDP. However, such a body could only attract attention if it obtained significant competences. Furthermore, we should bear in mind that such an institution is intended to meet only every second year, and so it would not be effective or efficient for the EU if significant powers and competences were passed to it.



3) In the view of a long-term vision of federalisation, not »only« would there be a need for an informal forum but also a formal joint body. A joint body would consist of delegates from AFET and delegates from the national foreign and defence committees. A permanent secretariat would support its work and ensure continuity in operation. Such an advisory interparliamentary body would also comprise members from non-EU countries that are associate members or partners of the WEU so as to foster a greater understanding and involvement of national parliaments in the activities of the European Union. The establishment of such a body might be done by an amendment or a declaration in a treaty amendment.

A crucial danger remains the potential increase in complexity. The institutionalisation of such a body would have to be given careful discussion since there is a risk that it might become some kind of a third chamber. Furthermore, careful consideration would also have to be given to how the members of this body are appointed or elected. The danger is that it becomes nothing more than an »inefficient talking shop«. Increased transparency and enhanced democratic involvement might possibly be achieved through a smaller body.

As mentioned above, it is in any case necessary that such a body be composed of parliamentarians who possess experience in foreign and defence issues. We only need to look to the WEU assembly to see the dangers of an institution made up of »backbenchers« who are generally not part of any important foreign, security or defence body at any level.



5. Options regarding international organisations

Until the early 1990s, there was an apparent functional division between NATO, the EU, and even the WEU. Although the EU had a vital impact on security matters by creating a network of cooperation and integration among its members and third countries, the main tasks of the EC/EU covered the economic area while NATO was a collective defence organisation with primarily political and military functions. The WEU was some kind of substitute for European security, despite having lost its role following the formation of NATO and its integrated command structure.⁷⁸

This configuration has changed tremendously since the end of the cold war and the emergence of new challenges in the international system. With the development of a Common Foreign and Security Policy (CFSP) in the framework of the European Union, the EU became a more or less decisive and efficient »player« in the international system. The dramatic developments in the Balkans highlighted the need for developing the European Union's capacity to react effectively to (regional) sources of instability and conflict. However, the first steps have been far from successful. The lack of progress in CFSP resulted from several reasons, but in particular from continuing disagreement amongst the Member States about the implementation of their Maastricht commitment to build up the WEU in stages as the defence component of the European Union.⁷⁹

Subsequently, the Council of the Western European Union concluded at its meeting in Marseille on 13 November 2000 that the operational capacities of the WEU should be handed over to the European Union at the end of 2000. As a result, the EU will in future be responsi-

⁷⁸ Particularly, Article IV of WEU makes this clear: "In the execution of the Treaty, the High Contracting Parties and any Organs established by Them under the Treaty shall work in close cooperation with the North Atlantic Treaty Organisation. Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information on military matters."

⁷⁹ See generally article J.4 (TEU – MV). Article J.4.2 states: "The Union requests Western European Union, 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."

ble for crisis management. The satellite centre in Torrejón in Spain and the Institute for Security Studies in Paris will work as EU-agencies.

The WEU continues to formally exist thanks to the military assistance clause of Article 5, but the decision taken in Marseille has ended its impact as a political organisation.

5.1. The future of the WEU and its Parliamentary Assembly

With the transmission of tasks the WEU has become a comparatively »inactive« organisation. The Parliamentary Assembly of the WEU with representatives of all 28 member countries (now renamed the Interim European Security and Defence Assembly) refused to accept the institution's elimination, despite the fact that the assembly has become a forum without any substantial task. In 2001, the WEU, or more particularly its parliamentary assembly, proposed that it take over for a transitional period the »job« of a parliamentary forum responsible for parliamentary oversight of ESDP. This function was to be carried out together with the European Parliament. Due to the composition of the delegates of the WEU assembly, this would also have included a closer relation to national parliaments. However this proposal is no longer important since neither the European Council at Laeken nor the European Parliament took up the proposal.

1) Adopting a status quo scenario, the current situation would remain unchanged. The WEU will continue to exist as an institution, continuing the functions related to the modified Brussels Treaty; especially Article V and Article IX. In addition, the support of the armament cooperation bodies (WEAG, WEAO) by the WEU can be considered as another »residual« function. The WEU would have to remain since the WEU assembly is (according to its own words) still the only European parliamentary body with a mandate to monitor security on a non-national level.

In such a case, the European Parliamentarians would need to maintain a close relationship and use the parliamentary assembly of the WEU as a channel for information and expertise.⁸⁰ As a general rule, it is inevitable that the expertise as well as the networks of the MEPs will be improved by using existing mechanism: To increase expertise, the EP should consider that the conflict prevention network (CPN) – established in order to advise the Commission and the European Parliament – should be used more comprehensively. The transition from early warning to (re)actions should be improved to make a better use of non-military crisis-prevention and management. In addition, the MEPs should step into »networks« such as the »Munich Conference for Security Policy« (former the Wehrkundetagung), considered as one of the most important meetings of political and military experts.

2) In view of an incremental change of the treaties, the EP should argue for gradual integration of the WEU into the EU and the use of flexibility to achieve this (see also above). Integration could be provided through a two-staged process in which the remaining functions of the WEU in the area of armaments cooperation would remain outside the treaties for some time, accompanied by the parliamentary assembly of the Western European Union. In the long run, however, they would be gradually transferred to the EU. In this case, the European Parliament should make use of the opportunity to integrate into its own administrative structures some of the well-experienced civil servants of the Western European Union secretary. The European Convention has also debated the scenario that the Council of Europe would obtain some of the residual functions of the WEU.⁸¹ However, the European Parliament

⁸⁰ See proposal by the WEU Assembly: "The role of national parliaments in the EU and more specifically in the ESDP – a contribution from the Assembly to the Convention", Document A/1778.

⁸¹ See the proposals of Convention member John Bruton, 10 April 2002 (CONV 27/02).

should reject this proposal since adoption of the structures of the Council of Europe would lead to the same problems experienced in the WEU in terms of overlapping memberships.

3) According to the federal scenario, the residual elements of the WEU will be entirely and straightforwardly transferred to the EU. This implies that all remaining competences of the Western European Union, both political and military, would be passed to the Union. In this case, the mutual assistance clause of the treaty on Western European Union should also be placed in the European treaties – even if this causes more difficulties with enlargement and a EU of twenty-seven. It would create a collective defence mechanism for the EU in the event of an attack (or act of terrorism) against any Member State.⁸² Hence, the European Union would provide the only framework in which defence policy is formulated and relevant decisions are taken.⁸³

In view of this solution, it has to be stated that some problems of developing effective working relationships between the various organisations arise from the different, overlapping memberships of Member States in several organisations. Special consultations might become necessary in this case. To overcome any difficulties, the final integration could be reached by means of a protocol to be signed by the Member States of the EU. However, an associate status might be permitted for non-EU countries in order to cope with the challenges of transferring the mutual assistance clause to the EU.

5.2. The relationship with NATO and the Parliamentary Assembly of NATO

The relationship between the EU and NATO is a key element for ESDP, especially given the growing urgency to deploy military forces and the need for hi-tech military equipment and transportation capacities.⁸⁴ Though US and NATO policies are not identical, the relationship with the United States is of special importance.

Since 2000 there has been no agreement between the EU and NATO on collaboration in military crises management operations. This was due to the objections of Turkey and Greece. The agreement forged in the context of the Nice Treaty has so far failed.⁸⁵ The conflict centres around the demand by Turkey to be involved in any decision about the EU's rapid reaction forces (RRF), even if it is an »autonomous« mission within the frame of ESDP. A compromise between the heads of government was finally reached at the Brussels summit in October 2002 with the so called »Istanbul Paper« which entitled the High Representative to negotiate with NATO over the use of NATO resources for the rapid reaction forces.⁸⁶

This already difficult issue has been complicated by the planned NATO »rapid response force«. As a result it is increasingly important to avoid a duplication of capabilities. A solution might be found in the following way: Whereas the EU Rapid Reaction Force would be used for the Petersberg tasks, the forces of NATO would be used to defuse trouble spots. Thus, the two rapid reaction forces would not be mutually exclusive, but complementary. The NATO force would be a front-line, combat unit with special responsibility for the fight

⁸² The Belgian Prime Minister, Guy Verhofstadt had presented such a proposal at 23 July 2002: ESDP, European constitution – Belgian Initiative. The Franco-German Summit on defence on 30 July 2000 supported the proposal. See also Panayotis Ioakimidis (MP Greece), CONV 389/02, 7 November 2002. This initiative has later been supported by the Working group VIII (Defence). See its revised draft report, Working document 22 Rev 1, 6 December 2002.

⁸³ See also Gunilla Herolf/Bo Hultdt: The European Union and the Inclusion of a Collective defence clause, in: Erich Reiter/Reinhard Rummel/Peter Schmidt (eds.): Europas ferne Streitmacht, Chance und Schwierigkeiten beim Aufbau der ESVP, Hamburg 2002, pp. 60-85.

⁸⁴ Note that the new A 400M will not be available earlier than 2008.

⁸⁵ The »Ankara« compromise of December 2001 on a consultation of Turkey in case of operation was rejected by Greece.

⁸⁶ See presidency conclusions, Brussels European Council, 24 and 25 October 2002.

against terrorism, while the ESDP force would be designed to carry out only the Petersberg tasks of humanitarian aid and peacekeeping.

Finally, the EP should stress an element that has not so far been discussed: nuclear powers, nuclear disarmament, arms control and non-proliferation. While two Member States of the EU possess nuclear weapons, the EU does not have a nuclear policy and the European Parliament has no role to play in the scrutiny of national nuclear policies. Following its overall approach, the EP should stress global arms controls regimes and the corresponding treaties, particularly the Comprehensive Test Ban Treaty (CTBT) and Nuclear Non-Proliferation Treaty (NPT).

1) In order to establish an operational ESDP, it is of special importance to improve the military facilities of the EU and its Member States. The resources of NATO remain crucial since the EU does not hold (in comparison with the US) a common strong and viable European armaments industry and has only limited independent military facilities. Nevertheless, the EP should request that Member States undertake more intense co-ordination efforts with regard to the internal organisation of military forces, in order to improve the efficiency in this sector.

For that reason and in view of the status quo scenario, the EP should press firstly for a fast solution to the still blocked negotiations between the EU and NATO over access to NATO planning facilities. The decision at Brussels to allow the High Representative to negotiate with NATO is a significant first step.

In order to guarantee a flow of information between NATO and the EP there should be better use of informal and formal mechanisms for gaining parliamentary information. To ensure information between NATO and EU in a parliamentary perspective, the formal (by EP's delegation for relations with the NATO Parliamentary Assembly) and (informal) cooperation, already established between the EP and the NATO Parliamentary Assembly, might be used more often as an instrument of parliamentary information.

2) In view of an incremental solution, the EP should go beyond the request for an agreement with NATO. Acquiring operational capabilities and military instruments for projecting an autonomous and active role in preventing, managing and resolving conflicts, points to improving own resources. It is vital to reduce the strategic shortcomings, technological inferiority, and a dependence on the US. Furthermore, the lack of adequate financial resources must also be addressed.⁸⁷ Nevertheless, the EU will continue to rely on American capacities and technology but only to a minor degree than in the current situation.

Some formal links should be established with the Parliamentary Assembly of NATO. Agreement should be reached to hold at least a semi-annual regular meeting between representatives of the European Parliament and representatives of the NATO assembly. A shift towards more regular meetings might be achieved through an additional declaration in the treaties.

3) In view of the federal model, the creation of an autonomous EU planning apparatus should be given serious consideration. In view of current threats, the European Rapid Reaction force should go beyond the peacekeeping and humanitarian tasks that it has set itself. A special focus should be laid on emergency response teams that are able to respond to terrorist attacks that use chemical, biological, or nuclear weapons.

Though some (additional) resources from NATO might still be necessary, the EU should first and foremost rely on its own assets.⁸⁸ In this regard, it is important to overcome the opposing positions of Germany and France. While the official French position does not deny the role played by NATO, it does stress the need for European autonomy. For Germany the transatlantic relationship remains at the centre of security policy. This tension creates a difficult conflict

⁸⁷ For latest development see summaries of the meetings of the Working Group on Defence, (CONV 294/02, 343/02).

⁸⁸ See in this respect several statements by French president Jacques Chirac.

over final preference: the French striving for a European Union with a “relationship of equal partners” with the USA opposed to the German wish to maintain multilateral ties in security and defence policy under the cover of transatlantic solidarity.⁸⁹

While France has argued since President Mitterand for the construction of a European defence capacity, according to the model of a »Europe Puissance«,⁹⁰ Germany continues to hold a contradictory, or even paradox relation to ESDP. On the one hand, stronger collaboration in this sector is welcomed; on the other Germany is not ready to increase its budget to complete the necessary capacities. In addition, Germany has tried several times to limit the tasks and role of ESDP, especially since the Federal Republic set out some preference for NATO.⁹¹

The development of an autonomous EU planning apparatus shall be linked to more coherent co-operation between the participating Member States. In particular, it is necessary to develop common and integrated command structures instead of command by a »lead nation«.

The EP should also emphasise the creation of a European armament agency⁹² (see above). A working and efficient ESDP can only be achieved by increasing effects between national and multinational projects in Europe in order to optimise the use of financial resources. As Ioannides puts it: “Although EU Member States spend \$ 140 billion a year on defence, compared with the United States’ \$ 290 billion, Member States possess about ten per cent of American capacity to deploy and sustain troops outside the NATO area.”⁹³ Since France, Germany, Britain, Italy Sweden and Spain produce 90% of all European arms, special efforts of coordination should be undertaken in these countries.⁹⁴

Additionally, the Parliament should support the Belgian initiative in favour of sponsoring the development of a common armaments market and the pooling of all multinational capabilities already available at the European level.⁹⁵ In addition, the Single Market might also apply to the policy field of defence, if Article 296 TEC were to be changed.⁹⁶

Such claims by the EP might initiate a systematic discussion on the issue especially in view of eastern enlargement. The efforts of the EU in this sector remain limited, although NATO has developed far-reaching links to Eastern Europe such as the PfP, EAPC, the NATO-Russia-Council and the NATO-Ukraine-Commission.⁹⁷

An improvement of the relationship with the parliamentary assembly of NATO is so far not necessary as the EU continues to rely primarily on its own sources.

6. General constitutional and institutional aspects of the EU’s evolution regarding CFSP and ESDP

In order to present viable policy options in the shape of precise Treaty articles, this study has contributed firstly to the debate on the overall institutional framework of the EU by presenting

⁸⁹ See Isabelle Ioannides, *op.cit.* pp. 12f.

⁹⁰ See Gisela Müller-Brandec-Bocquet: *Frankreichs Europapolitik unter Chirac und Jospin: Abkehr von einer konstruktiven Rolle in und für Europa*, in: *Integration*, 3 (2001), p. 261.

⁹¹ See Werner Link: *Die Neuordnung der Weltpolitik*, p.165 and Jean-Pierre Froehly: *Berlin, Paris und die Entwicklung der ESVP*, in: *Dokumente, Zeitschrift für den deutsch-französischen Dialog*, 4 (2001), pp. 298-302

⁹² See in this respect Lamberto Dini: *Contribution to the Convention*, 28 May 2002 (CONV 65/02).

⁹³ See Isabelle Ioannides, *op. cit.*, p. 24.

⁹⁴ See in this context the Franco-German proposal suggesting a protocol in a future EU treaty allowing enhanced co-operation (e.g. improvement of military capacities - such as harmonisation of planning for military needs) of only some Member States who are willing. Joschka Fischer and Dominique de Villepin: *Gemeinsame deutsch-französische Vorschläge für den Europäischen Konvent zum Bereich ESVP*, 22 November 2002 (CONV 422/02).

⁹⁵ See the proposal presented by the Belgian Prime Minister, Guy Verhofstadt. 23 July 2002: *ESDP, European constitution – Belgian Initiative*.

⁹⁶ See for such a proposal Armin Laschet, *op. cit.*, p. 7.

⁹⁷ Another element, which should be taken into account by the European Parliament, is the relevance of an UN mandate before carrying acting in military crisis management. See for discussion Isabelle Ioannides, *op. cit.*, pp. 34 ff.

reform options that will have a substantial impact on the parliamentary dimension of CFSP/ESDP. They might be seen as a supplement to the »questions« already set out in the note drawn up by Barnier in his function as chairman of the European Convention working group on Defence.⁹⁸

6.1. The status of CFSP and ESDP in the EC/EU Treaties

The European Union has become one of the most influential actors in the international system. Besides the USA, Russia, Japan and China it has the potential to be one of the key players in international relations. However, the Union is still far from making full use of its vast foreign policy potential.⁹⁹

Thus, it is of great significance to stress that the EU cannot renounce the economic, diplomatic and military aspects of its external policy. European security and defence policy should be understood as a comprehensive and wide-ranging principle. The separation of policy fields into communitarised on the one hand and intergovernmental politics on the other is no longer appropriate. The scale of international tasks including (foreign) trade relations should be bundled into a coherent Community policy carried out jointly by EU and Member States' institutions. Such a reform and linkage between internal and external aspects of security cannot be undertaken without the concurrence of CFSP and ESDP, and must also include the revisions since 1999 in justice and home affairs. At the moment, the EU is seen as performing badly in co-ordinating these various instruments. The view of the results is even more negative.¹⁰⁰ Thus, a potential reinforcement of the European Union can only be facilitated by enabling the Union to draw upon a wide range of foreign policy tools, ranging from technical assistance to humanitarian aid and from trade sanctions to warplanes. In order to make full use of these instruments, the European Parliament must claim a reinforcement of its role in CFSP and ESDP. With regard to the three scenarios several options are possible:

1) Based on the assumptions of the status quo scenario, the present institutional arrangements will not be changed substantially. CFSP and ESDP will continue to form a pillar of their own with an ambiguous legal and political groundwork. The distribution of foreign »tasks« between the presidency and the Commission will remain, causing irritations among the partners or even leading to a limited effectiveness of the EU in the international system.

The presidency conclusions of the last few years that relate to CFSP and ESDP will be implemented to only a limited extent. In response to this scenario, it should be stressed by the EP that the new provisions from Nice as well as the presidency conclusions will create opportunities for the Member States and the EU institutions to act together in a more flexible way. Each step forward towards more efficient decision-making should be combined with »fallback positions« offering the Member States a guaranteed »safety net. However, this will not reduce procedural complexity.

2) In view of an incremental adaptation approach, a gradual communitarisation of CFSP (excluding defence elements) will be stressed. Since the European Commission together with the Council already work across the various pillars and policies, the EP should claim that its own

⁹⁸ See M. Barnier: Mandate of the Working Group on Defence, 10. September 2002. (CONV 246/02).

⁹⁹ See Jan Zielonka: Explaining Euro-paralysis, Why Europe is unable to act in international politics, Houndsmill 1998 and Curt Gasteyger: An Ambiguous Power, The European Union in a Changing World, Gütersloh 1996.

¹⁰⁰ The presidency elections in Zimbabwe in March 2002 are considered as a recent proof for the weak performance of the EU in crisis management. See for discussion Lorraine Mullaly: The EU and Zimbabwe: too little to late?, in: European Security Review 11 (2002), p. 3 f. However, a better asset of EU crisis management can be drawn for Macedonia. The European Union has succeeded at least to prevent an armed struggle or even an open war between Albanians and Macedonians.

role in foreign and security affairs shall generally be increased by several means which should be incorporated in the treaties.¹⁰¹

Many important agreements with third countries comprise rules based on the exclusive responsibility of the EC as well as on agreements that are to be attributed to the 2nd pillar. In order to ensure higher transparency those procedures and agreements that touch upon competences of both pillars («mixed» actions) should be entirely transferred into the first pillar. Thus, as Romano Prodi, put it “the entire foreign and security policy of the Union [has to be] brought inside the Community system”. The Commission’s submission to the Convention, explicitly says “we should not make external policy more »intergovernmental« by extending the powers of the Member States or of the High Representative to the detriment of the Commission”.

As for ESDP, the European Parliament should concentrate primarily on civil means of crisis management. The regulations for this issue should be amended accordingly and transferred into the first pillar, thus granting a better linkage between first and second pillars. Defence issues, however, would remain excluded. Following the incremental approach the first and second pillars might not need to be merged. Nevertheless, a mixed security policy, carried out by both Member States and Community might lack both transparency and efficiency. But in terms of a »real« step towards a crucial European defence policy it might be the most appropriate way forward.

3) Following a federal logic, the separation between communitarian and intergovernmental policy areas can no longer be maintained. As Panayotis Ioakimidis argues with regard to the fight against terrorism, the abolition of the pillar structures is necessary since “the artificial distinction between Communitarian and intergovernmental aspects of foreign policy does not longer have any real substance”.¹⁰² Accordingly, the second pillar including all of its defence elements should be merged with the Community pillar in a new treaty or constitution. Such an option, put forward, for instance, in the Communication of the Commission on the Future of Europe,¹⁰³ would render it possible to erase the distinction between the community area and the treaty provisions concerning the second and third pillars.

Dismantling the current pillar system would be the easiest solution in terms of legitimacy and transparency.¹⁰⁴ Of course, this would also include a rejection of a “fourth pillar” for defence.¹⁰⁵ Overall, the current state, complexity and variety of instruments needed for common foreign, security and defence policy suggest a need for a more transparent and coherent institutional framework.

6.2. *The delimitation of competences*

The delimitation of competences is closely related to the overall legal status of CFSP and ESDP in the treaties. It is one of the core issues of the work of the Convention. Generally, the EP should emphasise that the development of a catalogue of competences should be avoided. Any attempt to set up such a catalogue would face large obstacles, considering the highly heterogeneous national interests and diverging organisational structures. A negative list that excludes certain elements from the Union level should also be avoided. Such a list could restrain

¹⁰¹ See Pavol Hamzik, *The European Security and Defence Policy as Part of the European Union’s Common Foreign and Security Policy*, Contribution to the Convention, 17 July 2002 (CONV 194/02).

¹⁰² Panayotis Ioakimidis: *The development of the EU’S common foreign and security policy and defence policy (CFSP/ESDP)*, Contribution to the Convention, 07 November 2002, (CONV 389/02).

¹⁰³ Communication from the Commission, *A Project for the European Union*, Brussels, 22 May 2002, COM (2002), 247 final.

¹⁰⁴ See Alain Lamassoure: *The European Union, Four Possible Models*, Contribution to the European Convention, 3 September 2002, (CONV 235/02).

¹⁰⁵ See in this respect Lamberto Dini: *Contribution to the Convention*, 28 May 2002 (CONV 65/02).

any further integration and would not help to make the EU more efficient – neither short-termed nor in the long run. In contrast, an un-binding recommendation list might prove more helpful. For the Convention, the need to prevent a possible standstill on this issue will be a key to the success of its work.¹⁰⁶

Nevertheless, since a vast discussion on such a catalogue of competences has already begun, several arguments with regard to the three options need to be discussed:

1) In a status quo model of minor changes the Member States will remain the decisive actors. Foreign and security policy will still be regarded as a key element of national sovereignty. Although it is considered necessary to establish permanent links between the Union and the Member States in this policy field, and although the new institutional set-up will be regarded as essential, the nature and the character of the EU's foreign and security policy will not be fundamentally changed. Defence policy will be carried out and co-ordinated at the national level; especially with regard to military actions and operations. Even if the EU becomes more capable of shaping international events, no shift of military competences to the European level will take place. Instead, tendencies to a »Core Europe«, a »directoire«, a »pioneer group« or simply a »national do-it-yourself« strategy might emerge. Hence, the European Parliament should advocate that only non-military crisis management be delegated to the Union level, and only to a certain extent.

2) If the preference were for a step-by-step communitarisation, the need for further reform and adaptation prevails; especially considering enlargement. The »incorporation« of new countries with different traditions and experiences will create additional difficulties for the present form of intergovernmentalism. Thus, an extensive transfer of competences to the EU level will become necessary.

In this context, the EP should focus on the submissions it has already made. The European Parliament and the European Commission alike have produced several proposals endorsing a further »Communitarisation« of European foreign policy: In its Lamassoure report of 24 April 2002, the European Parliament proposed to move foreign policy into the area of »exclusive competences« of the Union.¹⁰⁷ As a result, this would mean the complete »Communitarisation« of the second pillar.

However, defence and security matters might formally be excluded. Security and defence policy would remain the divided responsibility of the Union and the Member States.

A new aspect to this debate has been brought about thanks to the preliminary draft constitution for Europe devised by Giscard d'Estaing. Even though he has not elaborated upon the concise extent and status of the term »defence«, he has listed defence among those policy areas which have to be considered for a future constitution for the European Union.¹⁰⁸

3) A completely »Europeanised« scenario is at the moment not part of the debate. However, a communitarised CFSP and ESDP might prove useful in order to help develop a more politically informed »European public« and ensure that too many debates on important issues move beyond the national arena or the restricted circle of ministerial or diplomatic elite. For both the media and the public the principle forum of debate shall become the Union rather than the nation state.

This scenario might be realistic considering that the public does not reject such a shift of competences despite it having no control over any part of the foreign policy decision process. Empirical data from the last few years has proved wrong old ideas that defence policy is an

¹⁰⁶ See Marta Dassù/Antonio Missiroli, *op.cit.*

¹⁰⁷ See European Parliament resolution on the division of competences between the European Union and the Member states, 16 May 2002, (A5-0133/2002).

¹⁰⁸ See for the draft proposal of Giscard d'Estaing *Frankfurter Allgemeine Zeitung*, 29 October 2002.

indisputable competence of the nation state. Instead, more and more people can imagine an operational European army with real competences.¹⁰⁹ Hence, the EP should stress that foreign policy, including defence, might become part of the exclusive competences of the Union, at least at some distant date. Such a common foreign, security and defence policy could contribute even more to the identity of the EU and its citizens than the common currency has done.

6.3. *The decision-making procedures in CFSP/ESDP*

Currently, the »real« patterns of CFSP and ESDP decision-making follow an intergovernmental track. The need for consensus is the guiding principle and it has remained so even in the more mature areas of CFSP. Expectations to accelerate the decision-making process through majority voting have not yet been fully realised. The respective treaty provisions (Art. 23 and Art. 24 TEU AV) are admittedly modest and limited to the implementation of common strategies, joint actions and common positions. However, the governments have not taken advantage of these opportunities. The idea to use them as a »potential of a threat« to push for more rapid agreement of a common position, has not yet proved successful. This pattern of no-use reveals the irrelevance of major treaty provisions or procedures.

1) Following a path of minor adjustments, the procedural arrangements will not be substantially changed. Thus, the EP should claim, that instead of a revision of treaty articles, the existing articles should be used at all. The procedures and structures available will have to guarantee the working of CFSP and ESDP. Qualified majority voting will not become the general rule in the second pillar.

Maintaining unanimity has its advantages for national parliaments since in a »worst case« scenario qualified majority voting is able to undermine a national parliament's capacity to influence the outcome of decision-making at the European level. This is because even if a national parliament has successfully changed the position of its national government,¹¹⁰ its attempts might have been futile if the national government's position could have been »overruled« in the Council of Ministers by means of QMV.¹¹¹

Furthermore, in foreign and defence policy it is more important to achieve a broad consensus on principles and guidelines than to establish fast decision-making procedures. Thus, QMV is not necessarily beneficial and should be limited to joint actions, common positions and the implementation of decisions, if based on a common strategy.

2) Following a step-by-step logic, the deployment of military means within the framework of the intergovernmental CFSP/ESDP requires substantial reform of the decision-making and coordinating procedures. Two aspects might be important:

To avoid time-consuming decision-making procedures, all actions taken with reference to the framework of Article 23 and 24 but which exclude a military reference should be taken by qualified majority voting. This is especially so in view of the problems in reaching unanimity that will be faced following EU enlargement. »Constructive abstention« according to Article 23.1 would not solve the problem.¹¹² A more efficient decision-making procedure, consequently QMV, is necessary in order to ensure a reaction capability that is timely. Consequently, the logics of Article 23.1 should be changed in the way that "decisions under this title

¹⁰⁹ See Eurobarometer 57.

¹¹⁰ Note that there are national parliaments that do not have any formal means for influencing their government's position in the Council.

¹¹¹ See for the argument Patrick Birkinshaw/D. Ashiagbor: National participation in Community affairs: Democracy, the UK Parliament and the EU, in: *Common Market Law Review*, 3 (1996), pp. 499-529.

¹¹² In this respect the German-Franco proposal by Joschka Fischer and Dominique de Villepin should be rejected. 22 November 2002 (CONV 422/02).

shall be taken by the Council with QMV”.¹¹³ Military and defence decisions, however, will still be reached via unanimity.

Nevertheless, to avoid military coalitions outside the Treaty it is necessary that those states willing and able to cooperate are able to do so efficiently without, however, neglecting the other EU members' interests.¹¹⁴ As it is demanded in the German-Franco initiative on security and defence policy: “für diesen Fall muss denjenigen, die dies wünschen, die Option einer Zusammenarbeit mit einigen anderen im Rahmen des Vertrags offen stehen“.¹¹⁵

3) In the federal view, QMV would become the general rule in CFSP/ESDP affairs, including military and related issues. Although this might not help to improve transparency, specific forms of voting such as 2/3 majorities under the current provisions of Article 205.2 (TEC – NV) might be kept as some kind of a »safety net« for the Member States.

6.4. *The external representation of CFSP/ESDP*

By all accounts, the introduction of the High Representative Javier Solana has significantly improved the representation of the EU's foreign policy. He successfully made the EU a relevant actor in the Balkans and the Middle East. Some of the EU's modest foreign policy achievements in 2002 such as the agreements between Serbia and Montenegro are largely due to Solana's political manoeuvring and negotiating skills. Moreover, he was supported by all Member States, and not simply the »big three«.

It has to be stated, however, that the institutional complexity has been further increased with the establishment of the new position. Though Mr. Solana is perceived in the world as »Mr. EU«, as for the European telephone number – which Henry Kissinger asked for decades ago in his famous remark on Europe's incohesiveness – the Union is still unable to offer a reliable and credible political answer. During a crisis, the current system of external representation is completely in-adequate. A key single actor enjoying the support of the Member States and the Commission must be clearly identifiable for third parties.

1) From a view of only restricted adaptation, the present Troika system should not be abolished. Though it cannot be overlooked that the CFSP/ESDP framework lacks coherence and consistency, neither the presidency should be eradicated nor should there be a merger of the posts of the High Representative and Commissioner in charge of external relations.

As a consequence, the EP should only advocate a slight adaptation of the current system. This might be achieved by some »smooth« adaptations: Firstly, the time period of the presidency might be extended as among others Tony Blair has suggested. Secondly, the supporting staff of the High Representative should be substantially beefed up, preferably with officials detached from either the Council secretariat or national ministries.¹¹⁶

2) According to the model of a pragmatic development, both the role of the Commission and the High representative should be increased. Following the »double-hat (Doppelhut)«-system, which is currently being discussed in the Convention, representation of CFSP and ESDP should be carried out jointly by the responsible (foreign) Commissioner and the High Repre-

¹¹³ See in this respect especially Chris Patten (Commissioner in charge of External Relations) at the joint Meeting of the Working Groups on External Action and Defence, 14 November 2002, (CONV 412/02).

¹¹⁴ See below chapter 6.4.

¹¹⁵ See in this respect also the German-Franco proposal by Joschka Fischer and Dominique de Villepin, 22 November 2002 (CONV 422/02).

¹¹⁶ See the contribution for the Convention by Heather Grabbe: Preparing the EU for 2004, (http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0077_c_en.pdf).

sentative.¹¹⁷ In this manner, the tasks of the High Representative for CFSP will be kept, but competences would not be increased. However, the general structural limitations of the position should be taken into account despite the fact that the current High Representative Javier Solana has, due to his experience and personality, managed to acquire a fairly important position in an exceptionally short period of time. A less well-profiled politician as High Representative might cause a structural vacuum at the core of foreign and security policy.¹¹⁸

In view of this scenario the role of the presidency should be restricted. In order to achieve a better coherency, the foreign Commissioner and the High Representative should jointly carry out foreign representation while the presidency should focus primarily upon aspects of internal coordination. A small number of civil servants from the respective presidency might be delegated to the staff of the High Representative to ensure the necessary co-ordination.

3) Advocates of a fundamental reform would suggest the establishment of a key person in charge of foreign policy. In this respect, the EP should demand a personal union between the High Representative and the External Relations Commissioner.¹¹⁹ The two functions would be merged into the new position of a foreign Commissioner, responsible for foreign, security and defence policy. Obviously, this would mean the abolition of the post of High Representative and the »upgrading« of the Commission in the area of foreign policy. In this respect the European Commission would be considered as European government with the president of the Commission effectively becoming the »head« of the European Union.¹²⁰

Providing this new »Foreign Commissioner«/High Representative (a kind of »EU Foreign Minister« who would also claim the function of the single Commission vice-president) with exclusive external representation of the Union in CFSP and ESDP affairs, seems to be the most coherent and effective option. By the same token, this function should be given a formal right of initiative in foreign policy; similar to the one the Commission has in EC matters. Furthermore, substantial own resources would have to be combined with this function, both in terms of organisational structures and financial means. The entire structure would be at the disposal of the new »Foreign Commissioner«/High Representative.¹²¹

The institutional connections between the Council and the Commission resulting from this fusion would strengthen the coherence of the various elements of EU foreign policy and give the EU a more efficient and coordinated external representation. This external representation will be even more relevant for international organisation such as the Euro-Group in the IMF, G-8, World Bank and, in the long run, the United Nations.

Following this logic, the six-month rotating presidencies would be abolished. In an enlarged EU rotating presidencies are not adequate to provide the Union with leadership or a strong profile internationally.¹²² The European Commission has to be fully accepted as a key actor in CFSP and ESDP, especially as regards long-term conflict prevention, post-conflict rehabilitation and civilian matters. The Commission will then play a key role in combining the big security policy goals with the realisation of concerted action in internal policy.

¹¹⁷ See the proposal of Caspar Einem (MP Austria) on the »double hat«: Contribution to the Convention. 17 July 2002 (CONV 202/02). Günther Pleuger has taken up this proposal. 6 November 2002 (Working document 017 of the working group of the Convention on external action).

¹¹⁸ In this respect the proposal of the president of the Commission, Romano Prodi, introducing the idea of a new post of »EU secretary« placed as a link between Council and Commission should be rejected in order to avoid further institutional complexity. See *Süddeutsche Zeitung*, 5 December 2002.

¹¹⁹ See among many others Andrew Duff: A Model Constitution for a Federal Union of Europe, Contribution to the Convention, 1 September 2002, (CONV 234/02).

¹²⁰ See for the role of the European Parliament vis-à-vis this new key person chapter 2.2. above.

¹²¹ See Vitorino and Barnier: A project for the European Union, Communication from the commission to the Convent, 22 May 2002, (CONV 229/02).

¹²² The presidency problem has even increased since the Danish Presidency (started on 1 July) that will not chair the meetings concerning defence matters due to the Danish opt-out from ESDP in the Nice treaty.

6.5. *The reform of the Council*

The European Council in Seville referred to reform of the structures of the Council.¹²³ The new structure sought a General Affairs Council (GAC) that incorporates External Relations and which is split up into two separate entities: one designed to tackle horizontal issues¹²⁴ and one to deal specifically and exclusively with foreign issues. The defence ministers might join the latter, according to the agenda.¹²⁵

1) Following the status quo-scenario, this new arrangement is regarded as a sufficient adjustment to cope with the existing problems. In its first formation/composition, the General Affairs Council will be able to increasingly concentrate on co-ordination and legal factors. In its second formation/composition where it will consist of mainly foreign ministers, it will focus on CFSP and ESDP matters. The possible composition/formation of a special Defence Council seems not to be applicable and also undesirable. Thus, the EP would support the agreements of the Seville summit and the new rules of procedure for the Council that emphasise the division of general affairs and external relations.¹²⁶

2) From the assumptions of an approach that emphasises incremental change, a wide margin for further reform of the Council structures (besides the changes already undertaken) is possible. According to the overall target of more openness and transparency, the EP should also pay attention to the Council's own internal structures. The Council should act, if it is possible, and legislate to ensure better transparency with »open doors«.

In order to make the Council's activities clearer, the respective competencies of COREPER and the PSC must be defined. No »grey« areas within the Council should be left to cast any doubt on its work.

In view of this scenario, the setting up of an independent Defence Council should be considered.¹²⁷

3) The vision of a long-term communitarisation would require a clear relocation of competences to the Council of Defence Ministers for all issues relating to a military dimension of European security policy. This Council would be established by dividing responsibilities of this area with foreign ministers.¹²⁸ Joint meetings of the defence and foreign Council would take place regularly on a semi-annual basis and when necessary on an ad hoc basis. The Foreign Affairs Council as well as the Defence Council will be chaired (following the abolishment of presidencies (see above)) by the new »Foreign Commissioner«/High representative, thus guaranteeing consistency. To reflect this reform, the European Parliament would need to re-organise its Committee structure along the lines of the Council framework (see below).

In addition, the EP should claim that if the European Council is to play an important role in CFSP and ESDP affairs then it should become a regular institution of the European Union with clearly defined competencies in the treaty and legal responsibility.

¹²³ See Claire Piana: The Implications of the Council Reform for CFSP and ESDP, in: European Security Review 14 (2002), p. 4f.

¹²⁴ In this formation Member States will be free to send either the Foreign Minister proper or another member of cabinet.

¹²⁵ See Presidency Conclusions, Seville, 21-22 June 2002, Annex II (Measures concerning the structure and functioning of the Council). On 13 May 2002 the Defence Ministers of EU Member States took part for the first time in the General Affairs Council.

¹²⁶ See Council decision of 22 July 2002 adopting the Councils' rules of procedure. <http://ue.eu.int/en/info/RIEN.pdf>

¹²⁷ See especially proposal of the Seminar on Defence for the Members of the Convention, Brussels 7 November 2002, (CONV 417/02).

¹²⁸ See the resolution adopted by the EP in April 2002, calling for the institution of a formal »Defence Council«.

6.6. *The role of the European Commission*

Since the borderline between external and internal security is increasingly blurred on the one hand and the coherence of military and civilian measures is gaining ever more importance on the other, a truly independent European Commission committed to common European interests should become (according to the respective scenario) the central institutional link between pillars and policies. Thus, the role of the Commission in the EU's security policy should be generally increased.

1) In the scenario conceding only restricted adjustments, no substantial institutional changes will be made. The Commission will still be part of the Troika system. Nevertheless, improvements will be achieved by better means of communication and higher expertise in the Commission. Therefore, the EP would support a stronger role of the DG external relations and a better staffing of the DG with experienced civil servants. Establishing better communication between DG external relations and the respective Council bodies could also strengthen the role of the Commission.

2) With regard to the incremental adaptation scenario, a further involvement of the Commission in the armament sector could be achieved. Since a working European defence policy relies on a coordinated and efficient defence industry in order to reduce the gap with the well-equipped military forces of the United States, the Commission should be responsible for such a new policy sector, including responsibility for the use of funds from the EC budget to help develop this.

Moreover, the Commission might be permanently included and thus gain a legally based status in the sessions of the newly established bodies, not only in CIVCOM but also in PSC and EUMC. Thus, the Commission should obtain a status that really does correspond with Article 27 (TEU – AV).

3) The federal scenario will place the European Commission beyond Article 27 (TEU – NV) and into the core of foreign policy. Due to the new function of the merged »Foreign Commissioner«/High Representative (located within the Commission structure) the centre of gravity for policy initiatives in CFSP/ESDP would lie within the Commission¹²⁹. Though this might contradict transparency and coherency, the EP should focus on a special status for the new Foreign EU Leader »EU Foreign Minister«. As a full member of the Commission, the »Foreign Commissioner«/High Representative would be chosen jointly either by the President-designate of the Commission, and by the European Council.

Another aspect of a more federal perspective derives from setting up a European President. Such an arrangement, at present apparently supported by London, Paris and Madrid (though not based on a traditional federal approach), would put the »Foreign Commissioner«/High Representative in direct connection and potentially in competition with the new European President. As experiences from the French System show, foreign affairs might therefore be carried out as part of the »domain réservé« by the President. Institutional conflicts would be institutionalised by design unless a clear division of labour was established between the new »President« of the European Council, the President of the Commission and the new »Foreign Minister« of the Union. Hence, the EP should reject such an arrangement or ask for very clear competences, which would be set out in the treaties.

¹²⁹ See Ingolf Pernice: Reform der Aufgabenverteilung und der Entscheidungsverfahren in der GASP/EVSP, 25 September 2002, WHI White Paper 8/02.

7. Conclusions: Revisiting the options in view of the European Convention

This set of options offers an overview about possible institutional arrangements in CFSP and ESDP and the potential for a stronger involvement of the European Parliament. The bandwidth and ambiguity of the recommendations is notable but they must not provoke confusion. The conclusions of the European Convention might also include several ideas along a similar time scale. Changes do not have to be reached with one »saut qualitatif«, but rather could be established gradually via several steps.

The Convention can be considered the most appropriate place for discussion about the revision of the existing treaties. Therefore the Convention performs a necessary prerequisite for legitimating the next constitutional step towards extending the EU-system. These results might lead to a higher acceptance of the EU. The final document of the Convention could outline several recommendations for the forthcoming ICG that could attract wide support. The proposal of Giscard d'Estaing might be a starting point, since Convention delegates were broadly supportive of his »skeletal« proposal.

In particular, an incremental style advancement of the EU-system might be successful. Experiences so far have shown that proposals with far reaching solutions are not always appropriate or successful. A flexible strategy of »trial and error« might have a more important effect on the outcome. To focus on evolutionary adaptations in foreign, security and defence policy might also be the most appropriate strategy for the EP. The »finalité Européen« has to be achieved gradually. The European Convention will reinforce the debate on the future of Europe, but not necessarily lead to an end or a »one-valid result« in the integration process.

Besides the »trial and error argument«, there should, nevertheless, emerge from the abundance of detailed options some immediate recommendations for participation of the European Parliament. According to the debates in the Convention, neither the status quo, nor the federal scenario seems realistic. Instead, a move towards limited but valid reforms appears more realistic. Probably more than a minimal interpretation of the assignments by the European Council will arise.

The following set of options offers an overview of possible future institutional arrangements in CFSP and ESDP and the potential for a stronger involvement of the European Parliament as well as of national parliaments:

1. The European Parliament should focus on a substantial revision of Article 21 TEU. Since the objective of Article 21 is limited to the "Common Foreign and Security policy", a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP. Particularly the term ESDP should find its way into the Treaties proper. Following the preliminary draft proposal by Giscard, such a revised Article 21 has to be extended on both external actions and defence. This might help break the artificial distinction between CFSP and ESDP matters. A more workable method might be to differentiate e.g. between long-term strategies including their conduct and strictly military operations. Since the parliamentary dimension of ESDP is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of the presidency, the EP might claim in addition to extend its right for a more profound participation.
2. The appointing function of the European Parliament has been developed in only a fairly restricted way. Hence, since the High Representative has developed a key role in CFSP and ESDP (which might be further strengthened in the future considering some of the proposals made in the Convention), the European Parliament should become more involved in his appointment. There should at least be the need to consult the EP along similar lines to the ECB-investiture, and this should be inserted into the treaty. In terms of legitimacy, the assent of the EP appears more desirable, as it is applicable for the Commission.

3. The right of information in CFSP and ESDP is the most important aspect for efficient parliamentary participation. In this respect, the links of the EP's AFET with the Council and its bodies should be improved at all stages of the policy cycle. It would be especially useful to establish links to the PSC, which are currently close to non-existent. The EP should claim the right to obtain access not only to decisions that the Council intends to adopt but also to all other information related to foreign, security or military actions in order to gain a more comprehensive overview. Most notably, the current Article 21 and its passage stating that the EP shall be restricted to "be[ing] kept regularly informed" on the "development" of the Union's CFSP impedes an efficient and democratic legitimatised control by the EP. On the other hand, better information for the EP might be achieved by improved access to (confidential) documents. The inter-institutional agreement drafted in July 2002 concerning a special committee led by the chairman of AFET, might be an appropriate basis for the access to sensitive documents.
4. To carry out legal acts, parliament generally must not only have the possibility to formulate its position on all proposals for EU legal measures, but also have the right to approve or to reject what the executive has proposed. Hence, the European Parliament should claim a legally binding participation in civil crisis management and right of consultation in military crisis management. Although a distinction between civil and military means might prove difficult in a case-to-case evaluation, the Parliament should focus on the civil dimension of EU foreign policy including crisis management by non-military means as defined in Annex I of the Presidency Report in Feira on strengthening the Common European Security and Defence Policy and in Annex 2 to Annex IV of the Helsinki conclusions.
5. The use of flexibility as a »last resort« should be avoided both generally and in relation to CFSP/ESDP matters. Nevertheless, in order to achieve an operational ESDP, flexibility might be indispensable. In such a case, it should be discussed if the rights of the European Parliament should be equivalent to normal procedures in cases of enhanced co-operation.
6. The European Parliament should focus on a revision of the criteria under which the defence budget is drawn up. Currently, operations, "having military or defence implications", have to be financed by the Member States. According to the Council (of Foreign Ministers) decision of 17 June 2002, there are two categories of costs in ESDP: Firstly, common costs of the Member States, consisting of funds such as those for transport, administration or public relations of the staff quarter. Secondly, individual costs, which are shouldered separately by each individual Member State, with charges going to every single country according to its own expenses. Based on this accord, the EP should stress that the common costs including both operational and administrative costs should no longer be financed jointly by the Member States but by the EC budget. This would provide the parliament with an instrument of indirect control that it can exert through its rights to participate in the drafting of the EC budget. In practical terms, this might be carried out by a decision on the overall costs of the EP at the beginning of the budget procedure, which will then be distributed by the Council to single positions.
7. The European Parliament has so far obtained no competences to decide on, and not even to take part, in any »association« procedure under Title V. Consequently, the European Parliament should aspire to be involved in those international agreements, which fall under Title V. Thus, Article 24 (TEU – AV) should be amended along the competences of Article 300 TEC.
8. Since AFET is concerned to a large degree with questions of enlargement, the work of the Committee should in future begin to concentrate more effectively on foreign and

security aspects. This might be achieved either by a subdivision of tasks into several subcommittees or, along the working structures of the Council, with the dividing of AFET into two different committees: one covering the field of foreign policies and one focussing on defence and security matters. The policy field of human rights might either be merged with the Committee on Development and Cooperation (DEVE) or become a committee of its own. In addition, it should also be discussed whether AFET should still coordinate the work of the inter-parliamentary delegations and the joint parliamentary committees as well as the cooperation committees and the ad hoc delegations?

9. Basic parliamentary involvement in ESDP affairs is a product of »access«, thus requiring efficient and comprehensive information channels. In practise, a lot of information has to be obtained from the national level, in particular for cases of foreign and security policy. Thus, the European Parliament should improve co-operation and exchange of information with national parliaments by setting up some kind of a policy-oriented sub-COSAC related to foreign, security and defence issues. It is recommended that this A specialised COSAC or a EP based parliamentary conference on foreign, security and defence policy might ensure efficiency and a better performance in day-to-day-policies than the current COSAC is able to offer. A standing secretariat, however, should be avoided since this might lead in the long run to the institutionalisation of such a body. This structure might provide a forum for communication of day-to-day politics between national and European parliamentarians. Besides this structure a bigger forum might be installed which serves primarily as a forum for communication on general issues between national and European parliamentarians. This task might take the form of the so-called »European Congress« as promoted by Giscard and others.
10. With the transfer of tasks, the WEU has become a comparatively »inactive« organisation. Though the Parliamentary Assembly of the WEU has refused to accept the institution's demise, the European Parliament should insist that the mandate of the Western European Union and its parliamentary assembly expire. The remaining competences of the WEU should be transferred entirely to the EU. In this case, the mutual assistance clause of the treaty on the Western European Union should also be placed in the European treaties. This would imply a collective defence mechanism for the EU in the event of an attack (or act of terrorism) against any Member State. Communication between national parliamentarians and MEPs can be ensured by either the »European Congress« or by the other existing bodies such as the Parliamentary assemblies of NATO, OSCE or the Council of Europe.
11. The rights of national parliaments in foreign, security and defence policy differ substantially. While some national parliaments pronounced rights in initiating legislation and supervising the work of the respective government, other parliaments act primarily as a platform and forum for communication. In general, however, parliaments play only a marginal role in all major developments in the area of foreign policy. For this reason, national parliaments might enter into a benchmarking exercise looking at minimum standards for best practises of national legislatures in foreign, security and defence policy.
12. The relationship of the EU and NATO is a key element for ESDP, especially given the growing urgency to deploy military forces. The European Parliament should push for an improvement of the financial expenditures on military capacities in the EU Member States in order to develop operational structures and also push for the conclusion to the elusive agreement between the EU and NATO on collaboration in military crises management. In addition, the EP should improve (besides its NATO delegation) communication with NATO and NATO Member States. At least a semi-annual regular meet-

ing between representatives of the European Parliament and representatives of the NATO Parliamentary Assembly should be agreed upon.

An overall model for the parliamentarisation of CFSP and ESDP might be organised as follows:

