

Working Group VII

Working document 40

Working group VII – "External Action"

Subject: The comments by Mr Peter Hain to the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII) and to the draft text on principles and objectives of EU external action (WD 007 - WG VII)

Members of Working Group VII will find hereafter comments by Mr Peter Hain, UK government representative, member of the Convention.

Draft final report of Working Group VII on EU External Action

I. Introduction

1. The Working Group on EU external action has carried out a systematic examination of the issues set out in its mandate (CONV 252/02). The discussions took place against the background of the results of the Convention's plenary debate on EU external action (11 and 12 July 2002) and the reflection paper on this issue presented by the Praesidium (CONV 161/02). The Working Group heard evidence from Chris Patten, member of the Commission responsible for external relations, Javier Solana, Secretary General of the Council and High Representative for CFSP, Pascal Lamy, member of the Commission responsible for commercial policy, Poul Nielson, member of the Commission responsible for development co-operation, and Pierre de Boissieu, deputy Secretary General of the Council.
2. The Group held [8] meetings, [one of which was held jointly with Working Group VIII on Defence on the issue of civil crisis management.] Members have submitted [a number of] written contributions in the form of working documents and the Secretariat has prepared [a number of] documents that were used as an input to the debate.
3. The broad range of issues examined by the Group can be brought under the following general headings:
 - common interests, objectives and principles
 - competences
 - coherence and efficiency of action, through structures, instruments and decision making procedures
 - international agreements
 - external representation and services

The present report outlines the results of the discussions in the Group and presents a number of recommendations for consideration by the Convention, some of which would require Treaty changes.

II. Preliminary remarks

4. During the discussions, a number of general observations were brought forward by members of the Group. There was first of all a general acknowledgement that the Union had much to gain from acting collectively on the international stage. It was increasingly difficult for individual Member States to influence international developments when acting on their own. In addition, the process of European integration has led to more shared interests and values, the defence of which called for an integrated approach on the global stage.
5. Secondly, it was recognised that acting collectively on the global stage depended to a large extent on political will and solidarity among Member States. This was particularly true for foreign policy, which was considered a core issue to national sovereignty. It was acknowledged that the perception of international events sometimes clearly differed from one country to another and often led to different reactions, or intensity of reactions. The usefulness of mechanisms that foster convergence of views and a sense of solidarity was underlined in this respect.
6. Thirdly, it was underlined that external action covered a wide range of policy areas, that some areas were more subject to divergent national views than others, and that certain policy areas were more adapted to legal instruments and regulation than others. This required different arrangements and procedures in EU decision making and implementation. This was particularly true in relation to crisis management and defence issues.
7. Fourthly, it was recognised that although there were considerable collective resources at the EU level, the national resources that Member States could use internationally - both financial and human - were far larger. It was therefore underlined that policy making at the European level should aim at mobilising the whole range of available resources in a coherent manner, and that it should function as a catalyst for the use of national resources to pursue shared EU objectives.
8. Fifthly, it was recalled that considerable progress had been achieved over the last years. It was important that when considering how the current system could be further improved, one should identify the elements of success and build upon the progress achieved so far.

III. Common interests, principles and objectives

9. The Group exchanged views on how the EU could best identify common interests and set priorities for its action on the global stage. Several members pointed to the need to better define [in the Treaty] [in a solemn declaration] the underlying principles and general objectives of all areas of EU external action, in a manner that would be clear to the public and the EU's partners.
10. The Group examined a paper by the Secretariat, which contained a proposal for principles and objectives of EU external action on the basis of current Treaty language on different policy areas and recommendations presented by members of the Group. [The Group reached agreement on a text for principles and objectives of EU external action, as set out in Annex. In the discussion about the status of this text, different options were presented. ...] **[The Group noted that the status of the draft should remain a general background guide until the final version of the Praesidium constitutional treaty was available, as the current Article 2 of the draft treaty lists a different set of values for the Union.]**
11. In this context, members agreed that it would be useful to group in the new Treaty the relevant articles of the current Treaties, which constitute the legal bases of EU external action. The Group welcomed the fact that this was foreseen in the draft outline Treaty **[and noted that the special arrangements for CFSP should be retained.]**
12. Once the overall principles and objectives were set, it would be easier for the EU to define common interests and agree upon a strategy to defend them. In this context, the role of the European Council in defining the principles and general guidelines was recalled. Members also underlined the importance of the Commission's annual strategic priorities document and the Council's annual debate on the EU's foreign policy, as well as the work of the European Parliament in this respect.
13. The Group was of the opinion that common interests had to be defined collectively. **[The possibility of giving the HR more power in identifying common EU interests in foreign policy was mentioned as well.]** Some members **[also]** pointed to the role of the Commission as defender of the common interest and called for its role to be strengthened in this respect. **The possibility of giving the HR more power in identifying common EU interests in foreign**

~~policy was mentioned as well.~~ All agreed that it was important to establish an adequate mechanism that allowed, on the basis of general objectives, to identify specific objectives and interests, as well as strategies to defend them.

IV. Competences

- ~~14. The Group noted that the EC Treaty attributed explicit competences to the Community in external action, including for the conclusion of international agreements, and that the Court of Justice had recognised implicit external Community competences when the conclusion of international agreements were necessary for the implementation of internal policies. The Group saw merit in making explicit in the future Treaty the jurisprudence of the Court of Justice in this respect. In the field of explicit external competences, the Group acknowledged that the delimitation of competences between the Community and the Member States varied from one policy area to another.~~
15. With regard to Union competence in CFSP, the ~~Treaty stipulated~~ [Group recalled Article 11.2 of TEU,] that Member States [shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.] ~~were bound by the Treaty to support the Union's CFSP actively and without reserve, to enhance and develop mutual political solidarity and to abstain from any action that runs against the interests of the Union or that undermines its efficiency on the international scene. Member States were thus bound to ensure that national policies conform with positions agreed at EU level. In addition, power of representation was conferred to the Presidency and the HR.~~
16. In CFSP and in JHA, ~~the Union has competence to conclude international agreements.~~ [the Council, acting unanimously may conclude agreements on behalf of the Union.]
17. Notwithstanding the varying delimitations of competences between the Union/Community and Member States and varying roles of actors (institutions and Member States) and decision making procedures in the different fields, it was essential to ensure and maximise the coherence and efficiency of the EU's external action.

V. Coherence and efficiency of action

18. Members of the Group agreed that in order to maximise its influence on the global stage, the Union had to use all its instruments, political and economic alike, in a co-ordinated and mutually reinforcing manner. It was also underlined that a coherent approach in international affairs increased the Union's credibility vis-à-vis its partners. It was pointed out that the Union had a vast variety of instruments and tools at its disposal: e.g. programmes for technical and economic co-operation with third countries, funds for humanitarian assistance, funds for development co-operation programmes, arrangements to agree upon and undertake joint diplomatic action, actions by the Presidency and the HR, dispositions to conclude different types of bilateral and multilateral agreements, different possibilities for action in international organisations and multilateral fora, and it has recently started to establish a crisis management capacity, including the possibility to deploy personnel on the ground. In addition, many of the Union's internal policies and action could have an impact on its relations with the wider world.
19. Notwithstanding the progress achieved over the past years, members of the Group were of the opinion that current arrangements in the European architecture could be improved further to allow a more co-ordinated use of the different instruments. Several options were put forward in the course of the discussions. The proposed changes related to structures within institutions, relations between institutions and actors, as well as instruments and decision making.
 - a) **Structures within and between institutions**
20. Several members underlined the importance of establishing structures within the European Parliament, the Council and the Commission, that facilitated and encouraged a co-ordinated approach in the preparation, consideration and implementation of EU external action.
21. In this respect, a number of members underlined the importance of having in the Commission one focal point that oversees all external issues within the services of the Commission, where different DGs were dealing with external action and where internal policies could have an external dimension. Some suggested that this task could possibly be entrusted to a Vice President of the Commission.

22. A number of members pointed to the need of effective co-ordination at the national level, to ensure a more coherent approach by Member States in the work of the Council and the comitology.
23. With regard to the functioning of the Council, the Group welcomed the decision by the Seville Council to create a General Affairs and External Relations Council formation responsible for issues related to EU external action. Some suggested to go further and to formally separate the external relations dimension from the general affairs dimension in two separate Council formations, which did not exclude that Member States could be represented by the same Minister.
24. Members were of the opinion that an increased role of the HR would help to converge views in the Council and lead to more efficiency and coherence in CFSP. There was a general acknowledgement by the Group that the creation of the post of HR had greatly boosted the CFSP and helped to define and pursue a more pro-active and efficient foreign policy. On the basis of this positive experience, a large majority of members proposed a certain number of measures that would further strengthen the HR's role and status, including:
- the formal recognition of the right of proposal of the HR (alongside the right of proposal by the Presidency, Member States and the Commission);
 - chairing of the external action Council by the HR;
 - changing his title, ~~possibly into "Minister of Foreign Affairs" of the EU~~;
 - granting the HR adequate means to implement his/her tasks (see also below);
 - to split the functions of HR from those of SG of the Council, to allow him/her to concentrate on his/her CFSP tasks.
25. With respect to issue of relations between institutions and actors, the discussion focussed on the roles of the HR for CFSP and the Commissioner responsible for external relations. Members felt that more needed to be done to ensure coherence between foreign policy decisions and the deployment of instruments in the field of external relations. Different options were presented.

26. One option recommended practical measures to enhance the synergy between the functions of the HR and the role of the Commission in external relations, while keeping their functions separate. There was broad support for a number of practical proposals, which were also advocated by Chris Patten and Javier Solana, including: participation by the HR in all meetings of the Commission concerning external action, more joint work by the HR and the RELEX Commissioner, including the preparation of joint initiatives to be submitted to the Council (see also below), and enhanced co-operation between their services (notably in the framework of policy analysis, joint reporting etc.), including possible merger of services in certain areas.

27. A second option recommended the full merger of the functions of the HR and RELEX Commissioner into the Commission. **[Some members of the Group raised a series of questions about the practicality of this proposal, eg accountability, chain of command and voting.]**

28. A third option recommended the exercise of both offices by one "double hatted" person. With regard to this option, some members considered that this "double hatted" person with the combined functions of HR and RELEX Commissioner, would be appointed by the European Council [after consultation of the President of the Commission and approval by the European Parliament]. He/she would be a full member of the Commission, but at the same time receive a mandate and remain accountable to the Council for issues relating to CFSP. ~~This person could be given the title of "EU Minister of Foreign Affairs" or "EU Foreign Secretary".~~ **[Some members raised the same questions as at option 2 – para 27 above – about how this could work in practice.]**

29. Proponents of "double hatting" recognised that for decisions and actions in CFSP a close link was required with Member States through the Council and/or the European Council. Those who were not in favour of "double hatting" believed that it was not compatible with the principle of collegiality and that the job could not be done by one person. **[The current High Representative and External Relations Commissioner both told the Group that they did not see how doublehatting could work in practice.]** Others, however, considered that the scope of responsibilities could be dealt with by appointing to the "double hatted" person a number of deputies / assistants or Special Representatives with specific geographic/thematic responsibilities, nominated by the Council, as well as by having a burdensharing among members of the Commission of tasks relating to external action.

30. Certain members of the Group considered that there was a link between a possible reform of the functions of the HR and the RELEX Commissioner and the organisation of the Presidency of the European Council. The Group noted however that the wider institutional questions would be discussed by the Plenary.

31. Notwithstanding the different views on the possible merger of both functions, members agreed that duplication of services should be avoided and that increased co-operation and co-ordination would have a positive effect on the coherence of EU external action.

b) Instruments and decision making

32. In addition to structural changes within and between institutions, members felt that more coherence could be achieved through the application of instruments that covered different fields of action. As to the efficiency of action, the Group examined decision making procedures in CFSP and in community policy areas.

33. It was noted that the instrument of "common strategies", which was introduced by the Amsterdam Treaty and aimed at covering Community policy and CFSP, had not been used very often in practice and that the way they had been drafted had not led to the desired effect. Several members were disappointed that the possibility of more QMV, which had been introduced by the creation of common strategies, had not been used in practice.

34. The Group discussed the possibility of introducing a new instrument of EU external action in the form of joint proposals by the HR and the [Commission] [RELEX Commissioner], which would present an integrated approach of foreign policy considerations and concrete supporting measures. These proposals could concern the EU's relations with a particular country or region, or have a more thematic approach. The joint proposal would be submitted for adoption by the Council and implemented by the different institutions/actors in the field of competencies attributed to them.

35. All members agreed that it was important for the EU to have a dynamic foreign policy that was capable of responding promptly to international developments. The need to be able to respond in 'real time' was underlined in this respect.

36. For a number of members the capacity to act on an issue of foreign policy was determined by the existence of political will and convergence of views among Member States. Other members pointed out that the current need for unanimity restricted the Union's capacity to act and that it resulted in a policy dictated by the least ambitious position. They feared that in an enlarged Union the risk of 'CFSP inertia' would increase if the requirement of unanimity were maintained. To overcome this problem, many advocated extending the use of QMV in CFSP. Some advocated introducing QMV as a general rule, and considered that the mere existence of decision making by QMV would trigger more consensus within the Council. Other members, however, expressed the opinion that foreign policy issues were not adapted to decision making by voting since it would be difficult for a country to find itself in a minority position on an issue in which precisely its national interests were at stake **[and QMV in CFSP would heighten third country awareness of internal EU disagreements, thus rendering CFSP less effective.]**
37. In spite of these different positions, the Group in general was favourable to **[better use of the existing provisions of QMV, including in common strategies and decisions]**. Some members of the Group favoured an examination of the ~~{examine}~~ a partial extension of QMV in CFSP ~~and/or a better use of QMV in the framework of common strategies and decisions.~~
38. ~~The Group saw a possible extension of the use of QMV by the Council when it was presented with joint initiatives by the HR and the [Commission] [RELEX Commissioner], which would cover foreign policy and external relations issues (see above). There was a common understanding that initiatives proposed by both the HR and the [Commission] [Commissioner] would reflect a maximum degree of support by individual Member States.~~
39. Other options aimed at reducing the negative effects of the general rule of unanimity were raised as well. These included more use of "constructive abstention" and forms of closer co-operation between a limited number of Member States. [The Group agreed that increasing the threshold for constructive abstention [from the current one third of weighted votes to 50%] would have a positive effect on efficiency of decision making in CFSP].

40. With respect to efficiency in community policy areas, **[some]** members of the Group agreed that the use of QMV should be extended to as many areas as possible. The Group took note of the comment made by Commissioner Lamy that in spite of the fact that commercial trade policy was an exclusive competence of the EC/EU, not all areas of trade were subject to decision making by QMV. This oddity was considered **[by some]** an impediment to the Union's efficiency in multilateral and bilateral trade negotiations. [...] **[However, some members of the Group believed that this could have unwelcome effects on the distribution of internal competences within the EU and others pointed to the reasoning behind the changes to the TEU adopted in the Nice Treaty.]**
41. **[The Group discussed the urgent need to clarify both the purpose and role of EC's development policy, both in relation to those of Member States and in relation to other external policies.]** To improve the efficiency and coherence of development co-operation policy, which was a complementary competence to that of the Member States, it was underlined that **[the objectives of EU development programmes needed to be clarified, their management simplified and enhanced, and the added value of EC/EU activities in securing poverty reduction ensured. Several members of the Group stressed the importance of confirming poverty reduction as the central aim for EC's development policy and the importance of focusing efforts on low income countries. EC programmes should therefore be refocused to reflect this objective and, subsequently, resource allocations decision be done through a longer term strategic approach based on objective criteria for promoting development. Some argued that]** decision making at EU level should engage more the use of aid at national level. The EC/EU funds represented a considerable proportion of total global aid (10 %), but the sum of the Members States' national budgets represented an even larger percentage (50 %). The current arrangements and delimitation of competencies often led to the situation that the EU was a sixteenth donor in addition to the donor programmes of EU Member States. This **[reinforced the need for close collaboration and complementary activities in order to improve ~~undermined~~—**the efficiency of overall EU aid (financed from the EU budget and on a national basis) and **enhanced [reduce]** the risk of overlapping ~~actions~~ activities. **Equally, it is important to ensure that all EU's external policies are mutually supportive and also in coherence with the EU's policies.]** The Group took note of the comment by Commissioner Nielson that in order for the EU to be more efficient in development policy, policy making at the EU level should [to a greater extent engage] [commit] the Member States

in what they did at the national level. [It was further suggested by the Group that **[if adequate guarantees on the effectiveness and poverty focus of EC development programmes could be introduced then there might be a case for]** the EDF **[to]** be integrated into the Community budget and thus be subject to the same procedures as other areas of Community financial assistance.]

c) Financing CFSP

42. The Group agreed that efficiency in CFSP was closely linked to the issue of adequate resources, both in term of volume and procedures. The current CFSP budget had proved to be insufficient to implement actions that were deemed necessary in support of the EU's foreign policy and that current procedures were too heavy to allow a prompt financing of activities. There was strong support in the Group to change the current system and to make it more compatible with the EU's needs. The example of financing Special Representatives was mentioned in particular, and it was underlined that appropriate funding for these should be made available from the Community budget.
43. The Group felt that the HR should have more say in how the CFSP budget was used, that he should be allowed to propose initiatives, and that he should have a certain degree of autonomy in financing certain activities considered necessary for the implementation of his mandate. [In particular, the Group ~~noted the need to~~ **[considered the possibility of establishing]** an effective start-up fund **[within the EC budget]**, which would allow the HR to finance on an urgent basis the preparatory steps of crisis management operations.] [The Group took note of current procedures in humanitarian aid, where a certain degree of power of decision was conferred to the Director of ECHO/the Commissioner]. The Group further agreed that the budget management activities should remain with the Commission services and that any duplication should be avoided.

VI. International agreements

44. The Group noted the importance of the work of WG III on legal personality and its relevance for the issue of external representation. It ~~examined the relevant sections of its final report~~ **and** recalled the support of the Convention to the recommendation to confer an explicit single legal personality to the European Union. It was furthermore noted that in a possibly regrouped

section on EU external action in the Treaty (see paragraph 11), it would be useful to have a **provision[s]** on the negotiation and conclusion of international agreements that would indicate who would represent the Union in this respect. Such provision[s] could, as recommended by WG III, indicate that the Council authorises the opening of negotiations, issues the negotiating directives, and concludes the agreements. ~~Consolidation into a single article [This]~~ would not necessarily involve changes to the specific arrangements of the procedures according to the subject covered by the agreement. [Regarding the conduct of the negotiation, the current Article 300 TEC would apply if the agreement under consideration fell solely within the Community domain; and Articles 24/38 TEU would apply if the agreement came solely under Title V or Title VI. Where the scope of an agreement would fall within both the community domain and under Titles V and/or VI TUE ("cross-pillar mixity"), the Group noted that one could resort either to the conclusion of two different agreements or to the conclusion of a single agreement. In this last case, the Council, when authorising the opening of negotiations, would indicate whether negotiations would be conducted by the Presidency of the Council (or the HR) and the Commission together or by the Commission alone under the supervision of a committee.] ~~The Group furthermore supported the view advanced by WG III that if a decision were taken to merge the functions of the HR and the RELEX Commissioner, this person would play a role in the opening and conduct of negotiations.~~

VII. Services and External representation

45. The Group agreed that it was essential for the HR to have sufficient staff at his/her disposal in Brussels, and underlined the importance of including in his/her staff members of the national diplomatic services seconded on a temporary basis, with a view to enhancing synergy with Member States and further strengthening of the policy analysis capacity. It was suggested to reinforce the Policy Planning and Early Warning Unit (PU), which constituted of seconded diplomats and officials of the Commission and the Council Secretariat. Some proposed that the role of the Political and Security Committee in providing the HR with political guidance should be reinforced.

46. The Group was of the opinion that the current arrangements in external representation of the EU lacked clarity and some considered that a single representation, at least in certain areas, would improve the Union's capacity to act effectively and convincingly on the global stage. Others believed that diversity in representation was unavoidable, given the different fields of action and differences in delimitation of competences between the Union and its Member States, and that instead of introducing single representation, the Union should aim at delivering a single message, even if this had to be done through different actors.
47. Members welcomed the clarity and efficiency of EU representation by the Commission in the field of commercial policy. They considered that in other policy areas where Member States had agreed that competences would be exercised at the supranational level, representation in international fora should be in conformity with internal arrangements. Possible single representation of the Eurozone in IFI's was mentioned in this respect **[though others saw disadvantages and practical difficulties.]** ~~[Members considered that this task should be entrusted to the ECB / the Presidency / the Commission]. [The Group agreed that it would be desirable that international organisations (or their bodies) admitted full membership the EU, thus recognising its contribution to global governance].~~
48. When considering external representation in foreign policy, members felt that current arrangements could be improved with a view to enhancing clarity and continuity. The situation was particularly unsatisfactory with respect to bilateral relations, including political dialogue meetings, where [too] many spoke on behalf of the EU (Presidency, the HR, the Troika, the Commission, Member States). It was pointed out that in diplomacy a lot depended on trust and personal relationships. The Group considered in this respect that the role of the HR, or the person who would occupy this function, in representing the Union with international partners should be enhanced. They considered that granting him more responsibility in representation would improve the visibility, clarity and continuity of the Union on the global stage.
49. Some considered that representation at the highest political level (heads of State or Government) should be the responsibility of a permanent President of the European Council. The Group considered that the wider institutional questions should be discussed in the Plenary, but took note of the link between the issue of the external representation of the EU and the question of the Presidency of the European Council.

Principles and Objectives of EU External Action

1. The Union's action on the international stage will be guided by, and designed to advance in the wider world, the very values which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, solidarity, respect for the independence of sovereign states, freedom of opinion and opportunity, freedom from famine and fear. The Union will seek to develop relations and build partnerships with all countries, and regional or global organisations, who share its values; will seek multilateral solutions to common problems; will fully respect all international obligations; and will act in accordance with the Charter of the United Nations.
2. The European Union will define and pursue common policies and Union actions, and will work for a maximum degree of co-operation in other international fields, in order to:
 - (a) to safeguard the interests, independence and integrity of the Union;
 - (b) to consolidate and support democracy, the rule of law, international justice and human rights;
 - (c) to encourage the integration of all countries into the world economy, including through the abolition of restrictions on international trade;
 - (d) to foster the economic and social development of developing countries, and to reduce **[and eventually eradicate]** poverty in the world, in particular in ~~the least developed~~ **low income** countries;
 - (e) to assist communities, countries or regions confronting man-made or natural disaster;
 - (f) to develop international measures to preserve the environment and global natural resources, and ensure sustainable development; and
 - (g) *to preserve peace, and strengthen international security, in conformity with the principles of the United Nations Charter.*
3. Some EU internal policies have external aspects. When considering such aspects, the Union will have in mind the above objectives.