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European security policy fifty years after the signing of the  
modified Brussels Treaty – reply to the annual report of the Council

**REPORT**

submitted on behalf of the Political Committee  
by Mr Nazaré Pereira, Rapporteur (Portugal, Federated Group)

ASSEMBLY OF WESTERN EUROPEAN UNION  
THE INTERPARLIAMENTARY EUROPEAN SECURITY AND DEFENCE ASSEMBLY  
43, avenue du Président-Wilson, 75775 Paris Cedex 16  
Tel. 01.53.67.22.00 – Fax: 01.53.67.22.01  
E-mail: [info@assembly.weu.int](mailto:info@assembly.weu.int)  
Internet: <http://assembly.weu.int>

*European security policy fifty years after the signing of the  
modified Brussels Treaty – reply to the annual report of the Council*

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*submitted on behalf of the Political Committee<sup>2</sup>  
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TABLE OF CONTENTS

RECOMMENDATION 749

on European security policy fifty years after the signing of the modified Brussels Treaty –  
reply to the annual report of the Council

ORDER 120

on European security policy fifty years after the signing of the modified Brussels Treaty –  
reply to the annual report of the Council

EXPLANATORY MEMORANDUM

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- I. Introduction
- II. The 50th anniversary of the modified Brussels Treaty
- III. Preserving instruments and commitments in order to deal with unforeseen events
- IV. The EU's activities in the areas inherited from WEU– results and prospects
- V. The collective participation of the national parliaments in the ESDP: building on the  
Assembly's experience of fifty years
- VI. Conclusions

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<sup>1</sup> Adopted unanimously by the Committee on 8 November 2004.

<sup>2</sup> *Members of the Committee:* Mr Agramunt (Chairman); MM Pangalos, Hancock (Vice-Chairmen); MM André, de Assis, Mrs Azevedo, Mrs Bolognesi, Mr Dees, Mrs Durrieu, MM Goerens (Alternate: *Glesener*), Goutry, *Höfer*, Hörster, Landrain, van der Linden, Lintner, Masseret, Meimarakis, *Nazaré Pereira*, Mrs Paoletti Tangheroni (Alternate: *Zacchera*), Mrs Papadimitriou, MM Piscitello, Provera, Puche Rodríguez, *de Puig*, Rizzi, Rochebloine, Roth, Mrs Serna Masiá, Mr van Thijn, Ms Tritz, Lord Tomlinson, MM Versnick, Vis, *Wilkinson*, N... , N...

*Affiliate members:* Mrs Dubovská, Mr Hegyi, Mrs Herczog, MM Kaminski, Kasal, Kobielus, Ms Maripuu, MM Nemeth, Partljic, Pelc, *Sinkevicius*, Strazdins, N..., N ..., N...

*Associate members:* MM Akçam, Ates, Benediktsson, Çavusoglu, Livanelli, Marthinsen, Width.

*Affiliate associate members:* MM Dumitrescu, Roman, Timis, Tzekov, N...

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

**RECOMMENDATION 749<sup>1</sup>**

***on European security policy fifty years after the signing of the modified Brussels Treaty – reply to the annual report of the Council***

The Assembly,

- (i) Noting with satisfaction that, with the signature of the Treaty establishing a Constitution for Europe, many of the aims defined fifty years ago by the Paris Agreements modifying the Brussels Treaty with a view to promoting the unity and encouraging the progressive integration of Europe have been achieved, marking the culmination of a half-century of efforts by the member states of WEU;
- (ii) Welcoming the new prospects that have been opened up in the fight against international terrorism by the inclusion of a solidarity clause in the Constitutional Treaty and the decision of the European Council to act from now on in keeping with the spirit of that clause;
- (iii) Noting with interest that the Constitutional Treaty offers the WEU countries the possibility of participating in missions conducted by a group of member states and in the various forms of structured and enhanced cooperation in the area of the ESDP;
- (iv) Strongly hoping that the European Union will offer to all non-EU European NATO member states an associate status within the ESDP that will enable them to participate fully in all activities planned in this area, including structured and enhanced cooperation projects, as well as in the decision-making process;
- (v) Considering, on the one hand, the EU's loftier ambitions of becoming a global player – which necessarily exposes its member states to increased risks – and on the other hand, the unforeseeable dangers and threats arising out of the existence, development and proliferation of weapons of mass destruction (WMD) and their means of delivery;
- (vi) Convinced therefore of the need to maintain an unconditional security guarantee in the form of a binding mutual assistance commitment in the area of defence, such as that contained in Article V of the modified Brussels Treaty;
- (vii) Noting that the provisions on common security and defence policy in the Treaty establishing a Constitution for Europe contain no such binding commitment or any military guarantee as to the security and territorial integrity of those European Union member states that are not members of the Atlantic Alliance;
- (viii) Recalling that neither does the Constitutional Treaty make provision for cooperation between the European Union and NATO, and that the confidential “Berlin plus” arrangements, which are confined to specific aspects of crisis management, cannot replace a more general treaty-based agreement conducive to the development of a climate of trust and cooperation between the two organisations in areas of mutual interest and in the interests of European security;
- (ix) Regretting that the Constitutional Treaty makes no provision for any obligation on the part of the EU Council to engage in an institutional dialogue in the area of the ESDP with a body composed of representatives of the national parliaments, despite the fact that the latter have the task of scrutinising the policy of their respective governments, which in most cases is based on decisions taken at European level, and of voting their budgetary allocations for defence;
- (x) Noting that there is for the moment no consensus within the Council on the consequences for the future of the modified Brussels Treaty of the entry into force of the Constitutional Treaty;
- (xi) Recalling in that regard the arguments put forward in Recommendation 748, which strengthen the Assembly's conviction that the modified Brussels Treaty remains an essential part of European security;

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<sup>1</sup> Adopted by the Assembly on 29 November 2004 at the 6<sup>th</sup> sitting.

(xii) Deploring the Council's persistent refusal to offer all new EU and/or NATO member states that are prepared to expose themselves without reservation to the increased risks linked with ESDP missions the possibility of acceding to the modified Brussels Treaty in order to benefit from Article V, or of changing their status within WEU, despite the fact that those countries meet the criteria defined by the WEU member states in December 1991;

(xiii) Noting that the EU heads of state and government have appended to the Constitutional Treaty a protocol in which the EU and WEU are invited to draw up arrangements for improving cooperation between themselves;

(xiv) Extremely disappointed at the scant contents of the first part of the 50th annual report of the Council to the Assembly and of its replies to Recommendations 742 to 748, which cannot be deemed to comply with the institutional obligations placed on the Council by Article IX of the modified Brussels Treaty,

#### RECOMMENDS THAT THE COUNCIL

1. Maintain the modified Brussels Treaty and fully apply its provisions, including those whereby interested countries may be invited to subscribe to it for as long as the European Union has neither the legal means nor the equivalent instruments necessary for replacing the Treaty and all the organs of WEU;
2. Keep the promise made in its reply to Recommendation 736, in which it states that "as in the past, the Council will 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 (...) in the context of the progress being made in the Common Security and Defence Policy of the European Union";
3. Reply to paragraphs 6 to 8 of Recommendation 748;
4. Encourage all WEU member states to participate in the structured and enhanced cooperation provided for in the Constitutional Treaty and be prepared to propose WEU as the most suitable framework for such cooperation projects and their parliamentary scrutiny, given the protection provided by the mutual defence commitment contained in the modified Brussels Treaty;
5. Inform the Assembly of the way in which it intends to implement the protocol on cooperation arrangements between the European Union and WEU appended to the Constitutional Treaty;
6. Make efforts within the European Union to ensure that all European NATO member states that are not members of WEU, such as Bulgaria, Iceland, Norway, Romania and Turkey, are able to be participate fully in the ESDP and in enhanced and structured cooperation projects, as well as in the activities of the European Defence Agency;
7. Launch within the EU a study on the evolution and scope of the right of individual and collective self-defence in the context of the preventive engagement proposed by the European Security Strategy and of the "projection of stability" doctrine developed within NATO;
8. Inform the Assembly about the ESDP Action Plan on Combating Terrorism and more particularly about the content of the Conceptual Framework for the ESDP and Terrorism;
9. Support the Assembly more vigorously in its efforts to seek, together with the governments concerned and with other interparliamentary bodies, between now and the entry into force of the Constitutional Treaty, an appropriate solution for the collective participation of the representatives of the national parliaments in all ESDP activities that the European Union inherited from WEU.

**ORDER 120<sup>2</sup>**

***on European security policy fifty years after the signing of the  
modified Brussels Treaty – reply to the annual report of the Council***

The Assembly,

- (i) Recalling Decision 27 to study the possibility of granting voting rights in committees to parliamentary delegations of observer countries;
- (ii) Considering that when the Amsterdam Treaty was signed, the WEU member states undertook, in their Declaration of 22 July 1997, to develop the rights of observer countries like Austria, Denmark, Finland, Ireland and Sweden so as to enable them to participate fully and on an equal footing in WEU planning and decision-taking for operations to which they contributed and to strengthen their participation in WEU's activities;
- (iii) Recalling that since the entry into force of the Nice Treaty, all the abovementioned WEU observer countries except Denmark have been participating fully in all ESDP activities that the EU inherited from WEU;
- (iv) Considering that since 1 May 2004, Cyprus and Malta have been members of the European Union and that with Decision 27, the Assembly granted the parliamentary delegations of those two countries prerogatives similar to those of delegations with a permanent observer status;
- (v) Recalling that with the exception of Denmark, none of the abovementioned countries is a member of the Atlantic Alliance and hence able to participate in the collective defence efforts;
- (vi) Convinced that it is desirable to strengthen the possibilities for participation by the parliamentary delegations of the countries concerned in the Assembly's activities in all areas of the ESDP;
- (vii) Considering that granting those delegations voting rights in committees is an essential and appropriate way of taking better account of their views in the Assembly's work,

INVITES THE COMMITTEE ON RULES OF PROCEDURE AND PRIVILEGES

To draw up the necessary arrangements for granting the parliamentary delegations of Austria, Cyprus, Denmark, Finland, Ireland, Malta and Sweden voting rights in committees.

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<sup>2</sup> Adopted by the Assembly on 29 November 2004 (6<sup>th</sup> sitting)

## EXPLANATORY MEMORANDUM

*submitted by Mr Nazaré Pereira, Rapporteur (Portugal, Federated Group)*

### *I. Introduction*

1. Two events in autumn 2004 provided the Assembly with an occasion to reflect on European security and defence policy: the first was the celebration on 23 October of the 50<sup>th</sup> anniversary of the signing of the modified Brussels Treaty, and the second was the formal signature of the Treaty establishing a Constitution for Europe by the 25 EU governments in Rome a week later on 29 October.
2. Thus the signing of the EU Treaty came more or less exactly fifty years after the first initiative that was taken by the western European countries in order to promote the unity and encourage the progressive integration of Europe and to pledge mutual assistance by means of a binding treaty bringing together countries which had pursued radically different policies and even opposed each other in two world wars. We have come a long way since then: no-one could have imagined fifty years ago that the majority of European countries would come together in a single structure for peace, freedom, cooperation and integration.
3. Nevertheless, although the traditional threats faced by Europe and its citizens during the cold war era have disappeared, the hopes of quickly establishing a new global order based on peace, security and the rule of law have not yet been fulfilled. In addition to the numerous regional conflicts with which it has been confronted for many years in the Balkans, Middle East, Caucasus, Africa, Central Asia and elsewhere, the international community now also faces new overriding challenges from threats such as that of international terrorism and the proliferation of weapons of mass destruction.
4. Many people, convinced of the need for new responses to those challenges, are calling for a fundamental revision of the concepts that traditionally have guaranteed Europe's security. The European Union, which for the first time has adopted its own security strategy, is endeavouring to define such new responses, while the EU Constitutional Treaty contains highly detailed provisions on the common security and defence policy designed to give European leaders the tools they need to put those common responses into practice and meet the new challenges.
5. One important point should be made clear, however. The experience of two world wars and the threat of East-West confrontation during the cold war period were instrumental in shaping a common European defence strategy on the basis of the modified Brussels Treaty and in developing the United States' determination to link its security, through the Atlantic Alliance, with that of an equally determined Europe. The new threats and challenges to American and European security seem, on the contrary, to be generating differences or outright divisions not only between the two sides of the Atlantic, but also among the European states themselves.
6. As the example of Iraq shows, there is a danger that those divisions will spread or deepen at a time when the EU member states have ambitions of making the Union a global player or even a genuine world power. Moreover, as brought home by the discussions on the Constitutional Treaty, the member states have such widely varying positions in the most sensitive areas of security – particularly those with military or defence implications – that it was necessary to insert special provisions into the Treaty enabling groups of states to take action by themselves in the framework of “structured” or “enhanced” cooperation projects.
7. Other problems are hampering Europe's ambitions of becoming a credible power: only a minority of EU member states has the will or the means to contribute to the necessary strengthening of the Union's operational military capabilities. The aim of the European Council's decision to set up a European Defence Agency is to assist the member states in their efforts to improve the EU's military capabilities in the field of crisis management, but the success of that undertaking will depend on the willingness of the member states to make real efforts in that area.
8. Regarding Europe's role in the world, clearly the ambitions of the western European countries that agreed to sign up to binding mutual defence arrangements were much more modest fifty years

ago. The countries concerned were fully aware that the path towards European unity and progressive integration would be a long and difficult one and that it was too soon to embark on the adventure of establishing a common foreign and security policy. Only in the area of collective defence was there a “hard core” of western European countries prepared to sign up to unconditional mutual assistance clauses.

9. Today Europe’s ambitions go much further, yet at the same time most of the governments concerned appear to be convinced that there is no longer a need for a mutual assistance clause as binding as that of Article V of the modified Brussels Treaty. The reasons they give are first of all that the traditional threat of wars of aggression no longer exists in Europe and secondly, that the traditional mutual assistance clauses are not adapted to the new challenges.

10. A number of countries have put forward a third argument, which is that the Atlantic Alliance – thanks to the NATO integrated forces and the American superpower’s commitment to European security – is enough on its own to guarantee Europe’s defence.

11. The first experience of invoking Article 5 of the Washington Treaty following the terrorist attacks of 11 September 2001, not to mention the internal arguments within NATO about the nature of the Allies’ obligations vis-à-vis Turkey following the American and British intervention in Iraq, supported the arguments of those who doubted the capacity of the Atlantic Alliance as it stands today to show the cohesion needed during a major crisis. It should be recalled in that context that the United States recently announced its intention to drastically reduce its military forces in Europe by 2010.

12. The growing rift between the European and American allies and even more, the widening gap between US and European military capabilities, have damaged the cohesion of the Alliance in the field of international crisis management. While the United States increasingly advocates a doctrine in which it is no longer the Alliance that determines the mission, but rather the mission that determines the coalition and its various configurations, there are some countries in Europe that favour a direct dialogue between the EU and the US– in other words outside NATO – in the area of security.

13. Hence we have a situation in which EU member states, in keeping with their ambitions, are beginning to acquire the capabilities for conducting more demanding missions, including those with military implications, in order to respond to the new challenges. In so doing they are competing with a NATO that has undergone a fundamental transformation, from a collective defence organisation to one prepared to conduct crisis-management operations and combat international terrorism outside the geographic area defined by the Washington Treaty as the one in which the contracting parties’ obligations apply.

14. The Constitutional Treaty signed on 29 October 2004 by the EU heads of state and government reduces the mutual assistance obligation in the case of military aggression to a symbolic non-binding clause, while the main responsibility for collective defence is placed with the NATO allies. In response to the new terrorist threats, the Constitutional Treaty includes a new solidarity clause which makes any assistance by the member states contingent upon an explicit request from the political authorities of the state in which a terrorist attack occurs.

15. Finally, to make sense of the European Union’s action as a new global player, it is important to understand that its leaders’ aim is to promote an “integrated” or “multidimensional” approach, as emphasised by Javier Solana at the annual conference of the EU Institute for Security Studies in Paris on 9 September 2004. According to that doctrine, “sectoral” approaches that place the stress on military power, economic strength or ideological or cultural values alone cannot by themselves provide adequate solutions to international problems.

16. Several questions arise with regard to that scenario: (i) Do we still need a binding mutual defence clause in the traditional sense of the term or one adapted to the new unforeseeable threats? (ii) What priorities should we adopt in order to progress from statements of intent to action that will bring about a “more secure Europe in a better world”, to quote the European Security Strategy? (iii) Do the provisions of the EU Constitutional Treaty provide the full legal framework for the EU to take action in areas of external security? (iv) What are the consequences of that for the modified Brussels Treaty and for future cooperation within NATO? (v) What are the prospects for participation by non-EU

European NATO member states in the European Security and Defence Policy and EU-led missions?  
 (vi) How can the national parliaments and public opinion be more closely involved in common European security issues and (vii), what consequences does this have for future action by the Assembly?

## *II. The 50th anniversary of the modified Brussels Treaty*

17. Conferences organised by the Assembly and held on 20 October in Brussels<sup>3</sup> and 22 October in Paris, to mark the 50<sup>th</sup> anniversary of the modified Brussels Treaty, gave rise to some very helpful discussion of the ideas raised in the present report on the state of play with regard to European security at this historic moment, and likely future developments. It also provided an opportunity for the Assembly to affirm its role as an interparliamentary forum where representatives of national parliaments can participate actively in the security and defence debate in Europe by hearing the views of experts representing the civil and military structures of the European Union, NATO and WEU, and from the world of research and industry, and discussing those views directly with those concerned. These debates also provided answers, to a degree, to the questions raised in the foregoing paragraph.

18. This anniversary is also an opportunity for us to take stock of the institutional relationship between the WEU Council and the Assembly based on Article IX of the modified Brussels Treaty. This was indeed the purpose of the meeting the Presidential Committee and the Standing Committee held jointly, in Brussels, on 20 October 2004, with the WEU Permanent Council, the members of which are also their countries' representatives on the European Union's Political and Security Committee (PSC). These joint meetings between the committees of the Assembly and the WEU Permanent Council/PSC members have been an essential component of the institutional dialogue between the Assembly and the Council since 2001, the year in which the Council ceased to meet on a regular basis.

19. On this occasion, several factors gave the joint meeting with the members of the WEU Permanent Council a particular significance:

- Firstly, it was to provide an opportunity for frank discussion on member countries' intentions with regard to the future of the modified Brussels Treaty following the Chairmanship-in-Office's failure to issue a joint declaration by the WEU member states, on the occasion of the signing of the EU Constitutional Treaty in Rome, stating their intention to denounce the modified Brussels Treaty once the Treaty establishing a Constitution for Europe entered into force.
- That meeting was held the day following the issue (in advance of its official transmission) of the first part of the 50<sup>th</sup> annual report of the WEU Council to the Assembly for the period 1 January to 30 June 2004 and the Council's replies to Recommendations 742 to 748. The lack of substance in those replies and the fact of the annual report being limited to WEAG and WEAO activities certainly calls for discussion of the future application of Article IX of the modified Brussels Treaty and the Assembly's future role as the sole forum where national parliaments can obtain information directly on ESDP developments.
- Finally, a week before the joint meeting between the Committees and the Permanent Council, the Assembly was informed that the Council had decided to reappoint Javier Solana, the EU's High Representative for the CFSP, to the office of WEU Secretary-General, for three years as from 25 November 2004, with a possible extension of two further years.

20. It emerged from the statement made by the Netherlands Ambassador representing the Council Chairmanship-in-Office at the joint meeting with the committees that the reason why the Council had

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<sup>3</sup> Brussels, 20 October 2004 at the Belgian Senate: "From collective to common defence? European security and defence in the age of international terrorism". Paris, 22 October 2004, Palais du Luxembourg (Senate) "The European Security and Defence Policy: achievements and future developments arising from the draft Constitutional Treaty".

not acted upon the Presidency proposal that member states agree to denounce the modified Brussels Treaty when the Treaty establishing a Constitution for Europe took effect was because there was no common position within the Council on what was to become of the WEU Treaty. When Assembly members tried to obtain further information on the positions of the other governments concerned, the sole response was from the Italian government representative who stated that his country was not ruling out any option at the present stage and he therefore preferred to wait.

21. As there is no consensus within the Council on the Assembly's present role or its future, some grateful acknowledgement is due to the Chairmanship-in-Office of the Council for having provided detailed and substantial information at the joint meeting on all the aspects of the ESDP and its development that do not figure in the annual report, and for having replied to the parliamentarians' many questions. While such a pragmatic approach cannot replace the Council's duty to keep the Assembly informed through the annual report, it at least makes it possible in this period of transition for an in-depth dialogue to continue between the members of national parliaments represented in our Assembly and the government representatives responsible for dealing with such matters. There is no other body of national parliamentary representatives in which a dialogue of this nature can take place.

22. It is clear that the outstanding questions on the role of the Assembly with regard to ESDP matters continue to affect the content of the Council's replies to recommendations. Here, one positive aspect at least is apparent, as the Council, in its reply to Recommendation 742, notes with interest "the Assembly's recommendations, which Member States may keep in mind when discussing the various issues related to those proposals in the relevant fora". However, the Assembly cannot accept that the Council is not ready to take a position on recommendations directly concerning the application of the modified Brussels Treaty and the future of WEO.

23. This is more particularly the case with the reply to Recommendation 748 on "The European Security and Defence Policy following EU and NATO enlargement – reply to the annual report of the Council". This "reply" is merely a confirmation of the terms of its reply to Recommendation 745, which itself recalls the terms of the reply the Council gave on 1 October 2003 to the Assembly's Written Question 384 of 7 August 2003. In that earlier reply, while confirming the validity of the WEU Maastricht Declaration of December 1991, it states:

"The Council does not intend to take any initiative as regards accession to the modified Brussels Treaty or changes of status within the Group of 28 WEU countries until and unless it is seized of the matter through official démarches of the countries concerned requiring formal decisions".

24. The Council's reply to Recommendation 745 further adds that "Since then, this subject has not been on the WEU Council's agenda". Yet, replying to a question from Mr van Winsen at the meeting with the Permanent Council in Brussels, the representative of the Chairmanship-in-Office, while confirming the situation, made clear that, in his government's opinion, this was not "the right time" for changes in status. If there were any démarches to that effect, the Dutch government would oppose them.

25. Under these circumstances, what advice should be given to those European countries which might see an advantage in acceding to the modified Brussels Treaty or in changing their status in WEU? It is certainly in no one's interest to encourage a country to take such steps knowing that it would be bound to face a refusal from the Council. It will be up to WEU member countries, in the course of the process of ratification of the Constitutional Treaty, to take a decision about the future of the modified Brussels Treaty.

26. The question of further accessions to the Treaty will be dependent on that decision. Meantime, it is important that this option does not drop out of sight altogether. If the Council wants to avoid each individual signatory state taking its own decision, by exercising its right to put an end to the Treaty or not when the Constitutional Treaty comes into force, it should come to a common position on the matter "in due time" as it states in its reply to Recommendation 732.

27. But Recommendation 748 contains other key elements to which the Council has not replied. It is understandable that it does not yet have a position on the future of the modified Brussels Treaty and the Chairmanship-in-Office furthermore did give a degree of clarification in that regard at the meeting between the Permanent Council and the Presidential and Standing Committees. However, it is unacceptable for it not to have taken a position on those parts of Recommendation 748 concerned with making WEU's experience available to the European Union for developing constructive cooperation with NATO, proposing to the EU that it should establish a system of regular information and consultation with non-EU European NATO allies in a 25+5 framework and for developing a contribution to the European Union on the implications of possible reform of a country's right to individual and collective self-defence (Recommendation 748, paragraphs 6-8).

28. The Assembly can but reiterate here the terms of Recommendation 736 recommending that the Council provide more substantial replies to recommendations and written questions on subjects covered by the modified Brussels Treaty, even if those subjects are dealt with in other fora, and in particular in the European Union and NATO. Acting on such a request does not in any way prejudice how outstanding institutional questions may be dealt with in future but helps the national parliaments understand better and consequently support the action taken collectively by European governments – which should be in the interest of all concerned.

29. In its reply to Recommendation 736, the Council had promised to “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 (...) in the context of the progress being made in the Common Security and Defence Policy of the European Union”. Unfortunately the first part of the 50<sup>th</sup> annual report of the Council to the Assembly does not match up to that promise, being confined to a very brief summary of the problems relating to the future of WEAG and WEAO. This time the Chairmanship-in-Office has taken the decision to inform the parliamentarians about the development of the ESDP in the restricted framework of the joint meeting between Assembly committees and the Council. This can only be a one-off solution. The Assembly fervently hopes that the Council will continue to provide information on all aspects of ESDP developments and European Union relations with NATO in future annual reports, just as it did in the 49<sup>th</sup> annual report.

### *III. Preserving instruments and commitments in order to deal with unforeseen events*

30. The fact is that today, the political will of some member states to develop a binding common defence link in Europe is hampered by the long-term non-aligned stance adopted by a significant number of other EU member states that are not prepared to accept a commitment as binding as that of Article V of the modified Brussels Treaty.

31. An initiative taken by the Dutch Presidency of WEU with a view to issuing a joint declaration by the signatory states of the modified Brussels Treaty announcing their intention to denounce the Treaty once the EU Constitutional Treaty enters into force was not successful, because a number of governments felt that such a declaration was premature. Nevertheless, the widespread view is that the modified Brussels Treaty will become obsolete once the EU Constitutional Treaty enters into force.

32. At the joint meeting with the WEU Permanent Council on 20 October 2004 in Brussels, the Netherlands Ambassador, representing the Chairmanship-in-Office of the Council, said the mutual assistance clause as worded in Article I-41 (7) of the Constitutional Treaty reflected new thinking. Speaking at a conference in Brussels on the same day, Antonio Missiroli of the EU Institute for Security Studies offered the following explanation to help understand how the discussions had developed first in the European Convention and subsequently in the Intergovernmental Conference:

33. “The mutual defence clause was initially put forward by the Convention as referring to the case of a state being ‘the victim of an armed aggression against its territory’. It could be subscribed to on a voluntary basis and represent a specific form of ‘closer cooperation’ open to all. Accordingly, the ‘participating’ states would give the one under attack ‘aid and assistance by all the means in their power, military or other’, in line with the UN Charter and in cooperation with NATO. The new clause, however, soon raised old and new doubts over its strategic implications – from its decoupling potential (across the Atlantic as well as within Europe) to the status of the non-allied – and also got entangled in

the wider controversy over the so-called ‘Tervuren’ initiative of spring 2003. This led, in the subsequent IGC, to a partial rewriting of the clause whereby mutual defence would become binding for all – thus suppressing its voluntary character and ‘closer cooperation’ format – while contemplating explicit provisos for both NATO members and non-allied countries. Somewhat ‘neutralised’ in its impact, the revised clause eventually remained in the CTEU’s Article I-41 as a general objective of the Union.” Most authorities consider that this is sufficient in the changed political environment.

34. What is dangerous about that approach is that it signals a willingness to give up a solid guarantee of protection against unforeseeable risks which, while they may appear non-existent at present, could reappear in the future. Moreover, it is not reassuring to see that a minority of EU states that are not prepared to participate in a genuine collective defence are the ones to impose their position on the others, thereby weakening the basis for European security.

35. Thus it has become inevitable and indeed essential that we should answer the question of whether there is still a need for binding mutual collective defence arrangements, and even more importantly, whether we need military forces matching the corresponding threat. This question arises in particular with regard to the terrorist threat and that of weapons of mass destruction.

36. It is useful in that respect to study the five strategic scenarios set out in May 2004 under the auspices of the EU Institute for Security Studies by an independent group of experts in a document proposing the drafting of a white paper on European defence<sup>4</sup>. That document specifies that “the scenarios serve as a broad description of potential missions on challenges or threats which European countries may have to face over a 10-20 years timeframe (...)”. Those scenarios do not include “traditional” Article V-type threats. On that point the document notes among other things that “with the expansion and consolidation of the democratic peace, classic interstate conflicts have receded (...)”.

37. However, while two of the scenarios developed in the document correspond to the Petersberg missions as defined by the WEU Council in June 1992, the third is a scenario comparable to the first Gulf war of 1990-91, described by the authors as “regional warfare in the defence of strategic European interests”. The authors conclude, after some hesitation, that this type of intervention could be interpreted as falling within the range of Petersberg missions.

38. Most interesting of all are the last two scenarios: number IV concerns the prevention of an attack involving weapons of mass destruction (WMD), and number V, homeland defence. While recalling that certain proliferating states like North Korea and Iran are stepping up their efforts to acquire weapons of mass destruction, scenario IV nevertheless concentrates on a case in which those weapons fall into the hands of *non-state* terrorist groups. The authors take the view that the 11 September 2001 attacks against the United States could fall within that category since their effects were those of a WMD attack.

39. However, while NATO considered that those attacks justified triggering the collective defence mechanism in Article 5 of the Washington Treaty, the group of experts arrives at very different conclusions. It begins with a reference to “prevention”, but in actual fact it describes the arrangements for a military operation similar to “Enduring Freedom”, launched against the Taliban in Afghanistan in order to prevent further terrorist attacks.

40. The experts consider that such an operation would correspond to the extended Petersberg missions as defined in Articles I-41 (1) and III-309 (1) of the Treaty establishing a Constitution for Europe<sup>5</sup>. A terrorist attack launched against an EU member state, according to the authors, would trigger the solidarity clause in Article I-43 of the Constitutional Treaty which gives the EU the power, and indeed the obligation, to mobilise all instruments at its disposal, including military means, in order

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<sup>4</sup> “European Defence – a proposal for a White Paper: report of an independent Task Force”, May 2004”

<sup>5</sup> The second sentence of Article III-309 (1) of the Constitutional Treaty reads as follows: “All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories”.

to provide assistance to the member state concerned, at the request of that country's political authorities.

41. Finally, the authors state that "if an act of mass destruction of a magnitude equal or greater than the 11 September 2001 attacks occurred in an EU country, it is fair to assume that this country would not be left to its own devices". That statement nips in the bud any discussion about whether such a scenario fulfils the criteria for triggering the mutual assistance mechanism in Article V of the modified Brussels Treaty and/or Article 5 of the Washington Treaty.

42. Certainly it is difficult in the EU framework to talk about European Article V-type scenarios, since the EU does not – or not yet – have competence for these. Nevertheless, it should at least be mentioned that certain scenarios meet the conditions for being dealt with by collective defence organisations such as WEU and/or NATO.

43. This applies, precisely, to the abovementioned WMD threats, in particular those linked with the development of advanced ballistic missile technology being pursued by a number of states, some of which have isolated themselves from the international community. How can one be sure that such technology will be used only by the state authorities and not by non-state terrorist groups? It would be worthwhile for that scenario too to be studied in a European white paper, but for the moment this subject appears to be taboo within the European Union, at least at political level. The only reference to it in the group of experts' study is to the effect that "The potential use of air-breathing or ballistic missiles may also require greater extended air defence capabilities", which tends somewhat to play down the nature of the threat.

44. Such threats, however, are real, as has been brought home clearly by the recent claims of government officials from countries like Iran concerning the development of a long-range missile capability<sup>6</sup>.

45. In spite of the fact that this is clearly an Article V-type threat, WEU does not deal with it, because its Council no longer meets. Only within the NATO Council has there been some – highly cautious – discussion of this issue. That caution is reflected in the Istanbul summit declaration of 28 June 2004:

"We are examining options for addressing the increasing missile threat to Alliance territory, forces and population centres through an appropriate mix of political and defence efforts, along with deterrence. We note the initiation of the feasibility study on missile defence decided at Prague to examine options, and we continue to assess the missile threats".

46. This issue lies at the heart of collective defence and is therefore part of WEU's "residual" responsibilities. All discussion within NATO regarding collective defence is of concern to the WEU Council by virtue of its responsibilities under Article V and its obligation to cooperate closely with NATO pursuant to Article IV of the modified Brussels Treaty. Moreover, as the Assembly has underlined on a number of occasions, the Council is obliged under Article IX to keep the Assembly informed, through its annual report, of relevant NATO activities.

47. Coming back to the abovementioned study by the group of experts, it is also interesting to look more closely at scenario V on "homeland defence", which refers to terrorist attacks against certain sites "including power plants, harbours, airports, governmental buildings or buildings of EU institutions", using, for example, "dirty bombs, and biological weapons, which they smuggle in or produce locally".

48. The experts consider that scenario first and foremost as a case for the application of the solidarity clause in Article I-43 of the Constitutional Treaty. But if such a scenario were to involve the use of WMD, taking action on the basis of the solidarity clause alone would probably not be sufficient.

49. The application of that clause implies, among other things, the mobilisation of military resources and the involvement of the Political and Security Committee (PSC). Nevertheless, from the European Council Presidency conclusions of June last, it would appear that the fight against terrorism

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<sup>6</sup> "Teheran claims new long-range rocket capability", *Financial Times*, 6 October 2004.

is perceived exclusively as falling within the area of freedom, security and justice, which considerably limits the scope for the anticipatory application of the solidarity clause.

50. All proposed scenarios must bear in mind the possibility that any crisis-management or anti-terrorist operation could degenerate into a situation calling for the activation of the right of individual or collective self-defence referred to in Article 51 of the UN Charter. Moreover, in matters of security it is not sufficient to consider only the situation as it is now or is likely to be in ten or twenty years' time. It is necessary to look much further ahead and to be prepared for unforeseen developments. It would therefore be both irresponsible and premature to conclude that the time for binding collective defence arrangements is over.

51. It is important in that respect to emphasise a point already made by Mr van Winsen in his report on security and defence policy following EU and NATO enlargement<sup>7</sup>.

52. The wording of the Constitutional Treaty adopted by the Intergovernmental Conference is not that proposed by the Convention on the Future of Europe, which made provision for close cooperation with NATO in the field of mutual defence: indeed, the Convention text had incorporated the key elements of Article IV of the modified Brussels Treaty.

53. The argument put forward in the EU framework is that the Union has recently concluded a series of agreements on consultation and cooperation with NATO, including the "Berlin plus" arrangements, and that it is therefore not necessary to include a paragraph in the EU Treaty on cooperation between the two organisations. However, the Berlin plus arrangements relate to EU-NATO cooperation in the area of crisis management and have nothing to do with collective defence.

54. Moreover, as explained in an excellent study entitled "Some legal issues concerning the EU-NATO Berlin plus agreements"<sup>8</sup> carried out by a researcher at the Max Planck Institute and published on 14 May 2004, the Berlin plus agreement, as a document signed by the EU and NATO Secretaries-General and whose essential parts are confidential and thus inaccessible to the public, does not fulfil the criteria for a duly ratified international treaty and therefore does not have the binding force of such a treaty. The existence of that document is therefore not a valid argument for excluding a provision on EU-NATO cooperation from the EU Constitutional Treaty.

55. Article I-41 (7) of the Constitutional Treaty stipulates that NATO "remains for those States which are members of it (...) the foundation of their collective defence and the forum for its implementation". With that wording the Constitutional Treaty creates uncertainty about the way in which the security of the non-NATO EU member states – namely, Austria, Cyprus, Finland, Ireland, Malta and Sweden – is to be guaranteed in the absence of a binding mutual assistance clause in the Constitutional Treaty.

56. In his address to the Brussels conference, Antonio Missiroli acknowledged that both the article in question and the new solidarity clause, displayed "a certain lack of specifics as to their actual implementation, institutionally as well as operationally. They entail general commitments but no specific enforcement modalities". He went on to say: "Both clauses, however, provide the necessary legitimacy for any future development in this domain, as indeed did NATO's Article 5 when it was first approved in 1949: in fact, its relevant operational structures were put in place only some time after the political commitment was subscribed to. The CTEU certainly allows for something similar to happen a few years from now."

57. It is therefore the political will of the EU member states which will determine how they develop their own collective defence assets on the basis of a Constitutional Treaty which, in this area, advocates a clear decoupling from NATO.

58. In Article V, combined with Article IV, the modified Brussels Treaty therefore preserves certain essential values which must be maintained as long as there are no satisfactory corresponding provisions in the EU framework. It should be recalled in that context that a number of WEU working bodies, such as the Council Working Group (CWG), Politico-Military Group (PMG) and Military

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<sup>7</sup> Assembly Document [1860](#), 4 June 2004.

<sup>8</sup> Martin Reichard in the *Nordic Journal of International Law* 73, 37-67, 2004.

Committee, have not actually been dissolved, but merely have a “dormant status”. Hence they could be reactivated if Article V were to be invoked.

#### ***IV. The EU’s activities in the areas inherited from WEU– results and prospects***

59. The European Union now performs functions pertaining to the Petersberg tasks, assuming *de facto* a share of the responsibility for those functions under the modified Brussels Treaty. The exercise of those functions was transferred to it by WEU, although the latter has not renounced its own competences in that area.

60. Taking stock of what the European Union has achieved since December 2002 when it was declared operational by the Laeken European Council, it should be noted that the EU has successfully conducted two military operations: Operation Concordia in the Former Yugoslav Republic of Macedonia on the basis of the Berlin plus agreements and Operation Artemis, in the Democratic Republic of Congo. The latter was the first EU-led operation to be conducted entirely autonomously.

61. Two civil operations were conducted in the Balkans: the Proxima police mission in FYROM and the European Union Police Mission (EUPM) in Bosnia and Herzegovina. There was also a “rule of law” mission in Georgia.

62. By the end of the year the EU is to replace NATO’s SFOR mission in Bosnia and Herzegovina with Operation Althea, which will be more than 7 000-strong and have recourse to NATO assets on the basis of the Berlin plus agreements. It will be the EU’s biggest mission so far. Moreover, the EU has decided to send some ten military observers to Darfur (Sudan) to provide the expertise needed to launch the African Union’s first large-scale operation in order to put an end to the humanitarian disaster in the region. The possibility of the EU becoming involved in policing activities there is also under discussion. Furthermore, the EU is considering the possibility of civil ESDP missions in Congo and Iraq.

63. The results so far are encouraging in view of the initial difficulties encountered by the EU in setting up the structures needed to take over the functions of WEU and conduct ESDP operations. Among the priorities for future EU action presented by Mr Solana at the annual conference of the EU Institute for Security Studies we note a long list of unresolved problems and challenges, including the Middle East conflict, relations with the countries of the Mediterranean, the Balkans, the southern Caucasus and the Great Lakes region, the problem of Darfur, and the fight against terrorism and problems of proliferation, with particular emphasis on Iran’s nuclear activities. Each of those issues calls for a specific concept and only a few of them have military or defence implications.

64. With regard to the latter, which include the Petersberg missions, the fight against terrorism and threats emanating from the development of weapons of mass destruction (WMD) and their means of delivery, one may wonder up to what point the EU member states are resolved to develop the ESDP into an autonomous instrument that can be used independently.

65. With the disappearance of WEU’s role as the pivotal link between the EU and NATO, the latter two organisations have become direct competitors in the field of crisis management. The conclusion of the Berlin plus arrangements between the two organisations does not change that basic fact. It is interesting to note that with few exceptions the European Union authorities avoid using the word “cooperation” to describe relations with NATO and/or the United States.

66. Both in the EU and NATO the preferred term is “strategic partnership”, which enables consultation and concerted action while preserving each organisation’s autonomy. This is perhaps one of the fundamental aspects of European Security and Defence Policy that has changed following the disappearance of WEU as a political player on the European stage. It is not by chance that NATO Secretary-General Jaap de Hoop Scheffer recently called in Helsinki for better cooperation between the EU and NATO in a number of specific areas<sup>9</sup>.

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<sup>9</sup> *Atlantic News*, 14 September 2004.

67. At the joint meeting of Assembly committees with the WEU Permanent Council, nothing new emerged about the state of play in defining criteria for consultation, cooperation and the division of tasks between the European Union and NATO where they have common interests. In this respect, the briefings given by the representative of the Political and Security Committee Chair and, on the same day, by the Deputy Secretary-General of NATO showed that the priorities were clearly quite different.

68. The PSC representative confined himself to stressing the importance of a smooth transition from SFOR'S operation to EUFOR in Bosnia, joint meetings between the PSC and the North Atlantic Council and meetings between the respective Secretaries-General. He also mentioned the work of the EU/NATO Capability Group. In contrast, the NATO representative proposed that cooperation between the EU and NATO should be extended to other areas which were not purely military such as crisis management in the Caucasus, central Asia, the Mediterranean, the Middle East, Africa and Afghanistan.

69. Indeed it is in everyone's interests to develop a better climate of trust and cooperation between the EU and NATO while respecting the very different natures of the two organisations. While the European Union, which has the ambition of speaking with a single voice and taking common action, including in the area of defence policy, continues to forge ahead with the process of integration, NATO remains an intergovernmental alliance in which all members (including those allies which are members of the European Union) maintain full decision-making sovereignty.

70. The implementation of the ESDP in the strict framework of the European Union continues to pose problems for the participation of the non-EU European NATO member countries. As associate members of WEU they were entitled to participate fully in the activities of the Organisation, which has since transferred the exercise of most of its functions to the European Union.

71. This problem currently concerns Bulgaria, Iceland, Norway, Romania and Turkey. It is a particularly delicate issue for the latter, given the controversy in several EU member states surrounding the issue of Turkey's full accession to the EU.

72. It emerges from the Presidency report on the ESDP submitted to the European Council on 15 June 2004 that the Netherlands Presidency was given a mandate to strengthen "dialogue and cooperation" with the non-EU European NATO states in the field of the ESDP. The representative of the WEU Chairmanship-in-Office informed members of the Assembly on 20 October that "the EU continues to implement the Nice provisions for European non-EU NATO allies and they are consulted on a regular basis". However, the EU does not seem to be heading in the direction of a general associate status, but rather towards individual arrangements with each country on a case-by-case basis.

73. Nevertheless, at its meeting of 13 September the EU Council "agreed on two model agreements, one for military crisis management operations and one for civilian crisis management operations, for the participation of third states in future EU crisis management operations". The content of those agreements has not so far been made public. However, we are familiar with the text of a decision taken by the PSC on 20 September 2004<sup>10</sup> on the acceptance of third-country contributions to the European military operation in Bosnia and Herzegovina. Among those third countries are the European NATO countries Bulgaria, Norway, Romania and Turkey which thus find themselves on the same footing as Argentina, Canada, Chile, Morocco, New Zealand and Switzerland.

74. The decision-making process, which was already laborious in the WEU framework, has become even more complicated for the ESDP in a Union at 25 which has to find a consensus among member states whose positions are far from homogeneous. The Constitutional Treaty will not make any difference to that procedure. However, it does endeavour to overcome the difficulties arising from the heterogeneity of the member states by introducing several models for "enhanced" and "structured" cooperation enabling a group of member states to forge ahead together.

75. To some extent this is tantamount to reinventing the closer cooperation practised in the WEU framework on the basis of the modified Brussels Treaty, but in this case with rules that are much more detailed, indeed complicated, and which are confined to the EU member states only.

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<sup>10</sup> 12 468/04.

76. However, it has to be admitted that the system of enhanced and structured cooperation allowing a group of member states to be mandated to conduct an EU mission seems to be the only way of achieving the aims of a Union whose members do not yet speak with a single voice.

77. It should be emphasised in this respect that the modified Brussels Treaty is perfectly complementary to the abovementioned provisions of the Constitutional Treaty by virtue of its mutual assistance clause in cooperation with NATO. From the discussions among the political directors of the governments of the WEU member states in New York on the future of the modified Brussels Treaty following the entry into force of the Constitutional Treaty it is clear that there is no consensus that the latter will make the former obsolete.

78. The period between now and the entry into force of the Constitutional Treaty should therefore be used to give thought to establishing a politico-legal link between the two treaties for as long as it remains impossible to incorporate all areas of the modified Brussels Treaty in the range of EU activities. This could be done by means of a declaration signed by the ten signatory states of the modified Brussels Treaty which would be submitted to and approved by the European Union. This would give substance to Protocol 24 on Article I-41, paragraph 2 of the Constitutional Treaty, which consists of a single paragraph stating that “The Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them”.

79. Under these circumstances, what direction should the European Union’s ESDP take in the future? The European Security Strategy describes the EU as a “global player” which must be “ready to share in the responsibility for global security and in building a better world”. With that ambition in mind, the EU Council approved on 17 May 2004 a Headline Goal 2010 defining the responsibilities that the EU is ready to assume and setting out the main parameters for the development of the necessary EU military capabilities.

80. In practical terms, the member states undertake to be able by 2010 to respond to a crisis with “rapid and decisive action” in the full spectrum of the traditional Petersberg tasks (humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking) to which must be added joint disarmament operations, support for third countries in combating terrorism and security sector reform.

81. No geographic limits are set for that commitment. Indeed, we particularly welcome the progress made towards establishing cooperation between the European Union and the United Nations, and towards making available EU capabilities for UN military crisis-management operations or operations conducted by the EU at the UN’s request.

82. That commitment is in line with the proposals put forward on a number of occasions by the WEU Assembly and if implemented it will put into practice the “effective multilateralism” advocated by the European Security Strategy. Among the numerous tasks the EU still needs to carry out in order to be able to attain those objectives we should mention, in particular, the development of a sufficient number of battle groups together with a rapid decision-making and planning capability. The creation of a civil-military cell within the EU Military Staff (EUMS) with the capacity to put in place the operational framework is only a first step that one day should lead to the creation of a genuine European Union headquarters.

83. Clearly there is for the moment no consensus among the EU member states on that last point and much will depend on the resolve of both the countries concerned and the NATO member states to step up efforts to reach agreement on a broader framework for cooperation between the EU and NATO than just the Berlin plus agreements.

84. If it is to achieve the ambitions set out in the European Security Strategy and the Constitutional Treaty, the European Union will have to adopt a pragmatic approach. However, in so doing it will also have to establish a number of criteria for determining its priorities. In this respect it might well be

worth taking a look at the criteria set out in a document entitled “A Human Security Doctrine for Europe” which was presented to the High Representative for the CFSP on 15 September 2004<sup>11</sup>.

85. Among other things the document lists five factors that should be taken into account when a decision is taken to initiate operations:

- the first factor is the gravity and urgency of the situation;
- the second concerns the practicality of the missions, the risks and the chances of success;
- the third concerns the special responsibilities for neighbouring countries;
- the fourth concerns historical ties and responsibilities, and
- the fifth concentrates on public concern and pressure.

There are certainly other factors too, but the examples above would appear to be a good basis on which to establish criteria for taking action to implement the European Security Strategy.

86. Nonetheless, the European Union has a fundamental problem to resolve in order to meet its aims for the ESDP: the proposed capacity to intervene in a crisis should, according to the headline goal, include the ability to conduct several operations simultaneously at different levels of engagement. Achieving the necessary operational capabilities for that purpose will not be easy, but there is an even more difficult political question to be resolved, namely that there can never be any guarantee of a consensus among the 25 EU member states on launching a military operation far from Europe’s borders.

87. To overcome that problem the Constitutional Treaty offers the possibility either of mandating a group of states to take action or of acting in the framework of “enhanced” and/or “structured” cooperation. However, as long as the Treaty has not entered into force the member states cannot make use of those instruments, since there is no provision for them in the current Treaty on European Union. Following the disappearance of WEU’s operational role the member states have the choice either of taking action outside the treaties in the framework of coalitions of the willing or of leaving it up to NATO to act.

88. It is true that the European Council can at any moment apply in anticipatory fashion the instruments foreseen in the Constitutional Treaty provided this is not in contradiction with the provisions of the Treaty on European Union currently in force. The European Council acted in this way following the Madrid terrorist attacks, when it agreed on 25 March 2004 to take anticipatory action in the spirit of the solidarity clause, which has not yet entered into force. Mr de Vries was appointed EU counter-terrorism coordinator on that occasion. However, it does not seem wise to wait for such exceptionally dramatic events to occur before we apply instruments that are so fundamental to our countries.

89. According to the information provided by the representative of the PSC Chair, the vast majority of decisions and actions in the fight against terrorism lie within the area of Justice and Home Affairs. Apart from strengthening the EU’s intelligence capability, the Action Plan for Combating Terrorism, adopted by the March European Council, tasked the PSC to develop a Conceptual Framework for ESDP and Terrorism. According to the Presidency “the Conceptual Framework should provide an umbrella for all existing and potentially new ESDP activities, both civil and military, in this field. The Solidarity Clause declared in March 2004 by the Heads of State and Government is one area to be developed in this Conceptual Framework. Another is the refinement of the database of military assets which Member States have declared for potential use in case of a terrorist attack with weapons of mass destruction. This work is currently ongoing, and should be ready for the November Council.” It remains to be seen whether it will be possible at that stage to come up with the necessary details on the practical role of the ESDP in the fight against terrorism, on which information is lacking at present.

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<sup>11</sup> A Human Security Doctrine for Europe – the Barcelona Report of the Study Group on Europe’s Security Capabilities, Barcelona, 15 September 2004.

90. As stressed in previous Assembly reports, the implementation of the European Security Strategy poses another fundamental problem: we need to evaluate the consequences of the strategic objectives set out in that document, which states, quite rightly, that “Europe faces new threats which are more diverse, less visible and less predictable”. It includes among those threats, in the following order, terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime, but states, among other things, that “large-scale aggression against any Member State is now improbable”.

91. The ESS notes, as regards dealing with those new threats, that:

“Our traditional concept of self- defence – up to and including the Cold War – was based on the threat of invasion. With the new threats, the first line of defence will often be abroad”.

It then suggests that the European states should be ready to act before a crisis occurs: “Conflict prevention and threat prevention cannot start too early”. Regarding the instruments for such prevention, the document refers to a mixture of political, economic, police, judicial and, if necessary, military means of action.

92. The document does not make provision for “pre-emptive strikes” in the sense of the United States’ National Security Strategy, but its wording nevertheless creates ambiguity which could have serious consequences. Indeed, the term “first line of defence” gives the impression that preventive action taken outside Europe’s borders would be a measure of self-defence. Aspects pertaining to defence proper are mixed up here with crisis-management issues.

93. If the ESS was intended in this way to add a preventive dimension to the right to collective and self defence mentioned in Article 51 of the UN Charter, then we must realise that this would fundamentally change the nature of that right, with unforeseeable consequences. The White Paper published by the Institute for Security Studies on “European defence (regional warfare in the defence of strategic European interests)” describes in scenario III a case in which a country X asks the EU for assistance against an attack by country Y on the basis of Article 51 of the UN Charter. The first Gulf war in 1990/1991 was a similar case. The group of experts concludes that an EU operation to help the country in question could be interpreted as being a Petersberg mission.

94. There is a danger here of confusing the issues, which would only make the discussions among the member countries even more difficult if a case like the one in this scenario were to arise. It would be preferable to maintain a clear distinction between self-defence operations and Petersberg missions, although this is not always easy. Similar problems are also being discussed in NATO. For instance, it is reported<sup>12</sup> that the planning section considers that since 9 September 2001, if not before, the Alliance’s defence posture is no longer equated with territorial defence. The underlying objective of transatlantic security policy is increasingly that of projecting stability, with recourse to military capabilities that must be able to cover a whole series of operations ranging from so-called robust military intervention to long-duration peacekeeping operations in crisis zones outside Europe. Given that this issue also has repercussions for the interpretation of the mutual assistance obligation among the signatory states to the modified Brussels Treaty, the Assembly can only urge the WEU Council once again to become involved in the EU discussions on the implementation of that part of the European Security Strategy, possibly in connection with the drafting of a white paper on European defence on the model of that of the Institute for Security Studies.

95. Indeed, although the Article V commitment is confined to Europe, the preamble to the modified Brussels Treaty goes further when it confirms the resolve of the signatory states to “afford assistance to each other, in accordance with the Charter of the United Nations, in *maintaining international peace and security and in resisting any policy of aggression*” without setting any geographic limits.

96. The central issue is thus what the notion of “defence” means today and will mean in the future. We cannot properly prepare ourselves to deal with present and future threats using outdated concepts.

<sup>12</sup> See Michael Rühle: *Die Luftbrücke trägt nicht mehr* in the *Frankfurter Allgemeine Zeitung* of 27 September 2004.

97. Regarding the vast subject of future armaments cooperation, the WEU Council in its WEAG formation also faces a number of important decisions. Following the EU Council decision of 12 July 2004 to set up a European Defence Agency under the Council's authority by the end of 2004, the Netherlands WEAG Presidency has been paving the way for the decision to put an end to WEAG's activities by the end of the year, following the transfer of its functions to the Agency. Since the Technological and Aerospace Committee is to present a specific report on this subject, this report will be confined to a number of more general considerations.

98. The conference organised by the Assembly at Enschede on 16 and 17 September 2004 on "Cooperation on defence systems procurement in Europe" provided an opportunity to highlight a number of crucial points. First of all, given that the Agency, like WEAG, is an intergovernmental body, it must avoid running into the same difficulties as WEAG when it comes to reaching agreement on defence equipment requirements and on the implementation of the decisions taken.

99. Secondly, the Agency must not be allowed to become an exclusive club of EU member states, excluding the non-EU members of WEAG. Thirdly, it must be realised that the Agency's mandate is confined to the development of capabilities in the field of crisis management, while WEAG covers a whole range of defence requirements.

100. Under those circumstances it would be preferable to make use of the possibilities offered by the Agency's mandate for establishing close working relations with the LoI, OCCAR, WEAG and WEAO, so as to "incorporate them or assimilate their principles and practices in due course, as appropriate".

101. Article 25 (paragraphs 6 of 7) of the Agency's statutes guarantees the non-EU members of WEAG "the fullest possible transparency regarding the Agency's specific projects and programmes with a view to their participation therein as appropriate". Hence, participation by those countries in the Agency is not automatic, which falls considerably short of the rights they enjoy within WEAG. Consequently, it is necessary to ensure that any arrangements that the Agency might conclude with third parties should not place the countries concerned at an unacceptable disadvantage in future European armaments cooperation.

102. In order to achieve all the aims of the European Security Strategy, the 2010 headline goal, the European Capability Action Plan (ECAP) and the European Defence Agency it is necessary, among other things, to adopt a number of structural measures, many of which are already included or provided for in the Constitutional Treaty. However, a formal Council of EU defence ministers has still not been set up. This needs to be done as quickly as possible. It is not enough to simply envisage the possibility, as proposed in the draft white paper published by the EU Institute for Security Studies. Furthermore, it is necessary to follow up the recommendation put forward by the "Venusberg" Group (set up at the initiative of the Bertelsmann Foundation) in its report of 27 May 2004 for the establishment of an EU "Security Council" composed of the foreign affairs and defence ministers, like that which existed within WEU until 2000.

***V. The collective participation of the national parliaments in the ESDP:  
building on the Assembly's experience of fifty years***

103. Between now and the entry into force of the Treaty establishing a Constitution for Europe we must consider how to preserve the *acquis* of the Assembly in the light of the provisions in the Treaty on parliamentary involvement in the European Security and Defence Policy.

104. The Assembly's proposal for the creation of an EU interparliamentary forum in which the national parliaments could organise their cooperation, and which would be informed and consulted by the EU Council on ESDP matters, was not taken on board in the Constitutional Treaty. Neither was any account taken of the proposals that had been submitted by some members of the Convention on the Future of Europe in the course of its work or of the efforts made by several national parliaments during the meetings of the Presidents of the National Parliaments of the EU member states.

105. This raises a number of questions. The first concerns the Assembly's working conditions up to the entry into force of the Constitutional Treaty. On this point the Netherlands Chairmanship-in-Office

of the WEU Council gave an assurance at the joint meeting on 20 October 2004 in Brussels of the Permanent Council with the Assembly's Presidential and Standing Committees that the requests made in a letter of 14 September from the President of the Assembly to the Netherlands Minister for Foreign Affairs would be complied with. The President had requested:

- that the Council continue to cooperate fully with the Assembly on the basis of Article IX of the modified Brussels Treaty for as long as the Constitutional Treaty had not entered into force and, in accordance with Article XII, the period following the notice of denunciation had not expired;
- that throughout this period the working conditions of the Assembly as a forum for strategic reflection recognised by the Council, in which parliamentary delegations of 28 countries take part, would not be affected.

106. This implies among other things that the Council should continue to include all the aspects of the European Security and Defence Policy in its institutional dialogue with the Assembly. This concerns not only the content of its annual report but also of its replies to Assembly recommendations. For it is patently clear that all the questions discussed in the ESDP and NATO fall within the area covered by the modified Brussels Treaty. The Assembly is the only forum available to the national parliaments of European countries involved in the ESDP and NATO activities in which they can collectively take part in an institutional dialogue with the governments on security and defence issues.

107. This institutional dialogue based on the modified Brussels Treaty is a unique and indispensable feature of European democracy and must be preserved since it is crucial in helping elected representatives of the citizens of the member states to understand all those issues. Without the collective support of the national parliaments, no European security and defence policy can succeed.

108. It is not known whether the modified Brussels Treaty will be denounced after the entry into force of the Treaty establishing a Constitution for Europe. If it is not, the Assembly will continue its work and political and legal links will have to be established between both treaties with a view to ensuring full complementarity, particularly as far as the parliamentary dimension is concerned.

109. Regarding the question of how the national parliaments could be collectively informed and consulted about the ESDP within the EU framework if the modified Brussels Treaty no longer existed, efforts should start now to organise interparliamentary cooperation on the basis of the provisions in the Constitutional Treaty and its protocols as signed by the EU heads of state and government on 29 October 2004.

110. The Protocol on the role of national parliaments in the European Union offers two possibilities in that respect:

- Article 9 makes provision for the European Parliament and the national parliaments to together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union; this very general provision does not preclude the establishment of a forum of national parliaments as proposed by the Assembly; such a forum could make the appropriate arrangements for cooperation with the European Parliament;
- Article 10 stipulates that “a conference of Parliamentary Committees for Union Affairs” may organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy; this article does not therefore specifically mention COSAC as such; the “conference” to which it refers remains to be set up in the appropriate form and configuration that will enable it to carry out the tasks set out in the Protocol.

111. The abovementioned provisions offer numerous options, but all are confined to cooperation among parliaments. They do not provide any legal basis on which to organise an institutional dialogue between those parliaments and the European executive. Neither the Constitutional Treaty, nor the Protocol on the role of national parliaments provides for any obligation on the part of the Council, the Presidency or the future Union Minister for Foreign Affairs to consult an interparliamentary forum

composed of representatives of the national parliaments, or of both the national parliaments and the European Parliament, or to submit reports to such a body. Similarly, there is no obligation for the EU executive bodies to engage in a dialogue with interparliamentary conferences organised for the purpose of discussing ESDP matters.

112. Where the Constitutional Treaty differs fundamentally from the modified Brussels Treaty is that it does not give the governments represented in the EU Council any collective responsibility vis-à-vis the European Parliament or any other European parliamentary body in the area of security and defence. Hence their obligations fall considerably short those of the WEU Council vis-à-vis the Assembly.

113. Conversely, it gives the European Parliament enhanced powers for the financing of certain CFSP initiatives, despite the fact that the expenditure incurred by operations with military or defence implications is funded not from the Union budget, but from the budgets of the member states. Indeed, the Constitutional Treaty makes provision for the prior consultation of the European Parliament regarding any decision aimed at guaranteeing rapid access to the EU budget for the emergency funding of preparatory activities for the extended Petersberg missions pursuant to the Constitutional Treaty. The European Parliament must also be kept informed of the arrangements for the implementation of the solidarity clause.

114. In his letter of 14 September 2004 addressed to the Netherlands Minister for Foreign Affairs as Chairman-in-Office of the WEU Council, the President of the Assembly stressed the importance of seeking, before the entry into force of the Constitutional Treaty, an appropriate solution for the collective participation of national parliamentarians in all EU activities that build on the work of WEU and in all areas in which the Constitutional Treaty is to replace the modified Brussels Treaty, given that there are no arrangements for such collective participation in the framework of the European Union. At the 20 October joint meeting of Assembly committees with the Permanent Council, the Presidency representative confirmed that the Council would give this point due consideration.

115. This also means informing and consulting the representatives of the national parliaments about “structured” and “enhanced” cooperation activities and in particular about the work of the European Defence Agency, as well as about the funding arrangements for military operations. In this connection it is worth repeating that the task of finding a solution to the problem of how parliamentary oversight of the ESDP should be organised at the European level cannot be left to parliamentary bodies alone, with governments merely taking note of their proposals and not bothering to examine whether they are satisfactory. It is after all the governments which, in the final analysis, negotiate and sign treaties and decide on what happens to them, and this includes all the provisions governing the role of parliaments. Furthermore, in the absence of agreement by the governments, no arrangements approved by parliamentary bodies for placing them under a collective obligation to inform a parliamentary body and engage in dialogue with it can be binding.

116. The fact that some WEU governments have recently seemed to show more understanding for the usefulness of preserving the way in which the Assembly works is therefore to be welcomed. The British Foreign Secretary, for example, has embarked on a process of reflection on the future involvement of the national parliaments in the ESDP and considered a number of options which are close to the Assembly model.

117. Similarly, the different research institutes are paying greater attention in their publications to the specific problems of the parliamentary dimension of the ESDP. For example, a report published last July by the Hessian Foundation for peace and conflict research<sup>13</sup> contains a chapter on the work of the WEU Assembly – which it calls the “interim Assembly” – in which it states that:

“The reports drafted in committee and debated at the Assembly’s twice-yearly plenary sessions are an impressive demonstration of the rapporteurs’ expertise. The reports, which are available on the Internet<sup>14</sup>, provide a well-informed and critical assessment of developments in the field

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<sup>13</sup> See the report by Wolfgang Wagner entitled *Für Europa sterben? Die demokratische Legitimität der Europäischen Sicherheits- und Verteidigungspolitik*, HSFK-Report 3/2004

<sup>14</sup> [www.assembly-weu.org](http://www.assembly-weu.org)

of the ESDP. A further comparative advantage of the interim Assembly is the fact that it is composed of members of the national parliaments of the 28 nations of the “WEU family” (see the Assembly’s homepage). These include, in addition to the 23 EU member states (all EU states except Malta and Cyprus) the European NATO states Bulgaria, Romania, Turkey, Iceland and Norway, whose appropriate involvement in the ESDP, given the fact that they are not members of the EU, has been a long-debated subject. The interim Assembly could therefore act at parliamentary level as a bridge between NATO and the EU”. Finally, the interim Assembly, as a body composed of national parliamentarians, can justifiably claim to better match the intergovernmental structure of the ESDP. Indeed, the national governments will for the foreseeable future retain sole responsibility for deploying and funding the armed forces. From that point of view it would make sense for the democratic scrutiny of those governments to be made the responsibility of national parliamentarians who are closely involved in international discussions with their counterparts from other countries”.

118. The authors arrive at the conclusion that the European Parliament’s “primary competence for parliamentary scrutiny” does not in any way rule out a useful complementary role for the Assembly, possibly along the lines of that of COSAC. They even propose that the Assembly be incorporated in the COSAC system whereas the WEU Council Chairmanship-in-Office advocates the transfer of the Assembly Secretariat’s expertise to COSAC. However, it should be remembered that the Protocol on the role of national parliaments in the European Union does not refer specifically to COSAC in its current form. This provides every opportunity between now and the entry into force of the Constitutional Treaty for finding a way of accommodating the *acquis* of the WEU Assembly as an interparliamentary forum with the setting-up of a “conference of Parliamentary Committees for Union Affairs” as provided for in Article 10 of the Protocol. This would require all the interested parties to work together on a solution.

119. In the meantime, however, a spirit of cooperation and synergy must be developed among the existing bodies. At the present time COSAC does not deal with ESDP matters. If we wish to avoid any gap in the scrutiny of that policy by the national parliaments, all interested parties and the WEU and EU member governments in particular, but also the European Parliament, must agree on the fact that the Assembly for the moment remains *de facto* the appropriate body for monitoring the EU’s activities in the field of the ESDP, without prejudice to the competences of the European Parliament.

120. It is therefore necessary as of now to organise cooperation among the national parliaments and all relevant interparliamentary bodies, as well as the European Parliament, in order to seek appropriate arrangements for allowing the representatives of the national parliaments to maintain a regular institutional dialogue with the executive bodies of the European Union in charge of the different areas of intergovernmental cooperation, and the ESDP in particular.

121. In order to achieve synergy during the interim period, it would therefore be useful for working relations to be established between the Assembly Committees and the EP’s new Security and Defence Sub-Committee.

122. It is clear that the recent enlargement of the EU and NATO and the prospects opened up by the Constitutional Treaty have created a new situation which has also affected the way in which the Assembly works. Thus, the Standing Committee – acting on behalf of the Assembly – recently adopted Decision 28 in order to improve the working conditions and voting rights of the parliamentary delegations from the new EU and NATO member states.

123. Furthermore, in adopting Decision 27 on the European Security and Defence Policy following EU and NATO enlargement on 4 June this year, the Assembly agreed to study the possibility of giving the parliamentary delegations of the observer countries voting rights in committees. In considering this possibility it has to be borne in mind that the Assembly’s Rules of Procedure confer “permanent observer” status on the representatives of parliaments of WEU observer countries and on those of the WEU associate partner countries.

124. The following considerations apply to the first category, i.e. representatives of parliaments of WEU observer countries, since the main reason for giving them voting rights in committees is their countries’ membership of the European Union in which – with the exception of Denmark – they play

a full part in the ESDP. The parliamentary delegations concerned are therefore those of Austria, Finland, Ireland and Sweden, these being EU member states which chose, in December 1991, to become WEU observer countries.

125. The parliamentary delegation of Denmark is also concerned; it is a special case because as Denmark is a member of both the EU and NATO it fulfils the criteria drawn up by WEU in December 1991 for a country to be invited to accede to the modified Brussels Treaty and become a full member. However, Denmark chose the status of observer. The parliamentary delegations of Cyprus and Malta must also be added to the list because those countries became EU member states on 1 May 2004. It should be noted that the Assembly has given their parliamentary delegations prerogatives similar to those of delegations with the status of permanent observer.

126. A number of factors bolster the Assembly's decision to give the parliamentary delegations of the abovementioned countries voting rights in committees. When the Amsterdam Treaty was signed, the WEU Council gave the following undertaking<sup>15</sup>:

“WEU will develop the role of the Observers in WEU in line with provisions contained in Article J.7(3) and will adopt the necessary practical arrangements to allow all Member States of the EU contributing to the tasks undertaken by WEU at the request of the EU to participate fully and on an equal footing in planning and decision-taking in the WEU.”

It also stated that it would examine the necessary modalities to allow observer states to participate fully, in accordance with their status, in all operations undertaken by WEU and in activities in the fields of armaments, space and military studies.

127. In this connection it should be remembered that despite the Assembly's repeated requests, the Council has never provided it with details about the specific rights of the observer states within the Council, and that this has prevented the Assembly from taking timely action to assign corresponding rights to the parliamentary representatives of those countries in the Assembly.

128. Since the Nice Treaty, all the countries in question have had the same rights and obligations in the European Union as regards both the CFSP and also the ESDP which the Union inherited from WEU. (Denmark is the only country which does not take part in the ESDP.) They therefore play a full part in the decision-making process in the various EU Council formations and in the Political and Security Committee.

129. Conversely, none of the countries concerned – except Denmark – is a member of the Atlantic Alliance or, therefore, a party to the collective defence commitment contained in the Washington Treaty. It would accordingly not be justified to give their parliamentary delegations voting rights in plenary sessions. On the other hand, it would appear appropriate for them to have voting rights in committees to take account not only of the rights and obligations their countries were given in the WEU Council and ministerial organs upon the entry into force of the Amsterdam Treaty but also of their status as EU member states since the Nice Treaty came into force.

## *VI. Conclusions*

130. Pending the ratification of the most ambitious European project ever envisaged, i.e. the Treaty establishing a Constitution for Europe, the 50<sup>th</sup> anniversary of the signature of the Paris Protocols modifying and completing the Brussels Treaty is a fitting occasion to recall a number of the principles governing security on which the European countries agreed in the past, and to ask whether they are still valid or whether – at least in certain respects – they are outdated.

131. One of those principles was the conviction held by the WEU member countries, and expressed as early as 1987 in The Hague Platform on European security interests, that the construction of an integrated Europe would remain incomplete as long as it did not include security and defence. If the relevant provisions in the Treaty establishing a Constitution for Europe now reflect a new frame of mind in all the WEU member countries as far as security and defence are concerned, then the Treaty

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<sup>15</sup> Declaration by the WEU Council of 22 July 1997 annexed to the Amsterdam Treaty.

might indeed be the means of completing the construction of an integrated Europe within the European Union. In that case the modified Brussels Treaty would no longer be necessary as an instrument for achieving that objective.

132. This report endeavours to show that it is too early to arrive at that conclusion. Faced with a situation in which traditional threats have been replaced by less apparent and predictable risks and threats of different varieties, this is certainly not the right time to weaken the collective mutual assistance commitment and do away with a sound guarantee when we do not know what the future holds.

133. On the other hand, notwithstanding their shortcomings there is no denying that the provisions on security and defence in the Constitutional Treaty show that major progress has been made towards ensuring that the European Union has the instruments it needs to become a credible and responsible “global player” and to make a constructive and effective contribution to international crisis management with a view to furthering universal peace and security in the world. With that in mind it is not sufficient for the EU to remain a civil power: it must also become a credible military power and the Constitutional Treaty provides it with considerably enhanced legal means to achieve that goal. This opportunity must therefore not be lost.

134. However, since an armed attack against one of the member states is no longer a threat, the axiom that prevailed for many years has virtually disappeared from European politics, namely, the principle of the indivisibility of Euro-Atlantic security. The European Security Strategy relativises the importance of transatlantic relations and NATO by making them part of a more general international order based on “effective multilateralism” the precise characteristics of which remain to be defined.

135. While the European Security Strategy makes the claim that “the transatlantic relationship is irreplaceable”, the advantage of the principles governing the modified Brussels Treaty is that they strike the right balance between European ambitions and transatlantic cohesion which is currently lacking in relations between the European Union and NATO and indeed between Europe and the United States.

136. All these considerations lead to the conclusion that the modified Brussels Treaty still contains many features which, far from being obsolete, are still highly relevant and indispensable. The Assembly, created by the Treaty, must continue to shoulder its responsibilities, i.e. maintain a regular dialogue with the governments meeting in the Council and stimulate public debate on the major issues outstanding. In expressing the collective views of the national parliaments which are at the forefront in exercising democratic scrutiny of their governments’ security and defence policy, the Assembly guarantees the inclusive participation of those parliaments in its work and continues to campaign actively to ensure that its *acquis* are preserved in a European Union which will eventually take on all the responsibilities covered by the modified Brussels Treaty.



