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Subject :	Contribution submitted by Mr Antonio Nazaré Pereira, alternate member of the Convention: - “Guidelines for parliamentary scrutiny of the European Security and Defence Policy (ESDP) ”

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Antonio Nazaré Pereira, alternate member of the Convention.

Contribution from MP António Nazaré Pereira (alternate member)
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Supported by
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**Guidelines for parliamentary scrutiny
of the European Security and Defence Policy (ESDP)**

A – The question

In the European Union each National Parliament has a mandate to exercise democratic scrutiny over its government in the areas of external affairs, security and defence, in compliance with the national constitutional rules by which it is bound. In many member states the National Parliament takes the final decision on troop deployments and the national defence budget.

Furthermore, National Parliaments provide political support for these policies. Thus they help to build up support among the public at large for what are often difficult and painful decisions. This constitutes a crucial factor in the decision-making procedure.

The same support is necessary when national governments are involved in taking joint decisions at European level. Such decisions still need the backing of the National Parliaments for the broad guidelines of external, security and defence policies and for national defence budgets to be approved. Furthermore, public opinion in all the member states must be fully involved.

In order to keep abreast of government choices and decision-making at both national and European level and to be able to properly explain the issues to citizens, National Parliamentarians thus need to have regular access to up-to-date information. However, for that purpose a National Parliament has to rely solely on information that the government provides on a purely bilateral basis. Any government can argue vis-à-vis its National Parliament that some of its preferred choices were impeded, watered down or modified by the attitudes of other governments in the EU framework. Where common agreement cannot be reached in the EU framework, this damages the Union's credibility.

In the absence of coordination at European level among the National Parliaments, none of them has direct access to information about the decision-making process at the European Union level or about the viewpoints of the other governments involved, whereas each government has regular contacts with the other governments in the various meetings of the EU Council. Outside the existing interparliamentary assemblies, such as those of WEU, NATO, the OSCE and the Council of Europe, the National Parliaments have not fully developed regular contacts among themselves in order to exchange information, harmonise their views and express common concerns. This absence of information and dialogue impairs accountability as regards the decision-making procedure on security and defence issues. As a result European citizens find themselves even further removed from these crucial matters.

B – The background

This problem first arose when the EU acquired responsibilities under the ESDP without the Council being put under an obligation to be accountable either to the European Parliament or to an interparliamentary body at European level.

The breakthrough in Europe's defence, first agreed between the British Prime Minister Tony Blair and the French President Jacques Chirac, in December 1998 at St. Malo, and later adopted at the EU level by the Cologne European Council in June 1999, paved the way for the European Union itself, rather than WEU, to be the focus for the European Union's common defence efforts. In Cologne the Heads of State declared that “... *the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises without prejudice to actions by NATO*”.

The same European Council tasked the General Affairs Council to take the necessary steps for the “... *inclusion of those functions of the WEU which will be necessary for the EU to fulfil its new responsibilities in the area of the Petersberg tasks*”. The Helsinki European Council further developed these concepts and decided to set up new political and military bodies within the Council.

However, the European Council failed to address the important issue of the parliamentary dimension. Therefore, there is currently a clear democratic deficit in this area at the Union level which fully justifies the question raised in Plenary sessions already by a number of Convention members as to who in the future will be doing this work.

Two eminent Convention members (Mr Dominique de Villepin and Mr Joschka Fischer) recently submitted a document to the Convention (CONV 422/02) in which “*La France et l'Allemagne proposent que les États membres qui le souhaitent transfèrent à l'Union européenne les engagements auxquels ils ont souscrit dans le cadre de l'UEO en utilisant la coopération renforcée*”¹. Also, Working Group VIII – Defence – included the following statement in its recommendations: “... *those members of the Group who were in favour of the collective defence clause thought that it would be sensible to allow those Member States wishing to intensify their cooperation, and in particular to take over the commitments of the WEU Treaty, to do so within the framework of the Union rather than outside the Union...*”. It is clear that these commitments include parliamentary scrutiny.

C – Tentative solutions

Parliamentary scrutiny and dialogue with the executive require a framework in which the EU Council and Governments are under a treaty-based obligation to provide information to an interparliamentary forum made up of representatives of the National Parliaments of the member states. At present this task is being fulfilled by the WEU Assembly. It is necessary to find an appropriate solution as to how such a task is to be carried out and further developed if the ESDP is to be truly democratic and accountable.

Unlike the Satellite Centre and Institute for Security Studies, the WEU Assembly was not transferred to the European Union. In practice, because the EU's High Representative is also the Secretary-General of WEU and the members of its Political and Security Committee (PSC) are also members of WEU's Permanent Council, there is already some dialogue on ESDP issues between

¹ Unofficial translation: “France and Germany propose that those Member States wishing to transfer to the European Union the commitments they subscribed in the framework of WEU do so by having recourse to enhanced cooperation”.

the National Parliaments represented in the Assembly and the executive authorities. However, in the absence of a legal solution in the EU framework placing the European executive under an obligation to engage in dialogue on the ESDP with a representative European body of National Parliamentarians, the member states' parliaments will lose an essential source of information and an opportunity for the dialogue and exchanges of views which are indispensable for monitoring intergovernmental activities under the ESDP at European level and for subjecting their governments to proper scrutiny.

The EU member states also will lose an essential tool both for securing the support of European public opinion in this area and for enhancing National Parliaments' awareness of the growing need for a strong ESDP.

The Convention (and the ensuing Intergovernmental Conference) must not yet again postpone finding a solution to the problem of the parliamentary dimension of security and defence issues, especially as transparency, democratic accountability and good governance are supposed to be the guidelines for a Constitutional Treaty.

We do not yet know to what extent the European Union will be prepared to take responsibility for all aspects of defence nor what competences the European Parliament might be given, for instance under a strengthened version of Article 21 of the Treaty on European Union, to exercise democratic scrutiny over defence issues. Irrespective of whether this happens, the National Parliaments will continue to have their say in European defence policy and cannot be left out of the equation.

It is therefore essential that the EU intergovernmental decision-making process in this area be monitored on a regular basis by an interparliamentary institution composed of representatives of the National Parliaments.

While the Convention's Working Groups IV, VII and VIII have recognised the existence of a problem regarding the collective involvement of National Parliaments in the EU's decision-making process, their proposals for making good the deficit which continues to exist at European level are too weak and tentative. The development of interparliamentary conferences based on the COSAC model or on the conferences of chairmen of the foreign affairs and defence committees of the National Parliaments has been proposed. Some members of the Convention think that the problem can be resolved by improved cooperation between the European Parliament and the national parliamentary committees responsible for monitoring the CFSP and the ESDP.

But however important coordination and cooperation between the National Parliaments and the European Parliament may be, it must not be forgotten that the main purpose of parliamentary work is dialogue with the executives.

When trying to find the best formula for the collective involvement of the National Parliaments in the EU's activities in the field of the CFSP and ESDP, it is therefore not enough to draw solely on the experience (if it has any!) that COSAC has acquired. It is also important to look at the experience of existing interparliamentary assemblies such as those of WEU, NATO, the OSCE and the Council of Europe. These issues are also addressed in the contribution submitted by Mr Hubert Haenel, Ms Gisela Stuart and 43 other National Parliament members of the Convention (CONV 503/03).

D - Proposal

A whole range of models can be used to work out appropriate arrangements for meeting the requirements of the National Parliaments *without creating new institutions*, provided agreement can be reached on the guidelines set out below.

1. Arrangements must be made that provide for a proper dialogue between the EU institutions with competence for the ESDP and a consultative forum bringing together representatives of the National Parliaments, whose responsibilities should be defined as follows: its task would not be to hold the executive to account as such but rather to act as a channel for information and consultation with European decision-makers before and after decisions are taken, with a view to monitoring intergovernmental activities at European level in the field of the ESDP and making it easier for each National Parliament to exercise democratic scrutiny over its government.
2. The EU Council should submit to such a forum regular reports on its activities and reply to contributions or other operative texts adopted by the forum, and to questions put by parliamentarians. Any accountability to such a forum should not be confined to occasional briefings given by the relevant Commissioner or the High Representative but should be a democratic obligation on the part of the Council.
3. It is also necessary to make provision for arrangements whereby the forum of National Parliaments can give its views on the Council's multi-annual strategic programme and on the annual operating programme of Council activities for all questions pertaining to the ESDP.
4. In order to adopt the consultive texts, it will nevertheless be necessary to draw up rules on voting and on the number of votes to be given to the various delegations, so as to reflect the strength of the political groupings in their parliaments. Delegations should normally include members of national foreign affairs and defence committees.
5. The forum must be able to create working groups and even committees to prepare texts to be put to a vote in the plenary session.
6. Since the forum should represent the interests of the National Parliaments, it should be independent of and complementary to the European Parliament so as to avoid any confusion between their respective responsibilities. That does not preclude cooperation between the forum and the EP and, possibly, the holding of joint meetings or the participation of MEPs in meetings of the forum and vice versa.
7. The forum should have an elected presidency and an independent secretariat.
8. As the ESDP is implemented with the participation of the non-EU European members of NATO, arrangements will have to be made for the involvement of those countries' delegations in the work of the forum of National Parliaments.
9. It is not necessary to create new institutions or structures to ensure the collective participation of National Parliaments in the CFSP and ESDP in the future. Recourse should therefore be had to the model of existing interparliamentary assemblies. Use could also be made, at least initially, of a secretariat that is already operational in an existing assembly and has proven experience in this field.
10. Finally, the possibility of making provision for interparliamentary scrutiny of other European Union activities in the intergovernmental sphere such as justice and home affairs should be explored.