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**The European Security and Defence Policy following EU
and NATO enlargement – reply to the annual report of the Council**

REPORT

submitted on behalf of the Political Committee
by Mr van Winsen, Rapporteur (Netherlands, Federated Group)

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*The European Security and Defence Policy following EU and NATO enlargement –
reply to the annual report of the Council*

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*submitted on behalf of the Political Committee²
by Mr van Winsen, Rapporteur (Netherlands, Federated Group)*

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¹ Adopted unanimously by the Committee on 10 May 2004.

² *Members of the Committee:* Mr Martínez Casañ (Chairman) (Alternate: *Agramunt*); MM Pangalos, *Hancock* (Vice-Chairmen); MM André, de Assis, Mrs *Azevedo*, Mr van Baalen, Mrs Bolognesi (Alternate: *Manzella*), Mr Delattre, Mrs Delvaux-Stehres, Mrs Durrieu, MM Goutry, Guardans I Cambó, Höfer, Hörster, van der Linden (Alternate: *van Winsen*), Lintner, Marshall (Alternate: *Lord Judd*), Masseret, Meimarakis, Nazaré Pereira, Mrs Paoletti Tangheroni, Mrs Papadimitriou, MM Piscitello, Poty, Provera, *Puche Rodríguez*, de Puig, Rizzi, Rochebloine, Roth, Van Thijn, Ms Tritz, Lord Tomlinson, MM Versnick, Vis, *Wilkinson*.

Associate members: MM Akçam, Ates, Benediktsson, Çavusoglu, Fajmon, Mrs Grabowska, Mr Hegyi, Mrs Herczog, MM Kaminski, Kasal, Kobieltusz, Livanelli, Marthinsen, Nemeth, Pelc, Width, Wojciechowski.

N.B. *The names of those taking part in the vote are printed in italics.*

RECOMMENDATION 748¹

***on the European Security and Defence Policy
following EU and NATO enlargement – reply to the annual report of the Council***

The Assembly,

- (i) Welcoming the progress made on the ESDP, apparent from the information contained in the second part of the forty-ninth annual report of the Council to the Assembly;
- (ii) Regretting that the Council's reply to Recommendation 736 takes a partial position only on the issues raised there by the Assembly;
- (iii) Stressing the utmost importance of taking up the challenges and making the most of the opportunities offered by EU and NATO enlargement to make Europe and the world a safer place on the basis of a more homogenous and effective European and transatlantic policy;
- (iv) Earnestly hoping that the adoption and entry into force of the EU draft Constitutional Treaty will turn the European Union into a more credible and effective player on the international stage, in the interests of peace, freedom, democratic values, the well being of its citizens and security in Europe and throughout the world;
- (v) Recalling nevertheless that the provisions on security and defence and the relevant parliamentary dimension as currently proposed by the Intergovernmental Conference still have too many shortcomings to add value in those areas and replace the analogous provisions of the modified Brussels Treaty;
- (vi) Recalling in particular that the draft Constitutional Treaty is silent on the EU's defence cooperation with NATO and the matter of how the mutual defence obligation towards the six EU member states which are not members of the Atlantic Alliance can be guaranteed militarily;
- (vii) Convinced in consequence that the modified Brussels Treaty remains an indispensable element in Europe's security;
- (viii) Emphasising also that, in order to prevent the formation in Europe of areas of differential security, it is up to the Council to give the new EU and NATO member states the opportunity to benefit fully from the security guarantees available under the modified Brussels Treaty or from WEU associate status;
- (ix) Recalling that eight of the new EU member states now fulfil the criteria laid down under the Maastricht Declaration, adopted by the WEU member states on 10 December 1991, for being invited to join WEU, with two meeting the criteria for becoming WEU observer countries and two of the new NATO member countries for becoming WEU associate members;
- (x) Recalling the Council's reply of 1 October 2003 to Written Question 383, in which it confirms the full validity of the aforementioned Maastricht Declaration;
- (xi) Convinced that the position stated by the Council in its Reply to Recommendation 721 of not intending "to anticipate any official démarche (...) by third countries expressing an interest in WEU" is not compatible with the undertakings given by the WEU governments in the Maastricht Declaration inasmuch as the initiative for such invitations should come from WEU;
- (xii) Welcoming Croatia's progress in its candidacy for EU accession, as shown by the European Commission's recent recommendation to the EU Council for opening accession negotiations with that country;
- (xiii) Recalling that WEU and its Assembly still retain their vital importance as the sole democratic forum for strategic reflection on European security and defence matters where delegations from the national parliaments of EU member states and of all European countries that are members of NATO

¹ Adopted unanimously and without amendment by the Assembly on 4 June 2004 (5th sitting).

but not yet members of the European Union can take part, along with other candidate and third countries wanting to become more familiar with the European Security and Defence Policy;

(xiv) Stressing the utmost importance of rapid implementation of the European Security Strategy, particularly in regard to the European Union's new neighbourhood resulting from its eastward enlargement, which implies the development of a policy of constructive cooperation, including cross-border cooperation, and partnership with members of the Commonwealth of Independent States (CIS) and in particular with Russia, Ukraine, Moldova and the Caucasus states;

(xv) Recalling that the situation in Belarus continues to require particular attention in regard to the European Union's future policy, which must be closely coordinated with those of other international organisations and all neighbouring countries;

(xvi) Emphasising the need to speed up the process of firming up the part the ESDP is to play in combating international terrorism and the proliferation and development of weapons of mass destruction and their means of delivery, and also in the prevention of threats from "failing" states;

(xvii) Desirous that WEU members should contribute to the debate launched in the European Security Strategy on the possible reform of a country's right of individual and collective self-defence as set out in the United Nations Charter, which constitutes a key element of the modified Brussels Treaty,

RECOMMENDS THAT THE COUNCIL

1. Follow up Recommendation 732 by expressing a preference at the Intergovernmental Conference for any proposed formula in regard to the provisions of the Constitutional Treaty on security and defence matters that is equivalent to the provisions of the modified Brussels Treaty, including those concerning the parliamentary dimension;
2. Maintain the modified Brussels Treaty and WEU, and apply that Treaty fully for as long as the European Union does not have either the appropriate legal means or the necessary instruments to substitute the Treaty and all WEU bodies;
3. Reply to paragraphs 2-5 of Recommendation 736;
4. Implement WEU's Maastricht Declaration of 10 December 1991, appended to the Maastricht Treaty, and invite with immediate effect:
 - the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia to become members of WEU under terms to be agreed in accordance with Article XI of the modified Brussels Treaty;
 - Bulgaria and Romania to become WEU associate members;
 - Cyprus and Malta to become observers in WEU;
5. Grant Croatia the status of WEU associate partner;
6. Give the European Union the necessary impetus to ensure that the European Security Strategy is implemented, in particular by:
 - contributing actively to a constructive policy regarding the EU's new neighbourhood;
 - clarifying the part the ESDP is to play in the fight against international terrorism;
 - helping to take rapidly the necessary practical measures for anticipatory implementation of the solidarity clause;
 - making WEU's experience, and its experience in applying its Treaty, available to the EU for developing constructive cooperation with NATO;

7. Propose to the European Union that it establish a system of regular information and consultation with European NATO allies in a 25+5 framework;
8. Develop a contribution to the European Union on the implications of possible reform of a country's right to individual and collective self defence, as set out in the UN Charter;
9. Support Resolution 122 and Decision 27 which follow.

RESOLUTION 122²***on the European Security and Defence Policy following EU and NATO enlargement***

The Assembly,

- (i) Recalling its contributions to the Convention on the Future of Europe and the Intergovernmental Conference, and in particular Assembly Resolutions 109, 115 and 117;
- (ii) Conscious of its responsibility and experience as the first Interparliamentary European Security and Defence Assembly;
- (iii) Deeming it essential, in order to bring real added value to security in Europe, to amend the provisions of the draft Constitutional Treaty concerning defence and the collective participation of the national parliaments in those European Union activities falling within the sphere of intergovernmental cooperation as currently proposed by the Intergovernmental Conference,

STRONGLY URGES THE HEADS OF STATE AND GOVERNMENT OF THE COUNTRIES PARTICIPATING IN THE INTERGOVERNMENTAL CONFERENCE TO:

1. Adopt wording equivalent to that contained in the modified Brussels Treaty in the provisions of the draft Constitutional Treaty concerning the mutual defence obligation;
2. Envisage a provision on defence cooperation between the EU and NATO, and amend Article III-229 of the draft Constitutional Treaty by including NATO among the international organisations referred to;
3. Specify the content of the military guarantee of the mutual defence commitment to those member states which are not part of the Atlantic Alliance;
4. Re-word paragraph II.10 of the draft Protocol on the role of national Parliaments in the European Union to read as follows:

“10. The national Parliaments of the Member States shall organise their cooperation in an Interparliamentary Forum of the European Union whose composition, which shall include parliamentarians from all the WEU nations, and whose working methods they shall decide.

The Interparliamentary Forum shall be the network for consultation among the national Parliaments on any matter concerning the application of the principles of subsidiarity and proportionality.

The Interparliamentary Forum shall moreover hold a consultative dialogue with the executive bodies of the European Union on topics that are the subject of intergovernmental cooperation, and in particular on matters of common foreign and security policy and of common security and defence policy, on the basis of an annual report from the Council transmitted simultaneously to both the Interparliamentary Forum and the European Parliament.”

5. Add in paragraph II of the draft Protocol on the role of national Parliaments in the European Union a new subparagraph 11 to read as follows:

“11. The Interparliamentary Forum, in which the national Parliaments’ committees specialising in Community affairs shall also be represented, may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission.

The Forum shall in addition promote the exchange of information and best practice between Member States’ Parliaments and the European Parliament, including their special committees.

It may also organise interparliamentary conferences on specific topics.

² Adopted unanimously by the Assembly on 4 June 2004 (5th sitting) on the basis of the amended draft resolution.

Contributions from the Forum shall in no way bind national Parliaments or prejudge their positions.

The Interparliamentary Forum and the European Parliament shall together determine the practical arrangements of their cooperation.”

6. Add the following sentence to the end of paragraph 5 of the draft Protocol on the application of the principles of subsidiarity and proportionality:

“On any matter concerning the application of the principles of subsidiarity and proportionality, the national Parliaments may, as necessary, consult each other within the Interparliamentary Forum of the European Union for which provision is made in the Protocol on the role of national Parliaments in the European Union.”

7. Include the European Interparliamentary Forum in all the articles of the draft Constitutional Treaty which make provision for the European Parliament to be informed and consulted.

DECISION 27³***on the European Security and Defence Policy following EU and NATO enlargement***

The Assembly,

- (i) Recalling that eight of the new EU member states now fulfil the criteria laid down under the Maastricht Declaration, adopted by the WEU member states on 10 December 1991, for being invited to join WEU, with two meeting the criteria for becoming WEU observer countries and two of the new NATO member countries for becoming WEU associate members;
- (ii) Recalling the Council's reply of 1 October 2003 to Written Question 383, in which it confirms the full validity of the aforementioned Maastricht Declaration;
- (iii) Recalling that that Declaration is binding on WEU as a whole, and consequently also on the WEU Assembly;
- (iv) Desirous that the delegations of the national parliaments of the countries referred to should be allowed to benefit as quickly as possible from certain prerogatives that derive from the application of the principles of the WEU Declaration of 10 December 1991 in respect of their status in the Assembly, pending an initiative from the Council to implement the Declaration in respect of the countries concerned;
- (v) Recalling the wish expressed by certain parliamentary delegations of the countries concerned to take advantage of voting rights in the Assembly,

DECIDES:

1. To grant the parliamentary delegations of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia prerogatives in regard to voting rights similar to those of WEU member states;
2. To grant the parliamentary delegations of Bulgaria and Romania prerogatives in regard to voting rights similar to those of WEU associate member states;
3. To grant the parliamentary delegations of Cyprus and Malta prerogatives similar to those of the delegations benefiting from permanent observer status;
4. To study the possibility of granting voting rights in committees to parliamentary delegations of permanent observer countries;
5. To grant the parliamentary delegation of Croatia prerogatives similar to those of the delegations benefiting from associate partner status,

INVITES:

6. (a) its Committee on Rules of Procedure and Privileges to examine the effects of the present Decision on the Assembly's Charter and Rules of Procedure
(b) its Committee on Budgetary Affairs and Administration to examine the budget and administrative implications of the present Decision

so that it can enter into force at the latest by the second part of the fiftieth session.

³ Adopted unanimously and without amendment by the Assembly on 4 June 2004 (5th sitting).

EXPLANATORY MEMORANDUM

submitted by Mr van Winsen, Rapporteur (Netherlands, Federated Group)

I. Introduction

1. With the deposition of their instruments of ratification in Washington on 29 March 2004, NATO formally acquired seven new member states. The countries concerned are Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia. A month later, on 1 May 2004, the European Union enlarged in its turn to welcome 10 new member states. They include the countries mentioned above, other than Bulgaria and Romania (scheduled to join the European Union in 2007) plus Cyprus, the Czech Republic, Hungary, Malta and Poland. The Union will decide by the end of 2004 whether to open accession negotiations with Turkey. Norway and Iceland are other NATO countries that remain outside the European Union.

2. These parallel enlargements have been taking place at a time when European and international security face a variety of growing risks and threats, which the United States National Security Strategy and the European Security Strategy have endeavoured to identify and define. The murderous attacks perpetrated in Madrid on 11 March 2004 confirmed the absolute urgency of implementing preventive and protective measures against this new form of terrorism. Responding to such challenges is an ongoing concern for the European Union and NATO and a contractual obligation for the 10 signatory states of the modified Brussels Treaty. What is the likely impact of the biggest one-off enlargement of the EU and NATO on Europe's security policy?

3. The new accessions have taken place just at the time when the European Union, NATO and WEU are going through a period of fundamental change. The European Union member states did not succeed in their effort to wind up the Intergovernmental Conference at their Brussels summit on 12-13 December 2003, when they were due to adopt the European Union draft Constitutional Treaty drawn up by the Convention on the Future of Europe. Following the European Council's decision on 25 March 2004 to reach agreement on the text of the Constitutional Treaty by 17-18 June at the latest, and the significant progress the IGC has made on future security and defence cooperation, all the member states of the enlarged European Union are now under tremendous political pressure to settle their outstanding differences on the draft text.

4. They also need to decide how the ESDP in the wider European Union is to function over the period until the Constitutional Treaty can enter into force. EU enlargement will no doubt also have a considerable impact on the implementation of the European Security Strategy, adopted by the European Council on 12 December 2003, particularly in regard to how relations with the EU's new eastern neighbours and the states of the Balkans and the southern Mediterranean are concerned.

5. NATO, while itself still in the process of transformation, is currently preparing to take a decision on its future role, when it meets, in its new 26-member format, at its Istanbul summit on 28-29 June 2004. Lastly, the signatory states of the modified Brussels Treaty will have to decide, as WEU member states, whether or not to continue to apply the Treaty, Article XII of which gives any of them the right to cease to be a party thereto after expiry of the period of 50 years following its entry into force on 6 May 1955. That decision will depend in part on whether the European Constitution is adopted and ratified and whether it contains the necessary provisions on defence that will render the modified Brussels Treaty obsolete.

6. In fact, Article V (taken together with Article IV) of the modified Brussels Treaty embodies the only binding European mutual defence commitment. Also, the Assembly is the only embodiment of a commitment to give the parliaments of EU and NATO accession countries a say in the debate on CFSP and ESDP matters.

7. Since 1 May 2004, most of the countries concerned are automatically represented in the European Parliament. But how can the members of their national parliaments remain involved? Strengthening their status in WEU according to the criteria set out in the Declaration by its member states on 10 December 1991, might be an appropriate way of giving countries' parliamentary delegations the opportunity to play their full part in the work of the WEU Assembly. The prospect is

the more interesting to the parliaments of the new entrants, in that the WEU Council's annual report contains information on CFSP and ESDP developments. Furthermore, the Council has confirmed in its reply to Recommendation 736 that it will: "As in the past, (...) continue, through its Annual Report, to keep the Assembly informed of all developments liable to affect either the modified Brussels Treaty or the WEU organs, including WEAG and the WEAO, in the context of the progress being made in the Common Security and Defence Policy of the European Union".

8. Independently of any decision the WEU Council takes on its relations with the new European Union and NATO member countries, the Assembly will have to decide how it intends to organise its relations with the parliamentary delegations of the countries concerned, taking account of the political autonomy granted it under its Charter and the provisions of the modified Brussels Treaty, and at the same time mindful of the functions that fall to it as a WEU body.

9. Such are the main issues for discussion in the present report, which will also take a position on the second part of the 49th Annual Report of the Council to the Assembly covering the period from 1 July to 31 December 2003⁴.

II. The implications of European Union and NATO enlargement for implementation of the ESDP and of the European Security Strategy

10. The ten new member states have joined the European Union just after it has adopted its first European security strategy document "A secure Europe in a better world". A number of decisions about ESDP development have been taken within the framework of that strategy, among them a strategy for dealing with the proliferation of weapons of mass destruction. In view of the fact that eight of the 10 new member states are in central or eastern Europe and three of them (the Baltic States) were part of the former Soviet Union, they can be expected to regard building security along the Union's eastern borders and the EU's relations with Russia first and foremost, as major priorities.

11. While the joint statement issued following the EU-Russia Summit on 6 November 2003 confirms the fight against terrorism and preventing proliferation of weapons of mass destruction as the main pillars of Europe-Russia security cooperation, the practical programme of work set out in the statement makes no mention of terrorism but instead refers *inter alia* to disarmament, arms control, development of the CFSP/ESDP and of Russia's strategy and crisis management. The only concrete projects concern a joint wish for cooperation in the field of long-haul strategic lift and between the EU Institute for Security Studies and Russian research establishments.

12. EU and NATO enlargement will give rise to a range of specific problems with the EU's new neighbours to the east and especially with Russia that will impact in particular on CFSP issues even if the general direction of Russian foreign policy does not change fundamentally. In this connection it is worth noting that Estonia and Latvia are joining the European Union without their borders with Russia having been formally defined by treaty.

13. The Kaliningrad region will become a Russian exclave within the European Union and NATO area. At the same time Russia is demanding that the three Baltic States and Slovenia sign the revised CFE Treaty. It is also opposed to a NATO military presence in the Baltic States and looks askance at any attempts by the Alliance to protect those countries' air space. The CFE Treaty was revised in Istanbul in 1999 but has not yet been ratified. The question of whether new NATO member states such as the three Baltic States and Slovenia should be included in the revised CFE Treaty can be solved if all parties to the revised Treaty are prepared to ratify it and implement its provisions. In any case the new NATO members concerned have expressed their readiness to accede to the Treaty once it has been ratified. But the provisions of the revised Treaty also imply that Russia has undertaken to withdraw its troops from Georgia and the Dniestr region.

14. It is a positive sign that, after some problems, the European Union and Russia resolved their differences over EU enlargement and, on 27 April 2004, signed a protocol on the extension to the new

⁴ Assembly Document 1851, 1 March 2004;
http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2004/1851.pdf.

member states of their 1997 Partnership and Cooperation Agreement. However, Russia continues to raise the subject of the rights of the Russian-speaking minorities in Estonia and Latvia.

15. When considering the enlarged European Union's new neighbours to the east, one cannot leave aside future relations with Belarus, Ukraine and Moldova, nor with the countries of the Caucasus. Poland is particularly concerned here, as is Hungary, Slovakia, Bulgaria and Romania. Of all the new member countries, Poland carries the greatest weight, politically, demographically and in economic terms and has already indicated its wish to play a major part in shaping the future eastern dimension of the European Union's foreign and security policy. Through its close bilateral relations with Ukraine it is to some extent the advocate of that country's interests in the European Union.

16. As far as future relations with Belarus and Moldova go, Poland has also in each case adopted a clear stance, going so far as to suggest (provided there is an evolution towards democracy in those countries) the conclusion of association agreements between them and the European Union. From another angle, Russia is in the process of rethinking its policy towards Belarus following EU and NATO enlargement, and that country's position between the EU and Russia will require a more inventive and visionary policy on the part of the European Union than has been the case to date. The EU should also take advantage of the resumption of talks between Moldova, Russia, Ukraine and the OSCE on a solution of the Transdniestrian problem to frame a clearer policy for the region with a view to Romania's future membership of the EU. However, the central and eastern European countries and, among them, Poland in particular, will also bring their weight to bear on EU policy towards Russia itself, which they tend at times to find insufficiently critical. As far as the EU's future relations with its eastern neighbours are concerned, it is unlikely to prove any easier to formulate a common policy in an enlarged European Union.

17. Turning to the impact of EU enlargement on the southern dimension of the CFSP in future and, more particularly, to future Union policy on the Middle East, it is difficult to say, as yet, what priorities the new entrants will decide to put forward.

18. Indeed, following Joschka Fischer's proposal for the launch of a new transatlantic initiative for future peace and democracy in the Middle East and the American plan for a "Greater Middle East" it would appear that, on the basis of an agreement between France and Germany, the Union is moving in the direction of adopting a common approach in the framework of the European Security Strategy. However, the new line the United States and Israel have agreed to take on the Israeli-Palestinian conflict will now make it more difficult to take joint Euro-Atlantic initiatives in the region concerned.

19. The views of the eight new central European nations will doubtless influence the way in which the European Union builds security in its new environment, following the guidelines of the European Security Strategy. The Strategy confirms that settlement of the Arab-Israeli conflict is a "strategic priority for Europe". At the same time, it highlights the importance of maintaining and strengthening stability in the Balkans and of not creating new dividing lines in Europe. In this respect, the Strategy advocates extending "the benefits of economic and political cooperation to our neighbours in the East while tackling political problems there". The establishment of constructive cross-border cooperation will have an important part to play in any new "neighbourhood" policy. In this context the agreement concluded in March 2004 between the security authorities of Belarus, Poland, Russia and Ukraine for the purpose of organising joint counter-terrorism exercises and putting a stop to trafficking in human beings could become a good example of how such cooperation can work.

20. With the advent of Cyprus and Malta to the European Union, the number of member states not members of NATO has increased from four⁵ to six. Even though it is still the European Union's aim to achieve membership for Cyprus as a whole, in line with the 16 April 2003 accession treaty, the problem of reunification of the island on the basis of the plan put forward by the United Nations, which provides for a federal state, remains unresolved following the rejection of the plan by the Greek community on the island.

21. Since 1 May, there is now a fundamental problem of how the EU should deal with the northern part of Cyprus. Conclusion of an agreement would doubtless be a great boost for the European

⁵ Austria, Finland, Ireland and Sweden.

Union's common policy, in particular when it comes to preparing the negotiations for Turkey's accession to the European Union.

22. In admitting Cyprus and Malta, the European Union needs to decide how, militarily, non-allied members' security is to be guaranteed on the basis of the mutual assistance clause the Italian Presidency submitted to the IGC, while at the same time, admitting the central European nations, which regard NATO membership and their alliance with the United States as security policy priorities, will doubtless have an impact on how cooperation between the European Union and NATO and transatlantic relations are managed. In this connection, one should consider especially the experience of the Czech Republic, Hungary and Poland which, since they became NATO members in 1999, have observed the development of the ESDP from a NATO standpoint and experienced a degree of detachment from the European Union decision-making process. Nor should it be forgotten in this context that NATO is admitting two former Warsaw Pact members, Bulgaria and Romania, that initially at least are to remain outside the European Union.

23. Some observers fear that this asymmetrical enlargement of the European Union and NATO will only multiply divergences within both organisations about the nature and priorities of transatlantic cooperation and make consensus over a common policy more difficult. Several central European countries are keen to provide a home to NATO military structures, or even of the United States, on their territories, which is bound to influence their attitude to plans for an autonomous European defence.

24. The future of the ESDP will obviously also be influenced by the future evolution of NATO, still in a period of transformation and transition. Despite repeated statements to the effect that collective defence remains the core function of the Alliance, there is no doubt that NATO is changing character and becoming increasingly involved in worldwide crisis management, an area in which it is an important and predominant partner for the European Union. The forthcoming NATO summit in Istanbul will confirm what the Secretary-General has described as a common vision of a new NATO: an Alliance determined to deal with the new security threats of this century – terrorism, weapons of mass destruction and “failed states”; an Alliance prepared to send its forces to wherever they are needed and to defend against threats from wherever they may come⁶. It remains to be seen how NATO and the EU organise cooperation and coordination between them and, even more importantly their vision of those areas, so as to be genuinely mutually reinforcing and complementary.

25. The European Security Strategy adopted on 12 December 2003 makes a number of fundamental observations about NATO and transatlantic relations. In its discussion of “effective multilateralism” it affirms that the transatlantic relationship is “One of the core elements of the international system” and that “it is not only in our bilateral interest but strengthens the international community as a whole”. In this regard, the Strategy describes NATO as “an important expression of this relationship”. It also emphasises the importance of the “Berlin plus” arrangements in the framework of the strategic partnership between the two organisations.

26. It is all the more surprising that the attempts made by a number of Convention members to have NATO included in the article of the draft Constitutional Treaty enumerating the number of international organisations with which the European Union should cooperate closely were to no avail⁷. Now the European Security Strategy does effectively consider the transatlantic relationship irreplaceable, but not expressly in regard to NATO. Rather it advocates, in general terms, the European Union and the United States acting together in an “effective and balanced partnership” that can be a “force for good in the world”.

⁶ See Declaration by NATO Secretary-General Jaap de Hoop Scheffer in Slovenia, 23 April 2004; *Atlantic News*, No. 3570, 28 April 2004.

⁷ Article III-229 on relations with international organisations states: “1) The Union shall establish all appropriate forms of cooperation with the United Nations, the Council of Europe and the Organisation for Economic Cooperation and Development. 2) It shall also maintain such relations as are appropriate with other international organisations. (...)”

27. It is the more interesting therefore to note that the current debate on the renewal of the transatlantic relationship again picks up on the problem of the workings of cooperation between the European Union and NATO. In an interview with the *Frankfurter Allgemeine Zeitung* on the reconstruction of the West that he gave on 6 March 2004, German Foreign Affairs Minister Joschka Fischer questions the growing strategic parallelism between the EU and NATO which he feels does nothing to hasten a new approach. He notes: "Within the EU we discuss common foreign and security policy while in NATO we behave as though there were only national policy representation. This leads me, and others, to ask why we make a European pillar taboo. It can scarcely be conceived of without the enlarged EU". Almost simultaneously, two well-known German Christian Democrat members went even further by asking for NATO to be transformed into a political alliance "in which the European Union defends its policies on behalf of its member states". "Why" they ask "should the EU not have a seat in NATO?"⁸ Yet the new NATO Secretary-General, Mr Jaap de Hoop Scheffer, when interviewed on 4 February 2004, by the *Süddeutsche Zeitung*, made quite clear that he saw no interest in a specific grouping in NATO.

28. This discussion has a significance that goes beyond purely institutional considerations to the very heart of the European security and defence project which European Union member states want to make a reality within the Union. Resolution of this issue has become unavoidable now that WEU's dual role as the European pillar of NATO and the EU defence component has been abolished. It is true that the issue would still be there if WEU continued to have that role, but it would take on a different complexion, since close cooperation with NATO is a key element of the modified Brussels Treaty, but one not present in the draft Constitutional Treaty as put forward to the IGC.

29. It is not going too far to suggest that the direction in which the debate is moving could endanger the Atlantic Alliance as envisaged in the Washington Treaty. It is clear that the eight new European Union member states will bring the maximum influence to bear in order to avoid NATO's role as the prime actor in security matters being called into question.

30. That will profoundly influence ESDP development in general terms and also the EU's response to the main European and international security challenges as identified by the European Security Strategy: the fight against international terrorism and against the proliferation and development of weapons of mass destruction (WMD).

31. The savage attacks in Madrid on 11 March 2004 were a brutal reminder that the preventive and protective measures taken to date to safeguard the civilian population have not been adequate to ward off this growing threat. In this respect, the wider European Union may be forced to reconsider its own security concept. The Union has in fact, up to now, focussed its action on justice and financial and police measures, which at first sight seems justified since it is internal security which in the front line of any threat.

32. It therefore followed that the Interior Ministers were the first to meet, after the Madrid attacks, to agree on the appointment of an EU Counter-Terrorism Coordinator and take measures to achieve better cooperation on intelligence. However, it raises the question of whether the European Union's conceptual approach in dealing with terrorism should not be a good deal more proactive. The European Security Strategy consists in identifying the complex causes of terrorism and is at pains to point out that "none of the new threats is purely military; nor can any be tackled by purely military means". Thus, the emphasis in protecting against terrorism has shifted away from military methods. According to the Strategy, "dealing with terrorism may require a mixture of intelligence, police, judicial, military and other means".

33. However, the role the European Union attributes to ESDP facilities in the fight against terrorism is a rather hazy one. Until now, proposed work in this field has been confined to "the establishment of a database of military assets and capabilities relevant to the protection of civilian populations against the effects of terrorist attacks, including chemical, biological, radiological and nuclear (CBRN)

⁸ *Le Monde*, 19 March 2004.

attacks”⁹. The impression given is that the European Council did not consider the completion of that work particularly urgent. For, in the mandate conferred on the Irish Presidency, it asked the latter to continue to “further elaborate on modalities, procedures and criteria for the use of military assets and capabilities in the protection of civilian populations against the effects of terrorist attacks” but without setting any deadline.

34. However, in the face of the terrorist threat, the enlarged European Union will need to take a number of decisions immediately. Either the member states agree that ESDP instruments can be used within their territories (which is not the case at present) or they leave fighting against terrorism using military means to NATO, which has developed a concept for it. It should be remembered that NATO defines its activities in that sphere as part of the global war on terror and regards attacks such as those of 11 September 2001 as attacks within the meaning of Article 5 of the Washington Treaty. On that basis, the NATO Council decided on 16 March 2004 to extend the area of intervention covered by operation “Active Endeavour”, which until now has kept navigation in the Eastern Mediterranean under surveillance, to the whole of the Mediterranean.

35. The Madrid attacks led the European Council at its summit of 25-26 March 2004 to take new decisions, with the involvement of the accession countries. These are embodied in the EU’s Declaration on combating terrorism, which includes a revised version of the plan of action agreed following the 11 September 2001 attacks in New York. Again, the European Council has not set a deadline for completion of the work so as to maximise ESDP input into the fight against terrorism. What is more significant, however, is the fact that consensus was reached in the European Council that henceforth action taken would be in the spirit of the solidarity clause set out in Article 42 of the draft Constitutional Treaty, pending its application. The clause provides *inter alia* for mobilisation of military resources to prevent the terrorist threat in the territory of the member states and assist those member states that fall victim to a terrorist attack. But the practical measures to be taken for anticipatory implementation of the solidarity clause have so far not been specified.

36. Provision must, however, be made for preventive measures inside and outside European Union borders. And this is where the difficulties start. It must be clear what the European Security Strategy means by the term “preventive” engagement, which is supposed to ward off more serious problems in the future. The question arises both in the context of the fight against terrorism or against proliferation of weapons of mass destruction (WMD) and also in regional conflicts or cases where states are failing.

37. Proliferation of weapons of mass destruction is not only just “potentially” the most significant threat to our security, as the European Security Strategy states: it is a very real one. There is a good deal of evidence to suggest that proliferation is not only on the increase but is acquiring new forms. However, the same time, there is a need to keep track of the proliferation, not to mention development, of ballistic missiles and their means of delivery – as the recent launch by Pakistan of a missile with a 2 000 km-plus range and a nuclear warhead¹⁰ goes to show.

38. According to the European Security Strategy, and the specific strategy for preventing proliferation of weapons of mass destruction, adopted by the European Council: “Proliferation may be contained through export controls and attacked through political, economic and other pressures while the underlying political causes are also tackled”. But in the face of the inadequacy and ineffectiveness of the range of means available within the UN framework and through other international organisations or agreements, demand for more effective preventive measures is stacking up. What measures would be appropriate against countries in breach of inspection agreements or which refuse to accept inspections in the first place? And what measures are required to prevent WMD falling into terrorist hands?

39. The enlarged European Union must follow the broad outlines laid down in the European Security Strategy. Referring to the new threats: terrorism, WMD proliferation, regional conflict and “failing states”, the Strategy states: “Our traditional concept of self-defence ... was based on the threat

⁹ See ESDP Presidency Report, 15814/03, 9 December 2003, approved by the European Council on 12 December 2003.

¹⁰ *Le Figaro*, 10 March 2004.

of invasion. With the new threats, the first line of defence will often be abroad". The preventive engagement advocated in the strategy includes in this context "early, rapid, and when necessary, robust intervention".

40. In Recommendation 736¹¹, the Assembly has already demonstrated that the European Security Strategy does not make a clear distinction between the various situations in which intervention could be deemed legitimate. But by calling into question the traditional concept of the right of individual and collective self-defence embodied in Article 51 of the United Nations Charter, it implicitly invites discussion on the conditions under which that right might extend, in the event of a specific threat, well beyond Europe's borders. The European Union's counter-proliferation strategy against weapons of mass destruction, on the other hand, by stating that both preventive political and diplomatic measures constitute that first line of defence, fails to make the necessary distinctions. It does not rule out deterrence (using political instruments) in eliminating proliferation programmes, and envisages the coercive measures laid down in the United Nations Charter as a last resort.

41. Those measures are set forth in Chapter VII of the UN Charter, which provides for the right to individual and collective self-defence on the basis of a UN General Assembly Resolution. The debate on an adaptation of this right led to some interesting proposals, such as that from Manfred Hoyer, former deputy Foreign Minister of Germany:

"The right of self-defence should ... be complemented by a preventive component given legitimacy in a resolution adopted by the UN General Assembly. In order to take the maximum precautions to prevent this right as extended being misused for offensive purposes, strict criteria should be established regarding its exercise"¹².

42. This is a debate which is unlikely to yield concrete results very quickly. But it should be initiated in the European Union framework and in the United Nations in order to give substance to an international order based on the rule of law and effective multilateralism as envisaged in the European Security Strategy. The new EU member states will make their own additional contribution to the process of decision, the outcome of which should be a European policy able to ward off the new threats and protect civilians more effectively.

43. It will not become any easier in an enlarged Council of 25 member governments to reach consensus in those areas to which qualified majority voting does not apply – which is indeed the case as far as security matters are concerned. It will no doubt be impossible to settle all decision-making problems through institutional arrangements, like the specific mandates conferred on groups of member states, constructive abstention or enhanced or structured cooperation. There is a lingering fear that a "big country" directorate will come into being or of the revival of ideas involving "hard cores" or "pioneers" on the part of some of the countries concerned.

44. These difficulties will also persist for as long as there is no consensus either about the nature of the European Union's purpose on the international stage: whether as "military power, civilian power or simply a power *sui generis*", of which the military dimension is but one aspect. This type of situation is bound to engender a number of different suggestions about the best way of giving the European Union global reach. In that optic, Steven Everts of the Centre for European Reform, and Antonio Missiroli of the European Union Institute for Security Studies proposed setting up a European Security Council¹³ within the European Union with a maximum of 10 seats, three of them permanent, reserved specifically for France, Germany and the United Kingdom. This might, according to the proponents, operate as a Steering Committee between the Council "at 25" and the future Union Minister for Foreign Affairs.

45. This is in fact another institutional response to a political difficulty – showing that, even after the close of the debate in the Convention and on the eve of the adoption of the European Union's

¹¹ Assembly Document 1844, 2 December 2003;
http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2003/1844.pdf.

¹² *Internationale Politik*, No. 2, February 2004, page 66.

¹³ *International Herald Tribune*, 10 March 2004.

Constitutional Treaty, there are reasons enough to be discussing how decision-making should come about in the enlarged European Union

46. Among other issues which the European Union needs to sort out after enlargement is how its future relations with non-member countries are to be organised. Up till now, the latter have been able to take part in specific cooperation based on the 15+6 and 15+15 formats. In fact, pending further developments, five NATO members: Iceland, Norway, Turkey and, until 2007, Bulgaria and Romania, will remain outside the EU. Will the European Union initiate specific cooperation with those countries, by establishing a consultation framework based on a 25+5 configuration? It does not look as though it intends to adopt a common approach in this connection. All the same, the External Relations Council has authorised the opening of negotiations with the countries concerned as well as with Canada, Russia and Ukraine, to create a framework for those countries' involvement in EU-led crisis-management operations¹⁴.

47. The Council has also authorised the Presidency to open negotiations with a view to concluding agreements with third countries to allow them to take part in Operation Proxima¹⁵, the European Union police mission in the former Yugoslav Republic of Macedonia. The PSC had already accepted contributions towards this mission from Norway, Switzerland, Turkey and Ukraine. This is, then, a case-by-case approach which might involve third countries in a number of possible combinations. However, there is nothing to suggest that the Union is envisaging setting up a system of regular information and consultation with European NATO member countries which are not members of the EU along the same lines as the current 15+6 format. Such a system is however essential if the countries involved – EU accession candidates or those potentially so – are to have the opportunity of becoming routinely familiar with the characteristic workings of the ESDP, and not feeling “detached”. Lastly, the enlarged European Union must take a decision on Croatia's and FYROM's applications for accession. The European Commission has meanwhile recommended to the EU Council that it open accession negotiations with Croatia. Dealing with those applications would be an important signal and an encouragement not only for the countries involved, but for the entire region.

III. Conditions for new EU and NATO member state involvement in the ESDP and its parliamentary dimension pending adoption of the Constitution for Europe

48. Until the draft Constitutional Treaty has been signed and ratified, the Treaty of Nice remains the sole legal basis for the implementation of the CFSP and the ESDP. The Treaty does not provide for “enhanced” or “structured” cooperation on security and defence. It also rules out any extension of the scope of the Petersberg tasks and makes no provision for either a solidarity or mutual defence clause within the European Union framework.

49. This is the situation that the ten new member countries found when they joined the European Union. If the Constitutional Treaty is adopted by the European Council in 2004, its provisions might be expected to come into force some time around 2006, allowing for the fact that a number of member countries are to hold referendums on the Treaty. As the penetrating analysis by Senator Hubert Haenel, Chairman of the French Senate's Delegation to the European Union and former member of the Convention on the Future of Europe, contained in his statement of 13 January 2004 makes clear, the Intergovernmental Conference agreed in the rush of events surrounding the Naples conclave and the private talks between France, Germany and the United Kingdom, to make significant changes to the draft clauses put forward by the Convention in the area of the ESDP.

50. These concerned firstly the provisions on “structured cooperation” and the mutual defence clause. In regard to the first, the texts of Article I-40 (6) and Article II-213 of the draft Constitutional Treaty, as amended by the Intergovernmental Conference, and of the specific draft Protocol drafted by the Italian Presidency can be consulted in the Appendix to this report.

51. Regarding “permanent structured cooperation”, it should be noted that the text, as amended by the IGC, does not take up the Convention's proposal according to which the relevant provisions on

¹⁴ *Bulletin Europe*, 25 February 2004.

¹⁵ *Bulletin Europe*, 6 March 2004.

“enhanced cooperation”, as set out in Articles I-43 and III-322-329, should apply to “structured cooperation”. These two forms of specific cooperation are therefore now totally separate.

52. Furthermore, the IGC has drafted a “Protocol on permanent structured cooperation” which provides that participation in the activities of the European Agency in the field of defence capabilities development, research, acquisition and armaments, created by the EU Council on 17 November 2003, shall be part of permanent structured cooperation. What is more, participants in that cooperation are to take part in the development of “major joint European equipment programmes in the framework of the Agency”.

53. In Senator Haenel’s reckoning, whereas in the Convention text structured cooperation was linked to the Treaty and was to have come into force at the same time, its initiation was now subject to decision by qualified majority voting in the Council – including in regard to the list of participating states. And while it was up to the existing members participating in structured cooperation to decide whether or not to admit new participants at a later date, the decision was now to be taken by qualified majority vote, which was not as provided in the Convention text. Even now, the wording of the text was such as to convey the idea that entry was automatic, provided the state wanting to join the structured cooperation “fulfils the criteria and makes the commitments” laid down in the protocol.

54. Senator Haenel further noted that, broadly speaking, “initiating structured cooperation would become more difficult and it would be easier to join once launched”. The protocol put forward, following the compromise achieved by the Italian Presidency at the IGC, setting out the criteria for participation in structured cooperation did not in fact specify a precise commitment in quantitative terms. The commitment was rather one of playing a full part in all ESDP developments. Hence national force contributions were not specified. This as Senator Haenel saw it was “beating a retreat from the spirit of the work of the Convention where most people were thinking along the lines of a minimum percentage contribution from GDP allocated to defence spending being used for participation in the structured cooperation. The impression given is that the IGC wanted to make sure that any member state could take part in a given structured cooperation, even if that meant a reduction in the scope of the latter and the resources available to it”.

55. The advantage of the various forms of words referred to is that they allow the proposed cooperation to take place within the European Union. However, it means sacrificing flexibility, the tendency with the EU being invariably to want to iron out difficulties by making overly legalistic and often too detailed provision. The Nice Treaty (Article 17) provides for enhanced cooperation within the framework of WEU, for the organisation of which a good deal more latitude is allowed in the Treaty. It is also worth remembering that the wording preferred by the Convention and the Intergovernmental Conference does not provide for NATO member countries which are not members of the European Union to take part in enhanced and structured cooperation.

56. As far as the “closer cooperation” on mutual defence proposed by the European Convention goes, Senator Haenel notes that the amendments made at the IGC are even more sensitive. The table below compares the mutual defence commitment as drafted in the final version proposed by the Italian Presidency (left-hand column) and the corresponding provisions of the modified Brussels Treaty (right-hand column).

<p align="center"><u>9 DECEMBER 2003 : MOST RECENT PROPOSAL BY THE ITALIAN PRESIDENCY</u></p>	<p align="center"><u>MODIFIED BRUSSELS TREATY EXTRACTS</u></p>
<p align="center"><u>Article I-40 (7)</u></p> <p>If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.</p> <p>Commitments and cooperation in this area shall be consistent with commitments under NATO, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.</p>	<p align="center"><u>Article V</u></p> <p>If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.</p> <p align="center"><u>Article IV</u></p> <p>In the execution of the Treaty, the High Contracting Parties and any Organs established by Them under the Treaty shall work in close cooperation with the North Atlantic Treaty Organisation.</p> <p>Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information and advice on military matters.</p>

57. In fact, the wording of draft Article I-40 (7) no longer suggests a form of cooperation between some member states but rather a clause that extends to all of them. At the same time, intended to apply universally, the clause is far less strongly worded. It states for instance that, in the event of aggression against a member state, the other states “shall have towards it an obligation of aid and assistance” instead of “shall give it aid and assistance”. Military means are no longer explicitly mentioned as an element of that aid and assistance.

58. Furthermore, a sentence has been added to the effect that the clause in question will not prejudice “the specific character of the security and defence policy of certain member states”. Senator Haenel therefore concludes that in the IGC text “the mutual defence clause now becomes more like an exhortation in principle and as such can no longer be regarded as a replacement for WEU’s mutual defence clause”¹⁶.

59. It should be noted further that the Intergovernmental Conference did not accept the wording proposed by the European Convention providing for close cooperation with NATO in implementing mutual defence. In so doing the IGC eliminated an element of the Convention proposals also present in Article IV of the modified Brussels Treaty. And yet, by affirming that NATO, “for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation”, the IGC created uncertainty about the manner in which the security of the EU member states which are not NATO members (now six in number: Austria, Cyprus, Finland, Ireland, Malta and Sweden) is to be guaranteed, since the draft Constitutional Treaty is silent on the way in which the European Union should take military responsibility for the defence of its member states.

¹⁶ See the article by Hubert Haenel, French Senator, in *Le Sénat, délégation pour l’Union européenne*, No. 88, 1-14 January 2004, page 19.

60. Under the circumstances, the Assembly can do little other than remind the governments taking part in the IGC of the terms of its own Resolution 117, and the WEU Council of those of Recommendation 732¹⁷ asking that it “support any proposed formula in relation to security and defence matters corresponding to the provisions of the modified Brussels Treaty”. It remains to be seen whether the compromise elicited by the Italian Presidency last December should be regarded as the final word or whether the IGC will look at the wording again. In its reply to Recommendation 732¹⁸ the Council assures that Assembly that “the governments involved in the Intergovernmental Conference are aware of the Assembly’s recommendations and will use them as they see fit in the negotiations under way”.

61. Now even if, to date, the governments involved have not “seen fit” to take account of the arguments the Assembly has put forward while the draft Constitutional Treaty as a whole has not been adopted, until everything is agreed, nothing is agreed. Therefore the time has again come to rework the provisions on ESDP and collective defence, and on collective participation by national parliaments, even if governments are unlikely to be inclined to re-open discussion on the substance so as not to jeopardise agreement on the Constitutional Treaty once the issue of majority voting in the Council is settled.

62. More specifically, in regard to the parliamentary dimension of an ESDP governed by the rules of the Constitutional Treaty at present on the table at the Intergovernmental Conference, the Assembly must do its utmost to provide those governments sensitive to the points it has put forward with a convincing line of argument so that improvements can be made to the draft Constitutional Treaty and related protocols submitted to the Intergovernmental Conference – such as for example those suggested by Mr Juncker, Prime Minister of Luxembourg, in his address before the Assembly’s plenary session in December 2003¹⁹.

63. The fundamental basis for any request for a change to the inadequate provision made in the draft Constitutional Treaty for the collective involvement of national parliaments in the CFSP and ESPD must be the Assembly’s contribution to the Intergovernmental Conference, adopted by its Standing Committee on 22 October 2003²⁰, and Assembly Resolution 117 and Assembly Recommendation 732. Meantime, the President of the Assembly wrote on 19 February 2004 to all the Speakers of the Parliaments of the WEU member countries to ask for their support in the IGC in amending the provisions on the ESDP parliamentary dimension. The significant number of replies from the parliaments in question serves to indicate that awareness of the need to give parliaments an improved collective say in EU matters is growing.

64. The national Parliaments’ participation in the activities of the European Union concerns three main areas:

- monitoring compliance with the principles of subsidiarity and proportionality by the institutions of the European Union (Article I-9 of the draft Constitutional Treaty);
- scrutinising their governments’ policy in respect of the Common Foreign and Security Policy, the European Security and Defence Policy and all other areas falling within the intergovernmental sphere; and
- involvement in the areas currently covered by COSAC.

¹⁷ Assembly Document 1835, 22 October 2003;

http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2003/1835.pdf.

¹⁸ Assembly Document 1845, 1 December 2003;

http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2003/1845.pdf.

¹⁹ 49th plenary session of the Assembly, December 2003, 7th sitting;

http://www.assembly-weu.org/en/documents/sessions_ordinaires/cr/2003/cr07.pdf.

²⁰ Assembly Document 1835, 22 October 2003;

http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2003/1835.pdf.

Compliance with the principles of subsidiarity and proportionality

65. Article I-9(3) of the draft Constitutional Treaty states that the national Parliaments shall ensure that the EU institutions comply with these principles in accordance with the procedures laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

66. Under those procedures, each Parliament may, within a given period, send the competent EU institutions a reasoned opinion stating why it considers that a legislative proposal from the Commission does not comply with the principle of subsidiarity. Where such a reasoned opinion represents at least one third of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission will have to review its proposal without, however, being obliged to take account of the Parliaments' opinions.

67. Interestingly, in an article published on 13 May 2004²¹, Giuliano Amato, who was a Vice-Chairman of the Convention on the Future of Europe, proposes amending the text so that the Commission would be obliged to take account of the Parliaments' opinions where they represented at least two thirds of the national Parliaments. Mr Amato goes on to claim that there is a need for the national Parliaments "to form a network for European policy debate".

68. There is no doubt that it is essential to give the national Parliaments a European framework or network in which they can consult each other regularly and, as necessary, debate any matter concerning application of the principles of subsidiarity and proportionality. On that point the representatives of the Governments of Germany, France, the United Kingdom, Poland and Ireland to the Convention on the Future of Europe had already proposed in a joint contribution to the Convention on 14 June 2002²² that "this task (...) could be carried out by national parliamentarians acting collectively (...) or by some form of body mandated by the Council (...)". As the Convention rejected that proposal, Mr Amato's recent initiative is particularly welcome. The network he proposes should be defined in the Protocol on the application of the principles of subsidiarity and proportionality and the Protocol on the role of national Parliaments in the European Union, which is not the case at present.

The role of national Parliaments in the areas of intergovernmental cooperation

69. In these areas it is up to each Parliament to exercise democratic scrutiny at the national level over the government of its country. At the European level, parliamentary work has two dimensions: first, interparliamentary cooperation and secondly, the exchange of information, dialogue and consultation with EU decision-makers. But a national Parliament has difficulty in obtaining information about the decision-making process at the European level, particularly as regards the CFSP and ESDP. It has no direct access to the European institutions and therefore relies almost exclusively on its own government, which provides it with information according to national policy criteria. It has to assess decisions taken in the EU without being represented at that level, whereas the governments themselves consult each other regularly in the Council.

70. In contrast, while the European Parliament is better informed about CFSP and ESDP developments, it has no power of scrutiny in this area, which remains within the intergovernmental sphere. It can therefore be said that the CFSP and ESDP suffer from a double democratic deficit.

71. This is a problem that transcends the issue of scrutinising security and defence policy. It also concerns freedom, internal security and justice, as well as other areas of intergovernmental cooperation. In this respect, the draft Constitutional Treaty rightly makes provision for substantial participation by the national Parliaments, including – among other things – their involvement in the political scrutiny of Europol and Eurojust.

72. It is therefore all the more surprising that the draft Constitutional Treaty does not give the national Parliaments sufficient means to be consulted collectively in the ESDP decision-making process. In this particular respect the text is inconsistent.

²¹ "European unity will begin at home" in the *Financial Times*, 13 May 2004.

²² CONV 88/02, CONTRIB 46.

73. In practice, the lack of national parliamentary participation in a dialogue with the EU's executive bodies (the Council, the Political and Security Committee and the Commission) is one of the weaknesses in the development of the European Security and Defence Policy. The Convention did not take enough account of the need for such a dialogue. It concentrated on exchanges of information and on coordination between parliamentary bodies. All it proposed for the future was the idea of holding ad hoc conferences on ESDP issues. Some members of the Convention also considered that the constitutional role of the national Parliaments consists solely of exercising control over their respective governments at the national level, which would make a collective role of national Parliaments superfluous at the European level.

74. However, we must not confine the debate on the European Security and Defence Policy to the national arena. In so doing, we would not be serving the cause of European integration. On the contrary, we would needlessly be promoting a national vision of security and defence questions. In scrutinising its government's policy, a Parliament must be able to take full account of European aspects.

75. Despite the growing Europeanisation of security and defence policy, the national Parliaments retain important decision-making prerogatives; in particular, they approve national defence budgets which subsidise EU operations, give the go-ahead for the deployment of troops to crisis zones and agree to the procurement of modern crisis management equipment for which there is an urgent need.

76. The draft Constitutional Treaty introduces quite a number of new instruments for developing the ESDP into a policy that takes account of the differing security policies of the Member States. These take the form of enhanced cooperation and structured cooperation, which also covers the European armaments agency. All of them fall within the intergovernmental sphere. We must also take a careful look at the application of the solidarity clause and the so-called collective defence clause proposed in the draft text. How can democratic scrutiny be exercised over these instruments without consulting the national Parliaments collectively?

77. The Protocol on the role of national Parliaments in the European Union, which is annexed to the draft Constitutional Treaty, makes provision for the European Parliament and the national Parliaments to determine how interparliamentary cooperation can be organised in the area of the ESDP. While this is a possibility which needs to be explored, any arrangements that were to fall short of the experience national Parliaments have gained collectively over fifty years in the framework of the defence policy formulated by WEU, which laid the foundations for the ESDP as it exists today, would be unacceptable. The main requirements resulting from what has been achieved are as follows:

- the possibility for an interparliamentary body, in which the representatives of national Parliaments consult each other, to set up committees and adopt texts to be transmitted to the Council;
- the responsibility of the *Council as a collective body* (not just the Presidency or the High Representative) to make a report to the parliamentarians;
- the obligation upon the *Council* to reply to recommendations and written questions from the parliamentarians;
- the establishment of a regular, informal and confidential dialogue between the representatives and committees of the interparliamentary body with the Council as a whole, before and after decisions are taken; the need for such a dialogue is essential;
- the inclusive nature of the interparliamentary body, bringing together parliamentary delegations from the non-EU European countries which are members of NATO.

Areas currently covered by the activities of the Conference of European Affairs Committees (COSAC)

78. In contrast to the text of the Protocol on the role of national Parliaments in the European Union that is appended to the Amsterdam Treaty, and which was not changed by the Nice Treaty, the new draft Protocol on the role of national Parliaments – which is annexed to the draft Constitutional Treaty – no longer specifically mentions the right of COSAC to examine any legislative proposal or initiative

in relation to the establishment of an area of freedom, security and justice, or to make a contribution concerning the application of the principle of subsidiarity.

79. Instead, it assigns tasks of a more general nature to COSAC, in particular that of promoting the exchange of information and best practice between Member States' Parliaments and the European Parliament. In addition, COSAC may organise interparliamentary conferences to debate matters concerning the CFSP and ESDP. Giving COSAC this particular responsibility hardly seems sensible given that its specific role is to provide a forum for committees specialising in *Community* matters, whereas security and defence issues fall within the sphere of intergovernmental cooperation. So what is the solution?

80. We need a model which will give national Parliaments at the European level the working tools they require so as to be able, at the national level, to comply with their constitutional obligations in the three abovementioned areas. This implies a framework of permanent dialogue with the EU Council and of consultation among the national Parliaments. It is not sufficient to hold ad hoc conferences which would have no real political impact.

81. Cooperation between the national Parliaments and the European Parliament is indispensable if there is to be a permanent dialogue with the EU Council and the EU's other executive bodies. A number of different models are conceivable. Some propose, for example, setting up mixed interparliamentary institutions made up of European and national parliamentarians, but preference should be given to the creation of an Interparliamentary Forum composed of national parliamentarians; it should be organised in such a way as to be able to carry out all those tasks described above which fall within the sphere of intergovernmental cooperation. Why? Such a Forum should represent the interests of the national Parliaments and should therefore be independent of and complementary to the European Parliament in order to avoid any confusion about their respective responsibilities. In view of the consultative and complementary nature of the tasks carried out by the Forum, there would be no risk of it competing with the European Parliament. On the contrary, arrangements would need to be made for cooperation between the two bodies, including the possibility of their holding joint sessions. The Forum may eventually be able to take on the functions currently assigned to the Assembly of WEU and to COSAC, thus reducing the number of European institutions. Furthermore, a reference to the Forum should be included in all the articles of the draft Constitutional Treaty which make provision for the European Parliament to be informed and consulted.

82. All these factors point to the need for an amendment to the draft **Protocol on the application of the principles of subsidiarity and proportionality**, as follows:

At the end of paragraph 5 of the draft Protocol add the following sentence:

“On any matter concerning the application of the principles of subsidiarity and proportionality, the national Parliaments may, as necessary, consult each other within the Interparliamentary Forum of the European Union for which provision is made in the Protocol on the role of national Parliaments in the European Union.”

83. In addition, section II of the draft Protocol on the role of national Parliaments in the European Union should be amended as follows:

CURRENT TEXT	PROPOSED TEXT
<p>II. Interparliamentary cooperation</p> <p>9. The European Parliament and the national Parliaments shall together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the European Union.</p> <p>10. The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Contributions from the Conference shall in no way bind national Parliaments or prejudice their positions.</p>	<p>II. Interparliamentary cooperation</p> <p>9. UNCHANGED</p> <p>10. The national Parliaments of the Member States shall organise their cooperation in an Interparliamentary Forum of the European Union whose composition, which shall include parliamentarians from all the WEU nations, and whose working methods they shall decide.</p> <p>The Interparliamentary Forum shall be the network for consultation among the national Parliaments on any matter concerning the application of the principles of subsidiarity and proportionality.</p> <p>The Interparliamentary Forum shall moreover hold a consultative dialogue with the executive bodies of the European Union on topics that are the subject of intergovernmental cooperation, and in particular matters of common foreign and security policy and of common security and defence policy, on the basis of an annual report from the Council transmitted simultaneously to both the Interparliamentary Forum and the European Parliament.</p> <p>11. The Interparliamentary Forum, in which the national Parliaments' committees specialising in Community affairs shall also be represented, may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission.</p> <p>The Forum shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees.</p> <p>It may also organise interparliamentary conferences on specific topics. (18 words deleted)</p> <p>Contributions from the Forum shall in no way bind national Parliaments or prejudice their positions.</p> <p>The Interparliamentary Forum and the European Parliament shall together determine the practical arrangements of their cooperation.</p>

**IV. The consequences for WEU, and the WEU Assembly,
of EU and NATO enlargement and of the adoption of the Constitutional Treaty**

84. The present situation is characterised by the fact that all the countries which have acceded to the European Union and/or NATO fulfil the criteria laid down by WEU for accession to the modified Brussels Treaty, or for a change of status within WEU. These criteria were determined by the Declaration on WEU enlargement adopted by the member countries at the Maastricht Summit on 10 December 1991²³. In its reply to Written Question 383, the WEU Council again confirmed the validity of the Declaration while making clear in its reply to Recommendation 721 that did not intend to “anticipate any official *démarche* either by one or more of the countries concerned requesting a change of status or by third countries expressing an interest in WEU”.

85. According to the criteria laid down in the December 1991 Declaration, eight countries meet the conditions for accession to the modified Brussels Treaty and for becoming WEU full members because they have joined both the EU and NATO. Those countries are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. Bulgaria and Romania, as new NATO members, meet the criteria for becoming WEU associate members. Lastly, Cyprus and Malta, as new members of the European Union, may choose to acquire observer status in WEU.

86. However, it would appear that the governments of the signatory states of the modified Brussels Treaty reckon by and large that now is the time to start implementing the build-down of WEU and its Treaty in their entirety to avoid having to deal with the firm resolve of some of the new EU and NATO members to accede to WEU. In the opinion of some member governments, this process could lead to an “untimely revival” of WEU, which has, in their view, become devoid of substance.

87. In fact, at the Brussels European Council on 25-26 March 2004, the heads of state and government of the European Union member states agreed to resume the Intergovernmental Conference. They also decided that they would adopt the draft Constitutional Treaty no later than the EU summit meeting to be held on 17-18 June 2004. If the formal signing ceremony takes place in 2004, it can be assumed that the earliest date for the entry into force of the Constitutional Treaty will be in 2006 once the ratification procedure has been completed in all the member states, some of which plan to hold a referendum on the Treaty.

88. This means that the WEU Council is faced with a number of options: in the first instance, its members will have to decide whether they consider the provisions on security and defence in the Constitutional Treaty as signed to be sufficient to replace the modified Brussels Treaty – and in that case they may decide to denounce the latter – or whether they wish to leave it to each signatory state to take an individual decision to that end in pursuance of Article XII, which gives each contracting party the possibility of withdrawing from the Treaty after the expiry of a period of fifty years from the date of its entry into force.

89. But even if all the governments represented in the WEU Council were to agree that the Constitutional Treaty renders the modified Brussels Treaty obsolete, they would have to decide whether to wait until the EU Treaty enters into force before denouncing the WEU Treaty, or whether the crucial date is that of the signature of the Constitutional Treaty.

90. As far as the Assembly is concerned, there are some fundamental omissions in the Constitutional Treaty: first because the mutual defence clause it proposes is not binding to the same extent as Article V of the modified Brussels Treaty, and secondly, because it does not establish a requirement for cooperation with NATO or make provision for an appropriate collective involvement

²³ The text of which reads as follows: “States which are members of the European Union are invited to accede to WEU on conditions to be agreed in accordance with Article XI of the modified Brussels Treaty, or to become observers if they so wish. Simultaneously, other European member States of NATO are invited to become associate members of WEU in a way which will give them the possibility of participating fully in the activities of WEU”. According to the “Cahen doctrine” (developed by a former WEU Secretary-General), NATO membership is one of the conditions for EU member states to accede WEU.

of the national parliaments in the ESDP decision-making process that is equivalent to the role the Assembly has in WEU. It is for that reason that the Assembly would once again urge all the signatories of the modified Brussels Treaty to keep it in force and indeed invite any European countries fulfilling the Maastricht criteria to accede to the Treaty. Above all, they should not attempt to dissuade such countries from joining WEU and acceding to its treaty or from embarking on the formal application procedure with a view to obtaining a status in WEU or modifying their current status stemming from the WEU Declaration of 10 December 1991.

91. Irrespective of the decision the signatory states and the WEU Council take about the future of the modified Brussels Treaty, they will have to take account of the situation that will prevail during the period of ratification of the Constitutional Treaty, which could take several years. In view of these uncertainties, the Council and all the WEU member countries would be well-advised not to take premature steps in a direction that could affect full application of the modified Brussels Treaty and the functioning of WEU as organisation. In this connection, it should be also born in mind that it is through WEU and its Assembly that a number of European countries which remain outside the European Union, such as Iceland, Norway, Turkey and (until 2007) Bulgaria and Romania are able to be directly involved in European security and defence policy.

92. Furthermore, the Council should decide as rapidly as possible whether, in the light of the European Commission's recommendation to the EU Council to start negotiations with Croatia with a view to that country's accession to the European Union, the time has not now come to grant Croatia the status of associate partner in WEU

93. The Assembly too is faced with a difficult choice in that as of 1 May 2004 the eight countries referred to earlier, all of which are now members of both the EU and NATO, are all represented with full rights in the European Parliament. But how is the collective participation of their national parliamentarians in the activities of the CFSP and ESDP to be preserved if the WEU Council does not apply the WEU Declaration of 10 December 1991 as it concerns those countries, that is to say, if it does not invite them to accede to WEU and its treaty?

94. Would it be possible for the Assembly, if it deemed it necessary, to take an autonomous decision and offer the parliamentary delegations of the eight countries in question the same rights in the Assembly as those enjoyed by the delegations of the signatory states to the modified Brussels Treaty? Article IX of the Treaty and Article II (a) of the Charter of the Assembly stipulate that the Assembly is composed exclusively of representatives of the Brussels Treaty powers to the Consultative Assembly of the Council of Europe. If the WEU Assembly decided to accord full rights to the delegations of the eight new EU and NATO member states without the countries themselves having been invited by the Council to accede to the Treaty, some of them might reproach the Assembly for not having complied with either the letter of the Treaty or its own Charter.

95. However, the procedure provided for in the WEU Declaration of 10 December 1991 concerns not only the WEU Council but WEU as a whole and therefore its Assembly. Moreover, in its reply to Recommendation 721, the Council confirmed that "since the Assembly decides on its political agenda, it may agree to adjust its practices to take into account the wish of national parliaments of third countries to establish a working relationship". It may therefore be conceivable for the Assembly to amend its Charter by including in the preamble a reference to the Declaration by the WEU member states of 10 December 1991 and inserting in Article II a new paragraph which could read as follows:

"The Assembly shall admit delegations of representatives and substitutes from the parliaments of each state which fulfils the conditions to be invited to accede to WEU in pursuance of the decisions taken by the High Contracting Parties to the modified Brussels Treaty and set out in the Declaration on Western European Union of 10 December 1991, and shall grant them prerogatives similar to those granted to the delegations of the member states".

At the same time, cases in which it would be appropriate to envisage an exception to this rule would have to be examined. It is unlikely, for instance, that the members of the delegations concerned would be able to have the right to be members of the Bureau of the Assembly or that of its committees.

96. In acting in this way, the Assembly – while complying with the provisions of Article IX of the modified Brussels Treaty – would be drawing the logical conclusions of EU and NATO enlargement as foreseen in the WEU Declaration of 10 December 1991. However, the political, legal and financial implications clearly have to be studied first. In political terms such a decision would not only be justified but is even necessary given that the Assembly's rationale is not to refuse the parliaments and parliamentary delegations of the new EU and NATO member states rights enjoyed by the other delegations. But until those countries accede to the modified Brussels Treaty there is no legal basis for inviting them to send to the Assembly delegations identical to those they appoint to the Parliamentary Assembly of the Council of Europe. They should therefore be invited to appoint national delegations according to the criteria which apply to the Council of Europe Assembly, particularly as regards the number of representatives and substitutes, but they should be free to choose the membership of their delegations.

97. The financial implications of members of the delegations concerned having full rights of participation in the Assembly's work could pose a problem: for example, the cost of study visits by a Rapporteur belonging to such a delegation would have to be met. Any procedure for requesting the delegations concerned to make budgetary contributions to the Assembly could run into serious legal problems and should therefore be studied carefully by the appropriate committee.

98. The Assembly should in any event avoid taking any action which might result in the parliaments of the countries concerned losing interest in full participation in its work. Such interest could in the first instance take the form of their members taking part in debates in the Assembly's committees and plenary sessions on developments in the ESDP and in NATO on the basis of the Council's annual report, or receiving information from ministers attending sessions and colloquies, or again attending the joint meetings the Assembly holds with the WEU Permanent Council/EU Political and Security Committee and the North Atlantic Permanent Council.

99. The implications of the procedure proposed above were discussed at the previous meeting of the Political Committee and widely supported. Encouraged by that discussion, your Rapporteur is putting forward the specific proposals set out in the preliminary draft decision. Appropriate amendments to the Assembly's Charter and Rules of Procedure are also to be drafted to take account of the interests of Bulgaria and Romania as new members of NATO and of Cyprus and Malta as new members of the European Union.

V. Conclusions

100. During the second half of this year the European Security and Defence Policy will be faced with a number of challenges. To begin with, the leaders of the enlarged European Union will have to make sure that the provisions in the draft Constitutional Treaty concerning this area are formulated in such a way that they bring real added value to European security once they have been adopted by the Intergovernmental Conference. This means that all the member states will not only have to make an unambiguous commitment to guarantee the security of their citizens, but also that they will have to demonstrate their political will to overcome differences in national policies with a view to reaching agreement on a common policy at 25.

101. Another challenge concerns the importance of ensuring that while the EU develops an autonomous decision-making capacity, European policy continues to be closely coordinated with transatlantic policy. That will depend in the first instance on how future relations between the EU and NATO develop. It is clear that whereas the draft Constitutional Treaty does not make any provision for a legal basis for cooperation with NATO, such cooperation plays an important role in the European Security Strategy. The manner in which common European positions will henceforth be defended within the framework of the Atlantic Alliance will be of crucial importance for the latter's future. But conversely, the way in which the Alliance continues to assert itself in crisis management and in the development of its military assets will have a significant impact on the development of the ESDP and the EU member states' commitment to it. There is still a danger of a divergence between the policies pursued by the EU on the one hand and NATO on the other.

102. The threats and risks confronting European and international security, as reflected notably in new types of international terrorism, the proliferation of weapons of mass destruction and failed states, require swift implementation of the European Security Strategy with the support of public opinion. That support will not be forthcoming without a public debate and permanent dialogue with European decision-makers. In that process the national parliaments must continue to be involved both collectively and individually.

103. However, the national parliaments stand to lose most in the process of European integration which, according to the draft Constitutional Treaty, will in future be dominated by the two heavyweight executive powers, i.e. the governments and the Commission. Care therefore needs to be taken to ensure that the parliamentary dimension, which lies solely with the European Parliament, is strengthened by an interparliamentary body made up of members of the national parliaments, which – in parallel with the European Parliament – would be consulted and kept informed about all the areas covered by intergovernmental cooperation.

104. Finally, given the uncertainty surrounding the content of the provisions on defence in the draft Constitutional Treaty and the entry into force of the adopted text, it is not yet time to put an end to the modified Brussels Treaty, which continues to be indispensable for security in an enlarged and reunified Europe, and to which any interested new EU member states should be able to accede. As far as the WEU Assembly is concerned, it will – in the absence of any decision to the contrary – continue to be the only interparliamentary assembly in which representatives of the national parliaments of all the EU and European NATO member states but also of third countries can exchange information, consult each other and become familiar with the issues covered by the European Security and Defence Policy. As such it will continue to be the only link with European decision-makers and the citizens of the EU member states. What it has achieved must be preserved.

APPENDIX

**DRAFT TREATY ESTABLISHING A CONSTITUTION FOR EUROPE –
PROVISIONS ON THE COMMON SECURITY AND DEFENCE POLICY**

Proposal from the Presidency to the IGC, 9 December 2003

EXTRACTS

Permanent structured cooperation

Article I-40 (6)

Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article III-213. It shall not affect the provisions of Article II-210.

Article III-213

1. Those Member States which wish to participate in the permanent structured cooperation defined in Article I-40(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation shall notify their intention to the Council and to the Union Minister for Foreign Affairs.
2. Within three months following such notification, the Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating member States. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs.
3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs. The Council shall adopt a European decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol referred to in paragraph 1. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only Members of the Council representing the participating Member States shall take part in the vote. A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, comprising at least three fifths of the population of those Member States.
4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol mentioned in paragraph 1, the Council may adopt a European decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only Members of the Council representing the participating Member States, with the exception of the Member State in question²⁴, shall take part in the vote. A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, with the exception of the Member State in question, comprising at least three fifths of the population of those Member States²⁵.

²⁴ Usual procedure which appears throughout the Constitution. Moreover, Article III-213(3) should be mentioned in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.

²⁵ Usual procedure: the representative in the Council of the Member State “in question” does not usually participate in the vote (see EMU, sanctions, withdrawal).

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The European decisions and recommendations by the Council adopted within the framework of structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

**Protocol on permanent structured cooperation
established by Articles I-40(6) and III-213 of the Constitution**

THE HIGH CONTRACTING PARTIES,

Having regard to Articles I-40(6) and III-213 of the Constitution,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States.

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on assets civil and military; that the Union may use such assets on missions referred to in Article III-210 outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member State in accordance with the principle of a single set of forces;

RECALLING that the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States;

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework;

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements;

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community;

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter;

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities;

CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned;

RECALLING the importance of the Minister for Foreign Affairs being fully involved in proceedings relating to permanent structured cooperation;

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

Article 1

The permanent structured cooperation referred to in Article I-40(6) of the Constitution shall be open to any Member State which undertakes, from the date of entry into force of the Treaty establishing a Constitution for Europe, to:

- (a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the European agency in the field of defence capabilities development, research, acquisition and armaments²⁶ (hereinafter referred to as the “Agency”) 2, and
- (b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as combat formations, with support elements including transport and logistics, capable of carrying out the tasks referred in Article III-210, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

To achieve the objectives laid down in Articles 1 and 2, Member States participating in permanent structured cooperation shall undertake to:

- (a) cooperate, as from the entry into force of the Treaty establishing a Constitution for Europe, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives in the light of the security environment and of the Union's international responsibilities;
- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- (c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;
- (d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within NATO, the shortfalls perceived in the framework of the “Capability Development Mechanism”²⁷;
- (e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the Agency.

²⁶ Precise name of this Agency as approved in Council Decision 2003/834/EC of 17 November 2003 creating a team to prepare for the establishment of the agency in the field of defence capabilities development, research, acquisition and armaments (OJ L 3 18, 3.12.2003, p. 19).

²⁷ This paragraph has been restructured for the sake of clarity.

Article 3

The Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established *inter alia* on the basis of Article 2, and shall report on them at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article III-213 of the Constitution.

DRAFT RESOLUTION***on the European Security and Defence Policy following EU and NATO enlargement***

The Assembly,

- (i) Recalling its contributions to the Convention on the Future of Europe and the Intergovernmental Conference, and in particular Assembly Resolutions 109, 115 and 117;
- (ii) Conscious of its responsibility and experience as the first Interparliamentary European Security and Defence Assembly;
- (vi) Deeming it essential, in order to bring real added value to security in Europe, to amend the provisions of the draft Constitutional Treaty concerning defence and the collective participation of the national parliaments in those European Union activities falling within the sphere of intergovernmental cooperation as currently proposed by the Intergovernmental Conference,

STRONGLY URGES THE HEADS OF STATE AND GOVERNMENT OF THE COUNTRIES PARTICIPATING IN THE INTERGOVERNMENTAL CONFERENCE TO:

1. Adopt wording equivalent to that contained in the modified Brussels Treaty in the provisions of the draft Constitutional Treaty concerning the mutual defence obligation;
2. Envisage a provision on defence cooperation between the EU and NATO, and amend Article III-229 of the draft Constitutional Treaty by including NATO among the international organisations referred to;
3. Specify the content of the military guarantee of the mutual defence commitment to those member states which are not part of the Atlantic Alliance;
4. Re-word paragraph II.9 of the draft Protocol on the role of national parliaments in the European Union to read as follows:

“II. Interparliamentary cooperation

9. The national Parliaments of the Member States shall organise their cooperation within the European Union in a European Interparliamentary Forum whose composition and working methods they shall decide. This Forum shall hold a consultative dialogue with the executive bodies of the European Union on topics that are the subject of intergovernmental cooperation, and in particular matters of common foreign and security policy and of common security and defence policy, on the basis of an annual report from the Council transmitted to both the Forum and the European Parliament. The European Interparliamentary Forum and the European Parliament shall together determine the practical arrangements of their cooperation.”
5. Delete, in paragraph II.10 of the draft Protocol, the words “in particular to debate matters of common foreign and security policy and of common security and defence policy”;
 6. Include the European Interparliamentary Forum in all the articles of the draft Constitutional Treaty which make provision for the European Parliament to be informed and consulted.

AMENDMENTS 1-3²⁸

tabled by Mr van Winsen

AMENDMENT 1

1. Replace paragraph 4 of the draft resolution proper with the following:

“Re-word paragraph II.10 of the draft Protocol on the role of national Parliaments in the European Union to read as follows:

‘10. The national Parliaments of the Member States shall organise their cooperation in an Interparliamentary Forum of the European Union whose composition, which shall include parliamentarians from all the WEU nations, and whose working methods they shall decide.

The Interparliamentary Forum shall be the network for consultation among the national Parliaments on any matter concerning the application of the principles of subsidiarity and proportionality.

The Interparliamentary Forum shall moreover hold a consultative dialogue with the executive bodies of the European Union on topics that are the subject of intergovernmental cooperation, and in particular on matters of common foreign and security policy and of common security and defence policy, on the basis of an annual report from the Council transmitted simultaneously to both the Interparliamentary Forum and the European Parliament.”

AMENDMENT 2

2. Replace paragraph 5 of the draft resolution proper with the following:

“Add in paragraph II of the draft Protocol on the role of national Parliaments in the European Union a new subparagraph 11 to read as follows:

‘11. The Interparliamentary Forum, in which the national Parliaments’ committees specialising in Community affairs shall also be represented, may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission.

The Forum shall in addition promote the exchange of information and best practice between Member States’ Parliaments and the European Parliament, including their special committees.

It may also organise interparliamentary conferences on specific topics.

Contributions from the Forum shall in no way bind national Parliaments or prejudge their positions.

The Interparliamentary Forum and the European Parliament shall together determine the practical arrangements of their cooperation.”

AMENDMENT 3

3. After paragraph 5 of the draft resolution proper, add a new paragraph as follows:

“Add the following sentence to the end of paragraph 5 of the draft Protocol on the application of the principles of subsidiarity and proportionality:

‘On any matter concerning the application of the principles of subsidiarity and proportionality, the national Parliaments may, as necessary, consult each other within the Interparliamentary Forum of the European Union for which provision is made in the Protocol on the role of national Parliaments in the European Union.”

Signed: Van Winsen

²⁸ See 5th sitting, 4 June 2004 (amendments adopted).

