

BEGELEIDENDE NOTA

van: het secretariaat

aan: de Conventie

Betreft: Bijdrage van mevrouw Marietta Giannakou, lid van de Conventie
- "Het Europees veiligheids- en defensiebeleid"

De secretaris-generaal van de Conventie heeft van mevrouw Marietta Giannakou, plaatsvervangend lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

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“European Security and Defence Policy”

Overall Approach

It is not possible to isolate and tackle each and every single aspect of the European Security and Defence Policy (ESDP) without considering the implications on the other aspects. It is necessary to have an integrated approach that will cover all issues, thus creating a system of inter-related elements. Therefore it is of essential importance to examine the whole perspective of developing the ESDP, not only at a sector by sector basis but also as a complete system.

The scope of ESDP will determine the necessary military capabilities that the European Rapid Reaction Force must be able to deploy and sustain, according to the Helsinki Headline Goal. In order to develop such tailor made capabilities, it is necessary to establish an armaments scheme, which will provide the European Rapid Reaction Force with all the necessary equipment for its missions. Furthermore in order for the European Rapid Reaction Force to operate properly in the field, it is essential to establish an adequate chain of command that will provide plans, guidance, orders and decisions on issues relating to every mission. Such command must exist at both strategy and tactical levels. And given that all these aspects must be inter-related, the chain of command must be established in such a manner that it will set the necessary standards for the armaments policy and structures and vice versa, i.e. the armaments policy and structures must be developed in such a manner that it would require an efficient strategic and tactical command. This inter-dependence between command and armaments policy and structures is very important for every military scheme since it provides all conditions for a coherent development of the military mechanism in question (in this case the ESDP). There will be a constant feedback from all elements comprised in the ESDP system, thus a situation of constant update of needs and corresponding supplies in terms of guidelines, orders, equipment, etc, will be created.

Further below there is an examination of the questions posed during the meetings of Working Group VIII “Defence” so far:

Military Capabilities

- What mechanisms would make it possible to ensure that Member States meet their commitments as regards military capabilities?

The only way possible to oblige a Member State to meet its commitments as regards the military capabilities that it will make available for the European Rapid Reaction Force is to include a relevant provision in the EU Treaty. More specifically, such a provision would stipulate that if a Member State decides to participate in the military aspects of the ESDP,

it would be obliged to make the corresponding contributions. Thus, the participation to the military aspects of the ESDP will remain on a voluntary basis but if a choice is made to participate, then the contribution to the military capabilities of the European Rapid Reaction Force will be made obligatory. This amendment of the Treaty will allow the entire political and if necessary judicial mechanism of the Union to be activated in order to ensure that every Member State participating in the military aspects of the ESDP will fulfil its relevant obligations. Furthermore, it is necessary to establish a procedure during which a fixed type (in terms of quantity and quality) of contribution will be determined for each Member State. The point of reference for such a mechanism can be the progress achieved so far in locating the strengths and weaknesses of the commitments provided by the Member States till now, during the Commitment Conferences.

- Would it be appropriate to plan the establishment in this area of a mechanism similar to that used for example in the case of Economic and Monetary Union (convergence criteria) to achieve the objectives which the Union has set itself?

The concept of the Economic and Monetary Union is a crucial element in the unification process of Europe. It has been considered as the first step towards a more integrated approach of the European Union. Therefore, the convergence criteria procedure used in that occasion provided for a relatively long process, allowing the Member States time to examine their financial and macroeconomic situation and to adjust to the use of a common currency. The financial aspects of ESDP, namely the expenditure of the Member States regarding military equipment, cannot be evaluated by using a convergence procedure similar to the one of the Monetary Union. The Member States have set their national priorities through their national budgets, and these priorities vary from each other. Greece for instance spends 4,91% of its GDP on military expenditure while Portugal spends 2,6% and Luxembourg 1%. These percentages reflect needs on military expenses, which are not similar and cannot be assimilated, given the security environment of each country. Such differences cannot be overcome easily because they are based on factors beyond the influence of the Member States themselves, such as international relations, bilateral or multilateral conflicts, etc. Consequently it is not possible to set a percentage of GDP as a limit of military expenditure of the Member States. A possible method could be to create a financial pool, financed by the Union's budget as well as the Member States with a fixed amount, and use this pool in order to finance the organisation of the ESDP and the operations of the European Rapid Reaction Force.

Armaments

- What measures might be envisaged to ensure that decisions by the Member States on armaments take account of the objectives of the ESDP (adaptation of means to missions) and its requirements (interoperability of equipment)?

As noted above, the adaptation of the military means to the missions as well as the corresponding interoperability of equipment requires a clarified scheme of operations, which must have an obligatory character. If the Member States participate to the military aspects of the ESDP, then according to the rationale analysed above, they will be obliged to take part in the operations of the ESDP. This participation will include not only the contribution in terms of human and material resources but also their obligation to develop an armaments policy that will correspond to the requirements of the ESDP, otherwise their contribution will be hampered by the lack of compatibility of the substance of their

contribution with the objectives and needs of the ESDP. So, if it is decided that the Member States that choose to participate in the military aspects of the ESDP, will be obliged legally to participate in any operation of the European Rapid Reaction Force, this participation will include the Member States' obligation to adjust their armaments policy to the armaments requirements of the ESDP.

- How could co-operation between the Member States and the development of joint projects be encouraged? Must a European armaments policy be established? How should the diversity of the Member States in this area be taken into account?

The development of any armaments policy (including a European Armaments Policy) must be based on the development of corresponding defence industry, based on a well-established research and technology scheme. The use of defence industry as a platform of cooperation between the Member States for the ESDP, is a strategic option, described in Art.17 of the EU Treaty. This option must be combined with the will of all European leaders, as expressed at Cologne in 1999, according to which the technological and industrial base of defence must be strengthened, through the "harmonisation" (a concept much more powerful than "coordination") of the military requirements and needs on armaments issues. This position is considered to be a basic aspect of the whole policy approved at Lisbon in 2000, for the creation of a European Union as a knowledge based society, having very developed aspects in research and technology.

Consequently the key for a European Armaments Policy is the development of a European defence industry, based on research and technology. There are several factors that influence the development and operation of the modern European defence industry, including:

- The new asymmetrical threats of security (international terrorism, organised crime, etc)
- The new operational needs based on the nature of the humanitarian and peace making missions (Petersberg tasks)
- The reduction of defence expenditure in Europe
- The achievement of the Helsinki Headline Goal
- The international competition which is being intensified given the constant strengthening of the American defence industry and technology.

In order to comprehend the position of the European defence industry in the international environment, it is interesting to examine the relevant figures. The 2002-defence budget of the USA represents almost 40% of the total military budget globally. More specifically, the 2002-defence budget of the USA was increased by 48 billion USD compared to 2001, reaching a level of 336 billion USD. The Member States of the EU have for 2002 a defence budget of 118 billion USD, in total. In 2001, the defence expenditure of the USA was almost 284 billion USD, while the corresponding figure for all Member States of the EU was 116 billion USD. So, there has been an increase of 18,3% for the defence budget of the USA, while in Europe the increase was a mere 1,7%.

With regard to defence investments in research and technology, the USA spend more than 35 billion USD, while in Europe the corresponding figure is no more than 9 billion USD, 72% of which (about 6,3 billion USD) comes from only two countries, Great Britain and France. It is interesting to note that, in the USA, 55% of the total public investment on research and technology is dedicated to the defence sector, while in the European Union,

only Great Britain and France spend 30% of their total public expenditure on defence research and technology. In the remaining EU Member States only 8%, in average, of the public investment in research and technology is dedicated to the defence sector.

In the international market of defence products, the situation is similar. In the 100 largest companies-producers of defence equipment in the world, there are 40 americans with a market share of 57% and only 10 europeans with a market share of 12%. Thus, it is not surprising the fact that almost 40% of the american weapons sales is directed to european armies.

Given these figures, it is obvious that in order to establish a viable European defence industry the European governments must cooperate in this sector. It is impossible for a single European state to commit an adequate amount of budget appropriations in order to compete with the USA in that field. Under the current situation, even the most powerful European States soon will not be in a position to manage the financial burden posed by the needs in armaments of the new security requirements at national and international level. The solution to this problem is two-folded: an increase of their defence budgets (especially in the field of research and technology) and cooperation in the field of defence industry. This latter aspect is of the outmost importance as demonstrated by the following example: The needs in armaments are not estimated at european level but at national level. This has resulted in serious overlaps in national armaments programmes and extensive duplication of production lines. For instance there is only 1 programme of producing tanks in the USA from one company, while there are 4 such programmes in Europe. Also there are 3 programmes of producing armoured battle vehicles in the USA while in Europe there are 16 such programmes. Such fragmentation of production lines is of course problematic.

In order to develop a common strategy for the strengthening of the European defence industry, it is necessary first of all to identify the particularities of such an industry, compared to other industrial sector. The main feature of this industry is that it is being developed in order to provide support in the armaments field. The features of this field, compared to traditional economic activities, are quite different. In an environment of typical open market, there is an increased competition between a large number of buyers and sellers, perfectly informed about the quality and the cost of the items produced and supplied in the market. In the field of defence and armaments, where all economic activities are developed in a fixed military-industrial environment, the role of the State is decisive, there is a limited number of sellers/suppliers, and there is no competition in the traditional sense, since the market mechanisms are not based only on the ratio between cost and quality of the product but also on political and military needs, on the existence of offsets, and the possibility of co-developing the product in question. Furthermore, while in the framework of traditional economic activities, research and technology activities are realised and financed by private industries, in the field of armaments the State is intervening constantly through relevant agencies (for instance National Directorates of Armaments) and by financing specific research and technology projects.

Given these features, it is possible to identify five basic directives of high priority, in order to develop a solid policy in the fields of defence research and technology, defence industry and armaments:

- Research and Technology focus on the increase of capabilities and the reduction of cost, the increase of survival probability in the battle field, and the use of new and

improved materials

- Research and Technology lead to the development of industrial infrastructure, using technologies that may serve as basis for products and applications of military and commercial use (dual use)
- Cooperation in research and technology leads to the rapid transport of developing technologies in institutions involved in meeting the military needs
- Technological superiority provides with all necessary items in order to tackle future threats and therefore it is necessary to make investments in order to achieve it
- Self-sustained development (at european level) of the defence industry leads to independence for procurement from abroad and improvement of Europe's position in the international scene.

These directives may form the basis of a common approach on behalf of the Member States, regarding defence industry and armaments. Thus, setting the basic priorities, it possible to elaborate on a European policy in these fields, a policy that will be based not only on the needs of the European Rapid Reaction Force, but also on a long term planning of the operational needs of all member states, at national and european level. For such a planning, it would be useful to create an agency that may manage programmes of armaments at European level (see next question).

- Should there be a European armaments agency? With what aims and missions? With what conditions for participation?

Considering the establishment of a European armaments agency is a long-term thought. It is necessary first to establish a Common European armaments policy (see previous question) in order to provide such an agency with an object to work on. But, the formation of such a policy would require a institutional framework within which the Member States could initiate their co-operation examining issues such as the movement of defence materials throughout the EU or the exchange of relevant technological information.

At the moment, the existing frameworks of voluntary co-operation in Europe, in the field of armaments (Western European Armaments Group-WEAG, Organisation FOR Joint Armament Co-operation-OCCAR, Letter of Intent-Lol on industrial restructuring in the defence sphere) have demonstrated the need of an institutionalised approach on issues such as harmonisation of military needs, compatibility of european defence systems, security of supply and information, research and technology, intellectual property rights.

A first step towards that direction could be the introduction of a permanent Panel on issues of research and technology in the field of defence. It will consist of experts from every Member State. Again the voluntary or obligatory nature of participation to the Panel will depend on the choice that the Member State will make with regard to its participation in the military aspects of ESDP. Member States that will not participate as members in the Panel, may participate as observers, without voting rights. This Panel may work

- on the harmonisation of the long-term planning and the financing of research and technology regarding the military needs of the EU,
- on the elaboration and direction of research and technology to projects covering future needs of the european armed forces,
- on the guarantee, through co-financing (between Ministries of Defences and private industries) the implementation of research and technology projects
- on the coordination of heterogeneous institutions and bodies (research institutes and

centres, enterprises, financing and investing institutions, national and european authorities) in order for them to contribute to the elaboration and dissemination of novel technological achievements.

In a perspective of a more long-term nature, one could envisage a European Armaments Agency, working on all relevant issues identified above. This Agency will operate as an intermediate with regard to the chain of supply of the European armed forces, especially at EU level, and sometimes at national level (if the procurement in question affects the Member States participation in the military aspects of ESDP), as follows:

DEMAND

I. European Armed Forces

BALANCE OF DEMAND/SUPPLY

III. European Armaments Agency

SUPPLY

Industries (Manufacturers, Sub-contractors, etc.)

Crisis Management

How can a clear military chain of command be established without compromising political accountability? How can a genuinely coherent approach to crisis management be achieved whilst at the same time fully respecting the powers and prerogatives of the different institutions and bodies? Should the authority and role of the PSC as a focal point for crisis management be strengthened, and if so how? In view of the need for coherence and rapid action, is there scope for strengthening the role of the High Representative in crisis management?

The ESDP chain of command established so far is a very complex system, which does not allow for a quick reaction to crisis situations. This happens because so far there has not been a clear distinction between the political and strategy/military competencies regarding crisis management within the framework of the ESDP. This distinction can be set as follows:

The political competencies include the formation and declaration of political will, the setting of political objectives based on that political will, the balancing of aims and means to achieve these objectives. Thus the scope, the nature and the framework of a management crisis operation are defined.

The military competencies include the formation and adoption of strategy as well as the implementation of strategy through tactical actions. The formation of strategy is the translation of the political objectives into directives that will enable the Operation

Commander to undertake the mission. The first step of implementing strategy is the provision of all necessary means in order to achieve the strategic and tactical goals set.

After clarifying these two concepts, the next step for the establishment of a clear chain of command is to identify the institutions/bodies/persons to which the relevant authority will be given. Given the current institutional framework of the ESDP, the heart of the whole system is the European Council and the General Affairs Council. These two institutions form and declare the political will of the Union on all issues regarding ESDP. However, given the empowerment of the military aspects of ESDP, there is now scope to organise formal meetings of the Defence Ministers of the Member States, thus formalising the Defence Council, now operating at an informal basis and through the General Affairs Council. Consequently the Council, in all its relevant forms and capacities, will be accountable for the formation and declaration of political will.

The setting of political objectives, based on the political will expressed by the Council, will be made according to the Treaty of Nice and the Presidency Conclusions at Helsinki by the Political and Security Committee. This body, composed by national representatives at senior/ambassadorial level, is operating under the authority of the Council and it has the right to launch, suspend or end a crisis management operation, based on the will of the Council. Also the Political and Security Committee will decide, always under the authority of the Council, which are the military means necessary for the operation. Furthermore, the Political and Security Committee will appoint the Operation Commander; it will issue the basic initial directive for the Operation Commander; it will approve the operation plan prepared by the Operation Commander as well as the nomination of the Force Commander; it will decide on the composition and the means of the force and it will approve the rules of engagement, the organisation of Command and the arrangements for civil-military coordination.

Given the above description of the competencies of the Political and Security Committee, it's obvious that this body has full responsibility for the conduction of crisis management operations on behalf of the EU. This arrangement, although it makes only one body accountable for the whole mechanism, it allows the Political and Security Committee to operate in areas which involve the core of the military activities of the operation. Such an arrangement is a strategic option in which the balance of civil-military relations within ESDP is clearly in favour of the civilian aspect of management while the military aspect maintains an advisory role (see the competencies of the Military Committee and the Military Staff of the EU). Given the authority given to the Political and Security Committee, it is necessary to develop an accountability system of this body, not only towards the Council, but also towards the European Parliament. Furthermore, it could be argued that the High Representative could be placed as the head of this Committee. Given that the High Representative is the "incarnation" of the Union's Policy in the field of international relations and international security, such an official could act as head of a body, which has so many decisive authorities in the field of the ESDP. Thus, the Political and Security Committee will have a more formal position in the institutional balance of the EU and the High Representative will strengthen his/her involvement in the formulation and implementation of the ESDP.

Finally with regard to the military aspect of command, the Operation Commander, the Force Commander, as well as any other commanding officer, will be accountable to the authority that appointed them to their position.

Scope of ESDP

- Are the Petersberg tasks as set out in the Treaty still relevant? Can they be adapted/modernised/made more flexible to take into account the new security environment?

The Petersberg tasks as set out in the Treaty include a variety of missions: humanitarian missions, search and rescue missions, peace enforcing and peace making missions. The lower and upper ends of this spectre may be identified as follows:

- Lower End: The participation of the European Rapid Reaction Force to humanitarian missions covering threats/dangers from natural disasters such as floods, earthquakes, etc. The content of such missions may involve the evacuation of the population from an area, the provision of assistance in terms of human and material resources in order to tackle the situation, helping humanitarian organisations (like the Red Cross for instance) involved in the situation in order to relief those suffering from the situation, restoring security and public order whenever and wherever this is necessary in a area following a natural disaster.
- Upper End: The participation of the European Rapid Reaction Force to peace making missions and more specifically peace enforcing missions, involving the separation, by military force, of parties in any theatre of potential conflict (prevention) or actual conflict. In that respect, the prevention of deployment or conflict of the opposing parties' forces would be included. Given that this kind of missions is very likely to involve actual fighting, it is necessary to develop rules of engagement starting from the most basic approach possible that if fired upon, the European Rapid Reaction Force would be able to fire back. Given the new security environment, it is anticipated that such upper end tasks would involve missions not against a country but missions dealing with factionalism within countries and the separation of factions or different groupings or entities within particular countries. The example of the Balkans is the first that comes to mind. Operation Amber Fox in FYROM seems to be such a mission, and despite the fact that, according to NATO's estimations, the fighting element in that Operation is not so strong, there is always the possibility for the European forces participating in that operation (when the EU will take over from NATO) to be involved in fighting situations.

Given these points, the current description of the Petersberg Tasks in the Treaty may cover a large number of missions, in terms of quality and quantity. Consequently, it is not the Petersberg tasks that need to be revised but it is necessary to include in the EU Treaty additional provisions regarding further tasks (see next question).

- Should explicit provision be made for the use of the military capabilities and structures foreseen for ESDP inside the EU in the event of a security threat such as terrorist attack?

The new security environment throughout the world includes new forms of danger, quite different from the typical threats known so far. Nowadays most countries, especially in the European continent, are not afraid of being attacked by another country. The asymmetrical threats such as international terrorism, organised crime or even illegal immigration represent the new hazards of international security and the defence systems throughout the world are being redesigned in order to be able to tackle them. The ESDP, being a system under formation, has the opportunity to include in its initial designs and structures a

provision regarding these new threats. Therefore a relevant provision could be included in the Treaty, allowing for the use of the military capabilities of the European Rapid Reaction Force in case of a threat that violates existing EU or international legislation, such as a terrorist attack or activities of organised crime or even illegal immigration. Of course the use of the military capabilities should be proportionate to the nature of the threat. The principle of proportionality, as established so far by the European Court of Justice, may operate as a very useful rule regarding the use of military capabilities, setting the limits of all relevant operations. Furthermore, it must be noted that the use of military capabilities, given its reactionary nature, cannot take place for preventive operations. The need for intervention of the European Rapid Reaction Force must have a factual basis and not a subjective one, such as impressions or opinions.

- Should a solidarity commitment be introduced into the Treaty providing for mutual assistance? What form might this take (voluntary opt-in)?

According to Art. 1 of the EU Treaty, the Union has to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples. According to Art. 11 para 2 of the Treaty, the Member States have to support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They must work together to enhance and develop their mutual political solidarity. They shall refrain from any action, which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. There are also several other references in the Treaties of the solidarity that the Member States have to display in their actions. The two references mentioned above provide for the demonstration of solidarity on behalf of the Member States in their political activities. The provision of mutual assistance, in military terms, from one Member State to another, is a very important step, which however has not been included in the operational plans of the ESDP. There are two possibilities in which a Member State would require such an assistance from another Member States: a) if it is invaded by a foreign power and b) if it is the object of one of the new threats identified above. The first possibility does not exist for many member States, however it is still a possible scenario for Greece, given the positions expressed so far by Turkey on issues such as the implementation of the international law of the sea in the Aegean. Consequently, given the existence of this possibility, the inclusion in the Treaty of a solidarity clause (perhaps in the form of a guarantee on the Union's behalf regarding the integrity of the Union's external borders) could be a useful deterrent. The second possibility however is valid for all Member States. Consequently, all Member States would benefit from a commitment regarding the provision of mutual assistance in case of them being the objective of one of the new asymmetrical threats.

With regard to the form of this solidarity, it is within the notion of solidarity that the provision of mutual assistance as a form of solidarity must have an obligatory nature. If the provision of assistance as a solidarity measure is optional, then the inclusion of a solidarity clause will create an imperfect legal rule, without any effect. It is the notion of solidarity itself that leads to the obligatory nature of any measure used as an act of solidarity. Of course, once again it must be pointed out that the basic issue of a Member State participating in the military aspects of the ESDP is optional. However, if such a choice is made, the Member State will be obliged to take part in all ESDP aspects, including of course the provision of assistance, as a form of solidarity, to another Member State.

- How can the Union develop a comprehensive and coherent security concept, drawing on the range of civilian/military capabilities at its disposal? What should be the role of the High Representative in the area of Defence?

The idea of security in the Union, given the new content given to the notion of security globally, must be focused on a two-folded axis. The first aspect should be the classic concept of territorial defence. The second must be the protection against the new asymmetrical threats. It may seem odd for the Union to maintain a concept of security based even partially on territorial defence, given the new status of international relations formed in the European continent. However, this aspect will operate as a transitional mechanism in two aspects. Firstly, it will allow the national security concepts of the Member States to change their orientation in a steady and controlled manner, without suffering “shocks” by having to adapt immediately to the requirements of the second of the above-mentioned aspects. Secondly, it will operate as a deterrent for any possible crisis that might be generated from existing differences at the borders of current or potential Member States. Of course, given the quantity and the quality of the military capabilities available to the Union, this two-folded axis of the Union’s security concept must be adjusted to their range.

The institutional framework of this security concept must be based a) on the inclusion of the two pillars of the Union to the first pillar, thus bringing all relevant activities under a single framework, b) on the empowered role of the High Representative in that framework. A very good step towards meeting this latter condition would be the merger of the positions of the High Representative and the Commissioner responsible for External Affairs. Thus the High Representative will be the sole spokesman of the Union, with regard to the ESDP. Furthermore, this official’s involvement in the work of the Political and Security Committee (ideally as head of this body) will provide him with a more substantive authority.