

Working Group VIII

Working document 39

WORKING GROUP VIII « DEFENCE »

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

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

Comments by Mr. Manuel Lobo Antunes to the Preliminary draft report from the Working Group VIII on Defence (wd 22)

1. The report is a well-structured and ambitious document identifying the current state of play, the specific nature of defence matters and the challenges ahead. However, I can not say that it fully translates the different points of view expressed by the members of the group on various issues like, for instance, on the importance of the relations between EU and NATO, crisis management, institutional arrangements, or on the introduction of a possible “solidarity clause”.

The ESDP today

2. **Paragraphs 19 and 20** do not, in my view, reflect the essential links that should continue to exist between the EU and NATO. This relationship does not come out only by the fact that most of current and future EU Member States are members of NATO, but by the fundamental role played by NATO as a collective defence organisation for its Member States. In this regard, it is very important to avoid, as stressed by members of the Group, unnecessary duplications and overlapping.

I would therefore propose to add to first period of paragraph 19 the following sentence:

- *“Maintaining and developing close links between the EU and NATO is essential in order, i. a ., to avoid unwanted duplications”.*

Specific Nature of Defence Matters

3. **On paragraph 29** (Differences linked to deployment capability) it would be worthwhile mentioning the importance of co-operation between those Member States with and without deployment capability.

I would therefore propose to add at the end of the paragraph the following sentence:

- *“Cooperation should be sought between these countries and those without such a capacity in order to allow them to create the ability to deploy their forces”.*

The current challenges

4. **On paragraph 31, 3rd line, I propose to introduce the word “only” between words “longer” and “defined”.** In fact, the risk of new threats add to the existing ones, does not eliminate them.
5. **On paragraph 32,** I am of the view that it is not for the Convention as such to (quote) overcome the gap between expectations and reality (unquote), but to come forward with proposals that could lead to that objective (if indeed that gap exists).

I would therefore propose to redraft last sentence of that paragraph as follows:

-“It is therefore to the Convention to consider ways to overcome the gap between expectations and reality”.

Recommendations

6. **Paragraph 35 (b),** second period, should be amended as follows:

- ***“ A right of initiative could be given to the High Representative in crisis management matters except when deciding the setting up of a mission which should remain a Council prerogative”.***

Last period of that same paragraph should be amended as follows:

- ***“The High Representative could be empowered ,in urgent cases, to take the necessary decisions under the authority of the Council and in close and permanent contact with the Political and Security Committee”.***

In my view, the role of the High Representative in ESDP could not be seen separated from the role it might be attributed to him in CSFP matters, being that their are both closely linked. This is being discussed in another Group.

7. **In the same paragraph 35 (b),** it is important to know how the mentioned (quote) single person (unquote) would be chosen and on the basis of which criteria . I presume that that responsibility would lay with the Council (that would empower the High Representative to that effect by unanimity). Nevertheless, this pointy needs clarification.

8. On paragraph 35 (c), *I propose to add the following sentence* after (quote) that purpose (unquote):

- *“who will act under the authority of the PSC”.*

9. The setting up of a fund to support (quote) the preparatory phase of the operation (unquote) needs further thought in relation to its scope and modalities. A debate on this particular issue is taking place in a different forum. Besides, the concept of (quote) relatively modest (unquote) is ambiguous.

I would therefore propose to redraft second paragraph of 35 (d) as follows:

- *“The possibility of setting up a fund for the preparatory phase of the operation could be considered, among other options. This limited fund, based on Member States’ contributions, could be used to finance the preparatory stages of a military operation or an operation where it is not clear whether it is to be civilian or military (the remaining unchanged)”.*

10. On paragraph 38, it is my firm conviction that ESDP is and should continue to be an integral part of EU’s external action and, in particular, of CFSP. It seems to me, however, that the report does not make clear this essential connection which was very much highlighted in our discussions. The reference to a (quote) political figure (unquote) is ambiguous and anticipates the outcome of discussions in another Group. Besides, a reference to a possible role by an “enhanced” HR is already made in paragraph 35.

I propose to redraft paragraph 38 as follows:

- *“ESDP should be seen as part of the EU external action and, in particular, of CFSP. Only an integrated use of all available instruments can assure the much needed coherence and efficiency of EU external action”.*

11. The possible introduction of a so-called “solidarity clause” in the new Treaty was a subject of lengthy debate in the Group. It seems to me that the report does not take this fact into due account as it should. In any case, *it should be clear that such a clause, if inserted, would only apply within the conditions and limits set out in second sub-paragraph of paragraph 42. This should be made more explicit on the text.*

12. **On paragraph 45**, I believe that the definition of the Petersberg missions is flexible and broad enough. Therefore it does not need to be supplemented (besides, the first EU mission on the ground is still to be started). Nevertheless, *if an updating of the Petersberg missions is agreed, an additional "tired" on "post-conflict peace building" could be inserted on that paragraph.*
13. **The text of paragraph 46** needs further clarification. For instance, "consensus" is different from "unanimity", and the juridical meaning of "consent" is too vague and to my knowledge does not exist in the Treaties as such. Moreover, it is not clear at all what is the exact meaning (and scope) of (quote) relaxing the rules of constructive abstention (unquote) - how far should they be relaxed? *I thus propose that sentence to be deleted.*
14. **Still on paragraph 46**, it would be difficult to accept that once an operation is launched on behalf of EU, abstaining Member States would not be allowed to participate in decisions with political/military implications for the EU .

I would therefore propose to redraft last sentence of that paragraph as follows:

- *"Once the operation is launched, the abstaining States would not participate in decision making concerning the implementation of operational measures. They would, however, participate on those decisions which may have political consequences or require military action beyond the mandate or the terms of reference of the mission when originally decided".*

15. **Paragraphs 47 and 48** ignore the commitments assumed so far by Member States, notably those under the Helsinki headline goal. The impression is that nothing has been planned and achieved so far. Therefore, it seems preferable to take the Helsinki and others examples and try to integrate them all in a coherent and effective way. Even if the report omits the precise arrangements for the participation on a kind of "defence Eurozone", I am strongly of the opinion that a degree of flexibility would be needed as to avoid divisions that could become counterproductive to the attaining of the common goals that ESDP is expected to serve. Otherwise, only a very restricted number of Member States would be in a position to participate in a what is called in the report a (quote) closer type of co-operation on defence policy matters (unquote). This situation will be difficult to accept.

I therefore propose to add the following sentence at the end of paragraph 48:

- “Notwithstanding, any flexible arrangements on defence matters should on any circumstances respect the spirit underlying the current system of on enhanced co-operation enshrined in the Treaties”.

16. **Paragraph 49** rightly states that the strengthening of the military capabilities available to the Union is important for ESDP development. But, in my view, the setting up of quantitative convergence objectives is far less important than the setting up of qualitative objectives. However the report seems to give preference to the quantitative criteria. More important than defence budget consignments are the effective capacities to deliver. Besides, the report says nothing about who should set those objectives, with which criteria and within which timetable and about the type of mechanism that will monitor the attaining of those objectives (which the report, by the way, considers to be a “clear need”). All in all, the contents of this paragraph raise me reservations and needs further debate.

17. **On paragraphs 50 and 51** on the possible setting up of a European agency, my preference goes to a light structure with the tasks of promoting co-operation and harmonisation.

18. **On paragraph 52 fourth "tiret"**, I have reservations on the proposal to attribute to the Head of the Agency a formal “authority to monitor Member States’ progress”. Besides, what is the exact meaning and type of “recommendations” he can make? Binding ones? And to whom? To individual Member States, only to the all of participants in the Agency?

I would therefore propose to amend fourth "tiret" of paragraph 52 as follows:

- “The Head of the Agency will be informed by Member States on their progress in developing capabilities to meet the objectives approved and can make proposals concerning participation in specific programmes. He might also give advise concerning ...(remains unchanged)”