

Working Group VIII

Working document 34

## **WORKING GROUP VIII « DEFENCE »**

**Subject :**    **Comments by Ms Danuta Hubner on the preliminary draft final report of  
Working Group VIII "Defence" (WD 022)**

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

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**Comments on the preliminary draft report from the Working Group on Defence  
by the Representative of the Government of Poland to the European Convention**

GENERAL REMARKS

Majority of members of the Group still perceive efforts of the EU and its Member States within ESDP to be in the service of the efficiency of external action. This as well as a strong desire of some members to avert creating a separate chapter on Defence in the Treaty should be reflected in the Report.

For the same reasons in place of “defence policy”, the term “security and defence policy” should be adhered to throughout the text.

Despite a general recognition of a need to better co-ordinate and enhance the application of instruments already available to the EU in the area of crisis prevention and management, this aspect has been only marginally reflected in the text. More emphasis could be put in the recommendations part on how to find ways to make the most efficient and effective use of resources and instruments the EU already has at its disposal.

Although the crucial importance of NATO in the context of the development of ESDP has been emphasised in the descriptive part (para 19), the reference to NATO is lacking in the recommendation part. This imbalance could be remedied by an insertion of a passage underlining the crucial role of a strategic partnership between the EU and the NATO in the area of security policy, both in terms of capability building as well as institutional co-operation. Likewise a reference to the co-operation between the EU and the OSCE could be considered.

In the text the term “threat” is persistently used to describe what should rather be seen as an inventory of existing or potential challenges. Thus an impression is being created as if the EU's very existence was threatened. As it is not so, it seems more appropriate to use the notion of “security challenges” in place of the notion of “threat”.

Although in general there seems to be a merit in introducing the current set-up concerning the European Defence and Security Policy, we need to keep the right proportion between different parts of the text. Therefore, the recommendations part could be extended at the cost of the descriptive part thus enhancing the value of the text in the context of the debate on the future of ESDP.

DETAILED COMMENTS

**The current challenges**

*Para 31*

The analysis of new threats seems not to reflect fully the relationship between the changing security environment and the emerging challenges on the one side and the necessary conceptual work and related response capabilities on the other. In particular the September 11<sup>th</sup> emphasised the need to

cope with asymmetric threats while the shift from inter state to intra-state conflict pattern has already occurred and been recognised earlier in the nineties. It is also necessary to underline that the terrorism is not the only menace of today.

In general the term ‘challenge’ instead of ‘threat’ should be used as the majority of destabilising factors do not have a character that would justify the use of the notion of “threat” (as it is the case of e.g. ethnic conflicts, organised crime, etc.).

#### Para 32

A passage attributing adamant support for “European defence” to “all shades of public opinion” seems overstated. This argument should be used very cautiously in context of the debate on the European security and defence.

### **Recommendations**

#### *Para 35 b)*

While the enhancement of the role of the High Representative is welcome in general, the provision on ceding the power of decision to the HR in urgent cases seems vague and may open room for speculations and ambiguity. The text must be precise in this part as to what sort of decisions would come under the competence of the HR. The notion of supervision by the Council as well as that of a permanent contact with the PSC also lack operational clarity.

#### *Para 35 c)*

The commanding and co-ordinating role of Special Representatives have been mixed. The position of the Special Representative and that of the Commander-in-Chief of an operation should remain separate. The responsibilities of Special Representative could be understood as being limited to the co-ordination in case of operations having military and civilian components.

#### *Para 35 d)*

The start-up fund should rather form part of the community budget and as such used to finance costs incurred prior to the decision to prepare the proper operation, regardless of whether it will finally turn out to be a military or civilian one. Any extra-budgetary source of founding, also in the form of a special fund financed by the member states, would undermine the EU budgetary system and would be contrary to the spirit of integration process.

#### *Para 38*

The new HR must have the capacity not only to co-ordinate member states efforts but also to the same extent various instruments available to the Community. Without prejudice to the ultimate name of his function and potential outcome of works within the Group VII, this new person has to be given a more robust profile as the “crisis manager” on behalf of

the EU.

*Para 41 and 42*

The general use of the term “challenge” rather than “threat” is advisable.

A simple phrase could be favoured providing for the use of the ESDP instruments for the protection of the civilian population against terrorist attacks, including with the use of WMD, on the territory of the EU. A consensus on this issue seems to have been already reached.

The proposal to introduce a clause on “averting terrorist threat” as well as on “assisting a Member State within its territory in dealing with the consequences of possible attack” bear the notion of collective defence and therefore should be further discussed. The distinction between state and non-state terrorism is not helpful. Nor is it applicable in this case.

It is definitely worth noting in this context that the possibility of inclusion of the “solidarity” clause into the new Treaty remains controversial.

*Para 43 i 44*

It is worth noting that already now the Council is obliged to produce yearly a regional threat assessment as a basis for policy guidelines. The same applies to the civil protection pool which already exists.

*Para 46*

While the introduction of the constructive abstention in the matters of security and defence policy deserves support, it has to be hedged by a guarantee that the consenting states will be duly informed on the conduct of the operation.

Therefore the last sentence could be amended as follows: “*although they would retain the right to be duly informed and to rise questions concerning the conduct of the operation in the Council and other relevant bodies*”.

*Para 48*

The present formulation leaves a margin of doubt related to the nature and functional scope of possible enhanced co-operation. So far a common ground seemed to be reached on the application of this clause to the capability building sphere. The text has to be more specific in this regard. In any case a clause allowing for closer co-operation on defence policy matters could be accompanied by a clear statement of the principle that the effects of closer co-operation may not be detrimental to the security of other member states and the EU as a whole.

*Para 49*

Any qualitative or quantitative criteria applicable to the efforts of the member states in the area of military capabilities should be understood as reference points and not as discriminatory provisions.



*Para 50, 51,52*

The idea of creating the European Armaments and Research Agency serving also as the Capabilities Agency is very interesting and worth supporting. It is crucial however that EU co-operation in this field is open to all European countries being NATO members. It is widely understood that the development of European capabilities must be harmonised to the longest extent possible with appropriate undertakings within NATO.

#### OTHER REMARKS

*Para 19*

The proper accession date of the new NATO invitees has not been determined yet. Therefore the last part of the third sentence should be deleted. The last part of the fourth sentence should be amended in light of the remarks under para 9.

*Para 25 - tiret 5*

What happened in Prague was NATO inviting seven countries from the Central and Eastern Europe. It was not their formal accession to the Alliance. The middle part of the text should take this fact duly into account.

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