

COVER NOTE

from Secretariat

to The Convention

Subject : Text forwarded by Mr Nazaré Pereira, alternate member of the Convention:
- “Security policy in an enlarged Europe”

The Secretary-General of the Convention has received from Mr Nazaré Pereira, alternate member of the Convention, the attached Report of the Assembly of Western European Union “The Interparliament European Security and Defence Assembly, Forty-ninth session of the Political Committee” to which he wishes to draw the attention of the Convention.



**Assembly of Western European Union
The Interparliamentary European Security and Defence Assembly**

POLITICAL COMMITTEE

(Forty-ninth session)

**SECURITY POLICY IN AN ENLARGED EUROPE –
A CONTRIBUTION TO THE CONVENTION**

REPORT

submitted by Mr Nazaré Pereira, Rapporteur

RESOLUTION ADOPTED BY THE POLITICAL COMMITTEE

on security policy in an enlarged Europe – a contribution to the Convention

The Assembly,

- (i) Aware that the Convention on the Future of Europe faces a challenge in determining the commitments that the EU Member States are prepared to enter into as regards a common security and defence policy;
- (ii) Desiring therefore that the Convention should propose appropriate solutions to make progress in the sensitive area of the common security and defence policy with determination and in a spirit of reconciliation, flexibility and openness;
- (iii) Considering that the draft articles of the proposed EU Constitutional Treaty and the ongoing discussion on the common security and defence policy affect key areas covered by the modified Brussels Treaty, whose parliamentary function is exercised by the Assembly;
- (iv) Desiring that certain proposals, principally in the areas of closer cooperation, mutual defence and the collective participation of national parliaments in the common foreign and security policy and the common security and defence policy, be supplemented and clarified,

PROPOSES that the Convention on the Future of Europe take into account the following:

I. Proposals concerning a common defence in the EU and mutual defence among a group of Member States

A reinforced common defence policy including a mutual defence clause should be based on existing European practices, experiences and institutions and should be open to any Member States prepared to meet the obligations it entails.

1. The proposal to establish “closer cooperation on mutual defence” among a group of Member States by means of a mere Declaration is not sufficiently clear to justify the modified Brussels Treaty being made obsolete by virtue of such a procedure.
2. If the proposed arrangements are intended to replace the modified Brussels Treaty in its entirety, they must be set out in a Protocol to be appended to the Constitutional Treaty and duly ratified.
3. The content of the proposed mutual defence clause should not be weaker than the commitment already subscribed in Article V of the modified Brussels Treaty.
4. There needs to be a definition of what constitutes “armed aggression” as opposed to the term “terrorist attack” used in the draft article on a solidarity clause.
5. The geographical scope of the mutual defence clause needs to be no less than the phrase “in Europe” used in Article V of the modified Brussels Treaty.
6. It should be specified whether this clause relates to autonomous European commitments and capabilities or whether it establishes a link with NATO’s military responsibilities in the same way as does Article IV of the modified Brussels Treaty.
7. The Protocol should set out the arrangements for participation in cooperation on mutual defence and the obligations it entails. In particular it should specify whether or not the participating countries must be members of NATO and establish what kind of military obligations arise out of such participation.

8. Provision needs to be made for the decision-making process for closer cooperation, in the form of a restricted Council whose composition, method of work and chairmanship need to be specified.
9. In the event of situations in which a participating state that is the victim of “armed aggression” is unable to request the aid and assistance of the others, a provision should be considered stipulating that at the request of any of the participating Member States or of the Minister for Foreign Affairs, the restricted Council shall be convened immediately to determine whether a state is the victim of “armed aggression” and whether the situation requires implementation of the measures for which provision is made in Article 30(7) of Part One.
10. A provision (on the model of Article VIII.3 of the modified Brussels Treaty) should be included stipulating that at the request of any of the participating Member States or of the Minister for Foreign Affairs, the restricted Council shall be convened immediately in order to deliberate on any situation that might constitute a threat to peace, wherever it may arise.
11. The Protocol should specify that the United Nations Security Council will be informed immediately of any measures taken in application of the provisions in Article 30(7) of Part One and that those measures will be terminated as soon as the Security Council decides on the steps necessary to maintain or restore international peace and security.
12. In the absence of an explanation of the difference between “common defence” as referred to in Article 30(2) of Part One and “mutual defence” as referred to in paragraph 7 of the same Article, there is no justification for the latter paragraph becoming obsolete when the European Council reaches a decision under paragraph 2 of the Article in question.
13. In the chapter concerning relations with international organisations, NATO should be included among the organisations with which the European Union intends to establish “all appropriate forms of cooperation”.
14. Should it prove impossible to agree on the subjects referred to in paragraphs I.1 to 13 above, it would be preferable for the European mutual defence commitment to continue to exist in the framework of the modified Brussels Treaty (ideally annexed as an optional protocol to the Constitutional Treaty).

II. Tasks outside the European Union undertaken by the Union or by a group of Member States

15. The proposed provisions on tasks outside the European Union should state that the Union is ready to make its military capabilities available to the United Nations for the purpose of taking coercive action in the event of a threat to peace, in accordance with Chapter VII of the United Nations Charter.
16. In order to observe the principle of inclusivity as regards participation in the EU tasks referred to in the relevant articles of the draft Constitutional Treaty, these should be open to non-EU European NATO Member States and to other interested European countries on the basis of arrangements to be defined by the Council in pursuance of the corresponding agreements between the EU and NATO. The same principle should be applied to a task whose implementation is entrusted to a group of Member States.
17. While the general principle of giving a group of Member States the possibility of establishing “structured cooperation” between themselves – as proposed in Article 30(6) of Part One and Article 20, Title B, of Part Two of the draft Constitutional Treaty – is wholly acceptable, the purpose of such cooperation should be defined more clearly.

18. The condition to be met by Member States wishing to participate in such cooperation should be their willingness to become actively involved in the full range of activities for which the first five paragraphs of Article 30 of Part One make provision.

19. The decision-making procedure should be set out by specifying how the “restricted Council for structured cooperation” referred to in Article 20, Title B, of Part Two is to work, what its composition will be and how it will be chaired.

III. The parliamentary dimension

20. It is essential to make provision in the Constitutional Treaty for the collective participation of national parliaments if the European Union is to achieve its ambition of making the common security and defence policy more democratic and transparent and bringing it closer to its citizens.

21. The common foreign and security policy and the common security and defence policy are subject to an intergovernmental decision-making process based on joint actions by Member States or a group of Member States and on national means. It is national parliaments which take decisions on financial resources and on making national capabilities available for external missions.

22. It is therefore necessary to place the Council under an obligation to report on its activities in this area to an interparliamentary body composed of representatives of the national parliaments and to consult it regularly.

23. Provision for the collective participation of national parliaments can and should be made in any or all of the following ways:

- (a) in the provisions on the common security and defence policy (Article 30 of Part One and Article 13, Title B, of Part Two);
- (b) in the provisions on the Union’s advisory bodies (Article 23 of Part One);
- (c) in the Protocol on the role of national parliaments in the European Union;
- (d) in a protocol that takes up the relevant provisions of the modified Brussels Treaty;
- (e) in the article which may be included on the role of a Congress.

IV. Armaments cooperation

24. The provisions concerning the creation of a European Armaments and Strategic Research Agency should specify:

- (a) that it is the Council’s task to identify operational requirements for the common security and defence policy, and
- (b) that the Agency shall be open to all Member States, all WEAG Member States and any other European countries wishing to be part of it, in accordance with arrangements defined by the Council.

EXPLANATORY MEMORANDUM

1. The tasks of the European Union or a group of Member States

1. The Convention Praesidium is proposing at least three different models and types of enhanced cooperation. The first, called “structured cooperation” is described in Article 30(6) of Part I and in Article 20 of Part Two, Title B. The purpose of this cooperation should be clearly defined, i.e. the unambiguous commitment on the part of participants to all the tasks and measures provided for in paragraphs 1 to 5 of Article 30.
2. The condition to be met by Member States wishing to participate in such cooperation should not be that they “fulfil high military capability criteria” (Article 20 of Part Two, Title B) but rather that they are willing to become actively involved in the full range of activities for which paragraphs 1 to 5 of Article 30 make provision.
3. “Structured cooperation” should be open to non-EU European members of NATO and to other interested European countries on the basis of arrangements to be defined by the Council. One possibility for that purpose might be to take the model of the Schengen agreement.
4. What is missing is a precise description of how the decision-making process for such cooperation is to work. The draft of Article 20(2) of Part Two, Title B, introduces the idea of a “restricted Council on structured cooperation” without defining its purpose, composition, method of work or chairmanship. For such cooperation to have the flexibility that is needed, participating Member States should be free to organise the restricted Council as they see fit. It could, for instance, be organised in such a way as to be able to exercise its functions in an appropriate manner. The model for such organisation could be Article VIII.2 of the modified Brussels Treaty.
5. According to paragraph 3 of the draft Article 20, the new Minister for Foreign Affairs will attend the deliberations of the restricted Council on structured cooperation. However, there is nothing to prevent him from chairing the restricted Council, at least in cases where the EU Council entrusts the implementation, within the Union framework, of one of the tasks referred to in the chapter on the EU’s external action to Member States participating in such cooperation.
6. In its comments on how structured cooperation would work, the Convention Praesidium explains that operations undertaken by Member States participating in such cooperation would not be EU operations. However, participating countries would be able to make use of EU structures such as the Political and Security Committee and the Military Committee, and those bodies would in such cases meet only in the presence of representatives of Member States participating in structured cooperation. Taking that line of reasoning further, it could also be proposed that the countries concerned could have recourse to the Presidency of the European Union.

2. Common defence in the European Union and mutual defence among a group of Member States

7. The second type of cooperation the Praesidium is proposing (in Article 30(7) of Part One and Article 21 of Part Two, Title B, of the draft Constitutional Treaty) is “closer cooperation” in the EU framework, “as regards mutual defence”. Such cooperation would exist until the European Union decided, in pursuance of Article 30(2), that the time had come for “a common defence policy” to be transformed into “a common defence”. The draft Constitutional Treaty therefore refers to two different concepts of defence proper: a “common defence” for the Union as a whole and “mutual defence” in a restricted EU framework.

8. It should be noted in this respect that the term used in the title and preamble of the modified Brussels Treaty is “collective self-defence”. One of the first things that therefore needs to be done is to agree on the meaning of the various concepts being used and on their consequences in terms of the obligations and commitments they imply.

9. In its comments on the proposed provisions, the Praesidium says that the purpose of closer cooperation is to enable those Member States which so wish “to take up in the Union framework the mutual assistance commitment made in Article V of the Brussels Treaty”¹. It sees a number of advantages in this: it would help increase the European Union’s credibility in the eyes of its citizens and would allow participating Member States to use EU structures and expertise, for example its Military Committee and Military Staff.

10. This last consideration raises what is a fundamental choice: does the EU want to establish a European mutual defence commitment along the lines of the WEU model, in which case it would establish a link with NATO’s military responsibilities in the same way as does Article IV of the modified Brussels Treaty, or does it want to create an autonomous European defence in which the participating Member States will be ready to take on the military responsibility themselves and acquire capabilities to be used independently of NATO? The course the Convention chooses to adopt on this issue will be decisive and will show whether it intends to opt for a solution fundamentally different from Europe’s present defence system which is founded on transatlantic cohesion.

11. According to Article 21(1) of Part Two, Title B, closer cooperation on mutual defence is to be open to all EU Member States. No other criterion is mentioned. But formulating conditions to be met by Member States wishing to participate in a restricted form of defence cooperation is of paramount importance. In order to clarify future relations between a European defence commitment and a transatlantic commitment, The Convention must establish whether the principle adopted by the WEU member countries – namely, that EU Member States wishing to subscribe to a European collective defence obligation must also be members of NATO – is to be maintained as it stands, or made more flexible or abandoned altogether.

12. In the wording being proposed by the Praesidium two principles are being abandoned: the first being the principle enshrined in Article IV of the modified Brussels Treaty and the second the requirement for a country to be a member of NATO in order to be able to participate in closer cooperation on mutual defence.

13. On 29 April 2003, the Heads of State or Government of Belgium, France, Germany and Luxembourg proposed for their part that the Convention adopt the concept of a “European Security and Defence Union (ESDU)” in which participating states would “commit themselves to bringing mutual help and assistance in the face of risks of all nature” [sic]. However, it is hard to tell whether their proposals go in the same direction as those of the Praesidium because the document drawn up by the four countries does not go into detail on any links there might be between such a Union and NATO.

14. In any event, closer cooperation on mutual defence such as proposed by the Praesidium is a clear departure from the commitments the WEU member countries entered into in the modified Brussels Treaty; nor does it fully reflect the proposals put forward in the Franco-German contribution to the Convention of 22 November 2002. If the Praesidium’s proposals are accepted as they stand, they cannot replace the modified Brussels Treaty. There is bound to be controversy over whether the new provisions in the EU Constitutional Treaty make the modified Brussels Treaty obsolete and allow its signatories to denounce it.

¹ Translator’s note: this is the wording used in the English version of the Praesidium’s comments on Article 30(7) of Part One of the draft Constitutional Treaty. However, in its comments on Article 21, the English version reads “to “repeat” the commitment already entered into under Article V of the Brussels Treaty in the Union framework”. The French word used in both cases is “reprendre”.

15. In such a situation there is a risk that the mutual defence commitment will be split into three parts:

- one in the North Atlantic Treaty;
- one in the EU Constitutional Treaty;
- one in the modified Brussels Treaty.

16. It is therefore necessary to evaluate the Praesidium's proposals and the reasoning behind them on the basis of whether they will strengthen security in Europe or, on the contrary, weaken it. Europeans must decide once and for all whether or not they want to create, as the Praesidium is proposing, an autonomous European defence independent of NATO, with all the consequences that would entail. Judging by the amendments tabled to date, it is clear that a substantial minority of members of the Convention reject outright any idea of this kind of "closer cooperation".

17. There are three possible options for ensuring that the foundations of European security are not undermined: leave the modified Brussels Treaty as it is, which means that it would continue to exist outside the European Union; append it in its entirety to the Constitutional Treaty; take up its key features in a protocol or other instrument to be annexed to the Constitutional Treaty. The third solution would entail the difficult task of reaching agreement on those parts of the modified Brussels Treaty which continue to be relevant today.

18. If that third solution is chosen, the proposed provisions of Article 30(7) of Part One and Article 21 of Part Two, Title B, will have to be supplemented as regards a number of points:

- (i) in view of the importance of the subject, a mere Declaration by the countries concerned, appended to the Constitutional Treaty will not suffice; there will at least need to be a protocol which should be ratified;
- (ii) the content of the proposed mutual defence clause should not be weaker than the commitment subscribed in Article V of the modified Brussels Treaty;
- (iii) there needs to be a definition of what constitutes "armed aggression" as opposed to the term "terrorist attack" used in the article on a solidarity clause;
- (iv) the geographical scope of the mutual defence clause needs to be defined by specifying the meaning of the term "in its territory" that is proposed in place of the phrase "in Europe" that is used in Article V of the modified Brussels Treaty;
- (v) it should be specified whether this clause relates to autonomous European commitments and capabilities or whether it establishes a link with NATO's military responsibilities in the same way as does Article IV of the modified Brussels Treaty;
- (vi) the Protocol should set out the arrangements for participation in cooperation on mutual defence and the obligations it entails; In particular it should specify whether or not the participating countries must be members of NATO and establish what kind of military obligations arise out of such participation;
- (vii) provision needs to be made for the decision-making process for closer cooperation, in the form of a restricted Council whose composition, method of work and chairmanship need to be specified;
- (viii) in the event of situations in which a participating state that is the victim of "armed aggression" is unable to request the aid and assistance of the others, a provision should be considered stipulating that at the request of any of the participating Member States or of the Minister for Foreign Affairs, the restricted Council shall be convened immediately to determine whether a state is the victim of "armed aggression" and whether the situation requires implementation of the measures for which provision is made in Article 30(7) of Part One.

- (ix) there should also be a provision (on the model of Article VIII.3 of the modified Brussels Treaty) stipulating that at the request of any of the participating Member States or of the Minister for Foreign Affairs, the restricted Council shall be convened immediately in order to deliberate on any situation that might constitute a threat to peace, wherever it may arise;
- (x) the Protocol should specify that the United Nations Security Council will be informed immediately of any measures taken in application of the provisions in Article 30(7) of Part One and that those measures will be terminated as soon as the Security Council decides on the steps necessary to maintain or restore international peace and security;
- (xi) in the chapter concerning relations with international organisations, NATO should be included among the organisations with which the European Union intends to establish “all appropriate forms of cooperation”;
- (xii) structured cooperation and closer cooperation on mutual defence need an interparliamentary dimension in which the parliaments of the participating Member States are represented.

3. The parliamentary dimension

19. The absence of any articles making provision for the collective participation of national parliaments in the external action proposed by the Convention Praesidium is wholly unacceptable. The foreign, security and defence policy proposed in the Praesidium’s text is subject to a purely intergovernmental decision-making process based on joint actions by Member States or a group of Member States and on national means.

20. There are seven references to the Member States in Article 29 of Part One and ten in Article 30, but the draft Constitutional Treaty does not make provision for any procedure for the follow-up of Member States’ actions by an interparliamentary body. And yet it is national parliaments which take decisions on financial resources and on making national capabilities available for external missions.

21. The European Parliament’s involvement in terms of being informed and consulted has been strengthened considerably in the draft articles. In parallel, the texts should also place an obligation on the Council to report on its activities to an interparliamentary body composed of representatives of national parliaments and consult it regularly. This is something the Assembly has been requesting for a long time and which has had a formal treaty base for some 50 years in the modified Brussels Treaty.

22. Including the collective participation of national parliaments in the Constitutional Treaty is essential if the project as a whole is to be comprehensive and in keeping with the oft-stated ambitions of creating a more democratic, transparent European Union that is closer to its citizens.

23. From the technical point of view, provision for this can and should be made in any or all of the following ways:

- (a) in the provisions on the common security and defence policy (Article 30 of Part One and Article 13, Title B, of Part Two);
- (b) in the provisions on the Union’s advisory bodies (Article 23 of Part One);
- (c) in the Protocol on the role of national parliaments in the European Union;
- (d) in a Protocol that takes up the relevant provisions of the modified Brussels Treaty;
- (e) in the article that may be included on the role of a Congress.

24. A number of members of the Convention have proposed solutions on this matter in the form of amendments. There is still time for the Convention to set about tackling this problem seriously.

4. Armaments cooperation

25. The third form of enhanced cooperation proposed by the Praesidium consists in strengthening military capabilities and armaments cooperation. The proposal to establish a European Armaments and Strategic Research Agency is to be welcomed and has, moreover, been the subject of many recommendations made by the Assembly.

26. Nevertheless, the provisions should be amended so as to make the EU Council, as the policy-making body, responsible for identifying operational requirements under the common security and defence policy. Furthermore, the Council should take its decisions by unanimity. Secondly, it is essential for cooperation within the Council and the Agency to be open not only to EU Member States but also to all WEAG members and other European countries wishing to take part in it, in accordance with arrangements defined by the Council which should not be less satisfactory than the conditions for participation established within WEAG.
