

Working Group VIII

Working document 25

## **WORKING GROUP VIII « DEFENCE »**

**Subject :** Paper by Ms Danuta Hübner:

- "Improving the functioning and effectiveness of ESDP in the service of CFSP"

Members of the Working Group will find attached a paper submitted by Ms Danuta Hübner, member of the Convention.

-----

**Improving the functioning and effectiveness of ESDP in the service of CFSP**

*Contribution by Danuta Hübner  
Representative of the Government of Poland to the Convention*

**PRINCIPLES****Background**

When thinking on the future of institutional shape and functions of the EU security and defence policy the following should be recognised:

- a) evolving nature and intensity of threats to the EU and its Member States that call for adequate capabilities both national and collective,
- b) need for mechanisms of co-operation and complementarity of efforts with the organisations bearing the primary responsibility for maintaining peace and security, such as UNO and NATO,
- c) unique value added that the EU can and should bring in, providing a balanced mix of diplomatic, economic, civilian and military measures to prevent and combat crises as well as to enhance the security of its members and externally.

Building on the above reasoning, the following sections highlight key elements of possible future solutions regarding the security and defence policy in the EU.

**Place of ESDP within the Treaty framework**

The security and defence policy of the EU is a major yardstick in the process of European integration. It has been developed as a means to give the EU external performance a decisive backing in terms of real capabilities and mechanisms that could be used when situation so requires. This two-fold emphasis: on the creation of adequate capabilities and on the supportive role towards CFSP should not be lost from the sight.

It should be therefore preferred to maintain all aspects of ESDP as part of and in service of CFSP in the body of the new Treaty.

**Mutual assistance clause**

Any mutual assistance clause to bear real significance would necessarily have to be underpinned by credible and operational infrastructure on the supranational level. To build such an infrastructure would mean rising the overall ESDP level of spending far beyond its operational component and would overtly duplicate NATO structures. At this stage no emerging consensus seems to be discernible among the Member States to move forward towards such a solution.

The inclusion of a security clause seems at this stage premature and unjustified in the current security context. While some countries of the EU consistently choose to remain non-allied, the remaining ones see their security safeguarded by the NATO under the Washington Treaty. There is also a clear preference for the NATO membership among the candidate countries.

## **Terrorism and the scope of Petersberg missions**

There is a need for the EU to be able also to face the emerging new threats. Among these the challenge of terrorism, often combined with the proliferation of Weapons of Mass Destruction (WMD), belong to the most compelling issues to be tackled by the EU.

However, due to the nature of these challenges effective preventive and combating measures would require a wider approach, based on inter-pillar co-operation. Given the fact that ESDP is the EU's crisis management tool, there seems to be only a limited scope for direct involvement of ESDP instruments, notably in the area of prevention on protection of civilian population against the use of WMD or a terrorist attack. This could be achieved without significant amendments to the Petersberg remit. However, a formal recognition of the use of civilian and military instruments for crisis management on the territory of the EU would have to be introduced.

In any case this would imply strengthening of the existing structures of the Council Secretariat and ensuring co-operation with the relevant Commission's units as well as between the pillars (was the pillar structure of the EU to be maintained), while putting more emphasis on co-operation in fields such as civil protection and intelligence.

## **Enhanced co-operation**

In principle the idea of enhanced co-operation bringing together only a limited number of Member States can find only a limited application in the area of security and defence policy. As in this area the vital national interests are at stake and since actions taken collectively or individually can always have implications for the security of the other Member States and the Union as such the principle of common consent must always remain not compromised.

However, there might be situations where specific interests of some member States are at stake and not all Member States are willing or are in a position to take specific action. Some flexibility is therefore necessary. In such cases the use of constructive abstention or the general possibility of opting out could be introduced.

This approach, however, does not preclude closer co-operation in the area of armament, seen as a belated complement of the common market project (see section on CAPABILITIES).

## **EU-NATO co-operation**

With the view to the awaited conclusion of an agreement between the EU and NATO on partnership and co-operation in crisis management it seems appropriate that this emerging strategic partnership be reflected in the Treaty in its general part relating to the principles of co-operation with international organisations or alternatively in the part on security and defence policy. The relevant paragraph should bear reference among others to:

- Shared values and shared responsibility for maintaining peace and security
- Commitment to co-operation in all areas of mutual interest
- Institutional and decision-making autonomy and transparency in contacts
- Commitment to the development of mutually reinforcing capabilities

In this context the role and the contribution to ESDP of non-EU NATO members ought to be underlined as primary partners for the EU in crisis management.

## INSTITUTIONS

Enhancing the role of different institutions and bodies

The ESDP Project seems to be well in truck to equip the EU with instruments and structures that should enable it to engage effectively in crisis prevention and crisis management of „classical” Petersberg type. To make the mechanisms fully operational, without changing dramatically the existing set-up, some refinements seem necessary:

- Completing the project civilian and military capabilities,
- Establishing the European base for co-operation in armaments
- Strengthening the co-ordination of different instruments available to the EU in crisis prevention and crisis management,
- Ensuing a swift decision-making process in times of crisis,
- Guaranteeing ready access to financing of actions in an emerging crisis situation.

However, in trying to design new structural solutions we should be guided by working documents being prepared in the context of ESDP by civil and military Council bodies. Not infrequently constructions envisaged in documents such as *Procedures for coherent, comprehensive EU crisis management* constitute solutions to some co-ordination problems at the working level. These should in every case be looked at carefully before any major changes to the balance of institutional competencies are proposed in the framework of the Convention. Having that in mind, the following are possible improvements, which seem to require amendments of a more general nature.

### ***SG/HR in double-hatted function***

A significant role in providing the link between the capabilities and assets at the disposal of the Member States and of the Commission should be ascribed to the Secretary General, who would be double-hatted, combining the function of High Representative for CFSP and member of the Commission responsible for external aspects of the EU policy.

Thus, without merging the structures of the Secretariat and the Commission, the new double-hatted Representative of the EU for external policy, including security and defence policy would have under his purview all the instruments necessary to implement the most appropriate mix of measures in a swift and coherent manner.

Having in mind all positive aspects of such solution we should also be aware of possible negatives such as endangering the institutional balance in the EU or differences in opinions between the Commission and the Council.

A consideration could also be given to creating two positions of Deputy/Assistant High Representative: one responsible for the development and co-ordination of crisis management instruments and the other for traditional first-pillar instruments respectively. This solution would allow High Representative to act as an ultimate link with regard to external policy in general while retaining also the operational control over its ESDP and economic/diplomatic aspects. Permanent participation of the Deputy/Assistant HRs, in an alternate manner according to the specific topic, in PSC meetings would also be useful in terms of guiding the discussion and providing the inter-pillar input.

### ***PSC as focal point for crisis management***

The role of PSC as a focal point for crisis management is well entrenched in the Treaty and no significant formal change to its relative position and remit as described in the Nice Treaty seem necessary. For the times of crises, when the reaction time becomes crucial, the Treaty foresees the possibility for the Council to delegate its authority with regard to political control and strategic direction to PSC. This prerogative, if effectively used by the Council, should guarantee a speedy and competent crisis management on apolitical level. The close co-operation with the High Representative and/or his Deputies should additionally consolidate the leading position of PSC with regard to crises.

Taking into account the growing number of its daily responsibilities and broadening functional scope of its competencies, we could consider for the future different functional formation of PSC (e.g. development of military capabilities, monitoring of external political relations etc.).

### ***Co-ordination in the field***

Taking into account the operational requirements of timely reaction to the changing situation in the field the Operational Commander designated by the Council should be equipped with the authority to manage all the various ramifications of the operation on the spot. In case of deploying by the EU several missions at the same time (e.g. civilian and military components), for which the chain of command would not be unified (no single joint commander – this solution might not be acceptable for some member states due to internal legal arrangements) the role of co-ordinator in the field should be played by the Special Representative, who should also be the first contact point for the heads of missions. Thus a semi-formal mechanism would be introduced whereby a decision to deploy separate component missions would automatically trigger off the need to nominate a Special Representative in the field reporting to the double-hatted HR/SG.

As a rule micromanagement of EU field missions should be avoided in order to keep the decision chain as short and efficient as possible.

## **Procedures**

The practical experience indicates, that in times of crisis the efficiency and effectiveness of the decision-making process in the first place dependent on the ability to manage correctly the workload of the decision-making body, the flow of information and the co-ordination of various contributions to the process. It is often not the contentious nature of the issue to be decided that slows down the reaching of consensus, but rather the organisation of work itself, that favours the methods used routinely outside times of crisis. It is therefore rather the working method than the principles of decision-making process that should be closer looked at.

In the light of the above-mentioned considerations, any proposals envisaging the introduction of qualified majority voting in matters of security and defence would require careful consideration with regard to their implications. If applied, the qualified majority voting would have to be restricted to clearly identified areas e.g. for implementing measures proposed jointly by the HR and the Presidency in the scope of crisis management operations.

Introduction of the constructive abstention clause, including in measures with military dimension, could also allow in some cases to move forward and not to engage those Member States, who felt not at ease with or not concerned by such a decision.

## **Financing crisis management operations**

The issue of financing EU actions related to crisis management is crucial for their success. The current financial arrangements seem not to correspond to the needs of speedy and targeted actions.

While the bulk of expenditure, especially in case of military operations will continue to be borne by the sending states, there is a compelling need to have resources ready for rapid deployment of fact-finding missions or initial planing and set-up teams for both civilian and military purposes. However, in this context the overriding principle of integrity of the EU budget must be adhered to. For this purpose a start-up fund within the Community budget for common operational costs should be created. Solutions could be sought in combining parts of the CFSP and humanitarian assistance budget lines. Such a fund could additionally serve to finance the operational activities of Special Representatives especially in the initial stage prior to launching a fully-fledged operation. The Member States would continue to bear personnel costs.

The EU's involvement in operations and the related accumulation of equipment will inevitably create with the time the need to manage common assets in the most efficient way. Management of this part of the operational expenditure should be entrusted with the Commission services. If implemented in a coherent manner, an equipment management policy would allow savings in the long run.

## **CAPABILITIES**

### **Shared perceptions and standards**

The institutional and financial arrangements would not be effective if not complemented by a better understanding of mechanisms and goals of the EU in crisis management at the working level. To achieve that, two projects could be developed:

- *A comprehensive concept of civil-military co-operation in crisis management.* This is a field where there is a great need for conceptual and practical work. It is also where the EU, given its unique blend of available instruments, can and should pull its weight to bring the added value that could be shared with other organisations as its contribution.
- *European Military and Police colleges* that would provide education along the lines of common curriculum at staff level thus gradually introducing common understanding and universalised procedures for operations under the EU auspices. The EU staff colleges would be the first institutions to convey to staff officers from the Member States (and possibly from other partner countries, including non-EU European Allies) the genuinely European approach to tackling crises, basing on the EU concepts concerning crisis management and civil-military co-operation. Given the limited capacities of the EU bodies responsible in the first place for concept development, these institutions could also support the EU bodies (Police Unit and Military Staff) in preparing and refining basic conceptual documents.

### **Civilian capabilities and co-ordination**

In parallel, civilian elements of police, rule of law, civil protection and civil administration should be developed in order for the EU to eventually be able to respond to crises each time with the most suitable combination of civilian and military components. An indispensable element to be developed by the EU is the overarching concept, mentioned earlier in this section, that would give guidelines on how these elements should work together in terms of civil-military co-operation and inter-pillar co-ordination.

### ***Co-ordinating role of Deputy/Assistant SG***

The creation of the post of Deputy/Assistant SG for the development of capabilities (see section on INSTITUTIONS) would further contribute to the making of envisaged civilian capacities an operational tool for crisis management. In this regard his/her functions should encompass the general managing of civilian components with regard to the use in a crisis situation. The existing pools of experts (rule of law, civil protection, civil administration and other) should gain in this person:

- supervisor of their development according to the operational requirements,
  - co-ordinator of their use in times of crisis
  - inspirer of conceptual works related to the place of civilian elements in civil-military operations,
- who due to his double-hatted function ( see section on INSTITUTIONS) would be able to combine the intergovernmental and community perspectives.

The co-ordination in the field should be a matter for the Head of Mission in case of a unified chain of command or for the Special Representative when separate civilian and military component missions operate in the field (see section on INSTITUTIONS).

### ***Strengthened administrative structures***

For the purpose of joint planning and administrative support the relevant units of the Council Secretariat should be appropriately strengthened and the co-ordination with the Commission instances ensured. In times of crises, as well as in daily operations, as appropriate, the Secretariat and the Commission Staffs should be rearranged to form functional *task forces* ensuring co-ordination on the working level.

## **Military capabilities**

Enhancing real European military capabilities for crisis management lies at the heart of the ESDP project and was in fact the primary consideration that inspired its creation in 1999. For the EU to become an effective forum for co-operation in defence matters and for the Member States to perceive it as an attractive venue for the realisation of their security policies, the EU must develop individual and collective capabilities and mechanisms for co-operation on a wide spectrum of security matters. These must be accompanied by instruments to implement common undertakings.

The requirements of the tight budgetary discipline in the EU Member States, as well as in the candidate countries cause that any significant improvements in military capabilities can only be achieved by way of closer co-operation among the countries and specialisation, taking into account parallel commitments of some countries within NATO. Common effort in this respect could then be conducive to common procurement planning and enhanced interoperability, both elements being indispensable for the development of pool of effective military capabilities. The increased involvement of Defence Ministries in ESDP through regular Council of Defence Ministers as well as meetings of Armaments Directors (NAD) is the first step towards a harmonised defence planning and acquisition process. As this process sets in a close link must be created to the NATO planning discipline.

In order to guarantee the broadest participation genuinely European and inclusive solutions should be favoured that would not restrict the participation to only a group of countries. Therefore, the creation with the time of a European Armaments Agency with competencies in Research & Development and procurement, combining the efforts and resource commitments on national as well as Community levels should be treated as the long-range goal. This should not prevent closer co-operation in the framework of already established forums such as OCCAR or LoI. However, a

certain commitment to common effort by all Member States is necessary to introduce the convergence of policies and acquisition schedules in the long run as well as the decisive leap forward in European capabilities. This can only be achieved on the EU level by common participation. By this token initiatives such as OCCAR and LoI should become part of the network under the European Agency auspices.

A serious obstacle on the way to more efficient use of available resources is the exclusion of the armament industry from the rules of the single market pursuant to the provisions of art. 296 of TEU. The long-term goal should therefore be to invalidate this article when a certain degree of internationalisation and 'marketisation' of the sector is achieved. Instead, a safety clause providing for the scrutiny in case of mergers and major acquisitions with involvement of foreign partners should be introduced. This solution would also logically imply that the Code of Conduct on arms exports, currently voluntarily applied by the Member States, becomes part of the *acquis communautaire* and falls under the purview of the European Commission as part of the single market regulations.

Such an approach follows the logic inherent in the European integration process whereby economic co-operation in one field by the spill-over effect triggers of the need for joint efforts in wider sense finally leading to the convergence of overall policies. In this sense the gradual development of a European common defence market would be conducive to the development of the spirit of commonality and responsibility for common achievements in the sphere of defence efforts.

To sum up a three-step approach to the enhancement of European military capabilities can be envisaged:

1. Progressive involvement of defence ministries in ESDP issues related to the realisation of the European Headline Goal. Gradual development of co-operation in armaments matters through Armaments Directors leading to significant convergence of planning and acquisition disciplines as well as substantial gains in interoperability. Correlation with NATO commitments of some Member States and close link to the NATO planning discipline established.
2. Setting up of a European Armaments Agency as a research and procurement agency and an umbrella organisation for different multinational projects. Possibility of opting-out should be incorporated as well as participation of non-EU members of NATO solved.
3. Liberalisation of the defence sector under the single market regime. Integration of the Code of Conduct in arms sales into the *acquis communautaire*.