

Working Group VII

Working document 54

Working group VII – "External Action"

Subject: The comments by Mr Bobby McDonagh to the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII)

Members of Working Group VII will find hereafter comments by Mr Bobby McDonagh, representative of the Irish Government, alternate member of the Convention.

From: Bobby McDonagh, Irish Government Alternate Representative

To: Chairperson of External Action Working Group

Subject: Comments and amendments on the preliminary draft final report of the External Action Working Group

1. The Secretariat preliminary draft final report provides a useful basis on which to focus discussion in the remaining sessions of the Working Group. The issues raised in the report are complex and will require careful consideration by members of the Group.
2. As requested at the meeting of the Group on 13 November, I have set out below proposals for amendment to the draft report. I am sure that other members of the Group will do likewise and that these responses will be reflected by the Secretariat in the revised version of the draft report that will be discussed by the Group at its meeting on 27 November.

Para 13 Insert reference to the role of the Council in determining common interests alongside proposals to enhance of the role of Commission and High Representative in this respect.

Para 14 The proposal to make explicit the jurisdiction of the Court of Justice in respect of the Community competence to conclude international agreements where they are necessary for the implementation of internal policies will require further consideration.

Para 15 Reword: 'With regard to the Union's competence in CFSP, the Treaty stipulated that Member States **shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity, shall work together to enhance and develop their mutual political solidarity and 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.** (Article 11 TEU) In addition, power of representation was conferred to the Presidency and the High Representative.

- Para 16 Reword: In CFSP and in JHA, **the Council may conclude international agreements with one or more States or international organisations.**
- Para 18 Amend 1st sentence as follows: 'Members of the Group agreed that in order to maximise its influence on the global stage, **in support of its agreed principles and objectives**, the Union...'
- Para 24 It is not the case that a 'large majority' favour the chairing of the External Relations Council by the HR or the proposal that s/he be called 'EU Minister for Foreign Affairs'. It remains our position that the democratic accountability of the High Representative's actions is best guaranteed by the Council continuing to be chaired by the Member States, a position which is receiving widespread support. This is particularly so in the context of an enhanced High Representative, as proposed in our paper on this subject.
- Para 28 Not all proponents of the double-hat model advocate use of the title 'EU Minister for Foreign Affairs' - this should be reflected in the text.
- Para 29 Deputies to a double-hatted HR/Commissioner would be 'nominated' by the Council. How would they be appointed? Deputy High Representatives could also be members of the Commission assuming that the High Representative was a Vice President.
- Para 30/49 As proposed by other Group members, in the interest of balance, a reference should be inserted at paragraphs 30 and 49, to the position held by many Group members that the role of the Member States as Presidency of the European Council should be retained.
- Para 35 This paragraph refers to the need for the Union to be able to respond in 'real time'. The PSC is the body which can provide policy guidance and instructions to the High Representative on an on-going basis and reference to this role should be inserted here.
- Para 37 We have not, so far, and are unlikely to, reach consensus on further extending QMV in the CFSP. This is a very sensitive issue. Various proposals have been made and they will require detailed consideration. This paragraph should be reworded accordingly.

- Para 38 The suggestion that QMV should apply to initiatives presented jointly by the External Relations Commissioner and the High Representative must also be contested as there is no basis for the statement that there is a 'common understanding' that such initiatives 'would reflect a maximum degree of support by individual Member States'. Most, if not all, Member States would support the improved coherence that such joint initiatives would represent, but the Member States in the Council would still reserve the right and responsibility to assess and consider such joint proposals in the normal way. Nor does the proposal as worded reflect the differing views over the future relationship between the High Representative and External Relations Commissioner. This proposal should be reworded as follows: '**Some members of the Group** saw merit in a possible extension of the use of QMV...external relations issues.' Delete second sentence.
- Para 39 The proposition that the threshold for constructive abstention be increased from the current one third of weighted votes to 50% is unacceptable. In a Union of 25 this would mean that nineteen Member States could abstain from a proposal under this arrangement and it would still proceed if the six larger Member States backed the proposal. The strength and authority of Council decisions under the CFSP derives from the support of the Member States. This proposal, if agreed, would undermine the authority and legitimacy of such a decision. There is no evidence of support in the Group for this proposal and it should be deleted from the report.
- Para 40 We would not favour the proposal to further extend QMV in areas of community competence with regard to commercial policy beyond the agreement reached at Nice, and query the use of the term 'oddity' to describe the present areas excluded from QMV.
- Para 41 I would draw attention to the '*Guidelines for strengthening operational coordination between the Community and its Member States in the field of External Assistance*' adopted by the GAC in January 2001. These *Guidelines* provide a basis for coordination and cooperation between the Commission and the Member States in the field of development cooperation to ensure the maximum synergy and to avoid duplication. Effective coordination at a local level is the key to enhanced performance in this area and I would not support proposals that would 'commit' the Member States. The suggestion that the European Development Fund be incorporated into the Community

budget will require further consideration. However, I would note that a different contributory key is used for the EDF and the Community budget.

Para 46 There has been discussion in the Group on a single EU delegation and not on single EU representation in third countries. Reword para as follows: 'some considered that a single EU delegation **(Council/Commission)** in third countries would improve the Union's capacity...'

The second sentence should begin '**There was a general view that** diversity of representation is unavoidable...'. There will be occasions when having one representative to speak for the EU is not in the interest of the Union, and when it is an advantage for the Member States to be able to intervene individually in support of an agreed message. Insert new final sentence: '**It was recognised that, on occasion, this can result in the Union deriving additional influence in international organisations.**'

Para 47 I would question the section of the draft report dealing with membership of international organisations. The Group has not reached a view that it is 'desirable' that the Union be admitted to full membership of international organisations. This is a particularly complex issue as it directly affects the individual membership of such organisations by the Member States.

Nor is there agreement for a single Eurozone representation in international financial institutions or for single EU representation in any other international organisation. This proposal would be problematic for many Member States and would not significantly contribute either to the promotion of the Member States' interests or the functioning of the Bretton Woods institutions.

When considering this issue, we should reflect on the possible impact of regional representation in international organisations. It is also debatable whether this would enhance or dilute the EU's position within these organisations. There are practical measures that can be taken to enhance coordination amongst Member States within existing arrangements.

I would propose that this section of the report be significantly revised to state '**The Group considered that the issue of EU representation in international organisations was both complex and sensitive.**

Members welcomed the clarity and efficiency of EU representation by the Commission in the field of commercial policy. **It was welcomed in the Group that the Union would succeed to the present observer membership of the Community in a number of international organisations. While some members advocated full membership of international organisations of the EU, a majority viewed this proposal as problematic as it would conflict with the rights of Member States without significantly enhancing the influence of the Union. The Group proposed that Member States enhance the existing arrangements for coordination of their positions in international organisations including through the introduction of a forward-looking element .'**

Para 49 Insert new second sentence 'Others opposed this view'.

Para 50 There was agreement in the Group that the Union should be represented in third countries by a single delegation comprising Commission and Council Secretariat officials. There is also support for enhanced coordination between Union delegations and the diplomatic missions of Member States. This is different to the proposal that the Union would open Embassies. There are existing arrangements between Member States for the protection of their interests and nationals in third countries where they do not have a resident diplomatic mission and this arrangement has functioned well. The role of representing the interest of the Commission/Council Secretariat could be complicated with representing the interest of a Member State.

This paragraph should be modified to delete the term 'Embassy', to remove reference to EU Delegations representing Member States and to reword the final sentence as follows: 'diplomatic representations of MS should **cooperate closely** with **EU Delegations** and the HR.'

Bobby McDonagh
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19 November 2002