

Working Group VIII

Working document 27

WORKING GROUP VIII « DEFENCE »

Subject : **Comments by Ms Gisela Stuart to the preliminary draft final report of
Working Group VIII "Defence" (WD 022)**

Members of Working Group VIII will find attached comments by Ms Gisela Stuart, member of the Convention, on the preliminary draft final report.

Commentary on the Preliminary Draft Report

I welcome the Preliminary Draft Report, which provides the Working Group with a very good basis for discussion. It should allow us to develop final proposals that will ensure European Security and Defence Policy has both the structures and resources to meet the challenges the EU will face in the future.

It is particularly welcome that the Report's recommendations seek to: push forward the modernisation of the Petersberg tasks; encourage more responsive decision-making; reinforce the EU's military capabilities; and encourage greater co-operation, including through reinforced or flexible co-operation in defence acquisition, capability development and defence industrial matters. All these are concrete areas in which new proposals can substantively increase the EU's contribution to Europe's security policy and to the international security environment more generally.

However, there are some areas where I will be seeking further clarification from the Secretariat before taking a final view, or where I can not support the recommendations as currently drafted.

I Crisis management: coherence, efficiency (paragraphs 35-36)

There can be no disagreement with the objectives of these recommendations – coherence and efficiency are vital if ESDP is to have credibility and, more importantly, to work in practice. There is full agreement that EU needs a strong High Representative (HR) in crisis management situations. The model already defined, particularly in the Nice Presidency Report and its annexes, provides for this. In any attempt to elaborate on the current arrangements, it is crucial that the HR's responsibilities in relation to the military aspects must be clearly defined, as must those of any EU Special Representative (EUSR). The practical problem with the current proposal in the Report on the responsibilities of the HR and EUSR is that they imply a civilian HR could be taking military decisions which are properly the province of the commander on the ground. This is neither politically acceptable nor militarily workable. The experience of the "dual-key" arrangements for the UN Protection Force in Bosnia illustrates the risks of confusion on this point.

The military chain of command must be clear, as envisaged in the arrangements agreed at Nice. These reflected the expertise and experience of Ministries of Defence of the member states as well as that of the EU Military Committee. Under these arrangements, while the HR will advise, and work under the direction of, the PSC and Council on aspects of overall policy, which will be relevant to conduct of the military operation, the HR will not have a place within the operational military chain of command. In turn, the EUSR, working to the HR, will be charged with ensuring the political and strategic coherence of the civilian and military components of an EU mission on the ground. As such, the EUSR will be the senior EU representative in the field, but will not have operational military responsibility. In institutional terms, the emphasis in the Report should be on any necessary clarification of the relationship between the HR, the PSC, the Committee of Contributors, the EUMC and the EU operation commander. This is more likely to arise effectively following further exercising of the structures and through their operation in practice.

On financing, it is important that Community budgetary procedures have the flexibility needed to support rapid mobilisation of EU civilian ESDP crisis management capabilities. The question of an off-budget fund however requires further consideration. We should note that the Treaty presumption (Article 28 TEU) is that non-military operational activity would be financed by the Community budget.

On the proposal for a military college, I would suggest this is unnecessary as the requirement is already met by existing or planned activity delivered through a variety of organisations.

III The response to the new threat: more solidarity (paragraphs 41-44)

It is correct that the Convention and this paper address this important new challenge. I fully agree that non-conventional threats to the Union's security and stability, such as terrorism or other forms of instability should be addressed in a coherent way drawing on all instruments available to the Union. It is vital the military resources of EU member states and, as appropriate, the supporting EU mechanisms, can speedily made available in times of crisis at the request of member states civilian authorities.

The solidarity clause proposed in para. 42, seems intended to meet this need. But the proposal as currently drafted amounts to a common defence commitment. It is not clear how the military aspects of the guarantees in the proposed clause would differ from those offered under Article V in NATO. As with the proposed "solidarity clause", the NATO common defence guarantee covers threats to members of the alliance, not just state-to-state threats. The distinguishing feature of a military alliance is the obligation to provide support, not whether that support is requested by civilian authorities. The provision for a Treaty clause under which member states express a commitment to come to the aid of a Partner whose territory is under attack amounts to a form of common defence. We believe it is unnecessary duplication which should be avoided, for the reasons noted below.

More generally, such a separate "defence" clause or chapter – as proposed at the Working Group discussion is not needed. Rather the cross-pillar work the EU has already done to meet the non-conventional threat (including through the Counter Terrorism Group (which produces threat assessments), the EC Civil Protection Mechanism and the CBRN programme) should be built on. The participation of current second pillar activities in this work does not need a new legal basis - Article 11 of The Treaty on European Union (TEU) notes that the objectives of the CFSP include strengthening "the security of the Union in all ways". There is therefore nothing in the TEU to prevent CFSP – and ESDP actions by extension – covering the use of member states' armed forces to support EU security objectives within the EU (e.g. military support to national civil authorities in response to an emergency, such as terrorist action). In the same way, existing provisions for co-operation, (such as the Civil Protection Mechanism and CBRN programme) obviate the need for a separate civil protection pool as proposed in para. 44. The EU Counter Terrorism Group is already responsible for producing assessments of threats to EU member states.

The Report's proposals – and any consequent Treaty changes - should focus on reinforcing this work by clarifying the ways in which EU member states' armed forces can support EU national civil authorities rather than by promoting unnecessary, and divisive, treaty change. It would be a retrograde step to introduce artificial institutional distinctions and separate out aspects of ESDP activity from the CFSP mainstream. Retaining CFSP/ESDP in one chapter, perhaps headed

“external and security policy” would be a better recipe for promoting coherence, involving the potential use of ESDP activities both within the EU and - as would more generally be the rule – in third countries.

A question could also be raised on the emphasis on the nature of the objective of a solidarity commitment (dealing with threats posed by non-state entities, which are only directed at civilian targets not the territorial integrity of member states). This does not make good sense militarily. Would the clause cover attacks or threats which came from state-funded terrorist organisations? Would the EU be willing and able to counter a CBRN attack from a terrorist organisation but not a rogue state? What would the Union do if the nature of the attack was not clear, or if it took a period of time to clarify the source of the attack?

Finally, I would like to address a point raised during discussion in the Group on 25 November. Several members referred to the possible inclusion of the WEU Article V common defence commitment in the TEU.

During the operational existence of the WEU (all of whose members are NATO Allies), it was always understood that Article V would be exercised only through NATO. That understanding was based on Article IV of the WEU Treaty, which states:

“In the execution of the Treaty, the High Contracting Parties and any Organs established by Them under the Treaty shall work in close co-operation 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 and advice on military matters.”

In 1949, the Western European Defence Organisation (WEDO) was transferred to form the basis of NATO. Thus the collective security guarantee for Europe is found in NATO. The EU’s focus in ESDP should be to create security arrangements that are complementary to what already exists through NATO and reflect the particular strengths and purposes of the European Union.

IV Petersberg missions: up-dating and flexibility (paras 45-48)

The suggestion in para 46 of moving from unanimity to consent is interesting, but will need greater definition if it is to be consistent with inter-governmental agreement being a prerequisite for an operation being launched.

Equally, the function of a “eurozone” needs explanation. While I would welcome anything that will increase MS’ capability commitments or intensify practical co-operation, the starting point needs to be the objectives the activity will serve.

V Capabilities and armaments: towards a European Agency (Paras 49-53)

While I welcome the report's acknowledgement of the centrality of capabilities, and the need for monitoring, I believe that the proposals, as they stand, do not go far enough. The EU does not need to "converge" its spending, it needs to improve it. And monitoring that improvement must be done using less blunt tools than levels of spending – which will not tell us what capabilities the EU is actually gaining. As my paper argued, spending more alone is not the answer. EU member states need to spend more effectively if it is to build a meaningful pool of capabilities – and progress towards this will only be captured by a more rigorous benchmarking approach of the type outlined in the UK paper. We need to look at factors such as readiness, deployability, interoperability and sustainability if we are to get a true picture of our progress.

Equally, while I can support much of the proposal on armaments, I believe that the proposal in my paper offers a more comprehensive approach to co-operation. In particular, the draft Report's proposal fails to reflect fully the importance of link between capabilities and armaments in properly serving the objectives of ESDP. Equally, the wider industrial and political alliances of the EU need to be reflected in our proposals – a mandate to open markets across the entire euro-atlantic area should be included among the responsibilities of any Agency.

The Report concludes with the proposal that there should be a Council of Ministers for Defence. Defence Ministers should intensify their efforts to offer leadership and direction to capability development by meeting regularly within the over-arching framework of the GAERC.
