

Working Group VIII

Working document 38

## **WORKING GROUP VIII « DEFENCE »**

**Subject :**    **Comments by Mr Kenneth Kvist on the preliminary draft final report of Working Group VIII "Defence" (WD 022)**

Members of Working Group VIII will find attached comments by Mr Kenneth Kvist, alternate member of the Convention, on the preliminary draft final report.

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Stockholm 29 November 2002

**Comments by Mr. Kenneth Kvist, Alternate  
Member of the European Convention, on  
the preliminary draft Report from Working  
Group VIII (Defence) (WD 22)**

The Members of the Group have been invited to submit comments by Friday, 29 November. These are my remarks. I would also like to refer to my comments at the meeting with the Working Group last Monday.

1. General

I am not in a position to subscribe to the draft Report in its present form. The reasons are:

- Parts of the Report are unbalanced and do not reflect the general view of the Group. On a few points, they also go beyond the mandate of the Group.
- Other parts of the Report are presented as factual background text, whereas in fact they express opinions. This should be corrected, either by deleting these passages or by moving them to the final part of the Report, under the heading “Recommendations”.
- Further, I have some concrete drafting suggestions, which I believe to be non-controversial.
- On several points I may have a dissenting opinion from that of other Members of the Group – possibly a majority. In such cases, my points should be reflected in the Report as a minority view. If they rally support at the final meeting of the Group, this should also be reflected.

First, a few comments on working method. The draft Report sets out a single text, neither giving options or square-bracketed language allowing for political choices, nor highlighting of controversial passages where the Members of the Working Group might indicate their preferences. This is in contrast with how other Working Groups of the Convention have conducted their work. The normal procedure has been to indicate options in the draft Report, thereby inviting the Group Members to decide on the contents in an informed and open manner.

Furthermore, the language of the draft Report seems to suggest unanimity across the board, which is untrue. In other working groups of the Convention, dissenting opinions have been presented, hinting the magnitude of support.

If the Working Group would adopt the draft Report as it stands today, we run the risk of making the outcome of our work irrelevant. An unbalanced report would lead to a divisive debate in the Convention plenary and is not conducive to a constructive discussion in the following Inter-Governmental Conference.

## 2. Comments on the contents

In my analysis, the point of departure is that the ESDP is an integral aspect of the CFSP. It should therefore in general be discussed in the light of the future reform of the CFSP. Another important element is the need to cut down costs for defence spending. The net result of the contents of this draft Report would be an enormous increase in national spending. This is clearly outside the mandate of the Working Group, as it is no matter for the EU at all.

### A. Points which are unbalanced or go beyond the mandate

- I question the relevance of the entire chapter “C. SPECIFIC NATURE OF DEFENCE MATTERS”. What has been defined as the concrete content of European Defence Policy by the MS is defined in article 17.2 of TEU. What should be discussed is how to further develop goals, methods and co-operation within the framework of article 17.2, including both military and civil crisis management. There is still a lot to do when it comes to implementation of what has already been decided in the ESDP area. In consequence, I also question the need for the recommendations relating to closer co-operation in the field of security and defence (pp. 47-48).
- The proposal to grant the High Representative a right of initiative is interesting, but a wider discussion on a revision of the role of the HR role is currently taking place in WG VII. For this reason, and for reasons of staying within our mandate, we should avoid this discussion.
- P. 35 (d) tackles the idea of a possible “ad-hoc fund”. I can see the usefulness of this, but it does not require Treaty amendment, and it is thereby not *prima facie* a question for the Convention. In addition to this, the issue is already dealt with in other fora, where it will most probably become reality much quicker than by the Convention/IGC track, aiming for 2004 at the earliest.

The text should be deleted.

- PP. 42, 47, and 48 are all of a highly sensitive nature, and what is written in the report does not at all reflect the broad variety of views that have been presented in the Group. To be true, the text should state the amount of support for each point.
- P. 42 introduces the possibility of a “solidarity clause”, a kind of “soft mutual defence commitment” for terrorist and other similar threats. Military means are presupposed to be available to avert such threats. It could be noted that in Sweden (as is the case in other Member States as well, I believe) military means cannot be used to solve internal security problems. This is a duty for the police. Paragraph 42 thereby proposes collective action going well beyond what we are entitled to do even individually within our own territory. This is extremely controversial and will create far more problems than it is aiming at solving. I do not see how it fits in the mandate of the Group. The paragraph should be deleted.
- It is unclear how the proposal under p. 43 relates to the “Global overview” report presented by the European Commission.
- P. 49 is completely unacceptable. Providing for such “convergence criteria” is even going beyond the NATO commitments under the Washington Treaty.
- PP. 50 – 52 relate to co-operation in the field of defence industry. Current Treaty provisions allow for such co-operation to the extent that the Member States can accept this. In this way, the Treaty door is already opened, and political will in the Member States determines how far this co-operation will go. I fail to see how the Convention can have an impact on this. In my view, these paragraphs should be deleted.
- P. 53, on a separate “Council for Defence ministers”, should be deleted. This is not a Treaty matter, but internal to the Council. Moreover, it contravenes the recent decision to decrease the number of Council formations. The Union’s military dimension is one integral aspect of the CFSP, and military matters should therefore be discussed within the frame of the current GAERC (as is done today) or a possible new external relations Council.

#### B. Points where the background text indicates opinions rather than facts

PP. 32 – 34 contain numerous instances of opinions expressed. Examples include “A purely national framework is no longer appropriate...”, “...it is essential to step up...”, “The Union must be able to...(.)... cannot simply produce declarations...”. Such opinions should either be deleted, or transferred to the “Recommendations” chapter.

## C. Drafting suggestions

### i) Under the heading “B. THE ESDP TODAY”

- Sub-headings (f) and (g) should read ”Cooperation in crisis management with NATO” and ”Cooperation in crisis management with the United Nations”, respectively.
- Move p. 19 to become a new p. 25bis. The first sentence of this p. should begin “A European defence policy”, not “*The ... policy*”.
- In p. 20, the complete content of the Berlin Plus agreement should be spelled out in writing. As it now stands, only planning is mentioned specifically.
- In p. 21 the contents of Article 11, third alinea, TEU should be mentioned.

### ii) Under heading “C. SPECIFIC NATURE OF DEFENCE MATTERS”

- P. 25 Four Member States are non-aligned countries. They have observer status in the WEU.  
*Add: Their status is recognised in Article 17 TEU, third paragraph, which states that “The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States...”*.

(Cf. reference made in p. 19 to NATO Member States and Article 17 TEU.)

- Introduce a p. 25bis which mentions the EAPC and PfP cooperation, enumerating participating countries.
- Introduce a p. 25ter where OSCE is mentioned and point out that all MS and CS are members of this organisation.
- Last paragraph, second sentence: Replace ”others became members” by ”others were invited to become members”. Last sentence: replace ”remain” by ”are”.
- In p. 30, delete the word “restricted” in the first sentence.
- It should further be clarified how the High Representative and the Special Representative would relate to civil and military command structures on the ground (cf. pp. 35 [b], “command be assigned to a single person...”, and 35 [c]).
- In p. 40, the National parliaments should be mentioned first. The European Parliament plays only a supplementary role here.

iii) I maintain that a paragraph on the need to apply a “Gender perspective” is needed. I noted, at our last meeting, that the Chairman of the Group referred to the general principle of gender equality and the gender equality provisions of the Treaty, which aim at ensuring that neither sex is discriminated against. This is positive, but the point I am trying to make is different, and relates to the successful functioning of the operations, which is dependent on having female staff and managers. For this reason, I would like to see a new paragraph, along the following lines (to be placed, for instance, close to the current paragraph 36):

“ *A gender perspective*

A gender perspective to the ESDP should be developed. Women are often victims in conflicts, and systematic rape and torture of women have been prevalent in many recent conflicts. For this reason, women should always take part in the planning and management of ESDP activities, as well as in the field. Female victims in conflicts will feel safer if they have access to female staff from the Union forces in the field.”

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Finally, I would like to comment on the contribution submitted to the Convention by two prominent Members, Messrs. de Villepin and Fischer (doc. CONV 422/02). This document sets out, according to its wording, the “Franco-German proposals” in the field of security and defence policy. Leaving the contents aside for the moment, I have doubts relating to the form of the contribution. It is presented as the view of two countries, not two individuals. This is against both the spirit and the letter of our mandate, the Laeken declaration. The Convention is not a conference for *States*, it is a gathering of *individuals*. The *raison d’être* of the Convention is to provide an alternative to the traditional Inter-Governmental Conference method for preparing Treaty amendments. If certain Member States act within the Convention as if it were a gathering of States, this disrupts the whole set-up. Further, I wish to know whether such a document is including or not the views of the other Convention Members from France and Germany.

Kenneth Kvist

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