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The Parliamentary Dimension of CFSP/ESDP **Options for the European Convention**

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Contents

PREFACE

EXECUTIVE SUMMARY: THE PARLIAMENTARY DIMENSION OF CFSP/ESDP

1. Challenges for the European Parliament	1
2. Options of the EP for parliamentary participation within CFSP/ESDP	2
3. Recommendations for revisions and amendments of treaty articles	5

OPTIONS FOR THE PARTICIPATION OF THE EUROPEAN PARLIAMENT IN CFSP AND ESDP

1. Options for the parliamentary dimension of CFSP and ESDP	9
1.1. The need for parliamentary engagement	11
1.2. »Scenarios« for shaping CFSP and ESDP	12
1.3. Short term: Super power but no super state – the »status quo«-scenario	13
1.4. Medium-term: Incremental adaptation – the »gradual communitarisation«-model	14
1.5. Long-term: Towards a European federal foreign and defence policy – the »federal«-scenario	15
1.6. The scope of options and the legal character	16
2. Reform options regarding the parliamentary dimension of CFSP/ESDP	18
2.1. Legal references of European Parliament competences in CFSP and ESDP	18
2.2. Participation of the EP in »appointments« and electoral functions	19
2.3. Information and control rights of the EP in CFSP/ESDP affairs	22
2.4. »Legal« participation of the EP	25
2.5. The impact of enhanced cooperation	28
2.6. Participation of the EP in the budgetary aspects of CFSP/ESDP	29
2.7. Participation of the EP in international treaties	33
3. The involvement of AFET in all stages of CFSP/ESDP policy cycle	34
3.1. The overall Committee structure	34
3.2. The role of EP's AFET	35
4. Options regarding national parliament's involvement in CFSP and ESDP	36
4.1. Improving inter-parliamentary co-operation between EP and the national parliaments	37
5. Options regarding international organisations	40
5.1. The future of WEU and its Parliamentary Assembly	41
5.2. The relationship with NATO and the Parliamentary Assembly of NATO	42
6. General constitutional and institutional aspects of EU's evolution regarding CFSP and ESDP	45
6.1. The status of CFSP and ESDP in the EC/EU Treaties	45
6.2. The delimitation of competences	47

6.3. The decision-making procedures in CFSP/ESDP	48
6.4. The external representation of CFSP/ESDP	49
6.5. The reform of the Council	51
6.6. The role of the European Commission	52
7. Conclusions: Revisiting the options in view of the European Convention	53

Annex I

I. THE DEVELOPMENT OF FOREIGN AND SECURITY POLICY AT THE EUROPEAN LEVEL: FROM EARLY BEGINNING TO CFSP AND ESDP	58
I.1. EDC and Fouchet: the early history of European foreign and security policy	58
I.2. EPC and the institutionalisation of European foreign policy: awkward partners	61
<i>I.2.1. The European Parliament and EPC</i>	64
I.3. The CFSP and the (Maastricht) Treaty on European Union: new beginnings	65
I.3.1. The European Parliament and the (Maastricht) Treaty on European Union	67
<i>I.3.1.1. Information and Consultation competencies (Art. J.7 TEU - MV)</i>	68
<i>I.3.1.2. Recommendations and Questions (Art. 21.2 TEU - MV)</i>	69
<i>I.3.1.3. Budgetary powers</i>	69
I.4. The reform of the CFSP and the (Amsterdam) Treaty on EU: gradual improvements	70
I.4.1. The EP and the (Amsterdam) Treaty on European Union	72
<i>I.4.1.1. Positions for the Intergovernmental Conference</i>	72
<i>I.4.1.2. Budgetary powers</i>	73
I.5. The evolution of CFSP and ESDP: evolutionary dimensions in institution building	74
I.5.1. The new institutional set up	78
<i>I.5.1.1. The political and security committee (PSC)</i>	78
<i>I.5.1.2. The European Union Military Committee (EUMC)</i>	79
<i>I.5.1.3. The European Union Military Staff (EUMS)</i>	79
<i>I.5.1.4. The role of the High Representative</i>	80
<i>I.5.1.5. The Committee for Civilian Aspects of Crisis Management (CIVCOM)</i>	80
I.5.2. The European Parliament, the (Nice) Treaty and the ESDP provisions	81
<i>I.5.2.1. The Nice treaty</i>	81
<i>I.5.2.2. Budgetary affairs</i>	81
<i>I.5.2.3. Positions and statements</i>	81
<i>I.5.2.4. The role of the national parliaments</i>	81
I.6. The further development of ESDP in 2001/2002: beyond slow adaptation?	82
I.7. Conclusions: Trends of historical evolution in CFSP/ESDP: patterns of growth and differentiation	83

Annex II

II. FORMAL AND INFORMAL ARRANGEMENTS FOR PARLIAMENTARY SCRUTINY IN CFSP AND ESDP AT THE EUROPEAN LEVEL	85
II.1 Empirical trends in CFSP and ESDP	85
II.2. The role of European Parliament in CFSP and ESDP	87
II.2.1. Internal arrangements of the European Parliament	87
II.2.2. Parliamentary involvement in CFSP/ESDP matters	88
II.2.3. Internal arrangements of AFET	91
II.3. The European Parliament vis-à-vis the European Commission and High Representative	93
II.4. The European Parliament's relation to the Council and the Presidency	94
II.5. The European Parliament versus the Member States and the European Council	95
II.6. The European Parliament in relation to the National Parliaments and Parliamentary Groups	96
II.7. The European Parliament and third parties	98
II.8. The European Parliament and other actors at the European level	98
II.8.1. The European Parliament and Parliamentary Assemblies of international organisations	99
II.8.2. The European Parliament and NATO	97
II.9. Conclusions: channels for participation of the EP in foreign, security and defence matters	100
 Annex III	
III. THE COMPARATIVE DIMENSION: »NATIONAL« PARLIAMENTARY INVOLVEMENT IN CFSP AND ESDP	102
III.1. Danish Parliamentary participation in foreign, security and defence policy	107
III.1.1. Introduction	107
III.1.2. The national policy-cycle	110
<i>III.1.2.1. The Government</i>	110
<i>III.1.2.2. The Parliament's Participation at the National Level</i>	112
III.1.3. The Parliament's Participation at EU Level	121
III.1.4. Concluding Remarks	121
III.2. French Parliamentary participation in foreign, security and defence policy: anaemic national performance and European potential	125
III.2.1. Introduction	125
III.2.2. French Parliament participation to security and defence policy at the national level	125
<i>III.2.1.1. French parliament participation at the different policy stages</i>	126
<i>III.2.1.2. French parliamentary institutional structures regarding security and defence questions</i>	127
<i>III.2.1.3. An emerging parliamentary diplomacy?</i>	128
III.2.2. French Parliament participation in CFSP and ESDP affairs	129

III.2.2.1. <i>The problematic scrutiny of CFSP documents</i>	129
III.2.2.2. <i>The parliamentary oversight of CFSP and ESDP</i>	130
III.2.2.3. <i>Interactions at the European level</i>	131
III.2.3. <i>Conclusions</i>	132
III.2.3.1. <i>Performance of the French Parliament</i>	133
III.2.3.2. <i>Perspectives and suggestions for the future</i>	134
III.3. German Parliamentary participation in foreign, security and defence policy: developing structures in a complex system	137
III.3.1. <i>Introduction: Divided competences in foreign affairs</i>	137
III.3.1.1. <i>The historical framework</i>	137
III.3.1.2. <i>General doctrines and guiding principles</i>	138
III.3.2. <i>The national policy cycle: a new role for the Bundestag?</i>	138
III.3.2.1. <i>The »hegemony« of the executive</i>	139
III.3.2.2. <i>The »weakness« of the legislature in decision-taking</i>	140
III.3.2.3. <i>Other Parliamentary functions in foreign policy</i>	141
III.3.3. <i>Other actors in Foreign policy</i>	142
III.3.3.1. <i>The role of the Bundesrat</i>	142
III.3.3.2. <i>The role of the Federal constitutional court</i>	142
III.3.4. <i>The Committee structure</i>	142
III.3.4.1. <i>The foreign committee</i>	142
III.3.4.2. <i>The Committee on European Affairs</i>	143
III.3.5. <i>Conclusions</i>	144
III.4. British Parliamentary participation in foreign, security and defence policy: adapting to Europe within a transformed world	147
III.4.1. <i>Introduction</i>	147
III.4.1.1. <i>Historical fundamentals</i>	147
III.4.1.2. <i>UK priorities re security and defence policy/CFSP and ESDP</i>	149
III.4.2. <i>The National Policy-Cycle</i>	151
III.4.2.1. <i>Actors</i>	151
III.4.3. <i>Conclusions</i>	158
III.4.3.1. <i>National parliamentary performance - strengths and weaknesses</i>	158
III.4.3.2. <i>Necessary reforms</i>	158
III.5. Swedish Parliamentary participation in foreign, security and defence policy: the strong impact of defence politics	160
III.5.1. <i>Introduction</i>	160
III.5.1.1. <i>The Swedish Parliament – The Riksdag</i>	160
III.5.1.2. <i>Swedish Security and Defence Policy</i>	160
III.5.1.3. <i>General Division of Competences and Responsibilities in Foreign, Security and Defence Policy</i>	161

III.5.2. The National Policy Cycle	161
<i>III.5.2.1 The Government</i>	161
<i>III.5.2.2. The Riksdag</i>	162
III.5.3. National Parliament Participation at the EU Level in ESDP Affairs	164
<i>III.5.3.1. Governmental Coordination of EU Matters</i>	164
<i>III.5.3.2. Parliamentary Levels and Channels of Coordination with Regard to EU Policy Making</i>	165
<i>III.5.3.3. The Role of the Committee on EU Affairs</i>	167
<i>III.5.3.4. Interaction with the Brussels Institutions</i>	168
<i>III.5.3.5. Public Space for Information and Discussion</i>	168
<i>III.5.3.6. The EU Information Centre (EU-upplysningen)</i>	169
<i>III.5.3.7. The EU 2004 Committee</i>	169
III.5.4 Conclusions	169
<i>III.5.4.1. The European Level</i>	174
<i>III.5.4.2. The Swedish Level</i>	174
III.6. Polish Parliamentary participation in foreign, security and defence policy: the search for parliamentary scrutiny	174
III.6.1. Introduction	174
<i>III.6.1.1. Poland after 1989</i>	174
<i>III.6.1.2. Polish Foreign, Security and Defence Policy</i>	175
III.6.2. The national policy cycle	177
<i>III.6.2.1. The Executive</i>	177
<i>III.6.2.2. The Parliament</i>	179
III.6.3. Conclusion	184
III.7. The US-Congress in foreign, security and defence policy: invitation to struggle	188
III.7.1. Introduction: The ambiguous relationship of Congress and President in foreign affairs	188
<i>III.7.1.1. The historical framework</i>	189
<i>III.7.1.2. General doctrines and guiding principles</i>	190
III.7.2. The national policy cycle: Opportunity structures for control	191
<i>III.7.2.1. Initiative powers</i>	192
<i>III.7.2.2. Budgetary powers</i>	192
<i>III.7.2.3. Legislative powers</i>	193
<i>III.7.2.4. Military powers</i>	194
<i>III.7.2.5. »Confirmation« powers</i>	194
<i>III.7.2.6. Ratification powers</i>	194
<i>III.7.2.7. Hearings</i>	194
<i>III.7.2.8. Informal powers</i>	195
III.7.3. The Committee structure: the organisation of parliamentary work in foreign	195

policy	
<i>III.7.3.1. The committee structure in general</i>	195
<i>III.7.3.2. The committee structure with regard to foreign policies</i>	196
<i>III.7.3.3. Long time trends with regard to foreign policies</i>	197
III.7.4. The United States, the Congress and ESDP	197
III.7.5. Conclusion	198
III.8. The Parliamentary Assembly of the NATO	201
III.8.1. Fundamentals	201
III.8.2. Functions	201
III.8.3. Representation and Nomination	201
III.8.4. Committee Structures	203
III.8.5. Sessions and output of the Parliamentary Assembly	203
III.8.6. Conclusions	203
III.9. The Parliamentary Assembly of the WEU	206
III.9.1. Fundamentals	206
III.9.2. Functions	206
III.9.3. Representation and Nomination	208
III.9.4. Committee Structures	208
III.9.5. Sessions and output of the Parliamentary Assembly	208
III.9.6. The WEU Assembly and ESDP	208
III.9.7. Conclusions	208
III.10. The Parliamentary Assembly of the Council of Europe	209
III.10.1. Fundamentals	211
III.10.2. Functions	211
III.10.3. Representation and Nomination	211
III.10.4. Committee Structures	212
III.10.5. Sessions and output of the Parliamentary Assembly	213
III.10.6. The relationship with the European Union	214
III.10.7. Conclusions	214
III.11. The Parliamentary Assembly of the OSCE	215
III.11.1. Fundamentals	215
III.11.2. Functions	215
III.11.3. Representation and Nomination	216
III.11.4. Structure and Committees	216
III.11.5. Sessions and output of the Parliamentary Assembly	216
III.11.7. Conclusions	217
III.12. Assessing the involvement of parliaments and parliamentary assembly	221
III.12.1. The fundamentals: the growing attention of national parliaments to foreign	222

and defence policy	
III.12.2. The foreign and security policy cycle: the imperfect parliamentary participation	222
<i>III.12.2.1. Preparation of Decisions</i>	223
<i>III.12.2.2. Decision-taking: International treaties</i>	223
<i>III.12.2.3. Deployment of forces</i>	224
<i>III.12.2.4. Budgetary Powers</i>	225
<i>III.12.2.5. Control of decisions and public debate</i>	225
<i>III.12.2.6. The participation at the European level</i>	226
III.12.3. The role of the Committees in foreign and defence policy	227
<i>III.12.3.1. The Foreign Affairs Committees</i>	227
<i>III.12.3.2. The Defence Committees</i>	227
<i>III.12.3.3. The »EU«-Committees</i>	229
III.12.4. The role of the Parliamentary Assemblies of international organisations	229
III.13. Conclusions: Lessons from national parliaments	230
Annex IV	
IV.ANALYSING THE PARLIAMENTARY DIMENSION OF CFSP/ESDP	236
IV.1. Security and Defence policy and the European Union	237
IV.2. The Democratic Deficit in general	239
IV.3. The Democratic Deficit in view of CFSP and ESDP	240
IV.3. Public opinion and European defence	242
IV.4. The CFSP/ESDP policy cycle in a parliamentary dimension	244
IV.4.1. The participation of parliaments in preparing legislation	244
IV.4.2. The participation of parliaments in the making of legislation	244
IV.4.3. The participation of parliaments in controlling legislation	245
IV.5. Conclusions: the long but inevitable way to democratic accountability	245
Annex V	
V. PROPOSALS OF THE CONVENTION FOR THE FUTURE STRUCTURE OF CFSP/ESDP WITH REGARD TO POSSIBLE PARLIAMENTARY INVOLVEMENT	247
ABBREVIATIONS	256
BIBLIOGRAPHY	258

List of Tables and Graphs

Options part

Table 1: Overview on scenarios discussed	13
Table 2: Instruments in CFSP/ESDP according the incremental option (option 2)	26
Table 3: Instruments in CFSP/ESDP according the federal option (option 3)	27

Annex I:

Table I.1: Development of early European foreign policy	60
Table I.2: Institutional development of the EPC 1970-1993	63
Table I.3: Institutional development of CFSP 1993-1999	67
Table I.4: Development of ESDP 1998-2002	75

Annex II

Table II.1: (Legal) output of EPC/CFSP 1970-2001
Table II.2: Parliamentary involvement in questions on CFSP/ESDP in 2001
Table II.3: Involvement of AFET in the legislative work of the EP 1994 –2002
Table II.4: Parliamentary questions to other institutions in 2001

Annex III

Table III.1: Current Members of Foreign Policy Related Committees of the <i>Folketing</i> (November 2002)
Table III.2: Overview of national representatives in the Parliamentary Assembly of the NATO
Table III.3: Overview of national representatives of associated member states in the Parliamentary Assembly of the NATO
Table III.4: Overview of national representatives in the Parliamentary Assembly of the WEU
Table III.5: Overview of national representatives in the Parliamentary Assembly of Council of Europe
Table III.6: Models of parliamentary involvement
Table III.7: Role of National Parliaments in the foreign and security »policy cycle«
Table III.8: Role of the Committees in foreign and defence policy
Table III.9: Assessment of parliamentary involvement

Options part

Graph 1: “Appointment” rights in CFSP / ESDP – Option 1: confirmation of status quo
Graph 2: “Appointment ” rights in CFSP / ESDP – Option 2: incremental adaptation
Graph 3: “Appointment ” rights in CFSP / ESDP – Option 3: Federal approach
Graph 4: The Process of Military Crisis Management
Graph 5: Budgetary Rights in CFSP / ESDP Option 1: status quo
Graph 6: Budgetary Rights in CFSP / ESDP Option 2a: incremental adaptation
Graph 7: Budgetary Rights in CFSP / ESDP Option 2b: incremental adaptation
Graph 8: Budgetary Rights in CFSP / ESDP Option 3: Federal approach
Graph 9: Inter-action of CFSP / ESDP issues Option 1: confirmation of status quo
Graph 10: Inter-action of CFSP / ESDP issues Option 2: incremental adaptation
Graph 11: Inter-action of CFSP / ESDP issues Option 3: federal approach
Graph 12: Options for the parliamentary dimension of CFSP / ESDP

Annex I

Graph I.1: Dimensions of EC/EU external policies
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Graph I.2: Formal structures of EPC until SEA

Graph I.3: Formal CFSP structures after “Amsterdam”

Graph I.4: Formal CFSP / ESDP structures after “Nice and Helsinki”

Annex II

Graph II.1: Internal structure of EP’s secretariat general with regard to CFSP / ESDP

Annex III

Graph III.1: The Danish Decision Process in EU Matters

Annex IV

Graph IV.1: General support for the EU in 2002

Graph IV.2: Support for ESDP country-by-country in 2002

Graph IV.3: Support for the EU and CFSP/ESDP in the long run

Preface

The creation of the European Security and Defence Policy (ESDP) is among the most prominent developments of recent years on the European scene. When the ESDP becomes operational, the »parliamentarisation of ESDP« will become a crucial issue. Strangely enough, this subject has attracted so far only limited attention – even in the Convention. In order to contribute to the debate, this research paper has been drafted.

The study is the result of a research project carried out collectively by a group of European political scientists and legal experts submitted for the European Parliament (Directorate-General for Research) under Contract No. IV/2002/01/01. The particular aim has been to present options for a parliamentary dimension of the CFSP and ESDP. In order to achieve the purpose of presenting viable policy options in the final shape of precise treaty articles, the study presents a set of twelve options for three kinds of scenarios projecting the future development of the EU.

The executive summary and the final report including concrete proposals for treaty articles are the key results of this study. Since the proposed procedures as well as the treaty changes – indicating possibilities for institutional and procedural arrangements – have to be based upon thorough analysis of parliamentary participation in security and defence policy, five annexes have been attached:

In turn to present an overall picture, in annex I a historical overview of the developments in European foreign and defence policy was drafted. A brief description of basic structural outlines seemed inevitable regarding the latest debates and – more explicitly – the outlines in discussion for future possibilities and opportunities.

Beyond treaty regulations, there are also informal practices of information and mutual exchanges of views between the European Parliament and other bodies. Accordingly, in annex II a major work has been undertaken in investigating the channels of interaction at the European level.

The analysis of the role of parliamentary participation in security and defence matters is also related to the involvement of national parliaments. Hence, in annex III the national parliamentary level is explored regarding the preparation, adoption, implementation and control of foreign, security and defence policies. This part of the study has been undertaken primarily in a comparative perspective, including the United States of America.

Annex IV finally assesses the strength and weakness of parliamentary involvement in foreign, security and defence politics in view of legitimacy as the ultimate aim and, more concrete, voice, scrutiny, transparency and accountability.

The study has been organised as an interdisciplinary and cross-national analysis. To discuss the analytical approach and preliminary results along a common checklist, two meetings with the »core team« were held in Brussels at the 19 September and the 3 December 2002. This group of experts produced numerous ideas and suggestions, which afterwards have been revised, sorted and applied to the study scheme. Preliminary results also have been discussed with Members of the European Parliament in the session of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy at 3 December 2002.

This study has taken full advantage of the participating contributors and experts. Each of them has dealt for many years with CFSP and ESDP pooling different national backgrounds. Whereas Finn Laursen, David Allen, Gunilla Herolf, Olivier Rozenberg and Saskia Matl have contributed not only but foremost to the Member States perspective, Udo Diedrichs, Christopher Hill, Elfriede Regelsberger and Ramses A. Wessel have guided the study with their vast

experience in CFSP/ESDP issues. In addition, Ramses A. Wessel has drafted the treaty articles.

Besides them, the study would not have been carried out without the enthusiastic engagement of Martin Sümening and Jana Fleschenberg who took care for establishing the necessary databases and editing the study.

Since the time schedule of the study was particular tight, mistakes and incoherence might not have been avoided. Nevertheless, we look forward that it offers useful and inspiring options though no one-and-only solution can be presented.

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Wolfgang Wessels

Executive Summary: The parliamentary dimension of CFSP/ESDP

I. Challenges for the European Parliament

Recalling that

- ⇒ the Common Foreign and Security Policy (CFSP) now constitutes a key element of the European construction while remaining a cornerstone of the national foreign policy of the member states;
- ⇒ the creation of the European Security and Defence Policy (ESDP) is one of the most prominent and relevant developments in the European Union in the last few years;
- ⇒ the ESDP has still to be fully institutionalised and made operational;
- ⇒ the parliamentary dimension of ESDP – and the role of the EP – is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of a presidency;
- ⇒ the European Convention is supposed to make a statement on how a more coherent common foreign policy and defence policy should be developed;

Regarding that

- ⇒ the need for public support will be of crucial importance when the ESDP becomes militarily operational;
- ⇒ although CFSP and ESDP work by »special rules« due to the need for discretion and classification connected with foreign and defence policy, the need for democratic accountability in this policy field is of fundamental importance if the actions and activities of the EU are to be accepted and supported by the citizens;
- ⇒ Parliaments at both the European and national level are crucial for granting »legitimacy« and thus play a special role in ensuring public support;

Stressing that

- ⇒ in spring 2002 around 71% of all EU citizens were in favour of a common security and defence policy compared to only 16% against;
- ⇒ because this support has been constant over time, the EU can base its activities on a broad though diffuse general public approval for foreign, security and defence policy;

Taking into account that

- ⇒ foreign, security and defence politics is one of the remaining areas in which the national governments prevail as key players;
- ⇒ for the foreseeable future, defence budgets and operational military decisions are likely to remain within the competence of the national governments and parliaments;
- ⇒ the rights and performance of national parliaments in foreign, security and defence policy vary greatly in their intensity and effectiveness among EU countries;
- ⇒ each national parliament is finding it increasingly difficult to control the EU's security and defence policy;

Criticising that

- ⇒ for achieving the objectives of the Union in world politics (Article 11), the present constitutional and institutional status quo is highly insufficient;

- ⇒ there is an increasing democratic deficit within ESDP since neither the parliaments of the Member States nor the European Parliament are adequately involved in the new CFSP/ESDP structures and procedures;
- ⇒ the European Parliament's role in foreign and defence policy issues remains restricted – mainly due to its constitutional weakness vis-à-vis the Council and the Member States;

Considering that

- ⇒ parliamentary participation has to be upgraded for ESDP activities;
- ⇒ the European Parliament is a key institution which should also play a notable role in foreign, security and defence issues;
- ⇒ the debate within the Convention and beyond has not yet reached a high enough level, and as a result crucial points and vital issues are not yet at the top of priorities;
- ⇒ strategies must take into account different time scales: short term within the status quo, medium term within a incrementally reformed EU Constitution and long term within a perhaps federal»finalité« of the EU evolution;
- ⇒ at the current stage of the debate in the Convention several options out of a set of different strategies need to be discussed.

II. Options of the EP for a parliamentary participation within CFSP/ESDP

1. Constitutional provisions

A mayor requisite is a strong and firm constitutional basis. Starting from the present treaty provisions, the European Parliament should focus on a *substantial revision of Article 21 TEU*, the only article providing rights for the European Parliament in CFSP/ESDP (Title V). Since the objective of Article 21 is limited to the “Common Foreign and Security policy”, a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP.

Such a provision should reduce the artificial distinction between CFSP and ESDP procedures. In particular, a proper definition of ESDP – that goes beyond the Petersberg tasks – should be added to the Treaties. Within the “preliminary draft structure of the Constitutional Treaty” (skeleton of the presidium), such a revised Article 21 has to be extended on both “external actions (B.IV)” and “defence (C)”.

In addition, the EP should insist that »defence« includes provisions strengthening mutual solidarity which will lead to a collective defence clause.

(- > Article 11, 17, 18.1 and 21 EU in part III below)

2. Participation in appointment procedures

The European Parliament should be involved in the *appointment process* of leadership positions in CFSP/ESDP. A say in the appointment of top positions will become more significant, especially in view of any proposals made in the Convention which lead to a new allocation of responsibilities in CFSP/ESDP.

A first step would be the need to consult the EP along the lines of the ECB-investiture (Article 112.2.b TEC – AV) when nominating the High Representative, the chairpersons of the EUMC and CIVCOM or special envoys.

An optimal step would be to establish the assent procedure as presently applicable for the European Commission (Article 214.2 TEC – AV). If the Convention/IGC opts for

the abolition of the rotating presidencies and extending the term of European Council presidencies, then the EP should also gain assent powers for this new form of presidency.

(- > *Article 18.5 EU and 207(2) EC in part III below*)

3. Provision of information to and consultation of the European Parliament

In cases where the EU employs its CFSP/ESDP instruments (common strategies, common positions, joint actions), the *European Parliament should be fully informed and/or consulted at an early stage*. The EP should have the right to request information – if necessary for only a restricted circle of Members. It should be given the powers, which enabled it to mandate the appearance of the High Representative and/or the Presidency. The current Article 21 states that the EP is restricted to “be[ing] kept regularly informed (...) of the development of the Union's foreign and security policy”. This needs to be revised in order to ensure that the EO is supplied with substantial and timely information about each single case, at all stages, in all policy fields and by all bodies – including the political and security committee PSC.

As to the essential right of information, there must be an improvement in the links between the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Council and its associate bodies. The EP should claim to reinforce the inter-institutional agreement of November 2002 in terms that the *access to confidential information* related to foreign, security or military actions not only becomes possible for the »security committee« but is actually guaranteed.

(- > *Article 21 EU in part III below*)

4. Involvement in non-military and military measures

Regarding legal acts taken in CFSP/ESDP, the EP must not only have the possibility of formulating its own position, but should also have the right to ensure its position on all non-military EU legal measures will be given appropriate consideration. Hence, the European Parliament should claim more distinctive competences in terms of a *legally binding consultation in non-military crisis management*. In addition, consideration should be given to the right of ex-ante information in military crisis management. Thus, the new »security committee (see below) of the EP would be informed before any deployment or utilisation of the rapid reaction forces.

(- > *Article 21 EU in part III below*)

5. Enhanced co-operation

The powers of the European Parliament should be equivalent to normal procedures in cases of enhanced co-operation also if they are extended to military and security issues.

6. CFSP/ESDP budget

The European Parliament should demand a revision of the rules concerning the way the budget for foreign actions is drafted. Currently, operations “having military or defence implications” have to be financed by the Member States. Extending the Council (of Foreign Ministers) decision of 17 June 2002, which features categories of expenditures in ESDP, the EP should stress that *common costs* (including both operational and administrative costs) should no longer be financed jointly by the Member States but *by the EC budget*. This would provide the parliament with an instrument of control that it can exert through its right to participate in the drafting of the EC budget.

The long-term objective should be the inclusion in the EC budget of the costs of all EU activities for CFSP and ESDP purposes.

(- > **Article 28 EC in part III below**)

7. International agreements

The European Parliament should become *involved in all international agreements, which fall under Article 24 (TEU – AV)*. Revised treaty provision could be set up that are similar to the powers granted under Article 300.3 TEC: “The Council shall conclude agreements after consulting the European Parliament (...)” In cases that establish a specific institutional and budgetary framework, “agreements (...) shall be concluded after the assent of the European Parliament has been obtained.”

(- > **Article 24 EU in part III below**)

8. Internal organisation of the European Parliament

The division of labour within the European Parliament should also be discussed. In order to reflect the evolving working structures of the Council, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy *might be divided into two different committees*: one covering the field of foreign policies and one focusing on defence and security matters. The »security committee« should consist of representatives of both the defence and foreign committee. In addition, the policy field of human rights might either be merged with the Committee on Development and Cooperation (DEVE) or become a separate committee.

9. Co-operation with national parliaments

The EP should improve dialogue and co-operation with national parliaments in order to increase access to information and broaden support for its work.

This can be achieved through the setting up of a *policy-oriented sub-COSAC related to foreign, security and defence issues*.

A more preferable option might be *a specialised joint parliamentary forum* for foreign, security and defence policy, which would be organised by and held at the European Parliament. This forum would be held on a regular basis and be convened jointly by the chairmen of the national foreign and defence committees and the members of the EP’s committee(s) on foreign and defence matters. In emergency situations, this forum might delegate up to three of its members into the »security committee«.

More general communication between national parliamentarians and MEPs can be ensured by either the »European Congress«.

(- > **Modification of Protocol (No 9) in part III below**)

10. »Bench-marking« for national parliaments

Since the rights of national parliaments in foreign, security and defence policy differ substantially, national parliaments might enter into a benchmarking exercise looking at *minimum standards for best practises* of national legislatures in foreign, security and defence policy.

11. The role of the WEU provisions

The WEU has become a comparatively »inactive« organisation. Thus, the EU should acquire the residual functions of the WEU. Though the WEU Parliamentary Assembly (the interim European Security and Defence Assembly) has refused to accept the institutions’ demise, the *mandate of the Western European Union and its Parliamentary Assembly should come to an end*.

12. The relationship with NATO

The relationship between the EU and NATO is a key element for CFSP and ESDP. The *EP should therefore improve its links* with the US Congress and the relevant parliamentary bodies of other NATO Member States. In addition, communication with other existing bodies such as the Parliamentary Assemblies of the OSCE, the Council of Europe should be reinforced through the involvement of MEPs.

III. Recommendations for revisions and amendments of treaty articles

Based on these options, the following proposals could be used for an amended TEU, TEC and the protocol on the role of national parliaments (changes in bold). Taking up the present preliminary outline, the proposals might also be transferred into a new constitutional treaty. In addition, a proper definition of foreign, security and defence policy is attached.

TITLE V

PROVISIONS ON A COMMON FOREIGN, SECURITY AND DEFENCE POLICY

1. The Union shall define and implement a common foreign, security **and defence** policy covering all areas of **this policy**, the objectives of which shall be:

[etc.]

2. The Member States shall support the Union's **foreign**, security **and defence** policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

[etc.]

[Articles 12-16 unchanged]

Article 17

1. The common foreign, security **and defence** policy shall include all questions related to the security of the Union. [...] **This policy** might lead to a **collective** defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain member States, which see their common defence **policy** realised in the North Atlantic Treaty Organisations (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

[etc.]

Article 18

1. The Presidency shall represent the Union in matters coming within the common foreign, security **and defence** policy.

[...]

5. The Council may, whenever it deems necessary **and after the assent of the European Parliament has been obtained**, appoint a special representative with a mandate in relation to particular policy issues.

[Articles 19 and 20 unchanged]

Article 21

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign, security **and defence** policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept informed **on a continuous basis** by **the High Representative for the common foreign and security policy**, the Presidency and the Commission of the development of the Union's foreign, security **and defence** policy.

The Council shall consult the European Parliament before taking any decision – not having defence implications – on the basis of the procedure laid down in Article 23.

The European Parliament may ask questions of the Council or make recommendations to it. **The Council shall give an appropriate and prompt response. [Acting by absolute majority of its component members, the European Parliament may demand that the High Representative for the common foreign and security policy join a debate on any issue falling under this Title. The High Representative shall adhere to this request.]** The **European Parliament** shall hold an annual debate on progress in implementing the common foreign, security **and defence** policy.

[Article 22 unchanged]

Article 23

Without prejudice to Article 21, decisions under this Title shall be taken by the Council acting unanimously. [...]

Article 24

1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this Title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency after consulting the European Parliament. In case of establishing a specific institutional framework, agreements shall be concluded after the assent of the European Parliament has been obtained. [...]

[Article 25 unchanged]

Article 26

The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign, security **and defence** policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on be-

half of the council at the request of the Presidency, through conducting political dialogue with third parties.

Article 207(2) EC

[...]

The Secretary-General, High Representative for the common foreign and security policy, and the Deputy Secretary-General shall be appointed by the Council, acting by a qualified majority, after the assent of the European Parliament has been obtained.

Article 27

The Commission shall be fully associated with the work carried out in the common foreign, security **and defence** policy field.

Article 28

[...]

2. Administrative expenditure which the provisions relating to the area referred to in this Title entail for the institutions shall be charged to the budget of the European Communities.

3. Operational expenditure to which the implementation of those provisions gives rise, **including common costs of the Member States arising from operations having military or defence implications**, shall also be charged to the budget of the European Communities.

[delete the remaining part of par. 3]

4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

Modification of Protocol (No 9) annexed to the Treaty on European Union and to the Treaties establishing the European Communities, on the role of national parliaments in the European Union (1997)

[...]

I. INFORMATION FOR NATIONAL PARLIAMENTS OF MEMBER STATES

[...]

II. THE CONFERENCE OF EUROPEAN AFFAIRS COMMITTEES

[...]

III. COOPERATION BETWEEN THE EUROPEAN PARLIAMENT AND THE NATIONAL PARLIAMENTS ON TITLE V OF THE TREATY ON EUROPEAN UNION

1. Taking into account their shared responsibilities under Title V of the Treaty on European Union, the European Parliament and the national parliaments may organise special meetings, in the framework of COSAC or otherwise, to ensure that their combined influence is exerted as effectively as possible. They may agree to keep each other informed on any matter of foreign, security and defence policy in which they have a shared interest.

2. In emergency situations, including operations which have defence or military implications, the European Parliament and the national parliaments may establish a joint committee consisting of the members of their respective foreign and defence committees

with a view to discuss the development of the situation and to allow for the possible formulation of common positions.

3. Common positions adopted by the joint committee referred to in the previous paragraph shall in no way undermine the competences national parliaments enjoy under their respective national constitutions.

{Definitions}

In these draft articles, foreign policy relates to all external policies of the Union that are not covered in the context of CFSP by the (current) Treaty establishing the European Community or by Title VI of the (current) Treaty on European Union and that do not fall under the definitions of either security or defence policy.

Security policy relates to the non-military external policies of the Union, including the EU positions in the OSCE; the policy of disarmament and arms control; nuclear non-proliferation issues; and the economic aspects of security, in particular armaments cooperation, control of the transfer of military technology to third countries and control of arms exports.

Defence policy relates to the external policies of the Union involving military operations, including humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking and peace enforcement.

Collective defence (the term is used in stead of the term »common defence«) refers to a mutual obligation (currently) laid down in Article V of the modified Brussels Treaty (WEU Treaty).

Options for the participation of the European Parliament in CFSP and ESDP

“The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.”

CURRENT ARTICLE 21 TEU

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Detailed Table Contents of the final report

1. Options for the parliamentary dimension of CFSP and ESDP	11
1.1. The need for parliamentary engagement	11
1.2. »Scenarios« for shaping CFSP and ESDP	12
1.2.1. Short term: Super power but no super state – the »status quo«-scenario	14
1.2.2. Medium-Term: Incremental adaptation – the »gradual communitarisation«-scenario	14
1.2.3. Long-term: Towards a European federal foreign and defence policy – the »federal«-scenario	15
1.3. The scope of options and the legal character	17
2. Reform options regarding the parliamentary dimension of CFSP/ESDP	18
2.1. Legal references of European Parliament competences in CFSP and ESDP	18
2.2. Participation of the EP in »appointments« and electoral functions	20
2.3. Information and control rights of the EP in CFSP/ESDP affairs	22
2.4. »Legal« participation of the EP	26
2.5. The impact of enhanced cooperation	28
2.6. Participation of the EP in the budgetary aspects of CFSP/ESDP	30
2.7. Participation of the EP in international treaties	34
3. The involvement of AFET in all stages of CFSP/ESDP policy cycle	34
3.1. The overall Committee structure	35
3.2. The role of AFET	36
4. Options regarding national parliament's involvement in CFSP and ESDP	36
4.1. Improving inter-parliamentary co-operation between the EP and the national parliaments	37
5. Options regarding international organisations	41

5.1. The future of the WEU and its Parliamentary Assembly	42
5.2. The relationship with NATO and the Parliamentary Assembly of NATO	43
6. General constitutional and institutional aspects of the EU's evolution regarding CFSP and ESDP	45
6.1. The status of CFSP and ESDP in the EC/EU Treaties	46
6.2. The delimitation of competences	47
6.3. The decision-making procedures in CFSP/ESDP	49
6.4. The external representation of CFSP/ESDP	50
6.5. The reform of the Council	52
6.6. The role of the European Commission	53
7. Conclusions: Revisiting the options in view of the European Convention	54

1. Options for the parliamentary dimension of CFSP and ESDP

The creation of the European Security and Defence Policy (ESDP) belongs to the most prominent and relevant developments in the European Union during the last few years. The European Councils of Cologne, Helsinki and Nice have intensively promoted the elaboration of this »high politics« sector. However, ESDP is still to be fully institutionalised; i.e. new bodies such as the Political and Security Committee (PSC, new Article 25 TEU), the EU Military Committee (EUMC) or the Committee for non-military aspects of crisis management (CIV-COM)¹ have yet to find their role and position in the EU's institutional structure and establish links and settle relations with the existing bodies.

The need for public support and thus a parliamentary dimension will become a crucial factor when ESDP becomes militarily operational. Parliamentary participation could either be ensured by the national parliaments or by the European Parliament. In general, national parliaments have never had the same degree of control over foreign and defence policy as they have over domestic policy. Even if one ignores that the involvement of national parliaments varies considerably, they are left with mainly a symbolic formal influence. From the European (Union) level, the general weakness of parliaments in security and defence policy is even more apparent, since neither the national parliaments nor the European Parliament have substantial parliamentary control on foreign, security and defence policies.

Based on the historical developments in CFSP and ESDP (annex I), the inter-institutional set-up at EU level (annex II), the national parliamentary provisions (annex III) and the analysis of these arrangements in view of democracy and accountability (annex IV), this final report of the study submits distinctive options for consideration by the European Parliament and its Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET). These options are embodied in an executive summary, which includes concise proposals for treaty provisions to be included in any future treaty covering this policy sector, with special reference to the work of the Convention on the Future of Europe and the subsequent Intergovernmental Conference scheduled for 2004/05.

1.1. *The need for parliamentary engagement*

Of major relevance – especially for the debate in the Convention – are issues such as legitimacy, democracy and identity. The democratic perspective should not be ignored even if CFSP and ESDP have to operate by »special rules« due to the confidential nature of foreign and security policy documents. Legitimacy is of major importance if the people are to accept CFSP and ESDP. The fundamental assumption for the following approach is that in view of the Balkan crisis, the citizens of Europe and the political class alike are the first to point to and to criticise the shortcomings and deficits of formulation, presentation and implementation of CFSP/ESDP. Thus, it becomes clear that issues linked with CFSP and ESDP reflect vital interests of the Union and its Member States. The support for CFSP has been constant over the years. According to Eurobarometer 57 in spring 2002 nearly 64% of all EU citizens have been in favour of the principle of a common foreign policy, while 20% were against it. A common security and defence policy also attracted strong support. 71% of the respondents declared themselves in favour compared to 16% against. Eurobarometer shows that the highest levels of support are in Italy, Germany, Spain and the BeNeLux countries. On the other side the rates in Ireland and the United Kingdom show a more sceptical view.²

¹ See report on the ESDP, Brussels 4 December 2000, No. 14056/2/00 and Council decision of 22 January 2001 on setting up the Political and Security Committee, Official Journal, L 27, 30.01.2001; Decision of the Council setting up the Military Committee of the European Union, Official Journal, L 27, 30.01.2001 and Decision of the Council on the establishment of the military staff of the European Union, Official Journal, L 27, 30 January 2001.

² See Standard Eurobarometer 57, June 2002 and the in-depth assessments in annex IV.

Legitimacy is one of the most challenging issues facing the European Union. The notion of the »democratic deficit« is a key term and has for decades been one of the core issues in the European discourse.³ In this context, however, the specific nature of the EU – and especially of CFSP and ESDP – should be taken into account. Quite often, rather general assessments are made about the democratic nature of the EU. Frequently, political representatives and academics, regardless of whether they are »federalists« or »intergovernmentalists« transfer to the institutions of the EU standard doctrines and theories on parliamentary democracy developed for nation states. Quite often, this is done in a fairly unreflected way, as if the »optimal amount« of democracy is clearly defined, and as if alternative forms of international co-operation might not create even larger gaps of democratic accountability and responsiveness. The democratic deficit argument quite often concentrates on the strong or weak potentials of the EP: The Parliament is understood (in the federal view) as the key EU institution which will either lead to a new democratic quality for the Union or which documents the basic impossibility of the entire EU system to turn into an »ordinary« democratic system. In contrast, intergovernmentalists stress the role of the nation states and see the basis for any legitimacy as being based upon national parliaments. Strengthening the EP by means of institutional or procedural reform would not, from an intergovernmentalists view, pave the way to any kind of a democratic system. Instead, one should concentrate on the legitimising function of national parliaments.

While we should be extremely cautious against using criteria that are too simplified for the legitimacy debate and the democratic deficit, we should be careful not to make »naïve« assessments and propose »simple institutional« remedies. This study will therefore not contribute to one single overall solution with regard to reform of the existing treaties, since many of the current institutional arrangements of the EU have proved successful as seen in the »special« mixed institutional set-up of Member States and community bodies that have proved a successful way of handling ongoing ambiguities.

1.2. »Scenarios« for shaping CFSP and ESDP

Therefore, the presentation of institutional and procedural options for the parliamentary dimension of CFSP and ESDP is linked to three scenarios, which refer to the prospective developments of the EU, and several criteria ranging between a rather weak or strong degree of parliamentary influence.⁴ These models are focussed on the Brussels level, but also form one of those links which demonstrate the EU as a dynamic multi-level system;⁵ in other words they should also be regarded with a view towards the effects on the evolution of the national »end« of the system. Accordingly, it will be assumed that not only the European Parliament, but also national parliaments are constantly adapting and adjusting the possibilities and arrangements for parliamentary activity in CFSP and ESDP affairs.⁶

In particular the following three scenarios will be discussed:

³ See Thomas Banchoff/Mitchell P. Smith: Introduction, Conceptualizing legitimacy in a contested polity, in: Thomas Banchoff/Mitchell P. Smith (eds.): Legitimacy and the European Union, London/New York 1999, pp. 1-23 and Andrew Moravcsik: Reassessing legitimacy in the European Union, in: Journal of Common Market Studies 4 (2002), p. 603-624.

⁴ See for such an approach also the contribution by the member of convention, Alain Lamassoure: The European Union: four possible models, 3 September 2002. (CONV 235/02). See also the work of Andrew Duff: European Futures. Alternative Scenarios for 2020, London 2001.

⁵ See Markus Jachtenfuchs/Beate Kohler-Koch: Regieren im dynamischen Mehrebenensystem, in: Markus Jachtenfuchs, Markus/Beate Kohler-Koch (eds.): Europäische Integration, Opladen, 1996, S. 15-46.

⁶ See for such an approach Wolfgang Wessels: Wird das Europäische Parlament zum Parlament? Ein dynamischer Funktionenansatz", in: Albrecht Randelshofer/Rupert Scholz/Dieter Wilke (eds.): Gedächtnisschrift für Eberhard Grabitz, München 1995, pp. 879-904.

- ⇒ short-term adaptation: a »status-quo«-scenario
- ⇒ medium-term adaptation: a »gradual communitarisation«-scenario
- ⇒ long-term adaptation: a »federal foreign and defence policy«-scenario

These three scenarios contribute to the extensive discussions on the future of the European Union, which were triggered by the Fischer speech at the Humboldt University in 2000.⁷ The succeeding proposals (particularly those from the heads of government) and the Laeken Declaration of the European Council⁸ provided a crucial boom in the long history of conceptual controversies about the European Union's »finalité politique«.⁹

The configuration of these scenarios is primarily deduced from systematic reflections on European integration. Scenarios are in some way heuristic and ideal-types and do not gain subsistence in this distinct manner. However, scenarios or models might prove helpful in order to classify the wide-ranging approaches of the debate. Based on these three scenarios, possible options for institutional arrangements as well as potential revised procedures will be discussed and offered.

Table 1.: Overview on scenarios discussed

SCENARIO	STATUS QUO	GRADUAL COMMUNITARISATION	FEDERAL FOREIGN AND DEFENCE POLICY
SUBJECTS			
constitutional base / objectives of Art. 21 (see chapter 2.1)			
appointment procedures (see chapter 2.2)			
information and control (see chapter 2.3)			
legal acts (see chapters 2.4)			
enhanced cooperation (see chapter 2.5)			
budgetary competencies (see chapter 2.6)			
international treaty making (see chapter 2.7)			
role of AFET (see chapter 3)			
role of national parliaments (see chapter 4)			
cooperation with other organisations and bodies (see chapter 5)			
general aspects of reforms in CFSP/ESDP (see 6.1 -6.6)			

Formulation of articles

⁷ See Joschka Fischer: Speech of the German Minister of Foreign Affairs at a ceremony marking the 50th anniversary of Germany's accession to the Council of Europe Berlin, 9 October 2000 (http://www.german-embassy.org.uk/speech_by_foreign_minister_jos.html). See also Christian Joerges/Yves Mény/Joseph Weiler: What kind of constitution for what kind of polity? Responses to Joschka Fischer, Florence 2000.

⁸ See European Council: Laeken Declaration, Annex to the Presidency conclusions, Laeken December 14/15 2001 (http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm).

⁹ See for an general overview on concepts in integration history Wilfried Loth: Entwürfe einer europäischen Verfassung. Eine historische Bilanz, Bonn 2002.

1.2.1. Short term: Super power but no super state – the »status quo«-scenario

Taking into account the Nice Treaty amendments and the conclusions of the European Council, a first scenario is based on the status quo, on a careful or restricted approach for further communitarisation and the ambiguous legal and political groundwork of current CFSP/ESDP arrangements. As shown above, the EU's second pillar is primarily characterised by an inter-governmental pooling of national resources – in assumption of the sovereign nation-state being the authoritative actor in cross-border interaction.¹⁰ A further intergovernmental assumption sees the EU and its institutional set-up as products of a general strategy by national governments and their administrations to gain and to keep influence vis-à-vis other countries. Following this logic of competition, the preferred option is that Member States and their elected governments remain »the masters of the treaties« since they are the only actors qualified to do so.¹¹ In contrast to other policy fields in the first pillar such as EMU and certain policies belonging to the field of Justice and Home Affairs, treaty changes have not yet moved CFSP to the level of supranational communitarisation.¹² In particular, the defence and security dimensions of CFSP are dominated by intergovernmental patterns. Member States have only agreed to pool resources in CFSP/ESDP affairs in a loose form because they are part of »high politics« (thus the most crucial element of policies and politics), where national sovereignty remains very strong.¹³

From the assumptions of this school of thought we could expect that the founding text(s) of the Union will still be an international treaty with the heads of government as architects of the treaty. The institutional triangle between European Commission, European Parliament and Council is and will not be balanced because it prefigures a dominance of the latter.

Although other intrastate actors participate in the process of political decision-making, arrangements are often made either outside the current institutional framework or are characterised by unanimity. Subsequently, decision-making in this field of policy will continue to suffer from the potential of being blocked. Alternatively, the development of a »directoire«¹⁴ of large states or several other models of flexibility could be anticipated. However, this is not to say that the development of ESDP will be extinguished as intergovernmentalism has the potential to work, at least in the long run. However, in terms of democratic accountability and transparency the current CFSP/ESDP policy cycle cannot be considered acceptable. Democratic participation and control remains primarily institutionalised in the Member States through the national parliaments.

1.2.2. Medium-Term: Incremental adaptation – the »gradual communitarisation«-scenario

A second scenario refers to a process of gradual communitarisation. It postulates an incremental, pragmatic or step-by-step development. This scenario takes into account statements from the Convention about the current incremental debate on the reform of the EU. The community method is considered as a continuation of the current largely functional path of

¹⁰ See German Constitutional Court 1993: Judgement of 12 October 1993, in: Andrew Oppenheimer (ed.): *The Relationship between European Community Law and National Law: The Cases*, Cambridge 1995. See generally Kenneth N. Waltz: *Theory of International Politics*, Reading 1979.

¹¹ See Bundesverfassungsgericht: Urteil über die Verfassungsbeschwerden gegen den Vertrag von Maastricht, Judgement of 12 October 1993, in: Andrew Oppenheimer (ed.): *The Relationship between European Community Law and National Law: The Cases*, Cambridge 1993. For the term see also Hans Peter Ipsen: *Zehn Glossen zum Maastricht-Urteil*, in: *Europarecht* 1 (1994), pp. 1-21.

¹² See for such a statement Tony Blair: *Europe's Political Future*, Speech to the Polish Stock Exchange, 6. October 2000, (<http://www.fco.gov.uk/news/speechtext.asp?4913>).

¹³ See Stanley Hoffmann: *Obstinate or Obsolete: the Fate of the Nation-State and Case of Western Europe*, in: *Daedalus* (1966), pp. 862–915.

¹⁴ Joseph Janning: *Dynamik in der Zwangsjacke – Flexibilität in der Europäischen Union nach Amsterdam*, in: *integration* 4 (1997), pp. 285 – 292, here p. 290.

integration. The evolution of »real patterns« in the »living constitution« show a trend towards an intensive use of institutions and procedures to produce an increasing output which also becomes more differentiated. Although many supranational elements of the institutional framework have remained largely »dead letter«, this scenario is even applicable for the second pillar.

The basic theoretical background of the community method scenario is based on the idea of a functional, institutional and procedural spill-over: a process which refers "to a situation in which a given action, related to a specific goal, creates a situation which the original goal can be assured only by taking further actions, which in turn create a further condition and need for more action, and so forth."¹⁵ In view of this approach, the revisions of the European treaties are the legally sanctioned products of spillover processes, which provide the EU institutions with more exclusive powers for shaping outputs that are binding for the Member States. Therefore, the development of policies such as the European Union's external relations in the Common Commercial or External Monetary policy has led to pressure for further cooperation in CFSP or even ESDP affairs.

It is the »Monnet strategy« which has been followed from the beginning of the community project in the 1950s. Advocates of the community method promote a strengthening of the current institutional triangle. In particular, this scenario proposes options to link the strengthening of the (European) Council and/or Presidency with a stronger role for the EP – secured through majority voting and an independent Commission. Nevertheless, the scale of options within this scenario varies considerably, particularly due to the very heterogeneous positions of the EU Member States. This analysis of both dimensions demonstrates that political attentions as well as personal resources have shifted to Brussels, while national resources are not yet communitarised as in other policy fields. The external influence of the Union (and its perception by third parties) will thus be based on the current system, whereby the domestic and foreign policies of the individual Member States might reinforce and strengthen the common EU policies.

From the assumptions of this school of thought we could expect that committees with national civil servants will serve to extend at least the formal legitimacy of the nation state, even though the locus of de facto decision-making has already shifted to communitarised bodies outside national control. In terms of democratic accountability, the legitimacy of CFSP/ESDP actions would not remain restricted to the national level. Instead, it would be reinforced through supranational community institutions comprising a mix of the national and the EU level.

1.2.3. Long-term: Towards a European federal foreign and defence policy – the »federal«-scenario

The third scenario is based on the assumption of a move towards the idea of a federal constitution: a »saut qualitatif« towards a new European foreign policy structure. It is therefore a long-term vision that would require fundamental and complete reforms and would lead to a truly common European state model. In this context, the study will present a set of proposals for explaining the EP's role towards full-fledged parliamentary participation – similar to the US Congress model. Such a federal scenario would include a clear division of competences, a decentralisation of power, a European constitution that would feature a set of fundamental rights and an institutional structure with a two-chamber parliament and an elected government.

¹⁵ Leon N. Lindberg: *The Political Dynamics of European Economic Integration*, Stanford 1963, p. 10. See also Robert O. Keohane and Stanley Hoffmann: *Institutional change in Europe in the 1980s*, in: Robert O. Keohane and Stanley Hoffmann (eds.): *The new European community, Decisionmaking and Institutional Change*, Boulder 1991, pp. 1-39.

This federal scenario is based on the assumption that the overall dynamics of the EU System and the difficulties of the present institutions and procedures will create sufficient incentives for the heads of government to take a decisive step towards some kind of supranational or federal set of rules for running an efficient and effective CFSP/ESDP. Challenges and shocks from the international system will be perceived as pressures to push national politicians towards a federal »finalité politique« – perhaps at the beginning by means of incremental steps. Proposals in this sense are already being presented by some national politicians or political parties and, indirectly, also by the heads of governments questioning in the Laeken declaration: “Does Europe not, now that [it] is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples?”¹⁶

According to federalist thinking, national actors’ struggle for access, voice and veto powers, e.g. for the most extensive control possible of the Brussels arena, has not been, is not and will not be successful.¹⁷ Committees of national civil servants (especially COREPER and the PSC) are seen as serving only national interests and thus constituting a major obstacle to the proper institutional balance, which would be mandatory to guarantee efficient, effective, and legitimate integration policy with regard to CFSP/ESDP matters.

From the assumptions of this school of thought we could expect that Member States’ institutions and actors will become increasingly marginalised and substituted by EC/EU bodies. Such Member State institutions will be transformed from arenas for national actors into autonomous bodies replacing national influence. Each change of the treaty (constitution) would increase the role of supranational institutions and decrease the veto powers of Member States. The behavioural pattern of the Council of Ministers would be dominated by the use of articles, which would allow for qualified majority voting. The evolution of a »true will« of the »European people« and the desirable path to a federal union would therefore require a considerable increase of the European Parliament’s rights and powers.¹⁸ Federalism assumes a legitimate supranational order, in which the EP formulates far-reaching policy agendas, articulates ideals and brokers strategies for the deepening of the integration process. The EP would thus become a relevant actor or even the key institution in the constitutional set-up of the (future) EU government.

In this perspective the third scenario pictures a trend towards a further »Brusselisation« and ever closer political co-operation in foreign, security and defence affairs. More and more policy aspects of security and defence policy will be included, both in military as well as a non-military crisis management and defence. A federalist scenario’s objective is to have an institutional structure, which takes into account the dual legitimacy of the EU as a Union of states and a Union of peoples. Thus, democratic participation (and, consequently, legitimacy) can be achieved at the supranational, national and regional levels. Strengthening the *external* capacity of the EU is based on finding common solutions to common problems and speaking with one voice on the world stage. In this system, the EP would play a key role, ensuring a strong parliamentary dimension to ESDP.

Despite this completely federal Union seeming at present to be far from realistic (especially in terms of CFSP/ESDP), this scenario does prove helpful, as some of the federalist elements are

¹⁶ European Council 2001, op. cit., p.1.

¹⁷ See Richard Mayne and John Pinder: *Federal Union: The Pioneers, A History of Federal Union*, London/New York 1990, pp. 214-215; John Pinder: *European Community: the building of a Union*, Oxford/New York: 1995.

¹⁸ See Altiero Spinelli: *Manifest der europäischen Föderalisten*, Frankfurt a.M. 1958; Heinrich Schneider: *Föderale Verfassungspolitik für eine Europäische Union*, in: Heinrich Schneider and Wolfgang Wessels (eds.), *Föderale Union – Europas Zukunft? Analysen, Kontroversen, Perspektiven*, München 1996, pp. 21-50.

part of the wider discussions and can be incorporated while not embracing the final idea of a federation.¹⁹

1.3. The scope of options and the legal character

The strengthening of parliamentary involvement in the European policy-cycle is a core element in the debate about reform, which is taking place in the Convention on the future of European Union. It is argued that parliaments are of extraordinary political importance since general support in a Member State for the EU is closely related to the role played by its parliament(s). Parliaments are generally regarded in democracies as a key to ensuring legitimacy since in most systems they are the only body directly elected by the people. In the EC/EU-system, the European Parliament is the only institution, which gains its legitimacy in this way. The question of how far and by which means stronger parliamentary cooperation can be obtained is discussed with a large amount of controversy. The following four general options summarise the range and level of options both for the EP and national parliaments in general, as well as for CFSP and ESDP in particular:²⁰

- ⇒ strengthening the competences of the European Parliament in decision-making and controlling as well as improving appointment competences
- ⇒ enhancing the participation- and control rights of national parliaments in the European policy-cycle
- ⇒ establishing a body of national parliaments at EU level
- ⇒ improving the cooperation structures between the national parliaments and the European Parliament

All aspects of the parliamentary dimension of CFSP and ESDP will be discussed along the lines of these four models of possible parliamentary engagement. Hence, the various options for CFSP and ESDP will be discussed firstly along the three scenarios, secondly in view of the options for parliamentary involvement and thirdly in regard to all four phases (preparation, making, implementing and controlling) of the policy cycle.

In addition to these three aspects (1. scenario, 2. parliamentary involvement and 3. policy-cycle) a fourth feature will be introduced which will refer to the legal character of the suggestions. In order to present the EP with a widespread range of possibilities for how to achieve its positions, the proposed options will be combined with recommendations on the legal character of the prospective changes. In this context, it is important to distinguish between the following methods:

- ⇒ Treaty amendments (primary law)
- ⇒ legal decisions (secondary law)
- ⇒ Inter-institutional agreements (»soft law«)
- ⇒ Internal rules (rules of procedure)
- ⇒ Informal agreements

Due to their legally binding character, treaty amendments are the most important. Even if the legal basis for the EP were limited, it might be a starting point for further arrangements. By considering a restricted set of legal and real indicators of integration, we can identify recurrent patterns, which hint to a process of a *de facto* stronger involvement of national and EC actors.

¹⁹ As existing examples of federative elements in the EU the common currency and the European Central Bank have to be taken into account.

²⁰ See in this context also Andreas Maurer: Optionen und Grenzen der Einbindung der nationalen Parlamente in die künftige EU-Verfassungsstruktur, SWP-Studie, Berlin 2002, p. 5.

This happens in some form of »Brussellisation« for joint activities and pressure in the international system – without necessarily implying a direct »communitarisation« in strict legal terms.

Legal decisions are also of high importance since the creation of bodies such as the Political and Security Committee (PSC), the Military Committee (EUMC) and the Committee for non-military aspects of crisis management (CIVCOM) is based on a legal act by the Council.

In the legal hierarchy of EC/EU, inter-institutional agreements are binding, but not in the same way as treaty articles. These agreements aim to give concise expression to the Treaty on European Union. Internal rules are legally binding – but only for the institution that incorporates them.

Informal agreements are not legally binding. Nevertheless, they can hold high political significance by offering incentives and constraints. Furthermore, they can gain particular importance in the long run. If long-term goals or strategies based on informal agreements are, step by step, amended or even transposed to the formal institutional and procedural provisions, they can create crucial opportunity structures.

Very generally, the basis for all of the following observations, statements and recommendations should be to highlight and emphasise the collective nature of European Security and Defence Policy and to ensure that ESDP becomes more legitimated.

2. Reform options regarding the parliamentary dimension of CFSP/ESDP

Parliaments are of essential political importance. Since parliaments are the only body directly elected by »the People(s)«, they are regarded as a core of legitimacy in democratic systems. Democracy through parliamentary involvement remains important, even when a lot of the information and documents involved in foreign and security policy are of a confidential and sensitive nature.

Since legitimacy is of major importance for CFSP/ESDP, a more direct involvement of the European Parliament in foreign and security affairs must be achieved, including a revision of rules governing the CFSP/ESDP policy-cycle from decision preparation to decision implementation and control. Without neglecting the (primary) role of national parliaments in foreign and defence issues, the competences of the European Parliament needs to be reinforced in order to reduce a legitimacy gap. This is essential for the credibility of CFSP and ESDP. It is insufficient to rely on the indirect legitimacy of national ministers who are elected or appointed by their respective national parliaments, which are in turn elected by the citizens.

The current institutional arrangements where responsibilities are split between the Council, the presidency and the European Commission, between COREPER, the PSC and the High Representative of the CFSP have been criticised as inefficient and insufficiently democratic. Furthermore, the division of control and scrutiny of the respective actors (the classic instrument of parliamentary involvement in foreign and security affairs) between national parliaments and the European Parliament has been called into question. In order to reinforce the credibility of the European Parliament and take into account the priorities of the overwhelming majority of European citizens – who believe that foreign and security policy should be part of EU competences – several proposals for a parliamentary dimension of CFSP and ESDP will be introduced:

2.1. Legal references of European Parliament competences in CFSP and ESDP

The »Nice« version of the TEU includes references to ESDP only in Article 17 (TEU – NV) and in Article 25 (TEU – NV). Since the objective of Article 21 TEU is »merely« the »common foreign and security policy«, a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP. Still, Article 17 defines that CFSP »shall include all questions relating to the security of the Union, including the progressive framing of a defence policy, which might lead to a common defence, should the European Council so decide«. This provi-

sion should be re-formulated in a more precise manner as to facilitate a distinction where necessary between provisions on CFSP and ESDP. In particular, the term ESDP should find its way into the Treaties proper.

The discussion on such an issue should contribute to a more general (public) debate on the question: "What is foreign, security and defence policy about"? Is there, in practice, an applicable division between the aspects of CFSP and the features of ESDP, or is this merely artificial? Are these two areas mutually interwoven, rendering a division superfluous, or are they separable? Finally, should one take into account the involvement of interior issues, human rights affairs and development aspects or should they be excluded from the set-up of CFSP/ESDP?

1) According to the status quo scenario, the lack of »parliamentary« references is regarded as only a minor problem. However, since the parliamentary dimension of the ESDP is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of a presidency, the EP might in this scenario claim a larger role through insisting its will and its right for a more profound participation. This might be achieved as a minimum in specific wording. The connection of EP to ESDP in at least a declaration by the European Council might stress the participation of the European Parliament in this new policy area and link it more closely to democratic principles.

In addition, the European Parliament might put forward the idea of producing a »White Paper« on ESDP: Such a »paper« could then take into account the parliamentary dimension of European security and defence policy.

2) Even taking a pragmatic view about future developments in foreign and security matters, it appears necessary to extend the existing treaty provision in the second pillar to the emerging ESDP. Thus, all parts of Article 21 should be amended in the way that the objective is more clearly defined. In the view of the European Parliamentarians, it might prove helpful to distinguish between security targets, e.g. the Petersberg tasks, and other general defence matters. Following such an approach, the Petersberg tasks should not be reduced to peacekeeping but also include peace enforcement as outlined by UN Secretary General Boutros Ghali.²¹ Amending Article 21 with regard to the incremental option would mean that the EP contributes to the security aspect but is excluded from defence policy that is executed by the Member States.

If we follow the preliminary draft proposal by President Giscard, then the revised Article 21 has to be extended on both external actions and defence. Nevertheless, if a clause of mutual assistance is included in the Treaty (see below), then the EP (via its rights of information) should also be engaged in any case of invoking it.

3) If a truly European view eventually develops into the aspired »finalité politique«, the entire Title V TEU would have to be revised. Several references to parliamentary involvement would have to be included. In particular, Article 21 would have to be amended in two ways: Both security and defence policy would be inserted leading to the participation of the EP in foreign and security policies as well as defence. A new version could be drafted that read: "The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy »including defence« and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency, the High Representative and the

²¹ United Nations Secretary-General Boutros Boutros-Ghali published in June 1992 »An Agenda for Peace« which stimulated the debate about the role of the international community in securing peace in the world.

Commission of the development of the Union's foreign and security policy »including defence«”.²²

2.2. Participation of the EP in »appointments« and electoral functions

The function of appointment is generally based on the principle of parliamentary majorities that exert their influence through the instrument of the election of the respective head of the government or its cabinet. In the EU, the Commission can be characterised only to a limited degree as a »government«. The appointment function has been developed in a fairly restricted way. Nevertheless, the EP's approval of the president of the Commission followed by the entire Commission (Article 214 TEC) can be evaluated as a first step towards such an appointing function. By means of the »hearings« (not yet legally recognised in the EC Treaty) of the individual Commissioners, the EP has succeeded at least on a small scale in expanding its authority.

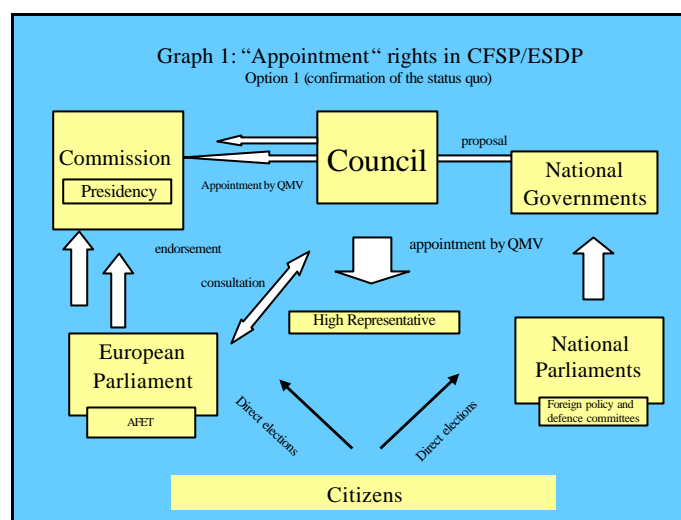
1) With regards to CFSP/ESDP affairs, a careful adaptation would include a slight enhancement of the EP's competences. Currently, the EP is not involved in the nomination or appointment of the High Representative. One possibility to achieve a better role for the parliament would be to introduce Parliament's involvement in the appointment of the High Representative. Hence, the EP should refer to the example of the EC treaty provisions concerning the European Central Bank. The president of the ECB, as well as the vice president and the other members of the executive-board, is appointed after consultation with the European Parliament. The same provision might be adopted in appointing the High Representative. Consequently, the wording could run as follows: "The High Representative of the CSFP will be appointed by common accord [or QMV since with the Nice treaty it is introduced for the appointment of the Secretary General of the Council] of the Governments of the Member States at the level of heads of state or government, on a recommendation from the Council, after it has consulted the European Parliament (...)".

An alternative solution, being discussed at present, would entail the appointment of the High Representative by the European Council, preferably as deputy President of the Commission but without being bound to the body's collegial discipline and with a specific right of initiative on foreign and security policy (which would derive also from the role of Commissioner).²³ In this case, the EP would at least be consulted before the High Representative is appointed.

Another aspect of the debate is the involvement of the European Parliament in the appointment of the special envoys. According to a careful adaptation, the EP should at least be consulted before the appointment of special envoys is decided.

²² See for further amendments of Article 21 in order to improve information and control competences chapter 2.6 below.

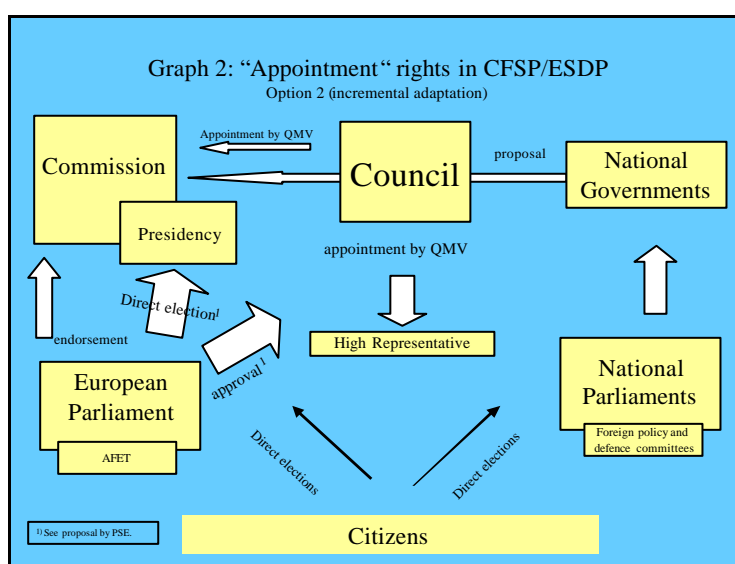
²³ See Hannes Farnleitner and Gerhard Tusek: A Common Foreign Policy for the EU, Contribution to the Convent, 13 August 2002 (CONV 224/02).



2) With regard to the perspective of an incremental adaptation of the treaties, the competences of the European Parliament in CFSP and ESDP have further to expand. The European Parliament should demand not only to be involved in the approval of the European Commission, as it does currently, but should also have a direct role in the appointment of the High Representative. In this case, the High Representative might be appointed along the same lines as the European Commission.

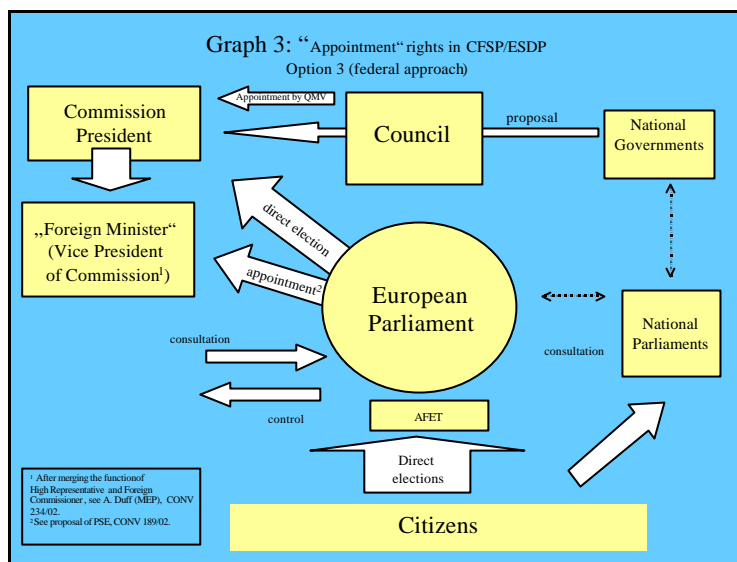
There is also an alternative for this treaty provision. In view of a more straightforward formulation, the provisions of the Treaty with regard to Article 207.2 might run as follows: "The Secretary-General and Deputy Secretary-General shall be appointed by the Council, acting by qualified majority after the assent of the European Parliament." In any case, the High Representative should be answerable to the European Parliament. This can be achieved by a amendment of the treaties including such a provision in Article 21.

In view of an incremental adaptation, the EP should also claim the right to take part in the appointment of the special envoys. Thus, an amendment of Article 18.5 might be necessary.



3) As already pointed out, if in the long run a far-reaching reform is to be achieved then the functions of the High Representative for CFSP and the Commissioner in charge of external relations ought to be combined into a single position. The institutional connection between the Council and the Commission resulting from this »fusion« of actors would strengthen the coherence of the various elements of EU foreign policy and might lead to a more efficient and

co-ordinated external representation of the Union. In view of a federal solution and a personal union between the High Representative and the »Foreign« Commissioner as vice president of the Commission (responsible for foreign, security and defence policy), the EP should have the right of electing the individual holding this position.²⁴ This right might include the obligation that the respective holder of the position is accountable to the EP for his actions.



To be in keeping with the »real« federal aims, a change in the mode and order of electing the presidency of the Commission should also be undertaken. The proposal of a candidate should not derive from the heads of government but from the majority in the plenary of the EP.²⁵ Regarding the special envoys, the EP should be an equal partner in the appointment process of the special envoys thus giving its assent.

2.3. Information and control rights of the EP in CFSP/ESDP affairs

Under the »Maastricht« TEU, additional rights of control for the EP were introduced in the EC pillar, such as bringing a matter before the ECJ (Article 227) and the use of committees of inquiry (Article 193). It remains to be seen whether the first negative experiences with the BSE committee of inquiry (concerning document insight, summons of national parliamentarians or civil servants) might be put in perspective in the future. Nevertheless, following a traditionally liberal position, the EP takes a significant position in controlling Council and Commission due to the overall non-parliamentary-system structure of the EC/EU.

With regard to CFSP/ESDP the constellation is even more intricate. In the year 2000 the High Representative, following a Council decision,²⁶ took several decisions in the field of security

²⁴ See election programme of the German Social Democratic Party (SPD), printed in: Frankfurter Allgemeine Zeitung, 9 August 2002.

²⁵ See Bündnis 90/Die Grünen (Germany): Electoral programm 2002, quoted in: Frankfurter Allgemeine Zeitung 9 August 2002.

See also the position of SPE, in: Für einen Erfolg des Konvents zur Zukunft Europas, Unsere wichtigsten Vorschläge, Strasbourg, 2 July 2002. See as example for the position of the EPP: A constitution for a strong Europe (adopted at the EPP Congress in Estoril, 18 October 2002), http://www.eppe.org/archive/Constitution_EN_1992.asp.

²⁶ In a COREPER meeting in July 2000, a majority of Member States decided to categorise all documents containing information on military or non-military crisis management. Public access is now refused to documents classified as top secret, secret, or confidential, whereas access to all other documents is granted or denied according to the previous rules.

and defence policy that were intended to protect secret or confidential information.²⁷ In reaction to this »Solana Decision«, the European Parliament made serious plans to take the Council before the European Court of Justice and claim its right for appropriate information. In July 2002 the situation was eased when a draft agreement was discussed that aimed to ensure that the EP would be informed appropriately about EU defence and security policy.²⁸ This agreement between the EP and the Council was concluded on 20 November 2002. Although it remains to be seen how the agreement works, it promises to be a substantial step forward compared to the current provisions of Article 21 in terms of timing, scope and quality of information.²⁹ Especially significant is the provision that a »security committee« will be created (Article 3.3. of the agreement) comprising four MEPs and the chairman of AFET, and which will be informed “of the content of the sensitive information”.

1) In consideration of the status quo scenario, the information rights of the EP will not be substantially amended due to the confidential nature of foreign policy. The recent arrangements are regarded as the optimum for the parliamentary ability to monitor CFSP and ESDP vis-à-vis the Council.

The first EU military exercise, the Crisis Management Exercise (CME), took place from 22 to 28 May 2002. The Member States and many European institutions took part in the simulation, as well as the main international players (as observers). The exercise was designed to test the decision-making system in a crisis situation. Though this prototype of European military exercise was considered a success, the European Parliament obtained hardly any detailed information. In view of the new arrangements (Inter-institutional agreement of November 2002) the EP's access to such confidential information might improve. Nevertheless, the EP has to ensure a genuine evaluation of the new arrangements.

In addition, it must question whether the present arrangements of intelligence sharing and the relatively small size of the Policy Unit are sufficient to deliver quality information assessments for EU action. Hence, the Parliament should propose initiatives for guaranteeing better information by discussing and addressing the Policy Unit and other bodies in the Council framework.

2) A pragmatic development might include that a distinction be made between the formal and informal information competences of the EP. Referring to the informal information competences of the European Parliamentarians, the key question would be: »(How) can a culture of informal participation evolve?« In this respect the links of the EP's AFET with the Council and its bodies would have to be improved at all stages of the policy cycle. This might also lead to the establishment of links between Parliament and the PSC, which are currently insufficient. Pragmatic channels of collaboration will probably depend on the national background of AFET Parliamentarians and the respective political directors of the EU Member States. In addition, MEPs should even seek ties and channels to the EUMC and especially the chair of the EUMC.

In view of formal information rights, it should be considered necessary by the EP to pursue an improvement in the flow of information from the Commission, the Presidency and the High

²⁷ Decision of Secretary-General/High Representative of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council (OJ C 239, 23 August 2000, p. 1).

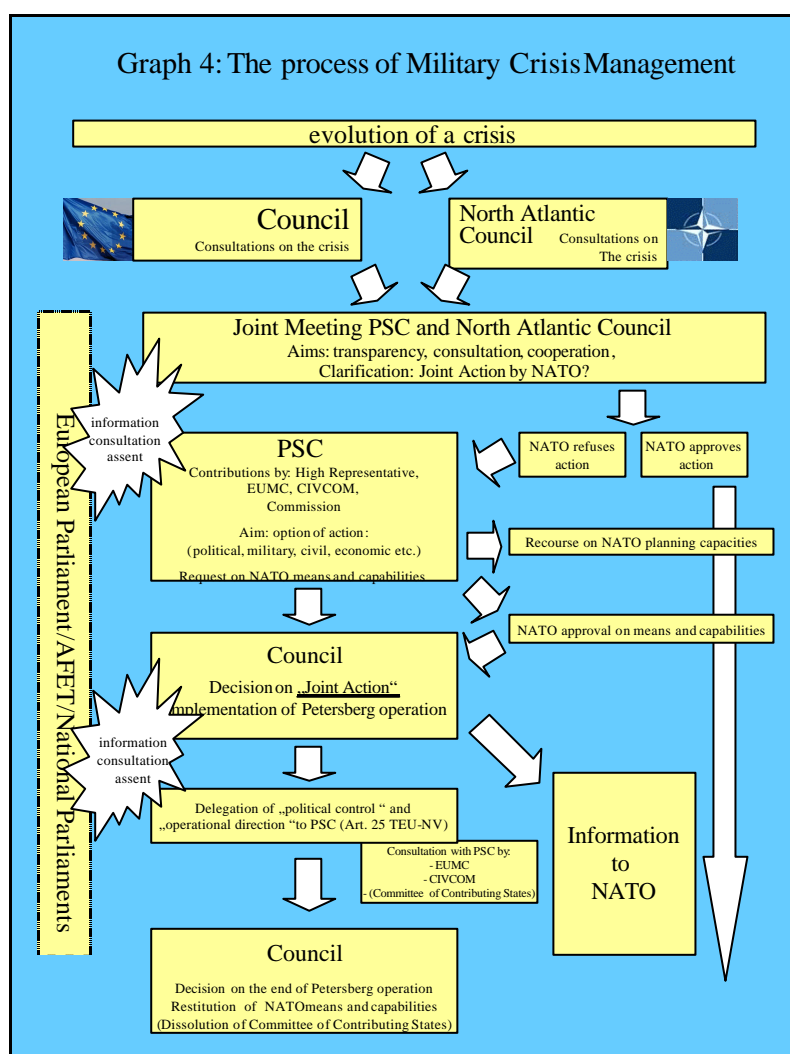
²⁸ By letter of 22 July 2002 the President of Parliament referred to the Committee on Constitutional Affairs a draft for an inter-institutional agreement between the European Parliament and the Council with reference to access of the European Parliament to sensitive information of the Council in the field of security and defence policy. The conference of Presidents had approved this document on 13 June 2002. See also See report (by Elmar Brok) on an inter-institutional agreement between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy and on amendments to the Rules of Procedure (2002/2130(ACI).

²⁹ See Inter-institutional Agreement of 20 November 2002, (2002/C 298/01).

Representative according to Article 21. This will be indispensable since it does not seem probable that any arrangements will be made for national parliaments to acquire information on ESDP matters at the European level – for instance from the High Representative.

Enhanced rights for the EP might be achieved on the one hand by a more regular and institutionalised supply of information by the presidency – particularly on ESDP matters. Annual reporting and debates on CFSP should explicitly include all relevant matters about ESDP (see above). However, the information should go beyond generalised information. The EP should request a formal provision for regular information. In addition, the information should not only be given orally as is the case at present, but if required by the parliamentarians it should also be given in a written version.³⁰

The High Representative might provide the information as he is to an ever-greater extent involved in foreign and security matters. To ensure the flow of information the possibility might be discussed of making the High Representative accountable to the EP.



On the other hand, better information for the EP might be facilitated by improved access to confidential documents. In order to ensure the flow of information without the danger of indiscretion, the British and US model might be adapted: Firstly, a classification of the document would be undertaken, offering free access to a large number of documents and a partial

³⁰ The European Parliament and the reporter Elmar Brok on behalf of AFET have issued this demand several times.

access to documents classified as sensitive.³¹ Secondly, for those documents categorised as confidential, an individual insight of single parliamentarians should be available.

The inter-institutional agreement, concluded in November 2002, is very close to this proposal. According to Article 3.1 of the agreement, “the President of the European Parliament or the Chairman of the European Parliament’s Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy may request that the Presidency of the Council or the Secretary General/High Representative convey information for this committee on developments in European security and defence policy, including sensitive information (...)”.³² A special committee led by the chairman of AFET and four members designated by the Conference of Presidents, will be informed by the Council Presidency or the High Representative on the content of sensitive documents. After that, the information shall be handled according to four different options. They can be made available to the chairman of AFET (3.3.a) the members of AFET (3.3.b), they can be discussed in AFET (3.3.c) or they can be more widely distributed if the information considered sensitive has been expunged.³³

This agreement is a promising step forward in access to information for the European Parliament. Parliamentarians should work to ensure that in two years time a thorough investigation of the agreement (see Article 4.3 of the agreement) will enable the EP to push for amendment of Article 3.1 so that the European Parliament “may (not only) request” information but that the EP has to be informed (in any case) at least in the formation of the newly established »security committee«. In addition it should be discussed, if even the »top secret« information, which is currently excluded, might be included in the agreement.

Moreover, the exchange of information between the national parliaments and the EP (see below) would improve the parliamentary dimension of CFSP and ESDP.

3) From the federal perspective it would be desirable to enhance the EP’s role by strengthening its formal rather than informal rights. The EP should claim that in order to gain a more comprehensive view of developments. It needs to obtain access not only to decisions that the Councils intends to adopt but also to all other information related to foreign, security or military actions. The possibility of the EP achieving more efficient and democratic legitimacy for foreign policy is restricted by the current Article 21 and its passage stating that the EP shall, be restricted to “be[ing] kept regularly informed” on the “development” of the Union’s CFSP..

Since the High Representative – or a body on entrust by him – is in charge of planning the military operation of the Rapid Reaction Forces while the External relations Commissioner is responsible for non-military action, it should be up to each single case who will be accountable to the European Parliament. Following this claim, a revised Article 21 TEU might read as follows: “The European Parliament shall be informed by the responsible actor at every stage and of all aspects on the Union’s foreign, security and defence policy considered necessary by the Parliamentarians.” To achieve this purpose, in practical terms the formal procedures of oral and written questions would have to be improved in order to guarantee a timely and serious response to the procedure.

Another point to be taken into consideration is the control by the EP of the special envoys. The Parliament should at least obtain the right to survey in written questions the activities of the envoys. Finally, the European Parliament should insist on an »observer« status in all Council meetings taking decisions about CFSP and ESDP affairs. Such participation by the EP would be reasonable in order to secure a supply of reliable information. However, such a

³¹ Currently, documents will be classified as top secret, secret or confidential. See more comprehensively in this context Isabelle Ioannides: *The European Rapid Reaction Force: Implications for democratic accountability*, BICC paper 24, pp. 20.

³² Inter-institutional Agreement of 20 November 2002, (2002/C 298/01).

³³ See *ibid.*

solution might also be problematic due to the discrepancy between higher expectations that are combined with such a right of the EP on the one hand, and the realistically to-be-expected marginal influence of the EP on the other.

2.4. *»Legal« participation of the EP*

To carry out legal acts in CFSP/ESDP, parliaments generally must not only have the possibility to formulate their own position on all proposals for EU legal measures but also be able to approve or to reject what the executive has proposed. From the view of the European Parliament there are currently five principle legal procedures: simple procedure (without any involvement of the European Parliament), consultation, co-operation, co-decision and assent. However, the EP cannot make use of any of these parliamentary options, since CFSP and ESDP are primarily intergovernmental. As this policy field is related to its specific nature, a simple transfer of rules is difficult and even risky.

As shown above, the simplest option to reduce the inconsistency of the Union's institutional design in CFSP and ESDP affairs would be to dismantle the current pillar system. Such an option would make it possible to »upgrade« the European Parliament to an active participant in decision-making in foreign, security and defence matters.

1) With regard to the short-term scenario, any direct legal competencies for the EP are far from realistic. Consequently, the European Parliament should insist exclusively on better information – especially from the Council. In this way, the EP might gain a means towards some influence by developing public pressure. Consequently, the EP should seek to place the topic of democratic accountability of ESDP on the wider agenda. This kind of influence is an indirect one, but legal decisions could be shaped by it (see below).

In addition, the EP might claim that the number of current various legal instruments in CFSP/ESDP should be decreased as it is a rather complex legal system: there are for instance general guidelines and principles as well as common strategies (taken by the European Council), joint actions and common positions either with QMV or with unanimity, (institutional) decisions and declarations (not yet incorporated in the treaties). In order to reduce complexity and to achieve a better awareness as well as a higher transparency, the use of only the key instruments would seem to be desirable.

2) According to a step-by-step approach (and in the case where all current CFSP/ESDP instruments are kept) the European Parliament should touch especially upon the civil aspects of CFSP/ESDP. Until the Brussels plenary session on 9 and 10 April 2002, the EP had always stressed the supremacy of the non-military aspects of ESDP.³⁴ Although this view has been softened, the focus of EP participation in decision making should be related to these non-military aspects as they are defined in Annex I of the Presidency Report in Feira on strengthening the Common European Security and Defence Policy and in Annex 2 to Annex IV of the Helsinki conclusions. It has, nevertheless, to be admitted that a clear distinction between civil and military means proves difficult and that a non-military action might turn into a military one.

In addition to the already existing possibilities of legal participation, the involvement of the European Parliament ought to be extended in a way that it will be consulted on all non-military questions of CFSP and ESDP. This right should also include existing actions of civil crisis management such as preventive diplomacy measures: for instance a stability pact.³⁵

³⁴ See for instance the report on security and defence policy of the European Parliament of 30 November 2000.

³⁵ Additional and reinforced parliamentary control is exercised by the EP via its own functions within the first pillar for civil crisis management.

Table 2: Instruments in CFSP/ESDP according to the incremental option (option 2)

LEGAL ACT WITHIN TEU	COUNCIL	EP'S INVOLVEMENT
general guidelines and principles	unanimously (European Council)	no participation
common strategy	unanimously (European Council)	assent by reinforced majority (2/3)
joint action on military issues = deployment of rapid reaction forces	unanimously	ex-ante information (of »security committee«)
joint action on non-military issues	QMV	Consultation
common position	QMV	information
(declaration)	QMV	information

These non-military legal acts (as well the military ones) should be taken regularly as joint actions. In this context, the EP should also claim that all non-military joint actions should be taken in the Council by QMV – irrespective of whether they are based on a common strategy or not.

Participation of the EP in military decisions will be less topical – at least in the long run.³⁶ In this area the decisive parliamentary role should be carried out by national parliaments. Nevertheless, the European Parliament or its bodies, especially the newly established »security committee« (see below) should be given an early insight into planned legal proposals or actions. In particular, EP should be informed prior to operations (joint actions) of the rapid reaction forces (RRF).

In addition, the parliament should work towards incorporation in the treaties the instrument of declaration and thus provide it with a legal basis. Due to its ad-hoc character, the EP should not be involved in the decision process of the Council acting by QMV. Instead it should be informed of the background and circumstances surrounding the respective declaration.

3) With regard to the federal scenario, the European Parliament might acquire an even more significant role in military aspects of CFSP/ESDP. In such a case of shifting competencies to the European level, the key question is: »who decides if and how to go to war?« Although such a right of the EP might cause difficulties in terms of a coherent and efficient and in-time reaction to crisis, and though the national parliaments also have to be included in the process (see below), the involvement of the European Parliament is absolutely essential since it is the only body directly legitimated at the European level.

Hence, the current provisions might be changed in a way that in cases of military crisis management the Council may act unanimously after consulting the European Parliament. Due to the confidential and urgent character of military actions, the new »security committee« should be allowed to act on behalf of the EP. This implies a change to the rules of procedure of the European Parliament.

EP rights must also be reinforced in the civil dimension of crisis management. In this case, the Council may act unanimously only after having received the assent (by a reinforced majority) of the European Parliament. Though things will be made even more complicated, it seems appropriate that the EP (or the respective body) votes with a 2/3 majority. The same procedure might apply for the instrument of common position. Nevertheless, it should be taken into

³⁶ See Matjaz Nahtigal (Slovenian government representative in the Convention), who claims that a "gradual communitarisation is needed", first the "civil dimension of the EU foreign policy – including crisis management by non-military means". 22 April 2002 (CONV 39/02).

consideration that this might lead to a less »streamlined« and coherent formulation of common positions.

In the long run and in view of an enhanced ESDP, a role might even be considered for the Parliament to be involved in decisions surrounding the deployment of military forces. Hence, the EP might not only be consulted but might also give its assent.³⁷

Table 3: Instruments in CFSP/ESDP according to the federal option (option 3)

LEGAL ACT WITHIN EU	COUNCIL	EP
general guidelines and principles	unanimously (European Council)	(general debate in the EP)
common strategy	unanimously (European Council)	assent by reinforced majority (2/3)
joint action on military issues = deployment of rapid reaction forces	unanimously	ex-ante consultation of »security committee« and ex-post information of EP
joint action on non-military issues	QMV	assent by reinforced majority (2/3)
Common position	QMV	assent by reinforced majority (2/3)
(declaration)	QMV	information

2.5. The impact of enhanced cooperation

Another aspect of decision-making procedures that must be considered is that of enhanced cooperation. »Flexibility« has always played a distinctive role in integration history and enhanced cooperation has attracted increased attention since its inclusion in the »Amsterdam« TEU.³⁸ However, due to the resistance of some Member States (led by the United Kingdom), the second pillar remained excluded from closer or enhanced co-operation.³⁹ In the second pillar, so as to provide a kind of safety net, only the option of a »constructive abstention« was introduced (Article 23.1 TEU – AV). The Treaty of Nice extended enhanced co-operation for the second pillar but with several restrictions. The veto option that has been deleted in the first and third pillar will remain valid for the second pillar and may thus prevent enhanced cooperation from the very beginning. Furthermore, enhanced co-operation will not be applicable for those issues involving military or defence implications.⁴⁰

According to Article 45 (TEU – AV), the European Parliament plays no particular role in enhanced co-operation. The Council and the European Commission shall just regularly inform it about developments in enhanced co-operation. Nevertheless, forms of flexibility are indispensable for the further development of CFSP and ESDP in general. The perspective of enlargement means that this will become increasingly the case. We can take up several of the

³⁷ See Jo Leinen (MEP Germany): *Verfassung der Europäischen Union, Contribution to the Convention*, 23 October 2002, www.joleinen.de/dokumente.html. It can also be argued about the right of co-decision according to article 251 TEC – or a yet to specify modification of co-decision. See in this respect proposal by CAP (Janis A. Emmanouilidis/Franco Algieri): *Stärkung außenpolitischer Kohärenz und Handlungsfähigkeit*, February 2002. http://www.cap.uni-muenchen.de/konvent/spotlight/Spotlight_2-02_d.pdf.

³⁸ See generally Claus Giering/Josef Janning: *Flexibilisierung als Option deutscher Europapolitik*, in: Heinrich Schneider/Mathias Jopp/Uwe Schmalz (eds.) *Eine neue deutsche Europapolitik? Rahmenbedingungen – Problemfelder – Optionen*, Bonn 2001, pp. 667-693.

³⁹ Flexibility was introduced in Amsterdam as closer co-operation but renamed with Nice to enhanced co-operation.

⁴⁰ See Elfriede Regelsberger: *Die Gemeinsame Außen- und Sicherheitspolitik nach »Nizza« – begrenzter Reformeifer und außervertragliche Dynamik*, in: *Integration 2* (2001), pp. 156-166.

related issues currently under discussion, particularly a differentiation between flexibility »inside« and »outside« the treaties.⁴¹

1) According to a limited change of the treaties, the current status quo will in no way be substantially changed. This indicates according to Art. 27b (TEU – NV) that defence or military matters remain excluded: “Enhanced cooperation pursuant to this title shall relate to implementation of joint actions or a common position. It shall not relate to matters having military or defence implications.” Flexibility will just take place outside the treaties and remains inapplicable for defence and military issues. The potential of the EP achieving more influence on developments in armament affairs remains very low. The only option is to make use or to improve the communication channels to national parliaments (see below) in order to secure better access to information.

2) A slight adaptation of the treaties will be closely linked to reduce flexibility outside the treaty. Since the European Parliament has neither influence nor even any information rights on the developments or decisions taken in the framework of bodies outside the treaties, it should claim that flexibility would be carried out within the treaties. Hence, the provisions for flexibility should also be made applicable for defence policy. In such a case, it should be discussed if (according to Article 27.d (TEU – NV)) the European Parliament will just be “kept fully informed of the implementation of enhanced cooperation (...)” or if the rights of the European Parliament should be equivalent to normal procedures in cases of enhanced cooperation that are extended to military and security issues.

To this end, instruments of cooperation in the defence industry e.g. developments such as the Western Armaments Group (WEAG) in the framework of the WEU or the creation of the Organisation Conjointe de Cooperation en matière d’Armement (OCCAR), should be incorporated in the TEU. »Schengen« might serve as a blueprint for this endeavour. In such a case, non-EU states might be given an association status.

The EP should reject the idea to establish a »security and defence union« as an independent actor outside the treaties but which is linked to the European Union.⁴² However, the idea to implement a security and defence protocol (as promoted in the popular Fischer/Villepin proposal) within the treaties might be a workable compromise.⁴³

3) As pointed out above, the use of flexibility as a »last resort« should be avoided both generally and in relation to CFSP/ESDP matters. Nevertheless, in order to achieve an operational ESDP, flexibility might be indispensable.

Thus, enhanced co-operation must be applied in the decision-making stage and should not merely be limited to the implementation of joint actions. An explicit link might also be established to CFSP »common strategies« as a general framework for enhanced co-operation.⁴⁴

Possible procedures for such a »regulated flexibility« could be achieved through changing the provisions of the Nice Treaty regarding “enhanced cooperation” (Article 27 TEU – NV). The

⁴¹ See in this respect especially Udo Diedrichs/Mathias Jopp: The application of the Concept of Enhanced Cooperation to CFSP/ESDP and arms industry, unpublished paper and Antonio Missiroli: CFSP, defence and flexibility, Chaillot papers 38, February 2000.

⁴² See for such an approach Reimund Seidelmann; Perspektiven und Optionen für die Kompetenz- und Mittelverteilung zwischen EU, NATO und den Mitgliedstaaten, in: Erich Reiter/Reinhard Rummel/Peter Schmidt (eds.): Europas ferne Streitmacht, Chance und Schwierigkeiten beim Aufbau der ESVP, Hamburg 2002, pp. 195-221.

⁴³ See the German-Franco proposal by Joschka Fischer and Dominique de Villepin, 22 November 2002 (CONV 422/02). See also Lamberto Dini, (MP Italy): Contribution to the Convention, 26 September 2002, (CONV 301/02).

⁴⁴ See Marta Dassù/Antonio Missiroli, op. cit. See in this context as well the proposals for enhanced cooperation and arms procurement with the aim to set up a common defence industrial base.

instruments of enhanced co-operation would be extended onto questions with military and security policy dimensions.⁴⁵ The passage that enhanced cooperation should not apply to “matters having military and defence implications” (Art. 27b TEU – NV) should be eliminated. Additionally, the provisions of Art 27e (TEU – NV) should be amended since such time periods are not appropriate in urgent foreign and security cases.

The adaptation of convergence criteria that is also discussed in view of CFSP and ESDP should be rejected due to the own logics of this policy area.⁴⁶

2.6. Participation of the EP in the budgetary aspects of CFSP/ESDP

Currently, in CFSP/ESDP budgetary affairs there exists a difference between »administrative« expenditures which are part of the EC budget and »operational« expenditures, which will also be financed by the EC budget unless the Council decides otherwise by unanimity. “Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except (...) cases where the Council acting unanimously decides otherwise.”⁴⁷

The inter-institutional arrangement of 6 May 1999 has made parliamentary rights even more tangible: “Whenever it adopts a decision in the field of CFSP entailing expenditure, the Council will immediately and in each case send the European Parliament an estimate of the costs envisaged (‘financial statement’), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements.”⁴⁸ This is a very strong form of accountability since it requires the Council to communicate immediately to the EP an estimate of the envisaged costs.

However, there is one remarkable exception: “Operations having military or defence implications”, have to be financed by the Member States.⁴⁹ Hence, according to Article 28.3 TEU, military expenditures will not be funded out of the Community budget. The EU Treaty does not allow military operations to be charged to the Community budget.

As a result of such an arrangement for (military) ESDP affairs, it “is left up to the discretion, goodwill and generosity of individual countries, which have the additional option of abstaining (Article 23.2 TEU – AV) and thus not paying for common missions”.⁵⁰ All things considered, the European Parliament has budgetary rights as for instance regarding police missions but no budgetary powers in the military area because of the absence of a common European defence budget.

1) From the perspective of restricted adaptations, the current treaty provisions will not be amended. Treaty rights do not appear vital since the EP has already achieved a remarkable ex ante control via its budget rights on non-military issues. An efficient dimension to parliamentary influence in ESDP requires approval and information rather than increased budgetary rights. Hence, institutional-related discussions on the budget should be left out. Budget debates might lead to more strategically orientated decisions, but do not necessarily increase the influence of the EP. Consequently, the current inter-institutional agreement will remain valid.

⁴⁵ See the so-called Berlin Draft. Proposal by Günther Gloser/Michael Roth, 18 November 2002, (<http://www.constitutional-convention.net/archives/000698.html>).

⁴⁶ See proposal of the Seminar on Defence for the Members of the Convention, Brussels 7 November 2002, (CONV 417/02).

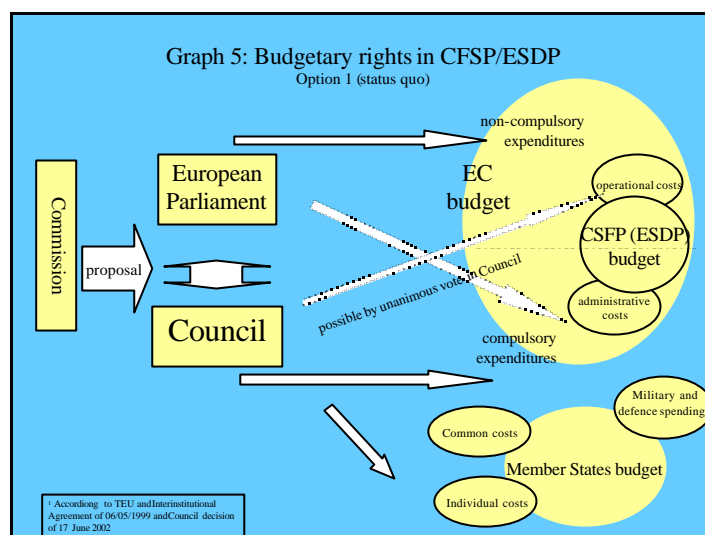
⁴⁷ Article 28.3 (TEU – AV).

⁴⁸ Inter-institutional arrangement of 6 May 1999. See Official Journal of the European Communities C 172/9.

⁴⁹ The respective contributions are referring to the national GDP.

⁵⁰ Marta Dassù/Antonio Missiroli: More Europe in Foreign and Security Policy: The Institutional Dimension of CFSP, in: *The International Spectator* 2 (2002), pp. 79-88.

The compromise reached by the Council and the European Parliament for 2003 on the increased budget can be regarded in this way as sufficient.⁵¹ According to this, the EP will be informed in time on the use of the additional funds. Each year before June 15, the Council will submit a document to the parliament, outlining the main aspects and basic choices for CFSP, including financial implications for the EU's General Budget.



Nevertheless, the European Parliament will support an operational ESDP. Hence, it seems essential that the EP focus its claims on increasing ESDP expenditures in military crisis management out of the EC budget. Though resistance of some Member States is to be expected, it might be reasonable to start with small projects that lead to a step-by-step growth.

2) In view of the incremental adaptation scenario, the European Parliament should apply for participation, with the Council, on all parts of the budget of CFSP *and* ESDP. There are two options to achieve this aim:

Firstly, a combination of budgetary powers of EU and Member States might be appropriate. This might be based on a modified version of the Council decision of 17 June 2002.⁵² According to this Council (of Foreign Ministers) decision, there will be two categories of costs in ESDP: firstly, either common costs of the Member States, consisting of funds such as those for transport, administration or public relations of the staff quarter. Secondly, individual costs, which will be taken separately by each Member State according to its own expenses. This Council based solution can be considered as a compromise between countries ready to »merge« their defence expenditures and those disposed to adopt NATO's »costs lie where they fall« principle.⁵³ The expenses for the transport and accommodation of troops will be decided on a case-by-case basis.

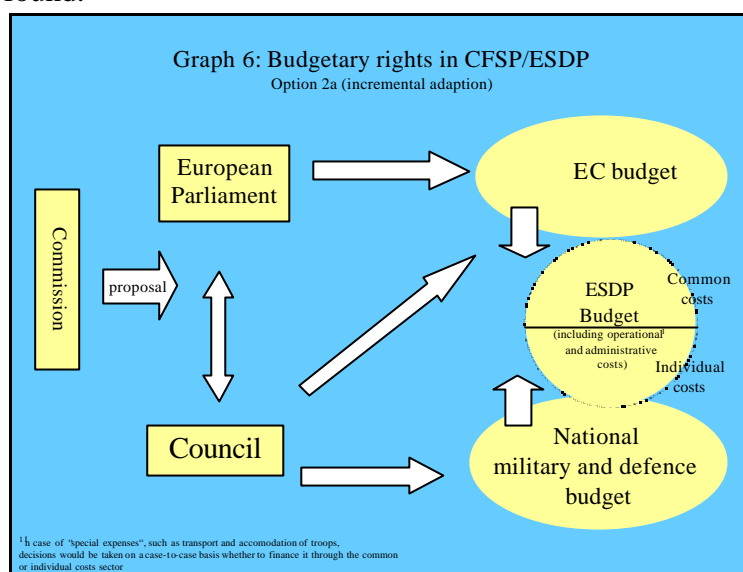
Based on this accord, the EP should stress that the common costs, including both operational and administrative costs, should no longer be financed jointly by the Member States but by the EC budget. Hence, Article 28.3 (TEU – AV) has to be amended. In practical terms, this might be carried out by a decision by the EP at the beginning of the budgetary procedure that will decide on the overall costs, which will then be distributed by the Council amongst the

⁵¹ It was agreed to increase the budget allocated to the actions undertaken under the Common Foreign and Security Policy (CFSP) in order to secure the financing of the EU Police mission in Bosnia from January 2003 (see Council decision of 18/19 February 2002 on an EU police mission (EUPM) in Bosnia-Herzegovina). Money was also secured for staff recruitment in the EU institutions from candidate countries as of next year.

⁵² See Note of the Council to the European Council with regard to the Presidency Report on European Security and Defence Policy, 22 June 2002. (10160/2/02 REV 2) (COSDP 188).

⁵³ See G. Gasparini: Observatory on European Defence, June 2002.

members. In this regard, the EP would have at least an indirect impact on ESDP financial matters. Nevertheless, a definite solution for the transport and accommodation of the troops would need to be found.



An alternative way to deal with budgetary questions might be found in view of a clearer differentiation between expenditures. Accordingly, the funding of Petersberg task should be covered by the EC budget, while all other military budget lines will remain the responsibility of the Member States. The EP should be involved in deciding on the Petersberg tasks – thus, it should emphasise that in any case a revision of Article 28 (TEU – AV) is necessary.

Following these two alternatives, an amendment of the inter-institutional agreement of 6 May 1999 is indispensable. The agreement has to be enhanced on ESDP matters. Consequently, the agreement might be changed in the following way: "Whenever it adopts a decision in the field of CFSP or ESDP entailing expenditure, the Council will immediately and in each case send the European Parliament an estimate of the costs envisaged ('financial statement'), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements."⁵⁴

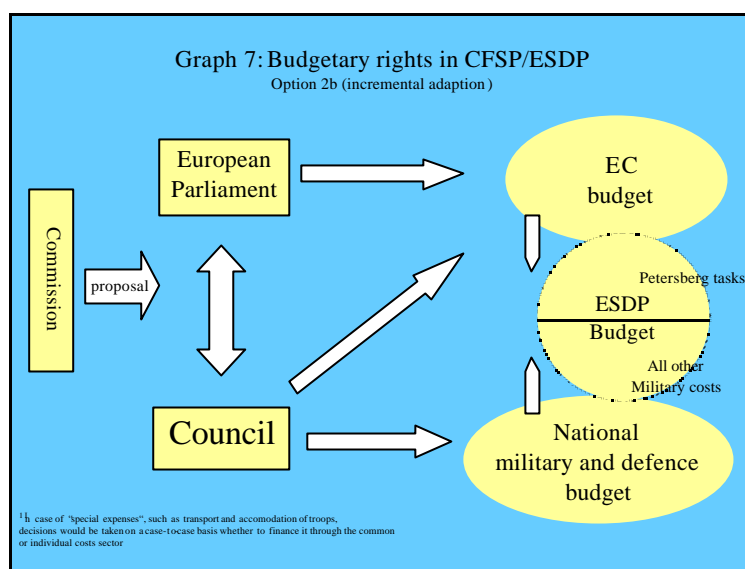
Closely related to budgetary questions in CFSP/ESDP are considerations on the establishment of a European armaments agency and a common European military budget for research and procurement (see below).⁵⁵ The European Parliament should continue to request that Member States increase their budget for security and military research, development and equipment.⁵⁶ The credibility of ESDP will depend very much on the ability of the EU to acquire necessary equipment and resources – especially if the European Union wants to carry out autonomous operations as outlined in Cologne and Helsinki.

In addition, the EP should demand that any action decided by enhanced cooperation, particularly those referring to defence issues (thus amending the current provisions on enhanced cooperation) should be financed by the EC budget. Such a budgetary arrangement might strengthen the perception of a collective responsibility and might act as a deterrent to »free-riding«.

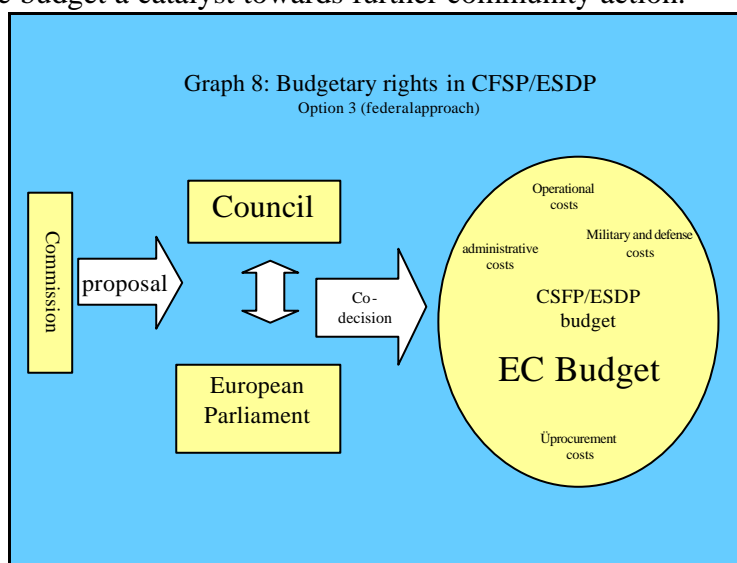
⁵⁴ Inter-institutional arrangement of 6 May 1999. See Official Journal of the European Communities C 172/9.

⁵⁵ Comparable proposals have been made by Philippe Morillon, head of the EP delegation for relations with NATO parliamentary assembly.

⁵⁶ See Motion for a resolution by Catherine Lalumière on the establishment of a common European security and defence policy with a view to the European Council in Feira, 3 May 2000.



3) A fundamental reform of the CFSP/ESDP budget would suggest that any action in this field would be covered by a system of common funding.⁵⁷ Thus, a total revision of Article 28 (TEU) would be necessary. This approach would go beyond Member States financing their own forces contributions on a »costs lie where they fall basis«. Instead, all costs in this context should be financed out of the EC budget. This will make it necessary to acquire the consent of the European Parliament.⁵⁸ The financing of military action from the budget would therefore make the budget a catalyst towards further community action.



In practical terms, it has again to be considered whether the EP's decision on the budget should be taken on a general basis or on a case-by-case basis including EP participation in the budget of each single action. In order to attain a working and efficient ESDP the general approach might be more appropriate. With the aim of achieving such a solution, the EP should at a minimum claim that the inter-institutional agreement of May 1999 be amended in order to strengthen EP's role.

⁵⁷ See Jo Leinen (MEP Germany): *Verfassung der Europäischen Union, Contribution to the Convention*, 23 October 2002, www.joleinen.de/dokumente.html.

⁵⁸ See Alain Lamassoure: *The European Union, Four Possible Models, Contribution to the European Convention*, 3 September 2002 (CONV 235/02).

In addition, the European Parliament should request the right to prevent opt-outs by Member States in financing military operations since such opt-outs would weaken the legitimacy of ESDP. On the other hand the EP will establish legitimacy for action thanks to its role as the final controlling authority of the EC budget.

2.7. Participation of the EP in international treaties

The Single European Act provided the European Parliament with the right of assent for all association agreements including conclusion of financial protocols. This right attracted special attention when the European Parliament hesitated to approve the Customs Union with Turkey (1996) and blocked the conclusion of financial protocols with Turkey, Israel, Morocco and Syria. Consequently, EU enlargement has been subject to the EP's assent. In 1994 the European Parliament was for the first time in a position to accept or refuse the membership of a candidate country when the admission of Sweden, Finland and Austria was debated. Nevertheless, the European Parliament has so far obtained no competences to decide upon, or participate in any agreement under Title V.

1) Following the status quo model in the development of CFSP/ESDP, the competences for parliamentary participation will not be substantially changed. Nevertheless, Parliament should claim that its information rights according to Article 21 TEU would also include a right to information about the international agreements taken under Title V.

2) The view of a slight adaptation of the treaties is closely linked to a higher involvement of the EP in the preparatory stage of international treaties. Consequently, the European Parliament would be more involved in those international agreements that fall under Title V. Thus, Parliament would claim that it is involved as it is in EC procedures. Hence, the EP would demand the right to become involved in all international agreements, which fall under Article 24 (TEU – AV). Revised treaty provisions might be set up for the powers of the EP in Article 300.3 TEC: “The Council shall conclude agreements after consulting the European Parliament (...). The European Parliament shall deliver its opinion within a time limit, which the Council may lay down according to the urgency of the matter.”

3) As to the »European (federal) ideal, a full parliamentary involvement would include that the European Parliament might, through the assent procedure, take part in any treaty with a third country. To this end, the European Parliament would be able to influence more intensely the institutional and procedural revisions of CFSP and ESDP.⁵⁹ A revised treaty provision might be set up amongst the parliamentary powers in Article 300.3 TEC: “Agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.”

3. The involvement of AFET in all stages of CFSP/ESDP policy cycle

While it is reasonable for the general aspects of CFSP (and ESDP) to be discussed in the plenary, it seems difficult to apply such an understanding to individual actions or declarations. It seems necessary to differentiate more specifically whether the Parliament in its entire composition should be involved or whether it should be the foreign and defence specialists who are addressed.

⁵⁹ See proposal by the PSE, op. cit. (CONV 189/02).

Of course, fundamentals such as the biannual work program or the presidency report might be part of an overall plenary session, while single actions should be part of the Committee's work. Otherwise, parliament would neither be able to deliver its opinion with the necessary rapidity (particularly in view of operations of the rapid reaction forces) nor be able to ensure the degree of confidentiality that the Council considers as necessary. Nevertheless, it might be discussed if the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) should continue to act in the same structure as it has in the past.

3.1. The overall Committee structure

As the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) covers an extremely wide range of policy fields, the internal committee structure of the EP should be revised in order to provide a more efficient way of coping with the heavy workload.

1) With regard to CFSP/ESDP and the status quo scenario the overall committee structure should not be changed substantially. However, the heavy workload of the Committee should be reduced. AFET is concerned to a large degree with questions of enlargement but this part of committee work will inevitably subside. Considering the status of enlargement and in view of the applications, the current candidate countries will in the near future no longer be part of the EU's external relations, but an integral part of the Union. Hence, the work of AFET could move on to focusing and concentrating more effectively on foreign and security aspects. Nevertheless, it should be discussed whether AFET should also co-ordinate the work of the inter-parliamentary delegations and the joint parliamentary committees as well as the cooperation committees and the ad hoc delegations.⁶⁰ The work area of AFET is even more extensive when we consider that these inter-parliamentary delegations also discuss economic and trade matters.

2) With regard to an incremental adaptation, AFET should reduce its workload by a better division of tasks. This might be achieved by a subdivision of tasks into several subcommittees. The EP has in the past had such structures including several sub-committees and it might prove helpful to return to this set-up. Substantial debates as well as improved in-depth insights, especially in defence policy, might only be achieved if work on security and defence issues becomes a substantial element of the day-to-day work of the committee.

3) As to the vision of a »European« federation, a complete revision of the EP's committee structure would seem desirable. Since foreign, security and defence matters include very different aspects, AFET should at least be divided into two different committees: one covering the field of foreign policies and one focussing on defence and security matters. The policy field of human rights might either be merged with the Committee on Development and Cooperation (DEVE) or become an independent committee. The latter might be more useful in view of the political and legal situation in some candidate countries and the growing salience of human rights issues in foreign affairs. Human rights will apparently attract more attention in the near future than it has in the past in the EU 15. In any case, the adopted Committee structure should lead to parallels with the Council formations (see above). This would, however, not rule out joint meetings of the respective foreign and defence committees.

In addition, with regard to its capacity in the collecting and selecting of information on ESDP topics, a noteworthy administrative secretariat unit of its own should be set up in order to assist the committee.

⁶⁰ See EP's Rules of Procedure, Chapter XX and XXI.

Finally, it is crucial that the EP is able to select Parliamentarians with a »broad view« in foreign and defence matters so as to ensure a »level playing field« of EP members and top-level decision-makers in the Council and Commission.

3.2. The role of AFET

The role of the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) should be increased in all stages of the CFSP/ESDP policy-cycle due to the growing relevance of the Second Pillar to the wider development of the EU. The number of non-public sessions might therefore need to be increased. This might at first glance mean a decline in transparency. On the other hand an increased capacity to restrict access might enhance the possibility of AFET gaining increased access to sensitive data.

1) In a short-term view of the status quo option, the Committee should concentrate on converting informal rights of information into legal provisions. The (informal) quarterly meetings between the High Representative of the CFSP and AFET might be held in a more formal way by setting them on a regular basis. This might be achieved by creating an inter-institutional agreement, or perhaps through a treaty amendment (of article 21), which will require consultation between the High Representative and the respective EP committee to take place at least four times a year.

2) In an incremental adaptation scenario, the committee would have to become more directly involved in the decision making-procedures with an inter-institutional agreement being the minimum to ensure progress. The following procedure might therefore be incorporated:⁶¹ Proposals for decisions of the Council should be passed, without delay, to the Parliament via the respective Committee. In urgent cases, Council representatives and the committee bureau could meet on an informal basis. This might be necessary before and after a Council meeting at which foreign, security or military policy actions had been on the agenda.

In addition, the Council presidency or the High Representative for CFSP should attend committee meetings at least once a month. At such meetings there should be a time for the committee to question the High Representative on subjects agreed beforehand. Finally, in cases of urgency, the Committee could hold an »extraordinary meeting« independent of the parliamentary calendar.

3) A long-term view would suggest a more forceful enhancement of the committee's competences. The committee should stress its involvement in controlling Council decisions. It must be appreciated that sudden international developments sometimes require the Council or the PSC to take positions at a very short notice and this does not always occur when the Parliament is meeting. Consequently, it is important to set up a »fast-track channel« for the Parliament to reach a decision in such circumstances. This might be achieved by conferring all of the above-mentioned information and consultation rights on the foreign and/or defence committee.

4. Options regarding national parliament's involvement in CFSP and ESDP

Suggestions for giving national parliaments more say in the EC/EU policy-making process are generally related to the idea of »democratising« the Union. Within the EU national parliaments have lost considerable power to control their own executives since the executives often come together as a »legislature« within the EU's Council of Ministers.

⁶¹ Proposal of Thomas Grunert in the context of evaluating the Maastricht treaty provisions on CFSP, op. cit.

For several years, three models for improving national parliament's involvement have been under discussion:⁶²

- (a) the introduction of a provision within the EC/EU Treaty framework guaranteeing national parliaments some unilateral control mechanisms vis-à-vis their respective governments
- (b) the introduction of direct participatory or control powers for national parliaments within the legal framework of the EC/EU and
- (c) the formal upgrading of existing multilateral scrutiny by bringing together representatives of the European Parliament and national parliaments in a joint body

At present, a multitude of institutional proposals are under discussion that seek to reinforce the role of national parliaments in CFSP/ESDP affairs. Frequently, these proposals reject the institutionalisation of democratic control-functions of national parliaments at the European level. Two main types of institutional models are the focal point of the discussion: on the one hand the arrangement of a »new« second chamber consisting of national parliamentarians⁶³ and on the other hand the creation of a subsidiarity committee, consisting of both national delegates and members of the European Parliament. However, these proposals have led to a large number of questions. In particular, both models might in the long run lead to the development of a third chamber at the »Brussels« level. This might further complicate an already complicated decision-making structure.

The most important questions surrounding the role of national parliaments are: Where could and should parliamentary control start from: at the national, at the European level, or both? Where will it be most efficient? Another problem lies in national control over areas subject to enhanced use of QMV: How can any given national parliament hold »its« national minister responsible if he or she personally voted against a common action but was overruled by the QMV majority within the respective group?⁶⁴ Finally, it has to be taken into account that there are no existing European »standards« which define the participation competencies of national parliaments; e.g. relatively high influence in Scandinavia, Benelux, Germany, but low in the United Kingdom and France.⁶⁵

4.1. Improving inter-parliamentary co-operation between the EP and the national parliaments

Basic parliamentary involvement in ESDP affairs is a question of »access« to efficient and comprehensive information channels. In practice, a lot of information has to be obtained from the national level, especially in the case of foreign and security policy.⁶⁶ This situation means that parliaments at the national level and the EP at the European level must work closely together. As MEPs and national parliamentarians address the same actors in the Council – either in their capacity as representatives of national governments or as representatives of the Council of Ministers – it appears appropriate to look for a joint monitoring.⁶⁷

⁶² See generally Andreas Maurer: National Parliaments in the European Architecture. From Latecomers' Adaptation towards Permanent Institutional change?, in: Andreas Maurer/Wolfgang Wessels (eds.): National parliaments on their way to Europe: Losers or Latecomers?, Bonn 2001, pp. 27-76, here p. 58.

⁶³ See among others: Gisela Stuart: Mandate of the Working Group on National Parliaments, 30 May 2002 (CONV 74/02).

⁶⁴ See Birkinshaw/Ashiagbor, op. cit.

⁶⁵ See: The role of national parliaments in the European architecture, Contribution to the Convention by the Praesidium, 31 May 2002 (CONV 67/1/02 REV 1).

⁶⁶ See Hubert Hänel: The complementary role played by the national and European parliaments, 10 September 2002 (CONV 255/02).

⁶⁷ See generally Andreas Maurer: National Parliaments in the European Architecture. From Latecomers' Adaptation towards Permanent Institutional change?, in: Andreas Maurer/Wolfgang Wessels (eds.): National parliaments on their way to Europe: Losers or Latecomers?, Bonn 2001, pp. 27-76, here p. 58.

Yet, established links between the EP and national parliaments are currently very loose and there is the danger of a duplication of monitoring activities. So far, COSAC has not developed into a real body for multi-level scrutiny and still faces major problems with the actual exchange of information on policy areas. Day-to-day politics is largely unaffected since COSAC acts mostly as a central tool for communicating institutional aspects of the EC/EU framework. Moreover, the exchange of information is not always shared equally. The two COSAC meetings a year are regarded primarily as a channel to keep national parliamentarians generally informed about Europe but not the other way round.⁶⁸

1) Following the short-term model of a limited adaptation in the development of ESDP and its parliamentary dimension, the overall parliamentary co-operation would not be changed. Parliamentary control would remain primarily at the national level. EP rights would therefore not be increased.⁶⁹

National parliaments remain first and foremost limited to their national area, displaying only limited interest in a formalised collaboration at the European level. Hence, the involvement of national parliaments will only be achieved through better policy-oriented inter-parliamentary cooperation with the respective specialised national parliamentary committees.

In this regard, existing mechanisms for exchange may be used more extensively and to their full potential: On the one hand, the national parliaments might ensure that their national EC/EU Committees are more focussed and used more efficiently. On the other hand, the European Parliament might make better use of its inter-parliamentary network with the parliaments of the Member States as well as with those of the applicant countries, in order to facilitate at an early stage the spread of more coherent information on CFSP/ESDP proposals in CFSP and ESDP.⁷⁰ Moreover, the informal channels of national and European Parliamentarians might be stressed by using personal and party connections.⁷¹

The EP must resist the creation of a new institution consisting only of representatives of the national parliaments, such as proposed by the WEU assembly.⁷² This is especially the case if the new institution is intended to gain the exclusive parliamentary scrutiny competence over ESDP. In view of democratic accountability and transparency such a new body would just increase complexity and weaken the role of the European Parliament.

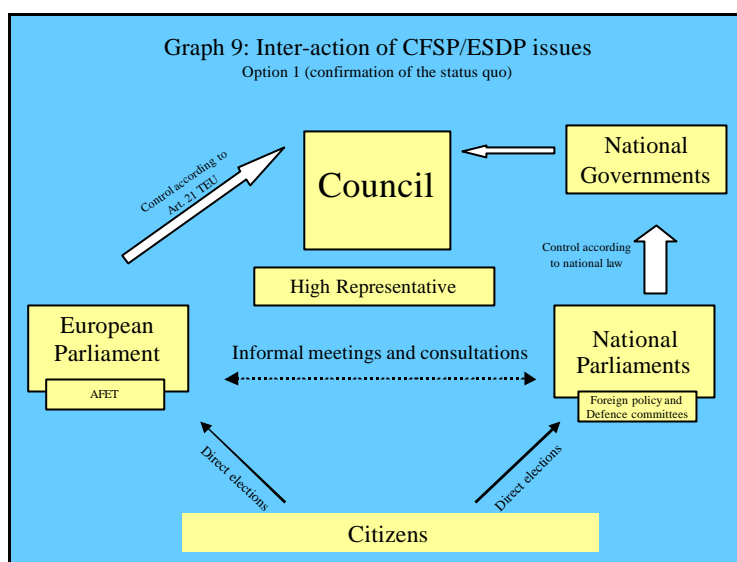
⁶⁸ See Andreas Maurer/Wolfgang Wessels: National Parliaments after Amsterdam: From slow adapters to national players?, in: Andreas Maurer/Wolfgang Wessels (eds.): National parliaments on their way to Europe: Losers or Latecomers?, Bonn 2001, pp. 425-475, here 457 ff.

⁶⁹ See for such an approach Huber Haenel: The complementary role played by the national and European Parliament, Contribution to the Convention, 10 September 2002, (CONV 255/02).

⁷⁰ See Maurer/Wessels, op. cit. for an overview on joint and bilateral committee meetings.

⁷¹ See Gisela Stuart, op. cit. (CONV 74/02).

⁷² See particularly the Report by the Assembly of the Western European Union on: The role of national parliaments in the European Union and more specifically in the ESDP – a contribution from the Assembly to the Convention, 4 June 2002. (A/1778)



2) According to a pragmatic approach, the »COSAC« option would be preferred. According to current Danish proposals,⁷³ a permanent European inter-parliamentary forum, or a parliamentary conference,⁷⁴ might be set-up along the lines of the »Conference des Organes spécialisés en Affaires communautaires« (COSAC) in which the European Parliament would be represented alongside the national parliaments.⁷⁵

The current discussion in the Convention has raised the possibility of establishing several »specialised« or »sub«-COSACs. A specialised COSAC for foreign, security and defence policy might ensure more efficient and better performance in day-to-day-policies than the current COSAC is able to offer. A standing secretariat, however, should be avoided since this might lead in the long run to the institutionalisation of such a body, a prospect which both the EP and the German Bundestag wish to avoid. Instead better co-ordination would be achieved by replacing the present COSAC troika with a »permanent lead group« of five or six Member States. This new COSAC forum would also decide on new rules of procedures. Instead of the current principle of unanimity to adopt a proposal⁷⁶, a simple majority would be sufficient. The COSAC forum might legally be based either on an inter-parliamentary agreement between the EP and the national parliaments or on a protocol of the revised treaties, or even included in the treaties.⁷⁷

An alternative to the »COSAC« solution might be the formation of a parliamentary conference as a specialised new parliamentary network for foreign, security and defence policy, and which would be organised by the European Parliament. This parliamentary conference would meet at the invitation of the European Parliament.

This parliamentary conference would be held on a regular basis and be convened jointly by the chairmen of the national foreign and defence committees and the members of EP's committee(s) on foreign and defence matters. Under certain conditions, representatives of the Parliamentary Assembly of NATO might also be involved.

⁷³ See XXVII COSAC Copenhagen, 16-18 October 2002, Contribution addressed to the Convention on the Future of Europe, the EU's institutions, the national parliaments and the Presidency, <http://www.cosac.org/eng.next/contribution.html>.

⁷⁴ See Armin Laschet: Parliamentarisation of the European Security and Defence Policy, Geneva Centre for the Democratic Control of Armed Forces (DCAF), working paper No. 82, August 2002, p. 6.

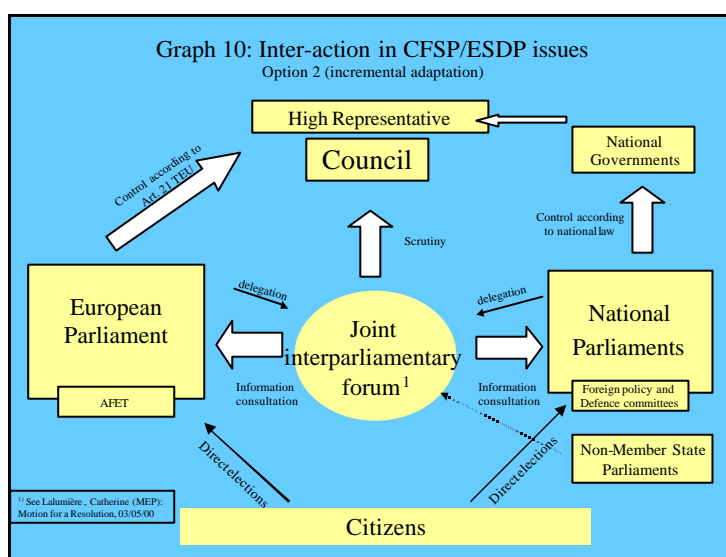
⁷⁵ See Heather Grabbe, Preparing the EU for 2004, op. cit.

⁷⁶ See Rules of Procedure of COSAC, 14.3.

⁷⁷ To change the name of COSAC – as it was introduced in the final report of the working group IV on the role of national parliaments – is mainly symbolic but might be useful in order to achieve a better understanding of the people as well as to underline the growing importance of the body. See in this respect also the contribution of the XXVII COSA in Copenhagen (16-18 October 2002) to the Convention.

It could act as a link between the EP and national parliaments bringing together the chairpersons of the foreign affairs and defence committees, effectively reinstating the existing multi-level-elements of other EU policy areas and incorporating players from these different levels. The basis for this parliamentary conference is the current semi-annual sessions held by the EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy with the chairpersons of the national foreign and defence committees. The special task of this conference would be the co-ordination of information and consultation about crisis management operations.

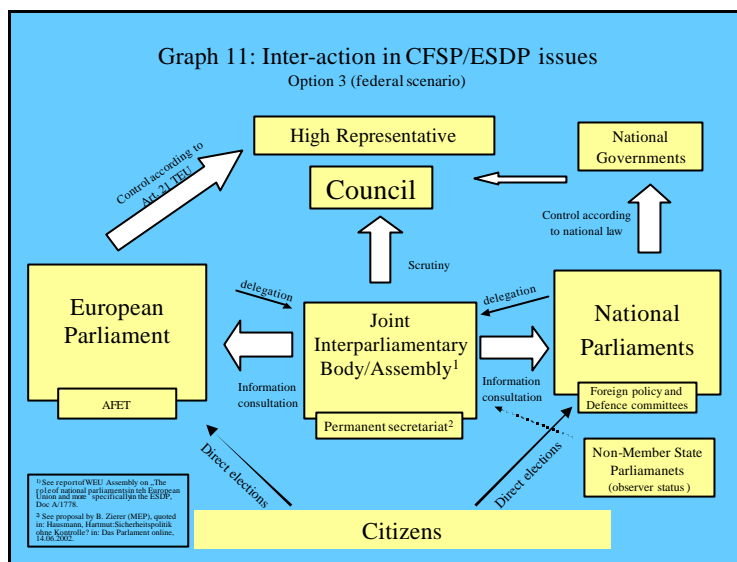
Thought would have to be given to whether or not there should be an increase in the number of parliamentarians attending this parliamentary conference, with consideration given to including politicians from opposition parties. This idea could, however, lead to efficiency problems. If the body is too big then it might be inflexible and unable to react quickly. Such a large forum might become the so-called »European Congress« as outlined by Giscard and others. In the discussions of the Convention, there was a good deal of support for this idea especially in view of giving such a body particular rights in CFSP or ESDP. However, such a body could only attract attention if it obtained significant competences. Furthermore, we should bear in mind that such an institution is intended to meet only every second year, and so it would not be effective or efficient for the EU if significant powers and competences were passed to it.



3) In the view of a long-term vision of federalisation, not »only« would there be a need for an informal forum but also a formal joint body. A joint body would consist of delegates from AFET and delegates from the national foreign and defence committees. A permanent secretariat would support its work and ensure continuity in operation. Such an advisory inter-parliamentary body would also comprise members from non-EU countries that are associate members or partners of the WEU so as to foster a greater understanding and involvement of national parliaments in the activities of the European Union. The establishment of such a body might be done by an amendment or a declaration in a treaty amendment.

A crucial danger remains the potential increase in complexity. The institutionalisation of such a body would have to be given careful discussion since there is a risk that it might become some kind of a third chamber. Furthermore, careful consideration would also have to be given to how the members of this body are appointed or elected. The danger is that it becomes nothing more than an »inefficient talking shop«. Increased transparency and enhanced democratic involvement might possibly be achieved through a smaller body.

As mentioned above, it is in any case necessary that such a body be composed of parliamentarians who possess experience in foreign and defence issues. We only need to look to the WEU assembly to see the dangers of an institution made up of »backbenchers« who are generally not part of any important foreign, security or defence body at any level.



5. Options regarding international organisations

Until the early 1990s, there was an apparent functional division between NATO, the EU, and even the WEU. Although the EU had a vital impact on security matters by creating a network of cooperation and integration among its members and third countries, the main tasks of the EC/EU covered the economic area while NATO was a collective defence organisation with primarily political and military functions. The WEU was some kind of substitute for European security, despite having lost its role following the formation of NATO and its integrated command structure.⁷⁸

This configuration has changed tremendously since the end of the cold war and the emergence of new challenges in the international system. With the development of a Common Foreign and Security Policy (CFSP) in the framework of the European Union, the EU became a more or less decisive and efficient »player« in the international system. The dramatic developments in the Balkans highlighted the need for developing the European Union's capacity to react effectively to (regional) sources of instability and conflict. However, the first steps have been far from successful. The lack of progress in CFSP resulted from several reasons, but in particular from continuing disagreement amongst the Member States about the implementation of their Maastricht commitment to build up the WEU in stages as the defence component of the European Union.⁷⁹

Subsequently, the Council of the Western European Union concluded at its meeting in Marseille on 13 November 2000 that the operational capacities of the WEU should be handed over to the European Union at the end of 2000. As a result, the EU will in future be responsi-

⁷⁸ Particularly, Article IV of WEU makes this clear: "In the execution of the Treaty, the High Contracting Parties and any Organs established by Them under the Treaty shall work in close cooperation with the North Atlantic Treaty Organisation. Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information on military matters."

⁷⁹ See generally article J.4 (TEU – MV). Article J.4.2 states: "The Union requests Western European Union, which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications."

ble for crisis management. The satellite centre in Torrejón in Spain and the Institute for Security Studies in Paris will work as EU-agencies.

The WEU continues to formally exist thanks to the military assistance clause of Article 5, but the decision taken in Marseille has ended its impact as a political organisation.

5.1. The future of the WEU and its Parliamentary Assembly

With the transmission of tasks the WEU has become a comparatively »inactive« organisation. The Parliamentary Assembly of the WEU with representatives of all 28 member countries (now renamed the Interim European Security and Defence Assembly) refused to accept the institution's elimination, despite the fact that the assembly has become a forum without any substantial task. In 2001, the WEU, or more particularly its parliamentary assembly, proposed that it take over for a transitional period the »job« of a parliamentary forum responsible for parliamentary oversight of ESDP. This function was to be carried out together with the European Parliament. Due to the composition of the delegates of the WEU assembly, this would also have included a closer relation to national parliaments. However this proposal is no longer important since neither the European Council at Laeken nor the European Parliament took up the proposal.

1) Adopting a status quo scenario, the current situation would remain unchanged. The WEU will continue to exist as an institution, continuing the functions related to the modified Brussels Treaty; especially Article V and Article IX. In addition, the support of the armament co-operation bodies (WEAG, WEAO) by the WEU can be considered as another »residual« function. The WEU would have to remain since the WEU assembly is (according to its own words) still the only European parliamentary body with a mandate to monitor security on a non-national level.

In such a case, the European Parliamentarians would need to maintain a close relationship and use the parliamentary assembly of the WEU as a channel for information and expertise.⁸⁰ As a general rule, it is inevitable that the expertise as well as the networks of the MEPs will be improved by using existing mechanism: To increase expertise, the EP should consider that the conflict prevention network (CPN) – established in order to advice the Commission and the European Parliament – should be used more comprehensively. The transition from early warning to (re)actions should be improved to make a better use of non-military crisis-prevention and management. In addition, the MEPs should step into »networks« such as the »Munich Conference for Security Policy« (former the Wehrkundetagung), considered as one of the most important meetings of political and military experts.

2) In view of an incremental change of the treaties, the EP should argue for gradual integration of the WEU into the EU and the use of flexibility to achieve this (see also above). Integration could be provided through a two-staged process in which the remaining functions of the WEU in the area of armaments cooperation would remain outside the treaties for some time, accompanied by the parliamentary assembly of the Western European Union. In the long run, however, they would be gradually transferred to the EU. In this case, the European Parliament should make use of the opportunity to integrate into its own administrative structures some of the well-experienced civil servants of the Western European Union secretary. The European Convention has also debated the scenario that the Council of Europe would obtain some of the residual functions of the WEU.⁸¹ However, the European Parliament

⁸⁰ See proposal by the WEU Assembly: "The role of national parliaments in the EU and more specifically in the ESDP – a contribution from the Assembly to the Convention", Document A/1778.

⁸¹ See the proposals of Convention member John Bruton, 10 April 2002 (CONV 27/02).

should reject this proposal since adoption of the structures of the Council of Europe would lead to the same problems experienced in the WEU in terms of overlapping memberships.

3) According to the federal scenario, the residual elements of the WEU will be entirely and straightforwardly transferred to the EU. This implies that all remaining competences of the Western European Union, both political and military, would be passed to the Union. In this case, the mutual assistance clause of the treaty on Western European Union should also be placed in the European treaties – even if this causes more difficulties with enlargement and a EU of twenty-seven. It would create a collective defence mechanism for the EU in the event of an attack (or act of terrorism) against any Member State.⁸² Hence, the European Union would provide the only framework in which defence policy is formulated and relevant decisions are taken.⁸³

In view of this solution, it has to be stated that some problems of developing effective working relationships between the various organisations arise from the different, overlapping memberships of Member States in several organisations. Special consultations might become necessary in this case. To overcome any difficulties, the final integration could be reached by means of a protocol to be signed by the Member States of the EU. However, an associate status might be permitted for non-EU countries in order to cope with the challenges of transferring the mutual assistance clause to the EU.

5.2. *The relationship with NATO and the Parliamentary Assembly of NATO*

The relationship between the EU and NATO is a key element for ESDP, especially given the growing urgency to deploy military forces and the need for hi-tech military equipment and transportation capacities.⁸⁴ Though US and NATO policies are not identical, the relationship with the United States is of special importance.

Since 2000 there has been no agreement between the EU and NATO on collaboration in military crises management operations. This was due to the objections of Turkey and Greece. The agreement forged in the context of the Nice Treaty has so far failed.⁸⁵ The conflict centres around the demand by Turkey to be involved in any decision about the EU's rapid reaction forces (RRF), even if it is an »autonomous« mission within the frame of ESDP. A compromise between the heads of government was finally reached at the Brussels summit in October 2002 with the so called »Istanbul Paper« which entitled the High Representative to negotiate with NATO over the use of NATO resources for the rapid reaction forces.⁸⁶

This already difficult issue has been complicated by the planned NATO »rapid response force«. As a result it is increasingly important to avoid a duplication of capabilities. A solution might be found in the following way: Whereas the EU Rapid Reaction Force would be used for the Petersberg tasks, the forces of NATO would be used to defuse trouble spots. Thus, the two rapid reaction forces would not be mutually exclusive, but complementary. The NATO force would be a front-line, combat unit with special responsibility for the fight

⁸² The Belgian Prime Minister, Guy Verhofstadt had presented such a proposal at 23 July 2002: ESDP, European constitution – Belgian Initiative. The Franco-German Summit on defence on 30 July 2000 supported the proposal. See also Panayotis Ioakimidis (MP Greece), CONV 389/02, 7 November 2002. This initiative has later been supported by the Working group VIII (Defence). See its revised draft report, Working document 22 Rev 1, 6 December 2002.

⁸³ See also Gunilla Herolf/Bo Hultdt: The European Union and the Inclusion of a Collective defence clause, in: Erich Reiter/Reinhard Rummel/Peter Schmidt (eds.): Europas ferne Streitmacht, Chance und Schwierigkeiten beim Aufbau der ESVP, Hamburg 2002, pp. 60-85.

⁸⁴ Note that the new A 400M will not be available earlier than 2008.

⁸⁵ The »Ankara« compromise of December 2001 on a consultation of Turkey in case of operation was rejected by Greece.

⁸⁶ See presidency conclusions, Brussels European Council, 24 and 25 October 2002.

against terrorism, while the ESDP force would be designed to carry out only the Petersberg tasks of humanitarian aid and peacekeeping.

Finally, the EP should stress an element that has not so far been discussed: nuclear powers, nuclear disarmament, arms control and non-proliferation. While two Member States of the EU possess nuclear weapons, the EU does not have a nuclear policy and the European Parliament has no role to play in the scrutiny of national nuclear policies. Following its overall approach, the EP should stress global arms controls regimes and the corresponding treaties, particularly the Comprehensive Test Ban Treaty (CTBT) and Nuclear Non-Proliferation Treaty (NPT).

1) In order to establish an operational ESDP, it is of special importance to improve the military facilities of the EU and its Member States. The resources of NATO remain crucial since the EU does not hold (in comparison with the US) a common strong and viable European armaments industry and has only limited independent military facilities. Nevertheless, the EP should request that Member States undertake more intense co-ordination efforts with regard to the internal organisation of military forces, in order to improve the efficiency in this sector.

For that reason and in view of the status quo scenario, the EP should press firstly for a fast solution to the still blocked negotiations between the EU and NATO over access to NATO planning facilities. The decision at Brussels to allow the High Representative to negotiate with NATO is a significant first step.

In order to guarantee a flow of information between NATO and the EP there should be better use of informal and formal mechanisms for gaining parliamentary information. To ensure information between NATO and EU in a parliamentary perspective, the formal (by EP's delegation for relations with the NATO Parliamentary Assembly) and (informal) cooperation, already established between the EP and the NATO Parliamentary Assembly, might be used more often as an instrument of parliamentary information.

2) In view of an incremental solution, the EP should go beyond the request for an agreement with NATO. Acquiring operational capabilities and military instruments for projecting an autonomous and active role in preventing, managing and resolving conflicts, points to improving own resources. It is vital to reduce the strategic shortcomings, technological inferiority, and a dependence on the US. Furthermore, the lack of adequate financial resources must also be addressed.⁸⁷ Nevertheless, the EU will continue to rely on American capacities and technology but only to a minor degree than in the current situation.

Some formal links should be established with the Parliamentary Assembly of NATO. Agreement should be reached to hold at least a semi-annual regular meeting between representatives of the European Parliament and representatives of the NATO assembly. A shift towards more regular meetings might be achieved through an additional declaration in the treaties.

3) In view of the federal model, the creation of an autonomous EU planning apparatus should be given serious consideration. In view of current threats, the European Rapid Reaction force should go beyond the peacekeeping and humanitarian tasks that it has set itself. A special focus should be laid on emergency response teams that are able to respond to terrorist attacks that use chemical, biological, or nuclear weapons.

Though some (additional) resources from NATO might still be necessary, the EU should first and foremost rely on its own assets.⁸⁸ In this regard, it is important to overcome the opposing positions of Germany and France. While the official French position does not deny the role played by NATO, it does stress the need for European autonomy. For Germany the transatlantic relationship remains at the centre of security policy. This tension creates a difficult conflict

⁸⁷ For latest development see summaries of the meetings of the Working Group on Defence, (CONV 294/02, 343/02).

⁸⁸ See in this respect several statements by French president Jacques Chirac.

over final preference: the French striving for a European Union with a “relationship of equal partners” with the USA opposed to the German wish to maintain multilateral ties in security and defence policy under the cover of transatlantic solidarity.⁸⁹

While France has argued since President Mitterrand for the construction of a European defence capacity, according to the model of a »Europe Puissance«,⁹⁰ Germany continues to hold a contradictory, or even paradox relation to ESDP. On the one hand, stronger collaboration in this sector is welcomed; on the other Germany is not ready to increase its budget to complete the necessary capacities. In addition, Germany has tried several times to limit the tasks and role of ESDP, especially since the Federal Republic set out some preference for NATO.⁹¹

The development of an autonomous EU planning apparatus shall be linked to more coherent co-operation between the participating Member States. In particular, it is necessary to develop common and integrated command structures instead of command by a »lead nation«.

The EP should also emphasise the creation of a European armament agency⁹² (see above). A working and efficient ESDP can only be achieved by increasing effects between national and multinational projects in Europe in order to optimise the use of financial resources. As Ioannides puts it: “Although EU Member States spend \$ 140 billion a year on defence, compared with the United States’ \$ 290 billion, Member States possess about ten per cent of American capacity to deploy and sustain troops outside the NATO area.”⁹³ Since France, Germany, Britain, Italy Sweden and Spain produce 90% of all European arms, special efforts of coordination should be undertaken in these countries.⁹⁴

Additionally, the Parliament should support the Belgian initiative in favour of sponsoring the development of a common armaments market and the pooling of all multinational capabilities already available at the European level.⁹⁵ In addition, the Single Market might also apply to the policy field of defence, if Article 296 TEC were to be changed.⁹⁶

Such claims by the EP might initiate a systematic discussion on the issue especially in view of eastern enlargement. The efforts of the EU in this sector remain limited, although NATO has developed far-reaching links to Eastern Europe such as the PfP, EAPC, the NATO-Russia-Council and the NATO-Ukraine-Commission.⁹⁷

An improvement of the relationship with the parliamentary assembly of NATO is so far not necessary as the EU continues to rely primarily on its own sources.

6. General constitutional and institutional aspects of the EU’s evolution regarding CFSP and ESDP

In order to present viable policy options in the shape of precise Treaty articles, this study has contributed firstly to the debate on the overall institutional framework of the EU by presenting

⁸⁹ See Isabelle Ioannides, *op.cit.* pp. 12f.

⁹⁰ See Gisela Müller-Brandec-Bocquet: Frankreichs Europapolitik unter Chirac und Jospin: Abkehr von einer konstruktiven Rolle in und für Europa, in: *Integration*, 3 (2001), p. 261.

⁹¹ See Werner Link: Die Neuordnung der Weltpolitik, p.165 and Jean-Pierre Froehly: Berlin, Paris und die Entwicklung der ESVP, in: *Dokumente, Zeitschrift für den deutsch-französischen Dialog*, 4 (2001), pp. 298-302

⁹² See in this respect Lamberto Dini: Contribution to the Convention, 28 May 2002 (CONV 65/02).

⁹³ See Isabelle Ioannides, *op. cit.*, p. 24.

⁹⁴ See in this context the Franco-German proposal suggesting a protocol in a future EU treaty allowing enhanced co-operation (e.g. improvement of military capacities - such as harmonisation of planning for military needs) of only some Member States who are willing. Joschka Fischer and Dominique de Villepin: Gemeinsame deutsch-französische Vorschläge für den Europäischen Konvent zum Bereich ESVP, 22 November 2002 (CONV 422/02).

⁹⁵ See the proposal presented by the Belgian Prime Minister, Guy Verhofstadt. 23 July 2002: ESDP, European constitution – Belgian Initiative.

⁹⁶ See for such a proposal Armin Laschet, *op. cit.*, p. 7.

⁹⁷ Another element, which should be taken into account by the European Parliament, is the relevance of an UN mandate before carrying acting in military crisis management. See for discussion Isabelle Ioannides, *op. cit.*, pp. 34 ff.

reform options that will have a substantial impact on the parliamentary dimension of CFSP/ESDP. They might be seen as a supplement to the »questions« already set out in the note drawn up by Barnier in his function as chairman of the European Convention working group on Defence.⁹⁸

6.1. The status of CFSP and ESDP in the EC/EU Treaties

The European Union has become one of the most influential actors in the international system. Besides the USA, Russia, Japan and China it has the potential to be one of the key players in international relations. However, the Union is still far from making full use of its vast foreign policy potential.⁹⁹

Thus, it is of great significance to stress that the EU cannot renounce the economic, diplomatic and military aspects of its external policy. European security and defence policy should be understood as a comprehensive and wide-ranging principle. The separation of policy fields into communitarised on the one hand and intergovernmental politics on the other is no longer appropriate. The scale of international tasks including (foreign) trade relations should be bundled into a coherent Community policy carried out jointly by EU and Member States' institutions. Such a reform and linkage between internal and external aspects of security cannot be undertaken without the concurrence of CFSP and ESDP, and must also include the revisions since 1999 in justice and home affairs. At the moment, the EU is seen as performing badly in co-ordinating these various instruments. The view of the results is even more negative.¹⁰⁰

Thus, a potential reinforcement of the European Union can only be facilitated by enabling the Union to draw upon a wide range of foreign policy tools, ranging from technical assistance to humanitarian aid and from trade sanctions to warplanes. In order to make full use of these instruments, the European Parliament must claim a reinforcement of its role in CFSP and ESDP. With regard to the three scenarios several options are possible:

1) Based on the assumptions of the status quo scenario, the present institutional arrangements will not be changed substantially. CFSP and ESDP will continue to form a pillar of their own with an ambiguous legal and political groundwork. The distribution of foreign »tasks« between the presidency and the Commission will remain, causing irritations among the partners or even leading to a limited effectiveness of the EU in the international system.

The presidency conclusions of the last few years that relate to CFSP and ESDP will be implemented to only a limited extent. In response to this scenario, it should be stressed by the EP that the new provisions from Nice as well as the presidency conclusions will create opportunities for the Member States and the EU institutions to act together in a more flexible way. Each step forward towards more efficient decision-making should be combined with »fallback positions« offering the Member States a guaranteed »safety net. However, this will not reduce procedural complexity.

2) In view of an incremental adaptation approach, a gradual communitarisation of CFSP (excluding defence elements) will be stressed. Since the European Commission together with the Council already work across the various pillars and policies, the EP should claim that its own

⁹⁸ See M. Barnier: Mandate of the Working Group on Defence, 10. September 2002. (CONV 246/02).

⁹⁹ See Jan Zielonka: Explaining Euro-paralysis, Why Europe is unable to act in international politics, Houndsmill 1998 and Curt Gasteyger: An Ambiguous Power, The European Union in a Changing World, Gütersloh 1996.

¹⁰⁰ The presidency elections in Zimbabwe in March 2002 are considered as a recent proof for the weak performance of the EU in crisis management. See for discussion Lorraine Mullaly: The EU and Zimbabwe: too little to late?, in: European Security Review 11 (2002), p. 3 f. However, a better asset of EU crisis management can be drawn for Macedonia. The European Union has succeeded at least to prevent an armed struggle or even an open war between Albanians and Macedonians.

role in foreign and security affairs shall generally be increased by several means which should be incorporated in the treaties.¹⁰¹

Many important agreements with third countries comprise rules based on the exclusive responsibility of the EC as well as on agreements that are to be attributed to the 2nd pillar. In order to ensure higher transparency those procedures and agreements that touch upon competences of both pillars («mixed» actions) should be entirely transferred into the first pillar. Thus, as Romano Prodi, put it “the entire foreign and security policy of the Union [has to be] brought inside the Community system”. The Commission’s submission to the Convention, explicitly says “we should not make external policy more »intergovernmental« by extending the powers of the Member States or of the High Representative to the detriment of the Commission”.

As for ESDP, the European Parliament should concentrate primarily on civil means of crisis management. The regulations for this issue should be amended accordingly and transferred into the first pillar, thus granting a better linkage between first and second pillars. Defence issues, however, would remain excluded. Following the incremental approach the first and second pillars might not need to be merged. Nevertheless, a mixed security policy, carried out by both Member States and Community might lack both transparency and efficiency. But in terms of a »real« step towards a crucial European defence policy it might be the most appropriate way forward.

3) Following a federal logic, the separation between communitarian and intergovernmental policy areas can no longer be maintained. As Panayotis Ioakimidis argues with regard to the fight against terrorism, the abolition of the pillar structures is necessary since “the artificial distinction between Communitarian and intergovernmental aspects of foreign policy does not longer have any real substance”.¹⁰² Accordingly, the second pillar including all of its defence elements should be merged with the Community pillar in a new treaty or constitution. Such an option, put forward, for instance, in the Communication of the Commission on the Future of Europe,¹⁰³ would render it possible to erase the distinction between the community area and the treaty provisions concerning the second and third pillars.

Dismantling the current pillar system would be the easiest solution in terms of legitimacy and transparency.¹⁰⁴ Of course, this would also include a rejection of a “fourth pillar” for defence.¹⁰⁵ Overall, the current state, complexity and variety of instruments needed for common foreign, security and defence policy suggest a need for a more transparent and coherent institutional framework.

6.2. *The delimitation of competences*

The delimitation of competences is closely related to the overall legal status of CFSP and ESDP in the treaties. It is one of the core issues of the work of the Convention. Generally, the EP should emphasise that the development of a catalogue of competences should be avoided. Any attempt to set up such a catalogue would face large obstacles, considering the highly heterogeneous national interests and diverging organisational structures. A negative list that excludes certain elements from the Union level should also be avoided. Such a list could restrain

¹⁰¹ See Pavol Hamzik, The European Security and Defence Policy as Part of the European Union’s Common Foreign and Security Policy, Contribution to the Convention, 17 July 2002 (CONV 194/02).

¹⁰² Panayotis Ioakimidis: The development of the EU’S common foreign and security policy and defence policy (CFSP/ESDP), Contribution to the Convention, 07 November 2002, (CONV 389/02).

¹⁰³ Communication from the Commission, A Project for the European Union, Brussels, 22 May 2002, COM (2002), 247 final.

¹⁰⁴ See Alain Lamassoure: The European Union, Four Possible Models, Contribution to the European Convention, 3 September 2002, (CONV 235/02).

¹⁰⁵ See in this respect Lamberto Dini: Contribution to the Convention, 28 May 2002 (CONV 65/02).

any further integration and would not help to make the EU more efficient – neither short-term nor in the long run. In contrast, an un-binding recommendation list might prove more helpful. For the Convention, the need to prevent a possible standstill on this issue will be a key to the success of its work.¹⁰⁶

Nevertheless, since a vast discussion on such a catalogue of competences has already begun, several arguments with regard to the three options need to be discussed:

1) In a status quo model of minor changes the Member States will remain the decisive actors. Foreign and security policy will still be regarded as a key element of national sovereignty. Although it is considered necessary to establish permanent links between the Union and the Member States in this policy field, and although the new institutional set-up will be regarded as essential, the nature and the character of the EU's foreign and security policy will not be fundamentally changed. Defence policy will be carried out and co-ordinated at the national level; especially with regard to military actions and operations. Even if the EU becomes more capable of shaping international events, no shift of military competences to the European level will take place. Instead, tendencies to a »Core Europe«, a »directoire«, a »pioneer group« or simply a »national do-it-yourself« strategy might emerge. Hence, the European Parliament should advocate that only non-military crisis management be delegated to the Union level, and only to a certain extent.

2) If the preference were for a step-by-step communitarisation, the need for further reform and adaptation prevails; especially considering enlargement. The »incorporation« of new countries with different traditions and experiences will create additional difficulties for the present form of intergovernmentalism. Thus, an extensive transfer of competences to the EU level will become necessary.

In this context, the EP should focus on the submissions it has already made. The European Parliament and the European Commission alike have produced several proposals endorsing a further »Communitarisation« of European foreign policy: In its Lamassoure report of 24 April 2002, the European Parliament proposed to move foreign policy into the area of »exclusive competences« of the Union.¹⁰⁷ As a result, this would mean the complete »Communitarisation« of the second pillar.

However, defence and security matters might formally be excluded. Security and defence policy would remain the divided responsibility of the Union and the Member States.

A new aspect to this debate has been brought about thanks to the preliminary draft constitution for Europe devised by Giscard d'Estaing. Even though he has not elaborated upon the concise extent and status of the term »defence«, he has listed defence among those policy areas which have to be considered for a future constitution for the European Union.¹⁰⁸

3) A completely »Europeanised« scenario is at the moment not part of the debate. However, a communitarised CFSP and ESDP might prove useful in order to help develop a more politically informed »European public« and ensure that too many debates on important issues move beyond the national arena or the restricted circle of ministerial or diplomatic elite. For both the media and the public the principle forum of debate shall become the Union rather than the nation state.

This scenario might be realistic considering that the public does not reject such a shift of competences despite it having no control over any part of the foreign policy decision process. Empirical data from the last few years has proved wrong old ideas that defence policy is an

¹⁰⁶ See Marta Dassù/Antonio Missiroli, op.cit.

¹⁰⁷ See European Parliament resolution on the division of competences between the European Union and the Member states, 16 May 2002, (A5-0133/2002).

¹⁰⁸ See for the draft proposal of Giscard d'Estaing *Frankfurter Allgemeine Zeitung*, 29 October 2002.

indisputable competence of the nation state. Instead, more and more people can imagine an operational European army with real competences.¹⁰⁹ Hence, the EP should stress that foreign policy, including defence, might become part of the exclusive competences of the Union, at least at some distant date. Such a common foreign, security and defence policy could contribute even more to the identity of the EU and its citizens than the common currency has done.

6.3. *The decision-making procedures in CFSP/ESDP*

Currently, the »real« patterns of CFSP and ESDP decision-making follow an intergovernmental track. The need for consensus is the guiding principle and it has remained so even in the more mature areas of CFSP. Expectations to accelerate the decision-making process through majority voting have not yet been fully realised. The respective treaty provisions (Art. 23 and Art. 24 TEU AV) are admittedly modest and limited to the implementation of common strategies, joint actions and common positions. However, the governments have not taken advantage of these opportunities. The idea to use them as a »potential of a threat« to push for more rapid agreement of a common position, has not yet proved successful. This pattern of no-use reveals the irrelevance of major treaty provisions or procedures.

1) Following a path of minor adjustments, the procedural arrangements will not be substantially changed. Thus, the EP should claim, that instead of a revision of treaty articles, the existing articles should be used at all. The procedures and structures available will have to guarantee the working of CFSP and ESDP. Qualified majority voting will not become the general rule in the second pillar.

Maintaining unanimity has its advantages for national parliaments since in a »worst case« scenario qualified majority voting is able to undermine a national parliament's capacity to influence the outcome of decision-making at the European level. This is because even if a national parliament has successfully changed the position of its national government,¹¹⁰ its attempts might have been futile if the national government's position could have been »overruled« in the Council of Ministers by means of QMV.¹¹¹

Furthermore, in foreign and defence policy it is more important to achieve a broad consensus on principles and guidelines than to establish fast decision-making procedures. Thus, QMV is not necessarily beneficial and should be limited to joint actions, common positions and the implementation of decisions, if based on a common strategy.

2) Following a step-by-step logic, the deployment of military means within the framework of the intergovernmental CFSP/ESDP requires substantial reform of the decision-making and coordinating procedures. Two aspects might be important:

To avoid time-consuming decision-making procedures, all actions taken with reference to the framework of Article 23 and 24 but which exclude a military reference should be taken by qualified majority voting. This is especially so in view of the problems in reaching unanimity that will be faced following EU enlargement. »Constructive abstention« according to Article 23.1 would not solve the problem.¹¹² A more efficient decision-making procedure, consequently QMV, is necessary in order to ensure a reaction capability that is timely. Consequently, the logics of Article 23.1 should be changed in the way that "decisions under this title

¹⁰⁹ See Eurobarometer 57.

¹¹⁰ Note that there are national parliaments that do not have any formal means for influencing their government's position in the Council.

¹¹¹ See for the argument Patrick Birkinshaw/D. Ashiagbor: National participation in Community affairs: Democracy, the UK Parliament and the EU, in: Common Market Law Review, 3 (1996), pp. 499-529.

¹¹² In this respect the German-Franco proposal by Joschka Fischer and Dominique de Villepin should be rejected. 22 November 2002 (CONV 422/02).

shall be taken by the Council with QMV”.¹¹³ Military and defence decisions, however, will still be reached via unanimity.

Nevertheless, to avoid military coalitions outside the Treaty it is necessary that those states willing and able to cooperate are able to do so efficiently without, however, neglecting the other EU members' interests.¹¹⁴ As it is demanded in the German-Franco initiative on security and defence policy: “für diesen Fall muss denjenigen, die dies wünschen, die Option einer Zusammenarbeit mit einigen anderen im Rahmen des Vertrags offen stehen“.¹¹⁵

3) In the federal view, QMV would become the general rule in CFSP/ESDP affairs, including military and related issues. Although this might not help to improve transparency, specific forms of voting such as 2/3 majorities under the current provisions of Article 205.2 (TEC – NV) might be kept as some kind of a »safety net« for the Member States.

6.4. *The external representation of CFSP/ESDP*

By all accounts, the introduction of the High Representative Javier Solana has significantly improved the representation of the EU's foreign policy. He successfully made the EU a relevant actor in the Balkans and the Middle East. Some of the EU's modest foreign policy achievements in 2002 such as the agreements between Serbia and Montenegro are largely due to Solana's political manoeuvring and negotiating skills. Moreover, he was supported by all Member States, and not simply the »big three«.

It has to be stated, however, that the institutional complexity has been further increased with the establishment of the new position. Though Mr. Solana is perceived in the world as »Mr. EU«, as for the European telephone number – which Henry Kissinger asked for decades ago in his famous remark on Europe's incohesiveness – the Union is still unable to offer a reliable and credible political answer. During a crisis, the current system of external representation is completely inadequate. A key single actor enjoying the support of the Member States and the Commission must be clearly identifiable for third parties.

1) From a view of only restricted adaptation, the present Troika system should not be abolished. Though it cannot be overlooked that the CFSP/ESDP framework lacks coherence and consistency, neither the presidency should be eradicated nor should there be a merger of the posts of the High Representative and Commissioner in charge of external relations.

As a consequence, the EP should only advocate a slight adaptation of the current system. This might be achieved by some »smooth« adaptations: Firstly, the time period of the presidency might be extended as among others Tony Blair has suggested. Secondly, the supporting staff of the High Representative should be substantially beefed up, preferably with officials detached from either the Council secretariat or national ministries.¹¹⁶

2) According to the model of a pragmatic development, both the role of the Commission and the High representative should be increased. Following the »double-hat (Doppelhut)«-system, which is currently being discussed in the Convention, representation of CFSP and ESDP should be carried out jointly by the responsible (foreign) Commissioner and the High Repre-

¹¹³ See in this respect especially Chris Patten (Commissioner in charge of External Relations) at the joint Meeting of the Working Groups on External Action and Defence, 14 November 2002, (CONV 412/02).

¹¹⁴ See below chapter 6.4.

¹¹⁵ See in this respect also the German-Franco proposal by Joschka Fischer and Dominique de Villepin, 22 November 2002 (CONV 422/02).

¹¹⁶ See the contribution for the Convention by Heather Grabbe: Preparing the EU for 2004, (http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0077_c_en.pdf).

sentative.¹¹⁷ In this manner, the tasks of the High Representative for CFSP will be kept, but competences would not be increased. However, the general structural limitations of the position should be taken into account despite the fact that the current High Representative Javier Solana has, due to his experience and personality, managed to acquire a fairly important position in an exceptionally short period of time. A less well-profiled politician as High Representative might cause a structural vacuum at the core of foreign and security policy.¹¹⁸

In view of this scenario the role of the presidency should be restricted. In order to achieve a better coherency, the foreign Commissioner and the High Representative should jointly carry out foreign representation while the presidency should focus primarily upon aspects of internal coordination. A small number of civil servants from the respective presidency might be delegated to the staff of the High Representative to ensure the necessary co-ordination.

3) Advocates of a fundamental reform would suggest the establishment of a key person in charge of foreign policy. In this respect, the EP should demand a personal union between the High Representative and the External Relations Commissioner.¹¹⁹ The two functions would be merged into the new position of a foreign Commissioner, responsible for foreign, security and defence policy. Obviously, this would mean the abolition of the post of High Representative and the »upgrading« of the Commission in the area of foreign policy. In this respect the European Commission would be considered as European government with the president of the Commission effectively becoming the »head« of the European Union.¹²⁰

Providing this new »Foreign Commissioner«/High Representative (a kind of »EU Foreign Minister« who would also claim the function of the single Commission vice-president) with exclusive external representation of the Union in CFSP and ESDP affairs, seems to be the most coherent and effective option. By the same token, this function should be given a formal right of initiative in foreign policy; similar to the one the Commission has in EC matters. Furthermore, substantial own resources would have to be combined with this function, both in terms of organisational structures and financial means. The entire structure would be at the disposal of the new »Foreign Commissioner«/High Representative.¹²¹

The institutional connections between the Council and the Commission resulting from this fusion would strengthen the coherence of the various elements of EU foreign policy and give the EU a more efficient and coordinated external representation. This external representation will be even more relevant for international organisation such as the Euro-Group in the IMF, G-8, World Bank and, in the long run, the United Nations.

Following this logic, the six-month rotating presidencies would be abolished. In an enlarged EU rotating presidencies are not adequate to provide the Union with leadership or a strong profile internationally.¹²² The European Commission has to be fully accepted as a key actor in CFSP and ESDP, especially as regards long-term conflict prevention, post-conflict rehabilitation and civilian matters. The Commission will then play a key role in combining the big security policy goals with the realisation of concerted action in internal policy.

¹¹⁷ See the proposal of Caspar Einem (MP Austria) on the »double hat«: Contribution to the Convention. 17 July 2002 (CONV 202/02). Günther Pleuger has taken up this proposal. 6 November 2002 (Working document 017 of the working group of the Convention on external action).

¹¹⁸ In this respect the proposal of the president of the Commission, Romano Prodi, introducing the idea of a new post of »EU secretary« placed as a link between Council and Commission should be rejected in order to avoid further institutional complexity. See *Süddeutsche Zeitung*, 5 December 2002.

¹¹⁹ See among many others Andrew Duff: A Model Constitution for a Federal Union of Europe, Contribution to the Convention, 1 September 2002, (CONV 234/02).

¹²⁰ See for the role of the European Parliament vis-à-vis this new key person chapter 2.2. above.

¹²¹ See Vitorino and Barnier: A project for the European Union, Communication from the commission to the Convent, 22 May 2002, (CONV 229/02).

¹²² The presidency problem has even increased since the Danish Presidency (started on 1 July) that will not chair the meetings concerning defence matters due to the Danish opt-out from ESDP in the Nice treaty.

6.5. *The reform of the Council*

The European Council in Seville referred to reform of the structures of the Council.¹²³ The new structure sought a General Affairs Council (GAC) that incorporates External Relations and which is split up into two separate entities: one designed to tackle horizontal issues¹²⁴ and one to deal specifically and exclusively with foreign issues. The defence ministers might join the latter, according to the agenda.¹²⁵

1) Following the status quo-scenario, this new arrangement is regarded as a sufficient adjustment to cope with the existing problems. In its first formation/composition, the General Affairs Council will be able to increasingly concentrate on co-ordination and legal factors. In its second formation/composition where it will consist of mainly foreign ministers, it will focus on CFSP and ESDP matters. The possible composition/formation of a special Defence Council seems not to be applicable and also undesirable. Thus, the EP would support the agreements of the Seville summit and the new rules of procedure for the Council that emphasise the division of general affairs and external relations.¹²⁶

2) From the assumptions of an approach that emphasises incremental change, a wide margin for further reform of the Council structures (besides the changes already undertaken) is possible. According to the overall target of more openness and transparency, the EP should also pay attention to the Councils own internal structures. The Council should act, if it is possible, and legislate to ensure better transparency with »open doors«.

In order to make the Council's activities clearer, the respective competencies of COREPER and the PSC must be defined. No »grey« areas within the Council should be left to cast any doubt on its work.

In view of this scenario, the setting up of an independent Defence Council should be considered.¹²⁷

3) The vision of a long-term communitarisation would require a clear relocation of competences to the Council of Defence Ministers for all issues relating to a military dimension of European security policy. This Council would be established by dividing responsibilities of this area with foreign ministers.¹²⁸ Joint meetings of the defence and foreign Council would take place regularly on a semi-annual basis and when necessary on an ad hoc basis. The Foreign Affairs Council as well as the Defence Council will be chaired (following the abolishment of presidencies (see above)) by the new »Foreign Commissioner«/High Representative, thus guaranteeing consistency. To reflect this reform, the European Parliament would need to re-organise its Committee structure along the lines of the Council framework (see below).

In addition, the EP should claim that if the European Council is to play an important role in CFSP and ESDP affairs then it should become a regular institution of the European Union with clearly defined competencies in the treaty and legal responsibility.

¹²³ See Claire Piana: The Implications of the Council Reform for CFSP and ESDP, in: European Security Review 14 (2002), p. 4f.

¹²⁴ In this formation Member States will be free to send either the Foreign Minister proper or another member of cabinet.

¹²⁵ See Presidency Conclusions, Seville, 21-22 June 2002, Annex II (Measures concerning the structure and functioning of the Council). On 13 May 2002 the Defence Ministers of EU Member States took part for the first time in the General Affairs Council.

¹²⁶ See Council decision of 22 July 2002 adopting the Councils' rules of procedure. <http://ue.eu.int/en/info/RIEN.pdf>

¹²⁷ See especially proposal of the Seminar on Defence for the Members of the Convention, Brussels 7 November 2002, (CONV 417/02).

¹²⁸ See the resolution adopted by the EP in April 2002, calling for the institution of a formal »Defence Council«.

6.6. *The role of the European Commission*

Since the borderline between external and internal security is increasingly blurred on the one hand and the coherence of military and civilian measures is gaining ever more importance on the other, a truly independent European Commission committed to common European interests should become (according to the respective scenario) the central institutional link between pillars and policies. Thus, the role of the Commission in the EU's security policy should be generally increased.

1) In the scenario conceding only restricted adjustments, no substantial institutional changes will be made. The Commission will still be part of the Troika system. Nevertheless, improvements will be achieved by better means of communication and higher expertise in the Commission. Therefore, the EP would support a stronger role of the DG external relations and a better staffing of the DG with experienced civil servants. Establishing better communication between DG external relations and the respective Council bodies could also strengthen the role of the Commission.

2) With regard to the incremental adaptation scenario, a further involvement of the Commission in the armament sector could be achieved. Since a working European defence policy relies on a coordinated and efficient defence industry in order to reduce the gap with the well-equipped military forces of the United States, the Commission should be responsible for such a new policy sector, including responsibility for the use of funds from the EC budget to help develop this.

Moreover, the Commission might be permanently included and thus gain a legally based status in the sessions of the newly established bodies, not only in CIVCOM but also in PSC and EUMC. Thus, the Commission should obtain a status that really does correspond with Article 27 (TEU – AV).

3) The federal scenario will place the European Commission beyond Article 27 (TEU – NV) and into the core of foreign policy. Due to the new function of the merged »Foreign Commissioner«/High Representative (located within the Commission structure) the centre of gravity for policy initiatives in CFSP/ESDP would lie within the Commission¹²⁹. Though this might contradict transparency and coherency, the EP should focus on a special status for the new Foreign EU Leader »EU Foreign Minister«. As a full member of the Commission, the »Foreign Commissioner«/High Representative would be chosen jointly either by the President-designate of the Commission, and by the European Council.

Another aspect of a more federal perspective derives from setting up a European President. Such an arrangement, at present apparently supported by London, Paris and Madrid (though not based on a traditional federal approach), would put the »Foreign Commissioner«/High Representative in direct connection and potentially in competition with the new European President. As experiences from the French System show, foreign affairs might therefore be carried out as part of the »domain réservé« by the President. Institutional conflicts would be institutionalised by design unless a clear division of labour was established between the new »President« of the European Council, the President of the Commission and the new »Foreign Minister« of the Union. Hence, the EP should reject such an arrangement or ask for very clear competences, which would be set out in the treaties.

¹²⁹ See Ingolf Pernice: Reform der Aufgabenverteilung und der Entscheidungsverfahren in der GASP/EVSP, 25 September 2002, WHI White Paper 8/02.

7. Conclusions: Revisiting the options in view of the European Convention

This set of options offers an overview about possible institutional arrangements in CFSP and ESDP and the potential for a stronger involvement of the European Parliament. The bandwidth and ambiguity of the recommendations is notable but they must not provoke confusion. The conclusions of the European Convention might also include several ideas along a similar time scale. Changes do not have to be reached with one »saut qualitatif«, but rather could be established gradually via several steps.

The Convention can be considered the most appropriate place for discussion about the revision of the existing treaties. Therefore the Convention performs a necessary prerequisite for legitimating the next constitutional step towards extending the EU-system. These results might lead to a higher acceptance of the EU. The final document of the Convention could outline several recommendations for the forthcoming ICG that could attract wide support. The proposal of Giscard d'Estaing might be a starting point, since Convention delegates were broadly supportive of his »skeletal« proposal.

In particular, an incremental style advancement of the EU-system might be successful. Experiences so far have shown that proposals with far reaching solutions are not always appropriate or successful. A flexible strategy of »trial and error« might have a more important effect on the outcome. To focus on evolutionary adaptations in foreign, security and defence policy might also be the most appropriate strategy for the EP. The »finalité Européenne« has to be achieved gradually. The European Convention will reinforce the debate on the future of Europe, but not necessarily lead to an end or a »one-valid result« in the integration process.

Besides the »trial and error argument«, there should, nevertheless, emerge from the abundance of detailed options some immediate recommendations for participation of the European Parliament. According to the debates in the Convention, neither the status quo, nor the federal scenario seems realistic. Instead, a move towards limited but valid reforms appears more realistic. Probably more than a minimal interpretation of the assignments by the European Council will arise.

The following set of options offers an overview of possible future institutional arrangements in CFSP and ESDP and the potential for a stronger involvement of the European Parliament as well as of national parliaments:

1. The European Parliament should focus on a substantial revision of Article 21 TEU. Since the objective of Article 21 is limited to the "Common Foreign and Security policy", a parliamentary dimension of CFSP/ESDP requires a particular reference to ESDP. Particularly the term ESDP should find its way into the Treaties proper. Following the preliminary draft proposal by Giscard, such a revised Article 21 has to be extended on both external actions and defence. This might help break the artificial distinction between CFSP and ESDP matters. A more workable method might be to differentiate e.g. between long-term strategies including their conduct and strictly military operations. Since the parliamentary dimension of ESDP is neither mentioned in any of the declarations adopted since October 1998 nor in any final conclusion of the presidency, the EP might claim in addition to extend its right for a more profound participation.
2. The appointing function of the European Parliament has been developed in only a fairly restricted way. Hence, since the High Representative has developed a key role in CFSP and ESDP (which might be further strengthened in the future considering some of the proposals made in the Convention), the European Parliament should become more involved in his appointment. There should at least be the need to consult the EP along similar lines to the ECB-investiture, and this should be inserted into the treaty. In terms of legitimacy, the assent of the EP appears more desirable, as it is applicable for the Commission.

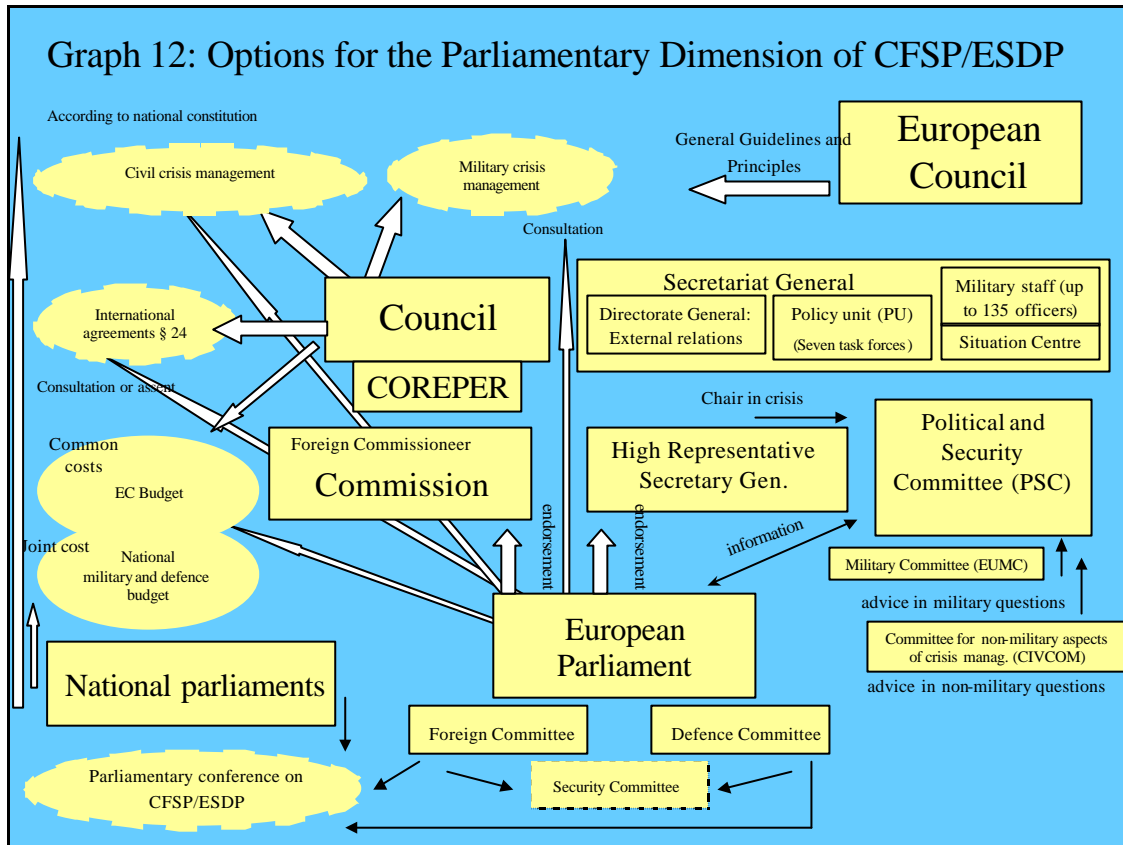
3. The right of information in CFSP and ESDP is the most important aspect for efficient parliamentary participation. In this respect, the links of the EP's AFET with the Council and its bodies should be improved at all stages of the policy cycle. It would be especially useful to establish links to the PSC, which are currently close to non-existent. The EP should claim the right to obtain access not only to decisions that the Council intends to adopt but also to all other information related to foreign, security or military actions in order to gain a more comprehensive overview. Most notably, the current Article 21 and its passage stating that the EP shall be restricted to "be[ing] kept regularly informed" on the "development" of the Union's CFSP impedes an efficient and democratic legitimatised control by the EP. On the other hand, better information for the EP might be achieved by improved access to (confidential) documents. The inter-institutional agreement drafted in July 2002 concerning a special committee led by the chairman of AFET, might be an appropriate basis for the access to sensitive documents.
4. To carry out legal acts, parliament generally must not only have the possibility to formulate its position on all proposals for EU legal measures, but also have the right to approve or to reject what the executive has proposed. Hence, the European Parliament should claim a legally binding participation in civil crisis management and right of consultation in military crisis management. Although a distinction between civil and military means might prove difficult in a case-to-case evaluation, the Parliament should focus on the civil dimension of EU foreign policy including crisis management by non-military means as defined in Annex I of the Presidency Report in Feira on strengthening the Common European Security and Defence Policy and in Annex 2 to Annex IV of the Helsinki conclusions.
5. The use of flexibility as a »last resort« should be avoided both generally and in relation to CFSP/ESDP matters. Nevertheless, in order to achieve an operational ESDP, flexibility might be indispensable. In such a case, it should be discussed if the rights of the European Parliament should be equivalent to normal procedures in cases of enhanced co-operation.
6. The European Parliament should focus on a revision of the criteria under which the defence budget is drawn up. Currently, operations, "having military or defence implications", have to be financed by the Member States. According to the Council (of Foreign Ministers) decision of 17 June 2002, there are two categories of costs in ESDP: Firstly, common costs of the Member States, consisting of funds such as those for transport, administration or public relations of the staff quarter. Secondly, individual costs, which are shouldered separately by each individual Member State, with charges going to every single country according to its own expenses. Based on this accord, the EP should stress that the common costs including both operational and administrative costs should no longer be financed jointly by the Member States but by the EC budget. This would provide the parliament with an instrument of indirect control that it can exert through its rights to participate in the drafting of the EC budget. In practical terms, this might be carried out by a decision on the overall costs of the EP at the beginning of the budget procedure, which will then be distributed by the Council to single positions.
7. The European Parliament has so far obtained no competences to decide on, and not even to take part, in any »association« procedure under Title V. Consequently, the European Parliament should aspire to be involved in those international agreements, which fall under Title V. Thus, Article 24 (TEU – AV) should be amended along the competences of Article 300 TEC.
8. Since AFET is concerned to a large degree with questions of enlargement, the work of the Committee should in future begin to concentrate more effectively on foreign and

security aspects. This might be achieved either by a subdivision of tasks into several subcommittees or, along the working structures of the Council, with the dividing of AFET into two different committees: one covering the field of foreign policies and one focussing on defence and security matters. The policy field of human rights might either be merged with the Committee on Development and Cooperation (DEVE) or become a committee of its own. In addition, it should also be discussed whether AFET should still coordinate the work of the inter-parliamentary delegations and the joint parliamentary committees as well as the cooperation committees and the ad hoc delegations?

9. Basic parliamentary involvement in ESDP affairs is a product of »access«, thus requiring efficient and comprehensive information channels. In practise, a lot of information has to be obtained from the national level, in particular for cases of foreign and security policy. Thus, the European Parliament should improve co-operation and exchange of information with national parliaments by setting up some kind of a policy-oriented sub-COSAC related to foreign, security and defence issues. It is recommended that this A specialised COSAC or a EP based parliamentary conference on foreign, security and defence policy might ensure efficiency and a better performance in day-to-day-policies than the current COSAC is able to offer. A standing secretariat, however, should be avoided since this might lead in the long run to the institutionalisation of such a body. This structure might provide a forum for communication of day-to-day politics between national and European parliamentarians. Besides this structure a bigger forum might be installed which serves primarily as a forum for communication on general issues between national and European parliamentarians. This task might take the form of the so-called »European Congress« as promoted by Giscard and others.
10. With the transfer of tasks, the WEU has become a comparatively »inactive« organisation. Though the Parliamentary Assembly of the WEU has refused to accept the institution's demise, the European Parliament should insist that the mandate of the Western European Union and its parliamentary assembly expire. The remaining competences of the WEU should be transferred entirely to the EU. In this case, the mutual assistance clause of the treaty on the Western European Union should also be placed in the European treaties. This would imply a collective defence mechanism for the EU in the event of an attack (or act of terrorism) against any Member State. Communication between national parliamentarians and MEPs can be ensured by either the »European Congress« or by the other existing bodies such as the Parliamentary assemblies of NATO, OSCE or the Council of Europe.
11. The rights of national parliaments in foreign, security and defence policy differ substantially. While some national parliaments pronounced rights in initiating legislation and supervising the work of the respective government, other parliaments act primarily as a platform and forum for communication. In general, however, parliaments play only a marginal role in all major developments in the area of foreign policy. For this reason, national parliaments might enter into a benchmarking exercise looking at minimum standards for best practises of national legislatures in foreign, security and defence policy.
12. The relationship of the EU and NATO is a key element for ESDP, especially given the growing urgency to deploy military forces. The European Parliament should push for an improvement of the financial expenditures on military capacities in the EU Member States in order to develop operational structures and also push for the conclusion to the elusive agreement between the EU and NATO on collaboration in military crises management. In addition, the EP should improve (besides its NATO delegation) communication with NATO and NATO Member States. At least a semi-annual regular meet-

ing between representatives of the European Parliament and representatives of the NATO Parliamentary Assembly should be agreed upon.

An overall model for the parliamentary dimension of CFSP and ESDP might be organised as follows:



Annex1: The development of foreign, security and defence policy at the European level: From early beginning to CFSP and ESDP

“What is Europe's role in this changed world? Does Europe not, now that is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Charta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others' languages, cultures and traditions. The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law.”

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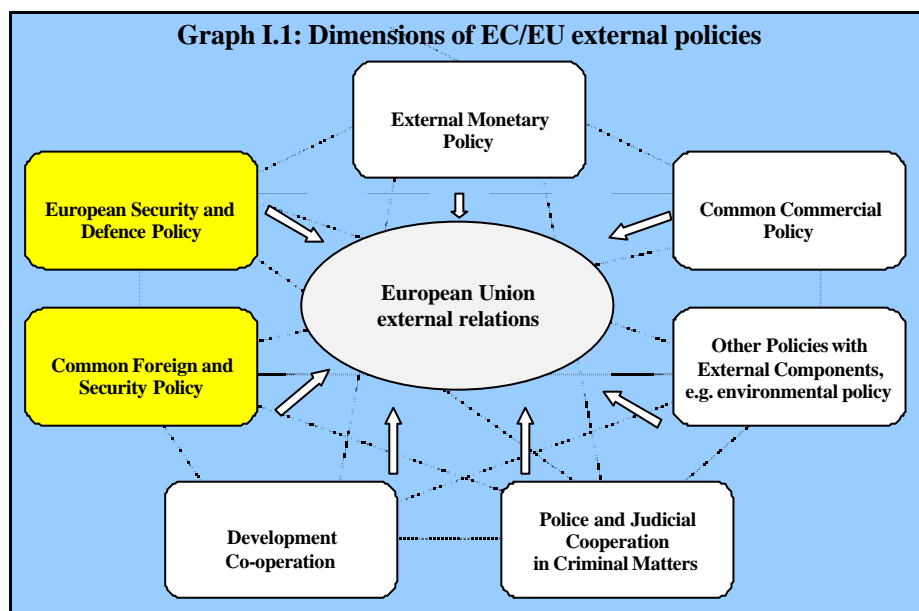
Detailed Table of Contents of Annex I:

<i>I. The development of foreign, security and defence policy at the European level: From early beginning to CFSP and ESDP</i>	58
<i>I.1. EDC and Fouchet: the early history of European foreign and security policy</i>	58
<i>I.2. EPC and the institutionalisation of European foreign policy: awkward partners</i>	61
<i>I.2.1. The European Parliament and EPC</i>	64
<i>I.3. The CFSP and the (Maastricht) Treaty on European Union: new beginnings</i>	65
<i>I.3.1. The European Parliament and the (Maastricht) Treaty on European Union</i>	67
I.3.1.1. Information and Consultation competencies (Art. J.7 TEU – MV)	68
I.3.1.2. Recommendations and Questions (Art. 21.2 TEU – MV)	69
I.3.1.3. Budgetary powers	69
<i>I.4. The reform of CFSP and the (Amsterdam) Treaty on EU: gradual improvements</i>	70
<i>I.4.1. The EP and the (Amsterdam) Treaty on European Union</i>	72
I.4.1.1. Positions for the Intergovernmental Conference	72
I.4.1.2. Budgetary powers	73
<i>I.5. The evolution of CFSP and ESDP: evolutionary dimensions in institution building</i>	74
<i>I.5.1. The new institutional set up</i>	78
I.5.1.1. The political and security committee (PSC)	78
I.5.1.2. The European Union Military Committee (EUMC)	79
I.5.1.3. The European Union Military Staff (EUMS)	79
I.5.1.4. The role of the High Representative	80
I.5.1.5. The Committee for Civilian Aspects of Crisis Management (CIVCOM)	80
<i>I.5.2. The European Parliament, the (Nice) Treaty and the ESDP provisions</i>	81
I.5.2.1. The Nice treaty	81
I.5.2.2. Budgetary affairs	81
I.5.2.3. Positions and statements	81
I.5.2.4. The role of the national parliaments	82
<i>I.6. The further development of ESDP in 2001/2002: beyond slow adaptation?</i>	82
<i>I.7. Conclusions: Trends of historical evolution in CFSP/ESDP: patterns of growth and differentiation without parliamentary involvement</i>	83

I. The development of foreign, security and defence policy at the European level: From early beginning to CFSP and ESDP

This first annex of this study reviews the trends for growth and differentiation in the institutionalisation and parliamentarisation of CFSP and ESDP by identifying historical »milestones« in the area of foreign and security policy. Institutional and procedural arrangements are described in general and particularly with regard to the EP's access and influence for preparing, taking, implementing and controlling decisions over an increasing scope of foreign policy activities since the beginning of European integration.

A brief historical overview of the development of foreign and security policy at the European level is indispensable in order to understand the current institutional arrangement of CFSP/ESDP institutions. The overview will focus entirely on the development of common foreign, security and defence policy; other elements of European Union external relations such as Common Commercial, External Monetary, Development Co-operation- and Environmental policies will not be covered.¹ Also, the competencies of the European Parliament in the ratification of the EU's international contracts are not examined.²



I.1. EDC and Fouchet: the early history of European foreign and security policy

After the successful beginning of European integration in the framework of the Schuman plan, debates started almost immediately on concepts for a further development of the European Coal and Steel Community (ECSC) towards a political union.³ The development of a common European foreign policy was moved forward by the influence of the Korean War and United States' demands for a re-militarisation of the Federal Republic of Germany. The

¹ Considerable effects on the role of the EU in the international system derive also from the arrangements in the areas home and justice affairs.

² See in this regard especially Stefan Krauß: *Parlamentarisierung der europäischen Außenpolitik, Das Europäische Parlament und die Vertragspolitik der Europäischen Union*, Opladen 2000.

³ See basically Simon Nutall: *European Foreign Policy*, Oxford 2000 and Simon Nutall: *European Political Co-Operation*, Oxford 1992; Wolfgang Wessels/David Allen/Reinhardt Rummel (eds.): *Die Europäische Politische Zusammenarbeit*, Bonn 1978; Martin Holland (ed.): *Common Foreign and Security Policy, The Record and Reforms*, London 1997; Ramses A. Wessel: *The European Union's Foreign and Security Policy, A Legal Institutional Perspective*, The Hague 1999; Ben Soetendorp: *Foreign Policy in the European Union, Theory, History and Practice*, London 1999.

Pleven plan introduced in October 1950 (named after its initiator, French Prime Minister René Pleven) and put forward only a few months after the Schuman initiative, advocated the creation of an integrated European army with joint command structures.⁴ Based on the Pleven plan, which was the subject of intense discussion by the members of the European Coal and Steel Community from February 1951 to 1952, a plan for a European Defence Community (EDC) was introduced.⁵ This plan suggested a far-reaching integration of military forces under a joint command structure, a joint armament program and a single budget.

Delegated by the Foreign Ministers of the ECSC-countries and according to Article 38 of the EDC treaty, the Parliamentary Assembly of the ECSC adopted a Treaty proposal for a »European Political Community«, already during the ratification phase of the EDC. The European Political Community was supposed to comprise a parliament consisting of two chambers, a European executive council, a council of ministers and a court. It was designed to have broad competences and bundle the tasks of the ECSC and EDC.⁶ This common »roof«, as it was introduced in a draft treaty in March 1953, made no precise statement on the »finalité politique«. Both federal as well as confederative elements were embraced; the possibility of transferring Member State's competences to a (future) supranational level was deliberately left open. However, the project failed when the French national assembly refused to ratify the EDC treaty on 30th August 1954.⁷

After the failure of EDC and European Political Community, the idea of a joint European security policy was dropped from the agenda. The concept of focussing on defence and foreign policy remained merely a visionary concept. Foreign and security policy was entirely excluded from the Treaties of Rome. The six »founding fathers« concentrated exclusively on further development in economic integration. In the 1950s and 1960s the North Atlantic Treaty Organisation (NATO) and, to a limited degree, the WEU were the only relevant organisations for security policy in Western Europe.⁸

At this time not only was the foreign and security dimension low on the list of priorities, but also to was the issue of parliamentary participation in European integration. Ever since the formation of the Council of Europe in 1949, debates about competencies, structures and functions as well as relations with other emerging parliamentary bodies have been on the agenda. European parliamentarians complained frequently about the lack of attention paid to their recommendations by national ministers. Parliamentary co-operation in foreign affairs remained poor despite governments hesitatingly agreeing to extend the scope of parliamentary participation in intergovernmental action. Though the EP, or more precise the Parliamentary Assembly, was considered a necessary element of consensus-building and multinational reinforcement of national debates, parliamentary control remained anchored with the national parliaments.

⁴ Quoted in: Jürgen Schwarz (ed.): *Der Aufbau Europas, Pläne und Dokumente 1945-1980*, Bonn 1980, pp. 149-152.

⁵ Quoted in: Jürgen Schwarz (ed.): *Der Aufbau Europas, Pläne und Dokumente 1945-1980*, Bonn 1980, pp. 161-240. See also: Edward Fursdon: *The European Defence Community, A history*, London 1980.

⁶ See Rita Cardozo: *The project for a political Community*, in: Roy Pryce (ed.): *The Dynamics of European Union*, Beckenham 1987, p. 49-77.

⁷ The reasons for the rejection are manifold and can be seen both in French inner systemic arguments (strengthening of the EDC-opponents in the French elections in June 1951) and in aspects of the international system (reduced threat of the Soviet Union). See in detail: Paul Noack: *Das Scheitern der Europäischen Verteidigungsgemeinschaft, Entscheidungsprozesse vor und nach dem 30. August 1954*, Düsseldorf 1977.

⁸ The WEU, pursuing the Brussels Treaty, was primarily intended to guarantee French armament control vis-à-vis the newly created army of the Federal Republic of Germany as well as to accompany the membership of Germany in NATO.

Table I.1: Development of early European foreign policy

DATE	SUBJECT
October 1950	Pleven Plan: suggestions to create an integrated European army
1952	French initiative for European Defence Community
May 1952	Signing of the Treaty establishing the European Defence Community
August 1954	Failure of the ratification of European Defence Community in the French National Assembly
November 1961	First French Fouchet Plan: proposition of a closer political cooperation and a common foreign and defence policy
January 1962	Second Fouchet Plan
December 1969	The Hague Summit <u>Aims</u> : Launch of political cooperation; <u>Procedures</u> : preparation of a report on political cooperation.

Ideas for a more intense cooperation in foreign affairs again received attention after Charles de Gaulle's so-called Fouchet plans in the early 1960s.⁹ Negotiations among the Member States of the Community took place on the basis of the two – primarily intergovernmentally inspired – Fouchet plans as presented by France. These concepts called for closer political cooperation, a Union of States and a common foreign and defence policy.¹⁰ However, negotiations between the Member States failed in 1962 due to a general opposition against Gaullist policy by the partner states. The »Six« did not achieve consensus on the proposals of the Fouchet Committee; especially due to the prospective relations with NATO.

No sooner than at the Hague summit in December 1969, a new effort was taken in institutionalising a common approach to international politics in the EC Member States. Following the "»relaunch« of European integration"¹¹ and a demand of the heads of government in The Hague, a report on perspectives in cooperation, the so-called »Davignon-report« (or »Luxembourg report«) was presented at the Luxembourg summit in 1970.¹² This report established the groundwork for »European Political Cooperation« (EPC) by establishing procedures for a regular exchange of information and coordination mechanisms. Two foreign ministers' meetings a year as well as four political director meetings were agreed upon.

A cautious approach prevailed as a result of the experiences in the past and due to still existing fundamental differences among the Community Member States: The objectives and mechanisms of the Luxembourg report were laid down – in a legally non-binding text – outside the treaties. This lasted until the »Single European Act« (SEA) of 1987 when the EPC was formally laid down in a legal document.¹³

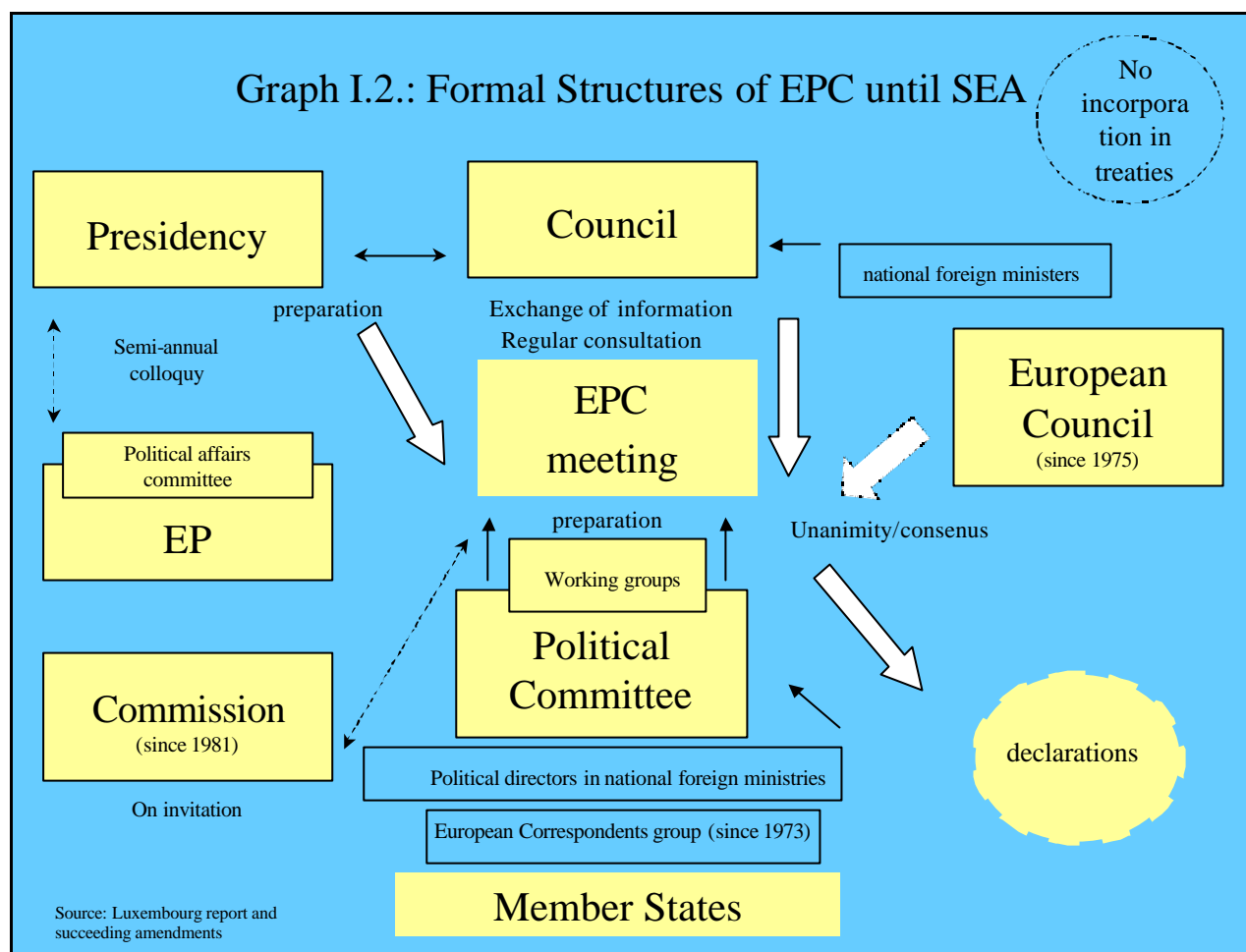
⁹ In the 1960s De Gaulle increasingly detached French foreign policy from the US-dominated NATO-structures, demonstrated clearly in 1966 in the French withdrawal from the military command structures of the NATO.

¹⁰ Quoted in: Jürgen Schwarz (ed.): *Der Aufbau Europas, Pläne und Dokumente 1945-1980*, Bonn 1980, pp. 363-380.

¹¹ Anthony Forster/William Wallace: *Common Foreign and Security Policy*, in: Helen Wallace/William Wallace (eds.): *Policy making in the European Union*, Fourth Edition, Oxford 2000, pp. 461-491, here p. 464.

¹² Quoted in: Reinhardt Rummel/Wolfgang Wessels (eds.): *Die Europäische Politische Zusammenarbeit. Leistungsvermögen und Struktur der EPZ* (Appendix III), Bonn 1978, pp. 351-356.

¹³ See basically Gianni Bonvicini: *Strukturen und Verfahren der EPZ: Mehr als traditionelle Diplomatie?*, in: Alfred Pijpers/Elfriede Regelsberger/Wolfgang Wessels (eds.): *Die Europäische Politische Zusammenarbeit in den achtziger Jahren, Eine gemeinsame Außenpolitik für Westeuropa?*, Bonn 1989, pp. 71-94; Elfriede Regelsberger: *Institutional Setup and Functioning of EPC/CFSP*, in: Elfriede Regelsberger/Philippe de Schoutheete de Tervarent/Wolfgang Wessels (eds.): *Foreign policy of the European Union: from EPC to CFSP and beyond*, London 1997, pp. 67-84.



1.2. EPC and the institutionalisation of European foreign policy: awkward partners

The EPC concept included a mutual consultation of Members States on major international conflicts. The Foreign Ministers would meet at least semi-annual. In addition, the political directors of the foreign ministries would come together at least quarterly. Other Community institutions such as the Commission or the European Parliament were left outside.¹⁴ Security and defence matters were also excluded.

The first meeting of the foreign ministers in the framework of the EPC took place in November 1970 in Munich. This first meeting already featured an agenda that became characteristic for the EPC in the following years: the prevailing issues were the situation in the Middle East and aspects of the planned Conference on Security and Cooperation in Europe (CSCE).

Three years later, at the Copenhagen summit in November 1973, a report on the functioning of the EPC was presented.¹⁵ As a result of this report, the number of foreign minister meetings and the sessions of the political committee (consisting of the national political directors of the foreign ministries preparing the council meetings) were increased. The foreign ministers were now expected to meet four times a year.¹⁶ Simultaneously, a group of »European correspon-

¹⁴ The European Commission was to be requested solely as far as the work of the ministers has effects on the work of the Community. Meeting of parliamentarians of the EP's political committee should take place twice a year in an informal colloquium.

¹⁵ Quoted in: Reinhardt Rummel/Wolfgang Wessels (eds.): *Die Europäische Politische Zusammenarbeit. Leistungsvermögen und Strukturen der EPZ* (Appendix III), Bonn 1978, pp. 357-364.

¹⁶ The number of colloquia with EP's political committee was increased to four a year.

dents« was established in order to improve the consultation mechanisms between the Member States.¹⁷

At the Paris Summit of 1974 the set-up of the European Council, the role of the heads of government and the report of the Belgian premier Leo Tindemans on a »European Union« emphasized the importance of international relations to the Community. Subsequently, the role of the presidency and the publicity given to the work of the EPC mutually reinforced each other through official positions.

Although the discussions on a European Union subsided, the coordination of the EPC was slightly improved in the following years. The presidency attracted more attention and the work of the Member States in the EPC framework acquired increasing importance. This, however, did not lead to a more coherent European foreign policy. Simon Nutall characterises this time period as a phase of stagnation.¹⁸ After the occupation of Afghanistan by the Soviet Union and the »Islamic revolution« in Iran the weakness of the EPC became obvious. The EPC was considered reactive or inactive or both.

The London report in 1981, stating that the EPC had become a »central element« in the foreign policy of Member States, led to another reform. In order to reduce the heavy workload of the presidency and to ensure a better coordination between the current presidency and its predecessor as well as the succeeding presidency, all of them were integrated into the overall working programme. Thus, the London reports created the troika system.

Moreover, a small secretariat (Troika secretariat), which had already been working rather successfully on an informal basis for some time, was officially established. The EC Member States were required to consult each other on all international questions affecting them as a whole. Additionally, the European Commission was officially involved at all levels of EPC. Therefore, the London report »eradicated what lingered of the Presidency's margin of manoeuvre to exclude the Commission from participation in EPC activities.«¹⁹ However, the European Commission did not acquire any powers as far as NATO and defence issues were concerned. Finally a »crisis-mechanism« was arranged: on request of at least three members states, a conference of the political committee or of the Council could be convened within 48 hours. The overall approach, however, remained intergovernmental and consensus-based.

Another effort to improve the still poor collective performance of the EPC led to the Genscher-Colombo-initiative of 1981, suggesting a qualitative leap in foreign affairs. The initiative focussed on subjects such as political cooperation, culture, fundamental rights, and harmonisation of the law outside the fields covered by the Community Treaties as well as ways of dealing with violence, terrorism and crime. Yet, the initiative of the Italian and German foreign minister failed. The only progress that could be reached at that time was the »Solemn Declaration on European Union« in Stuttgart 1983. In this declaration, the target of further strengthening EPC was stressed: joint positions should become a central point of reference for the international cooperation of the EC Member States.²⁰ However, the declaration on European Union did not lead to substantial reforms of EPC, especially due to the resistance of some Member States, who showed a general opposition to the obligations of EPC. The European Parliament, however, took advantage of the declaration since each presidency was now required to present a report to the EP on its achievements.

Prior to the opening of the Intergovernmental conference (IGC) leading to the Single European Act, new impulses were given in the report of the Ad-hoc-Committee on institutional questions, the so-called »Dooge-Committee« (named after its chairman). In 1985 it presented

¹⁷ The establishment of the COREU (Correspondance Européenne)-telenetwork has also led to an increased cooperation. In quantitative terms the number of messages grew from more than 2.000 in 1973 to 12.699 in 1994.

¹⁸ See Nutall 1992, p. 149.

¹⁹ Susan Hainsworth: *Coming of Age: The European Community and the Economic Summit*. Country Study No. 7, Toronto 1990.

²⁰ See part 3.2. of the declaration.

several proposals for a European foreign policy, particularly with regard to security issues and better cooperation in the armaments sector. Furthermore, the Dooge-Committee recommended the set-up of a permanent secretariat.

Within the IGC, the political directors were asked by the foreign ministers to draft treaty articles on political cooperation in security and foreign affairs. This was done on the basis of a German-French report and a British memorandum as well as text proposals from the Netherlands and Italy. With the Single European Act of 1987, the EPC was for the first time provided with a legal basis. The SEA formalised the previous intergovernmental cooperation without changing its nature and methods. Title III stated that the Member States of the EC “shall endeavour jointly to formulate and implement a European foreign policy”.²¹ However, common actions were established by information and consultation especially in order to achieve the economic aspects of security.²²

The central organisational aspect of the SEA was the installation of a permanent EPC Secretariat that would support the presidency in the preparation and execution of EPC tasks as well as in administrative work. The Secretariat was located in Brussels, working under the direct authority of the presidency.²³

The treaty provisions of the SEA were not as comprehensive as the original proposals of the Dooge-Committee but they set up an institutional arrangement for the group of »European Correspondents« and the Secretariat. In the long run, these treaty provisions did not only provide the legal basis of the EPC but also showed the way to a closer relationship between the EPC and the Community. Moreover, the EPC treaty provisions contained a »revision clause«, i.e. an integrated »rule« to revise the provisions five years (in 1993) after the entry into force of the SEA. This clause turned out to be the basis that led to a growing dynamic and a quasi-regular revision of the legal and institutional provisions of EPC.

In the 1980s the scope of EPC policies grew progressively. Besides the Middle East Conflict and the CSCE, the policy vis-à-vis South Africa, the peace process in Central America and the proliferation of nuclear weapons were put on the agenda of EPC.

Table I.2: Institutional development of the EPC 1970-1993

DATE	SUBJECT
October 1970	Luxembourg Report <ul style="list-style-type: none"> • <u>Aims</u>: to give shape and will to the Union; exercise Europe’s growing international responsibilities; match the political with economic policies; gradual action in areas of common agreement; • <u>Procedures</u>: regular exchange of information; coordination of positions; foreign ministers’ meeting (2 per year); political directors’ meetings (4 per year); meetings in national capitals; • <u>Instruments</u>: common positions.
November 1970	First Meeting of foreign ministers, Munich
July 1973	Copenhagen Report <ul style="list-style-type: none"> • <u>Aims</u>: act in the world as a distinct entity; seek common solutions by consultation; • <u>Procedures</u>: increased number of foreign ministers’ meetings; presidency role elaborated; correspondents’ group confirmed; working groups formalized; COREU established; • <u>Instruments</u>: political dialogue.
December 1974	Paris Summit: decision to hold regular meetings of the European Council.

²¹ Article 30.1 of the SEA.

²² See generally Marit Sjøvaag: The Single European Act, in Kjell A. Eliassen (ed.): Foreign and Security Policy in the European Union, 1998, pp. 22-42.

²³ See Pedro Sanchez da Costa Pereira: Der Nutzen des Sekretariats, in: Alfred Pijpers/Wolfgang Wessels/Elfriede Regelsberger (eds.): Die Europäische Politische Zusammenarbeit in den achtziger Jahren, Eine gemeinsame Außenpolitik für Westeuropa?, op. cit., Bonn 1989, pp. 111-132.

October 1981	London Report <ul style="list-style-type: none"> • <u>Aims</u>: Goal of EPC is now joint action; coordination of political aspects of security; better coordination between presidencies • <u>Procedures</u>: strengthened presidency role; troika secretariat confirmed; full association of Commission; • <u>Instruments</u>: Sanctions, trade, development aid. <u>Reform</u> : Creation of Troika system.
November 1981	Genscher-Colombo-initiative
June 1983	Solemn Declaration on European Union <ul style="list-style-type: none"> • <u>Aims</u>: greater coherence / coordination between EPC and EC; consideration of economic aspects of security; • <u>Procedures</u>: European Council issues general guidelines for EC / EPC; Presentation of a report to the EP of each European Council presidency; • <u>Instruments</u>: Sanctions, trade, development aid.
December 1984	‘Dooe-Committee’: <ul style="list-style-type: none"> • Proposal for stronger relationship between EPC and EC; • Incentives for EPC by creation of a secretariat.
February 1986	Single European Act <ul style="list-style-type: none"> • <u>Aims</u>: transformation of relations into a European Union ⇒ achieved by consistency and solidarity; reduction of differences between instruments of EPC / EC; treaty review by 1993; • <u>Procedures</u>: legal treaty basis for EPC; common actions by information / consultation; establishment of EPC secretariat; decisions by consensus (refraining from blocking consensus); • <u>Instruments</u>: economic and political instruments.

1.2.1. The European Parliament and EPC

The Luxembourg report, the »second Davignon report«, had already suggested that the foreign minister chairing political cooperation between the Member States should present an annual report to the European Parliament.²⁴ Since 1975, the European Parliamentarians have been entitled to issue written and oral questions to the Council with regard to matters of political cooperation. However, »oral« questions concerning political cooperation were excluded since “answers require the coordination and approval of all nine foreign ministers.”²⁵

The above mentioned London report on European Political Cooperation contained in its paragraph 11 a hint for the formalisation for the relations between the Council and the European Parliament: “In accordance with the Luxembourg and Copenhagen reports, which underline the importance of associating the European Parliament with Political Cooperation, there are frequent contacts between the European Parliament and presidency. These take the form of four colloquies with the political affairs committee, answers to questions on political cooperation, the annual report on political cooperation and the presidency speeches at the beginning and end of its term of office, which now usually include Political Cooperation subjects.”

Based on the London declaration, the communication between Council and European Parliament was extended including informal meetings between ministers and the leaders of the different political groups represented in the parliament. “These informal meetings provide a further opportunity for informal exchanges on political cooperation.”²⁶ Article 30.4 of the EEA declared the right of a proper consideration of the views of the Parliament and requires participation and regular correspondence from the presidency.

²⁴ Paragraph 10 of the “second report on European political cooperation on Foreign Policy”, quoted in: Bulletin of the European Communities 9 (1973), p. 17.

²⁵ See Philip Taylor: When Europe speaks with one voice, The external relations of the European Community, London 1979, p. 93.

²⁶ W.F. van Eekelen: Who speaks for us? The European parliamentary dimension, in: European Business Journal, 1 (2002), pp. 20-31.

I.3. The CFSP and the (Maastricht) Treaty on European Union: new beginnings

Subsequent to the two meetings of the European Council in Dublin and the notification of a new IGC by the heads of government, the cooperation in foreign and security policy was set again – next to EMU – at the top of negotiations. Due to the changes in the international system following the end of the »Cold War«, Germany's reunification and as a consequence of the substantial transformation process in the Central and Eastern Europe countries (CEEC), the EPC had to face considerable challenges. The decision of the G-24 summit in Paris 1989 to pass on the coordination of financial aids for CEEC to the European Commission provided it with a more influential role in foreign affairs.²⁷

In reaction to the poor performance of the EPC and the altered international system after »1989« – and its impact on EC Member States²⁸ – the (Maastricht) Treaty on European Union introduced a new title (Title V TEU – MV): the Common Foreign and Security Policy (CFSP). EPC was replaced by CFSP, but foreign policies still remained outside the EC Treaty. The CFSP was converted into a separate and unique so-called 'pillar', in the context of "one single institutional framework" (Art. C TEU – MV).²⁹ The CFSP is also addressed in Article 2 of the Common Provisions which states that one of the subjects of the Union is to "assert its identity on the international scene, in particular through the implementation of a common foreign and security policy, including the eventual framing of a common defence policy, which might in time lead to a common defence."³⁰

With CFSP, the European Union refers to the aim of "strengthen[ing] the security in all ways".³¹ "The progressive framing of a common defence policy, which might lead to a common defence" should contribute to this purpose.³² Hence, the CFSP was established in order to better prepare the European Union for the numerous challenges it had to face in the »new« international system.³³

The European Union obtained a number of new means and instruments that were added to the »traditional« foreign activities of the Community especially in the sectors of trade and development. As a new instrument, »joint actions« were introduced. Instead of merely formulating common positions, the EU is now able to decide on common actions for all foreign issues with the exception of defence.

»Common positions« are adopted by the Council and then used as guidelines for the policy pursued by the Member States which in turn commit themselves to ensuring that their national policies are in line with the common position. »Joint actions« are explicitly binding for the Member States. The Council will adopt them in order to enable the Union to make use of material and financial means in common actions. One example of a joint action is the stability pact for South-Eastern Europe, which is a model of preventive diplomacy. Other instruments for the EU in foreign policies are »declarations« giving public expression to a position, request or expectation of the EU vis-à-vis a third country or an international issue; statements,

²⁷ See Nutall 2000, p. 76.

²⁸ Especially France and the United Kingdom intended to incorporate the reunified Germany resolutely in the west European framework and prevent each national »Sonderweg«. See Gisela Müller-Brandeck-Bocquet: Das neue Entscheidungssystem in der Gemeinsamen Außen und Sicherheitspolitik der Europäischen Union, in: Gisela Müller-Brandeck-Bocquet (ed.): Europäische Außenpolitik, GASP- und ESVP-Konzeptionen ausgewählter EU-Mitgliedstaaten, Baden-Baden 2002, pp. 9-27, here p. 9.

²⁹ The specification of a single institutional frame had consequences for the relation between COREPER and the political committee. No sooner than 1996 it was decided that the political committee acknowledged the responsibility of COREPER for the coherence of foreign policy, while the permanent representatives do not put the political positions in question.

³⁰ Art. 2 TEU.

³¹ Art. 11 TEU.

³² Ibid.

³³ Josef Janning: Außen- und Sicherheitspolitik nach Maastricht, in: Werner Weidenfeld (Hrsg.): Maastricht in der Analyse. Strategien und Optionen für Europa, Gütersloh 1994, p. 57.

co-ordinated voting and joint positions in international organisations and conferences, joint representations and joint investigative missions.

Due to its intergovernmental character, the CFSP still differs from the communitarian procedures of traditional EC policy areas such as the internal market. Since unanimity is required, the differences are evident, in particular with regard to the decision-making procedures. The intergovernmental dimension of the CFSP pillar becomes apparent in the limited amount of competences given to the European Commission³⁴ and particularly the European Parliament and the European Court of Justice, as laid down in Title V TEU. The fairly insignificant role of these institutions in CFSP affairs indicates a clear contrast to their respective competences in the first pillar. In the TEU, the European Commission was given the competence to initiate proposals. But – unlike in the first pillar – this is not exclusive.³⁵

At the administrative level, the Political Committee became with the TEU the central body for the preparation and implementation of CFSP policies even though it entered into a competitive conflict with COREPER (see below). Additionally, »Maastricht« merged the EPC secretariat into the Council and merged the EPC and the General Affairs Council. The ECJ remained excluded from the CFSP system.

Probably the most promising part in the treaty which – in the long run – laid the groundwork for the development of ESDP affairs, was the new Article J.4.1 (TEU – MV), stating that: “The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of common defence policy, which might lead to a common defence.”

Although »Maastricht« had brought several changes, the first results after the TEU’s entry into force did not correspond with the expectations of the Member States on Title V: In the Yugoslavian crisis the European Union as a whole did not appear a relevant actor – especially compared to the United States. The poor attempt to find a single position regarding the recognition of Slovenia and Croatia demonstrated at an early stage the difficulties that would be faced. The Bosnian War revealed again the lack of will and capacities by the Member States to act »as one«. Although there were lots of activities, the success was limited. Member States were often content to stay on the sidelines or act militarily only in a concerted act with the United States within the framework of NATO.³⁶ However some positive steps were achieved and some of »Maastricht’s« unfinished business was resolved at the WEU ministerial meeting in Bonn in 1992 where the Petersberg declaration was adopted. This declaration outlined a distinctive role for the WEU in undertaking peacekeeping and peacemaking operations, including crisis management.

Furthermore, the financing of CFSP soon posed considerable problems. Since some of the Member States did not want the European Union to play an advanced role in foreign affairs, the compromise lastly agreed upon resulted in dividing the valued costs of 50.000.000 ECU for a joint action in former Yugoslavia between the Member States and European Union. However, it took nearly five months to achieve a compromise about the distribution. Under these circumstances the international profile of the EU remained poor. Therefore the CFSP was again a major topic for the next Intergovernmental conference.³⁷

³⁴ The European Commission created a DG1A and a Commissioner for External Affairs.

³⁵ Moreover, the Commission shares external representation tasks with the presidency.

³⁶ Following the French and the US agreement at the Brussels NATO Summit in January 1994, the US delegation launched the concept of Combined Joint Task forces which was intended to enable European Governments to form coalitions of the willing for operations without direct US commitment but with access to NATO assets. This was the founding of the so-called European Security and Defence Identity within the NATO framework, which provided European allies with a greater role in crisis management and for maintaining security in their own region.

³⁷ Due to the fact that the EU covered no defence instruments, the WEU was regarded as an integral part of the development of the European Union. Specific measures have been undertaken to improve the liaison between the CFSP institutions and those of the WEU. See Mathias Jopp: The Defence Dimension of the European Union:

Table I.3: Institutional development of CFSP 1993-1999

DATE	SUBJECT
February 1992	<p>Treaty on the European Union - Maastricht</p> <ul style="list-style-type: none"> • <u>Aims</u>: CFSP established as a Union not a Community responsibility; instruments of EC and CFSP fully combined but institutional distinction through 'pillar' structure; treaty review by 1996; sub-contracts defence to WEU; • <u>Procedures</u>: merging of General Affairs Council and EPC; merging of EPC secretariat into Council Secretariat; qualified majority voting for implementation measures; Commission receives right to initiate; DG IA and Commissioner created for External Political Affairs; COREPER directly involved; • <u>Instruments</u>: common actions; joint actions (on all issues except defence); request WEU action on defence issues.
October 1997	<p>Treaty on the European Union - Amsterdam</p> <ul style="list-style-type: none"> • <u>Aims</u>: EU can examine all aspects of foreign and security policy; closer links with WEU; held out possibility of an EU-WEU merger; • <u>Procedures</u>: strengthened CFSP planning; creation of High Representative; voting for joint actions; European Parliament receives restricted budgetary competences; decision-making on the basis of »constructive abstention«, possibility of QMV • <u>Instruments</u>: common strategies; guidelines; constructive abstention; EU can 'avail itself' of WEU on defence issues.

1.3.1. The European Parliament and the (Maastricht) Treaty on European Union

The Treaty on European Union concluded at Maastricht contained (based on Article 30.4 of the SEA) a new Article J.7 offering the parliament in particular rights of information and consultation. Generally, information can be regarded as the ultimate basis for participating in policy-making. Nevertheless, information competencies of the EP in the TEU lagged behind the positions the European Parliament formulated in its resolution of 25th October 1991. Demands such as the obligation for the European Parliament's approval for the establishment of "essential joint interests" of the EU through the European Council, the participation of the EP in developing and controlling CFSP or a possible veto of the EP in the case of military actions were rejected during the negotiations.³⁸ The EP had also adopted a number of resolutions claiming the incorporation of the Western European Union and institutions into the European Union.³⁹

Since they are not mentioned in the legal provisions of Article 30.4 of the SEA, parliamentary rights remained unchanged compared to the pre-TEU situation. Since it has always supported a treaty based common foreign and security policy, the European Parliament took a very critical view of the »Maastricht« arrangements in general and the pillar structure in particular.⁴⁰

In an attempt to secure for itself at least some influence when more far-reaching instruments were unachievable, the European Parliament was sought after »Maastricht« an inter-institutional agreement on scrutiny in the second and third pillar. But at this moment, the European Parliamentarians entered into a conflict with their national colleagues. The French

The role and performance of the WEU, in: Elfriede Regelsberger, Philippe de Schoutheete de Tervarent, and Wolfgang Wessels (eds.): *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, Boulder, CO 1997, pp. 153-172.

³⁸ Günter Burghardt/Gerd Tebbe: Art. J.7, in: *Handbuch des Europäischen Rechts, Systematische Sammlung mit Erläuterungen*, 371. Lieferung, Mai 1998, pp. 80 ff.

³⁹ See for example the resolution from 20 January 1993. A3-0189/92.

⁴⁰ See Thomas Grunert: The association of the European Parliament: No longer the Underdog in EPC? in: in: Elfriede Regelsberger, Philippe de Schoutheete de Tervarent, and Wolfgang Wessels (eds.): *Foreign Policy of the European Union. From EPC to CFSP and Beyond*. Boulder, CO 1997, pp. 109-131.

Assemblée Nationale rejected a more substantial role for the EP in both intergovernmental pillars. In its place, the French parliament promoted proposals for the creation of an additional European chamber of national parliamentarians for the scrutiny of CFSP and the third pillar.⁴¹ In general, »Maastricht« also produced improvements for the national parliaments. According to Declaration No. 13 of the TEU, the Member States agreed, “it is important to encourage greater involvement of national parliaments in the activities of the European Union”. In this framework, the national governments committed the EU to “ensur[ing], inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination”.

1.3.1.1. Information and Consultation competencies (Art. J.7 TEU – MV)

According to the treaty provisions, the European Parliament is consulted about the main aspects of CFSP and fundamental decisions concerning it. It has the competence to issue questions or submit recommendations. But the parliamentary right »to be consulted« was in practice watered down in two ways. On the one hand, only “main aspects“ of the CFSP are considered in Article J.7 as relevant areas of scrutiny. Hence, the EP might only be involved in the debate on general guidelines in CFSP matters, and furthermore, there is, of course no clear definition of what is to be considered “main aspects”. However, the European Parliament has no claim on actual legal acts such as special »common positions« although these objectives might acquire more importance than general guidelines. On the other hand, there is no treaty provision which guarantees parliament an »ex-ante« consultation. The EP might also be informed and consulted retrospectively. This provision contradicts the Parliament’s request that the Council should consult the Parliament beforehand and regularly on foreign policy decisions.⁴²

Article J.7 included a debate on CFSP matters for only once a year. But this could not prevent the parliament from dealing more often with CFSP matters. The participation of the presidency is not yet related to the provisions of article J.7.⁴³ Hence, König and Pechstein have considered the Maastricht treaty provisions as a mere continuation of the SEA provisions.⁴⁴

The TEU provisions go slightly beyond the regulation of the SEA. However, according to Burghard and Tebbe the new provisions offer no guarantee for a detailed instruction in individual cases. The treaty provides that the “views of the European Parliament are duly taken into consideration”.⁴⁵ But this provision does not oblige the presidency to binding consequences.⁴⁶ De facto, it depends on the presidency how quickly, in which form and how comprehensively the EP is to be informed.⁴⁷ Nevertheless, it is remarkable that since the Maastricht Treaty on European Union the Commission has entrusted information to the EP.

As Thomas Grunert has pointed out, in October 1993 the Council decided to reduce the gap between the EP’s demands and the (Maastricht) treaty provisions by a decision on guidelines in the CFSP field:⁴⁸ “In addition to the existing arrangements, the presidency will attribute the utmost importance to the obligation to inform, in concert with the Commission, and consult Parliament, as provided for in Article J.7 (TEU). The presidency and the Commission will ac-

⁴¹ See Assemblée nationale, 5 Mai 1993, p. 11.

⁴² See opinion by Cassanmagnano Cerretti on the Intergovernmental Conference (A-0123/92 Part.2).

⁴³ To prepare the annual pronouncement, the presidency presents the EP a written report on progress in CFSP matters. Moreover, each presidency organises three informal colloquia with the responsible EP-committee during its presidency.

⁴⁴ Matthias Pechstein/Christian Koenig: Die Europäische Union, Die Verträge von Maastricht und Amsterdam, Tübingen 1998, p. 156.

⁴⁵ Art. 21 TEU.

⁴⁶ See Elfriede Regelsberger: Die Gemeinsame Außen- und Sicherheitspolitik nach Maastricht – Minimalreform in neuer Entwicklungsperspektive, in: integration 2 (1992), pp. 83-93.

⁴⁷ Ibid.

⁴⁸ Cited as to Thomas Grunert, op. cit., p. 115.

quit themselves on these tasks as regularly as possible and in a manner compatible with the sensitive nature of certain information and discussions. The presidency will be in constant contact with Parliament in arenas covered by CFSP.” To achieve this target, the following means are listed: “By attending, in addition to the two colloquia, whenever this is useful or necessary, the meetings of Parliament’s Committee on Foreign Affairs, Security and Defence Policy; by participating, if need be, in Parliament’s debates in plenary session; by continuing the practice of the general-secretariat of the Council attending the start of each meeting of the Committee on Foreign Affairs, security and Defence Policy; by having recourse to the practice of written information.”

1.3.1.2. Recommendations and Questions (Art. 21.2 TEU - MV)

Recommendations and questions play an important role in the framework of information and consultation competences. With the TEU, the provision has been introduced that “the European Parliament may ask questions of the Council or make recommendations to it”⁴⁹ Based on this article, written and oral interpellations of the EP can be addressed to the Council. This right rests with each single member of the EP. Interpellation of the EP is given in form of resolutions.

However, the recommendations of the EP are legally non-binding. But they could evoke political effects. This might be the case especially if further legal acts were to follow, as for example international agreements according to article 228 (TEC MV) or budgetary matters.

According to the Council decision of October 1993 the presidency would at each Council meeting “inform the Council of Parliament’s reactions, communications, questions, recommendations, or resolutions concerning CFSP”.⁵⁰

1.3.1.3. Budgetary powers

Although the Fifteen continued to prefer the intergovernmental procedures practised for decades, there is one area where the Community rules also cross over into the CFSP pillar: the budget. Most of the influence the EP can exert in CFSP affairs derives more from the budgetary rights than from information and consultation as well as interpellation and question competences.

The nature of the expenditure determines whether the EP or the Council has the final say, depending on whether the expenditure is compulsory or not. However, quite apart from the classification of expenditure and the ensuing power sharing, the European Parliament finally adopts or rejects the budget in its entirety.

With regard to CFSP costs, there were first rather vague models offering either Community resources (to be decided upon unanimously in the Council) or requiring national contributions from the Member States, which they were to specify according to a system yet to be defined (Article J.11 TEU – MV).

However, one has to distinguish between several kinds of costs. It was clear that the administrative set-up of the CFSP must be covered by the Community budget but administrative cost were part of the compulsory expenditures and thus obliged to the Council.

The Parliament is especially involved in those cases where the Council makes use of the possibility to finance operational actions through the EC budget. The Council can decide (unanimously) whether the operational costs will be financed by the Member States or by the Community budget. In the latter case, without EP’s agreement on the budget for operational costs no actions in CFSP matters were taken. Since money was scarce in the capitals, even supporters of an intergovernmental CFSP pillar were ready to take recourse to the EC budget to finance some of the first joint CFSP actions. But this implies that the Council and the European

⁴⁹ Art 21 TEU MV.

⁵⁰ Quoted as to Thomas Grunert, op. cit., p. 115.

Parliament act as the budgetary authority on an equal footing. Disputes lasting for several years and still pending followed on this issue.⁵¹

I.4. The reform of CFSP and the (Amsterdam) Treaty on EU: gradual improvements

Due to new external challenges and the still weak performance in crisis management, especially in former Yugoslavia, the operational character of the CFSP and the decision-making procedure were supposed to be improved with the Amsterdam Treaty on European Union.⁵² Several changes were introduced:

The Amsterdam treaty introduced – besides the already existing instruments of joint actions and common positions – a new procedure: the common strategies. The European Council defining the principles and general guidelines for the common foreign and security policy decides on common strategies to be implemented by the Union in areas where the Member States have important interests in common. Common strategies shall set out their objectives, duration and the means to be made available by the Union and Member States. The Council shall recommend common strategies to the European Council and ensure their implementation.⁵³ More concise than in the »Maastricht« TEU, the other instruments – joint actions and common positions – are defined and delimited of each other.⁵⁴

Moreover, the revised TEU introduced a new »constructive abstention« which might enable the Union to act, even if Member States up to a third of the weighted votes were not obliged to apply the decision. By making a formal declaration, the respective member of the Council may avoid, when abstaining from a vote, being obliged to apply the decision. Hence, the respective Member State may carry the collective decision, even if opposed, without having to act accordingly, thus opening a window for an opt-out, which does not imply assuming a blockade position. The Member State accepts in sense of “mutual solidarity” that the decision is binding for the Union. Moreover, it accepts to abstain from everything that is contrary to the action.⁵⁵ The chance to issue a legal act to the European Council if a Member State resorts to a veto was considered as an additional »security«.⁵⁶

The activities of the CFSP were enhanced by the so-called Petersberg tasks that were integrated in Title V of TEU.⁵⁷ Until this change, these tasks were solely manifested in a declaration of the Western European Union, held at the Petersberg in Bonn (see above). As well in the perspective of security policy, the field of action was enhanced by an amendment of article J.3 (1), because the European Council also determines the general guidelines and principles of CFSP in aspects with defence references as well.

The new article 26 (TEU – AV) means to guarantee – by introducing a High Representative for CFSP – larger, more visible and stronger coherence to foreign and security matters. Institutionally, this has been achieved by linking the function of the Secretary General of the Council with the function of the new High Representative for foreign and security policy of EU. This High Representative supports the Council in questions of foreign and security pol-

⁵¹ See Jörg Monar: The finances of the Union's Intergovernmental pillars. Tortuous experiments with the Community Budget, in: *Journal of Common Market Studies*, No. 1 (1997), pp. 57–78.

⁵² See Christian Pippan: Die EU nach Amsterdam: Stärkung ihrer Identität auf internationaler Ebene? Zur Reform der GASP in der EU, in: *APuZ* 47 (1997), pp. 30–39.

⁵³ Until now common strategies have been taken on Russia, Ukraine, and the Mediterranean region.

⁵⁴ Moreover, the Union makes use of declarations in CFSP affairs that are not included in chapter 5 of TEU.

⁵⁵ This mechanism (abstention with a formal explanation) is not open to consideration if the Members States that make use of abstentions hold more than one-third of the votes in Council.

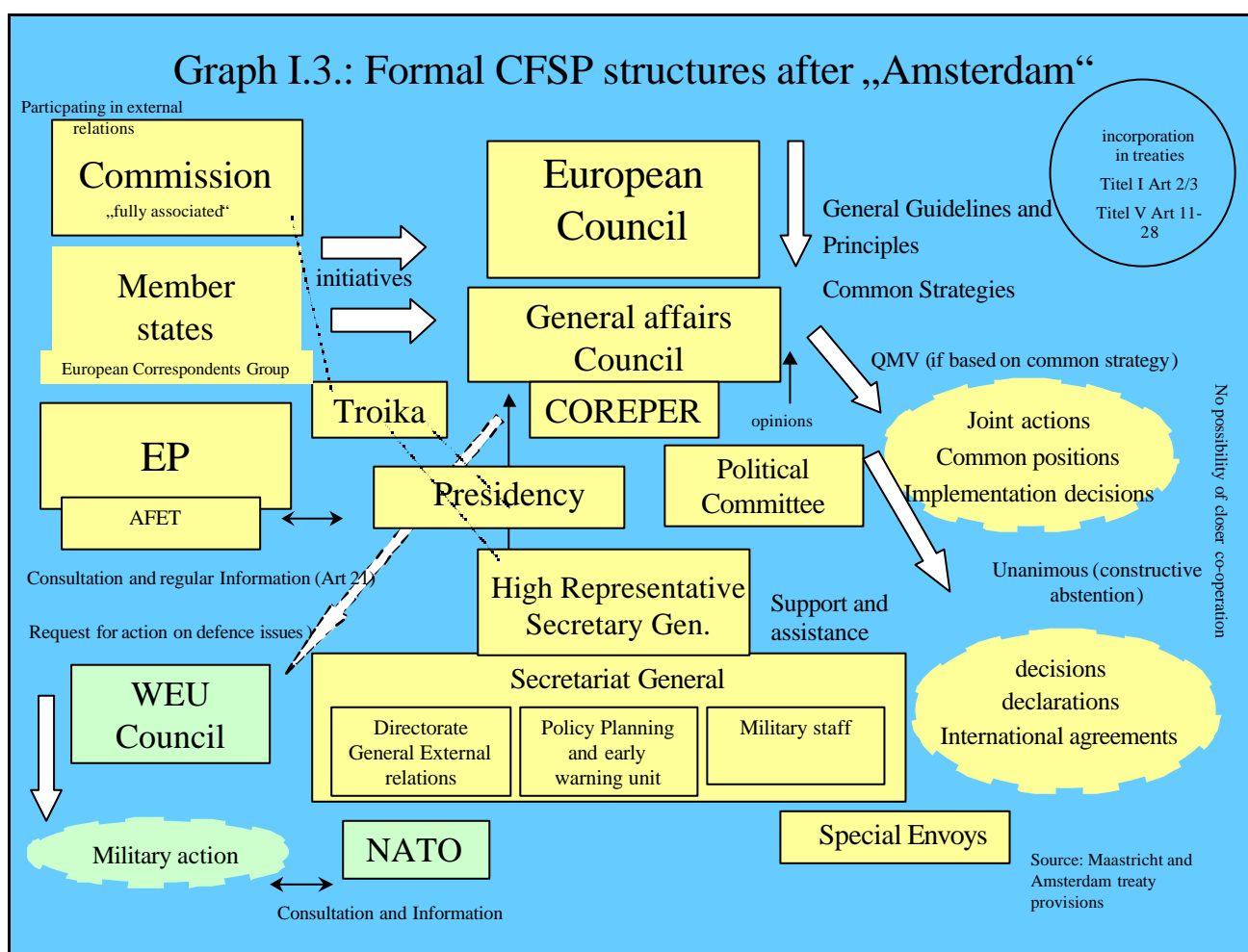
⁵⁶ See Franco Algeri: Die Reform der GASP – Anleitung zu begrenztem gemeinsamen Handeln, in: Werner Weidenfeld (eds.): *Amsterdam in der Analyse. Strategien für Europa*, Gütersloh 1998 und Mathias Jopp: Reformziel Stärkung der außen- und sicherheitspolitischen Handlungsfähigkeit der EU, in: Mathias Jopp/Otto Schmuck (eds.): *Die Reform der Europäischen Union*, Bonn 1996.

⁵⁷ These consist of humanitarian and rescue tasks, peacekeeping tasks and tasks involving combat forces in crisis management, including peacemaking.

icy, especially by preparing and implementing political decisions. At the request of the presidency, he leads the political dialogue with third countries in the name of the Council.⁵⁸

The creation of this new function prompted a re-organisation of the tasks within the Council.⁵⁹ On the »logistic« level, the High Representative of the CFSP is supported by the »policy planning and early warning unit« that was created in the General Secretary of the Council, and subordinated to the responsibility of the High Representative. It consists of experts from the secretariat general of the Council, the Member States, the Commission and the Western European Union.⁶⁰ This new body was created to improve the lack of capacity for analysis of CFSP and provide a better coherence for Member States positions.

The European Commission was included more thoroughly in representation and executive tasks. The Commission is now involved in the »new« troika together with the presidency and the newly created High Representative of the CFSP.



The new article 17 (TEU – AV) offered two new – long-term – perspectives. Both a joint defence in the EU framework as well as the integration of the Western European Union (WEU) into the European Union were envisioned. Concisely, the new provision intended for CFSP to cover all questions concerning the security of the Union. In this context, the gradual establishment of a joint defence policy that could lead to a European defence was also included, if

⁵⁸ This excludes however the Council holding to account a Special Envoy with a mandate for special political tasks. The role of the Council in nominating special envoys was also institutionalised in the Amsterdam TEU.

⁵⁹ The organisation of the secretariat general was transferred to the Vice Secretary-General of the Council.

⁶⁰ This unit takes care of early and more far-reaching analysis of external developments in the long, medium and short term.

the European Council ever decided in favour of this. A similar formula applied to the relation of the EU with the WEU; it was possible that the European Union would promote closer institutional links between both organisations in view of a potential integration of the WEU into the European Union. Such an approach was, however, rejected by the United Kingdom and Denmark.

1.4.1. The EP and the (Amsterdam) Treaty on European Union

Both, the plenary of the EP and European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET) dealt intensively with the political priorities of the EP concerning CFSP matters.

1.4.1.1. Positions for the Intergovernmental Conference

To clarify its position, the EP introduced several reports: on the one hand, the report of Bourlanges and Martin of 17th May 1995,⁶¹ the Matutes report of 18th May 1995⁶² and the report by Dury and Maij-Weggen of 13th March 1996 presented just before the beginning of the IGC.⁶³ In these reports the European Parliament expressed very similar demands as in the framework of the IGC leading to the Maastricht treaty.

The most far-reaching proposal of the European Parliament was to push an effective foreign policy of the EU in the framework of the Community pillar. No Member State would be obliged to a joint action against its will, but a qualified majority of members states would not be blocked when taking a joint action.

Several other priorities of the EP can be listed:

- 1) The demands of the EP show it pursuing a strengthening of supranational institutions, both for the European Parliament itself and the Commission. In respect of the participation of the parliament, its role in particular was to be stressed. The European Parliament should supervise CFSP and be consulted in common positions or joint actions. Furthermore, the national parliaments should be included in the decision-making process. It was noted at the same time that consultation of the EP should occur before the taking of a common position or a joint action.⁶⁴
- 2) As a further element of parliamentary influence, the EP focussed on the budgetary aspects of CFSP. It argued that the CFSP would be financed entirely by the Community budget. There would be no possibility for Member States to withdraw from financing even if a formal non-participation was assessed. In this connection an "agreement on mutual assistance and solidarity", hence, a general solidarity clause was required.⁶⁵
- 3) According to the EP, a more important role for the Commission in CFSP affairs was necessary. The European Commission would be in charge of the policy planning and early warning unit, under the direction of the Commissioner responsible for external affairs.⁶⁶ For this reason the EP also rejected the installation of a High Representative for the CFSP in order to avoid any competition with the responsible Commissioner.⁶⁷

⁶¹ See report of Jean-Louis Bourlanges and David W. Martin, Assessment of the Reflection Group's work, EP Political Priorities, 3. May 1995. PE T4-2001/1995.

⁶² See report of Juan Abel Matutes, Annual report on progress in the field of CFSP (Art. J.7, TEU), 18 May 1995. PE A 4/0083/1995.

⁶³ See report of Raymond Dury und Hanja Maij-Weggen, 13/03/1996. Amendment of the TEU: convening an intergovernmental conference under Article N (TEU), 4. March 1996. PE A4-0068/1996.

⁶⁴ See report of Bourlanges and Martin, op. cit., Briefing 5, p. 6.

⁶⁵ Opinion of the Committee on Foreign Affairs, Security and Defence Policy, 21 February 1996. Briefing 5, p. 8.

⁶⁶ See report of Dury and Maij-Weggen, op. cit., Briefing 5, p. 7.

⁶⁷ Ibid.

According to the EP's proposals, the Commission would be represented in the »new« Troika.⁶⁸

- 4) A further priority of the EP focused on the introduction of qualified majority decisions in the second pillar. Basically, the possibility of a veto was rejected, but »constructive abstentions« would be possible with the exception of financial matters of CFSP.⁶⁹
- 5) To increase the effectiveness of the proposals, the EP also planned flexibility options within the CFSP, whereby "a certain number of Member States, acting by a qualified majority, should be able to engage in a humanitarian, diplomatic or military action".⁷⁰
- 6) The proposals of the EP finally touched upon the relationship of the EU and the WEU. The proposals discussed an integration of the WEU into the EU in the long run. In the Bourlanges/Martin-Report no time framework was mentioned, while the Dury/Maij-Weggen-Report proposed a "gradual incorporation of the WEU into the EU".⁷¹

In 1996 a reduction of the EP's demands and a shift toward political »reality« could not be overlooked.

Compared with the Amsterdam results, even minimal demands could not be achieved. Apart from its approval right in cases of accession and association, the rights of the EP remained, according to article 21 (TEU – AV), restricted to consultation and information competencies. The new article 21 of the Amsterdam treaty does not substantially differ from the old article J.7 of the Maastricht Treaty.

The rule that all operational CFSP costs (with the exception of costs for defence measures) were to be covered fundamentally by the EC budget led at least indirectly to a strengthening of the EP's competencies. At the same time the inter-institutional agreement caused problems, as the CFSP budget, though part of non-compulsory budget of the Union, was to be regarded as part of the compulsory budget. Therefore the potential leeway of the EP was limited. It was also determined, however, that the Council and the EP must agree annually the total budget and the distribution of the operational CFSP-costs.

1.4.1.2. Budgetary powers

The Amsterdam Treaty also changed the financial aspects of CFSP. In the TEU, the existing treaty provisions were amended (Art. 28 TEU – AV) and improved. »Maastricht« had set up the provision that the operational costs in the framework of CFSP should either be paid by the budget of the European Community or, corresponding to a yet to be fixed distribution, by the Member States. Due to its complexity and inefficiency this »case-to-case«-procedure was criticised repeatedly, especially by the European Commission. The Amsterdam Treaty inserted a new guideline since it was planned that the operational costs be taken from the budget of the European Community, except for CFSP decisions with military or defence implications, unless the Council decides unanimously concludes otherwise. In the latter case it is planned that the abstention of a Member State should be linked with a formal explanation, and consequently the respective Member State would not be obligated to be involved in financing the measure.⁷²

It can be argued that not only the administration costs, but also the operational costs should be covered by the EC budget. However, based on an inter-institutional agreement of May 1999 between Council, Parliament and Commission, the budgetary rights of the EP remain restricted. The inter-institutional agreement defines the procedures and categories for CFSP ex-

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Opinion of the Committee on Foreign Affairs, Security and Defence Policy, 21 February 1996. Briefing 5, p. 8.

⁷¹ See report of Dury and Maij-Weggen, 13. März 1996. Briefing 5, p. 7.

⁷² In cases where Members States cover the costs, they are distributed according to the GDP unless Council decided otherwise via unanimity.

penditure: The Council must come to an agreement with the Parliament on the operational CFSP costs and its distribution on particular articles. However, the parliament loses its right of approving the financing of each single joint action.

In this specific area, parliamentary participation and some sort of control is probably most effective since the Council is obliged to inform the EP regularly about those actions which imply financial commitment. On the other hand, importance is limited. Since CFSP expenditure (47 Mio. € in 2000) only comprises around 0.05% (in 2000) of the total EC budget and only roughly 1,0% of all those budget lines covering external EC policies (in total: 4.825 Mio €). This marginal expenditure underlines the boundaries of direct influence by the European Parliament.

I.5. The evolution of CFSP and ESDP: evolutionary dimensions in institution building

The further development of CFSP and ESDP is linked to two key-factors: firstly, the fundamental change in the perception of European defence and security after the change in government in 1997 in the United Kingdom and secondly, the Kosovo crisis in the first half of 1999, with United States dominance in carrying out air strikes against the Milosevic regime.⁷³ The strong dependency of the Europeans on the United States during the Kosovo war produced an important base for the tremendous changes that followed.⁷⁴ This is especially the case when set against the escalation of the conflict and the repeated requests for the Europeans to work collectively and on common conflict management while not neglecting differences and discussions on institutional responsibilities.⁷⁵

Arguably the most crucial point was the shift in British policy under the labour Prime Minister Tony Blair and his willingness to become more engaged in foreign and security matters at the European level.⁷⁶ This change opened the way for a further development of CFSP and an inclusion of military matters. The explicit insistence on national sovereignty and the »special relationship« with the US which had until then prevented any effort for a European security and defence policy had lost its predominant character.⁷⁷ Unlike his Conservative predecessor the new British prime minister was no longer reluctant to pool sovereignty or as Howorth put it: "Blair crossed the European defence »Rubicon«".⁷⁸ The British Prime Minister stated at the 1998 informal EU summit in Pörtschach that he would no longer object to the development of a EU defence policy, if certain conditions were met. France, on the other hand, had traditionally issued a sort of blueprint for an autonomous EU force based on the WEU and thus promoted European security and defence as an alternative to NATO.⁷⁹

In December 1998, France and the United Kingdom held a bilateral summit at St. Malo where they issued a declaration in which they advocated that the EU should be in a position to play

⁷³ See generally Oliver Thränert: Europa als Militärmacht? Perspektiven der Gemeinsamen Außen- und Sicherheitspolitik der EU, Analyseinheit Internationale Politik, Bonn 2000. See also: Klaus-Dieter Schwarz: Europäische Sicherheits- und Verteidigungspolitik, Auf dem Weg zur Realisierung? Stiftung Wissenschaft und Politik, Ebenhausen 2000.

⁷⁴ See for the early history of ESDP Mathias Jopp: European Defence Policy: The Debate on the Institutional Aspects, Institut für Europäische Politik, Berlin 1999.

⁷⁵ Elfriede Regelsberger: Gemeinsame Außen- und Sicherheitspolitik, in: Werner Weidenfeld/Wolfgang Wessels (Hrsg.) Jahrbuch der Europäischen Integration 1998/99, Bonn 1999, p. 243.

⁷⁶ See Tony Blair: Time for Europe to Repay American the soldier, in: International Herald Tribune 15/15 November 1998.

⁷⁷ See for the background also Ronan Fanning: Defence and Security, in: Paul Gillespie (ed.): Blair's Britain, England's Europe, A view from Ireland, Dublin 2000, pp. 214-230.

⁷⁸ See Jolyon Howorth: European integration and defence: the ultimate challenge? Chailiot Paper 43 (2000), p. 25.

⁷⁹ One more argument for setting-up own military capabilities was the reduction of US military presence in Europe. The number of forces has been reduced from 335.000 before 1999 to less than 100.000 in 2000. See Isabelle Ioannides: The European Rapid Reaction Force: Implications for democratic accountability, BICC paper 24, p. 6.

its full role on the international stage.⁸⁰ This implied that "the Union must have the capacity for autonomous action, backed by credible military forces, the means to decide to use them, and the readiness to do so, in order to respond to international crisis without prejudice to actions by NATO".⁸¹

From now on, with "light speed", as the High Representative of the CFSP Javier Solana later put it, the way to ESDP was open.⁸² Based on the debate on a joint European security and defence policy started in October 1998 at the (informal) summit in Pörtschach, the European Council of Cologne in June 1999, as well as on Helsinki summit in December 1999 declared the will to develop a European security and defence policy (Cologne) and to clarify the timetable for it (Helsinki).

Table I.4: Development of ESDP 1998-2002

DATE	SUBJECT
April 1998	NATO summit Washington, D.C.: Formal establishment of the European Security and Defence Identity (ESDI)
October 1998	Non-official GAC meeting
December 1998	French-British Summit at St. Malo: Blair abandons resistance to independent European defence policy
June 1999	Cologne European Council Kosovo ceasefire Nomination of Javier Solana ⇒ expansion of European military capacities.
November 1999	WEU Ministerial Council Luxembourg: Imposition of national contributions.
December 1999	Helsinki European Council <u>Aims</u> : development of common European security and defence policy; creation of military and civil planning capacities; military 'headline goals': create joint military force of 50,000 – 60,000 persons; for rapid responses within 60 days; sustainable force for up to 1 year; <u>Procedures</u> : General Affairs Council to include defence ministers; Political and security Committee; Military Committee; Military staff attached to EU Council; combine Secretary-General of EU Council with that of EU;
February 2000	Foreign Ministers' Meeting Sintra <ul style="list-style-type: none"> • Political Security Committee • Military Committee • Military Staff.
June 2000	Feira European Council <ul style="list-style-type: none"> • Formulation of 'headline goals' for civil part; • Coordinating structures for EU-NATO; • Eligibility requirements for non-EU NATO members und acceding countries;
November 2000	WEU Ministerial Council Marseille: EU receives operative functions from WEU; WEU continues existing as organization. 'Force Generation Conference': 80,000 persons, 350 planes, 80 ships.
December 2000	Nice Summit: treaty revision: WEU removed; Political Committee renamed
June 2001	Göteborg European Council: expansion of civil capacities (e.g. contributions of Non-EU members; cooperation with International Organisations).
December 2001	Laeken European Council: declaration about partial operative capabilities.
January 2002	Declaration of the Spanish Presidency: <ul style="list-style-type: none"> • Establishment of a council for European defence ministers; • Taking over of UN mission in Bosnia-Herzegovina (from 2003 on).
February 2002	Informal Meeting of European Defence Ministers at Zaragoza: taking over of NATO-Mission in Macedonia

⁸⁰ Quoted in: CFSP-Forum 4 (1998), p. 8.

⁸¹ See [Joint Declaration of the British-French summit in St. Malo](#), 4. December 1998, quoted in: Maartje Rutten (ed.) From St-Malo to Nice, European Defence: Core Documents, Chaillot Paper 47, p.15.

⁸² See basically Martin Kremer/Uwe Schmalz: Nach Nizza – Perspektiven der Gemeinsamen Sicherheits- und Verteidigungspolitik, in: integration 2 (2001), p. 167-178.

At their meeting in Cologne on 3/4 June 1999, the Member States of the European Union published a declaration “on strengthening the common European policy on security and defence” which can be considered the »birth« of an »autonomous« and »operative« ESDP. For while the Treaty of Amsterdam provided for the WEU to be called on to implement military measures, the Cologne Declaration stated: “We, the members of the European Council, are resolved that the European Union shall play its full role on the international stage. To that end, we intend to give the European Union the necessary means and capabilities to assume its responsibilities regarding a common European policy on security and defence”.⁸³

As regards the aims formulated at St. Malo, it was decided in Cologne to create new permanent political and military bodies within the Councils structure in order to provide military expertise and support to the ESDP. The Cologne summit also placed the Petersberg tasks at the core of ESDP.⁸⁴

The conclusions of the heads of government at the European Council in Helsinki on 10th and 11th December recalled the guiding principles agreed at Cologne. The »Headline Goal« of constructing an independent EU-mission – a rapid reaction force (RRF) – set a milestone in the process of European integration. In response to international crisis, the Member States committed to the headline goal of being able “by 2003, to deploy within 60 days and sustain for at least 1 year military forces of up to 50.000-60.000 persons capable of the full range of Petersberg tasks”.⁸⁵ It was officially emphasised, however, that this would “not imply the creation of a European army”.⁸⁶ Following these decisions, new institutions were created for ESDP such as the military committee,⁸⁷ a military staff,⁸⁸ and, above all, the new coordination centre of ESDP: the political and security policy committee.⁸⁹

Moreover, the EU expressed its will for a direct relation to NATO and took over responsibilities for the WEU, as an organisation between the EU and NATO, which could be used for peacemaking and peacekeeping missions. The European Council underlines its determination to develop an autonomous capacity “to launch and conduct EU-led military operations [...] if NATO as a whole is not engaged”.⁹⁰

The Portuguese presidency gave the developments of ESDP a new impetus, particularly with the establishment of a Committee for Civilian Aspects of Crisis management.⁹¹ The European Council of Feira in June 2000 set up the identification of priority areas for targets as well as specific targets for civilian police capabilities. In this respect, Member States acting voluntarily, have decided that by 2003 they will be able to provide “up to 5000 police officers for international missions across the range of conflict prevention and crisis management operations”.⁹² The institutions that have been set up by the Helsinki summit became operational in March 2000 as interim bodies.⁹³

⁸³ Declaration of the European Council on strengthening the Common European Policy on Security and Defence, quoted in: Maartje Rutten (eds.): *From St-Malo to Nice, European Defence: Core Documents*, Chaillot Paper 47, p.41.

⁸⁴ *Ibid.*, p. 41 ff.

⁸⁵ Presidency Conclusions of the European Council of Helsinki, 11 December 1999, quoted in: Maartje Rutten (eds.): *From St-Malo to Nice, European Defence: Core Documents*, Chaillot Paper 47, p.82.

⁸⁶ *Ibid.*

⁸⁷ Decision 2001/79/GASP (ABl. L 27 vom 30.1.2001 und Bull. 1/2-2001, Ziff. 1.6.7).

⁸⁸ Decision 2001/80/GASP (ABl. L 27 vom 30.1.2001 und Bull. 1/2-2001, Ziff. 1.6.6).

⁸⁹ Decision 2001/78/GASP (ABl. L 27 vom 30.1.2001 und Bull. 1/2-2001, Ziff. 1.6.8).

⁹⁰ Presidency Conclusions of the European Council of Helsinki, 11 December 1999, quoted in: Maartje Rutten (eds.): *From St-Malo to Nice, European Defence: Core Documents*, Chaillot Paper 47, p.82.

⁹¹ See Presidency Conclusions on the European Council of Santa Maria da Feira, 20. June 2000, quoted in: Maartje Rutten (eds.): *From St-Malo to Nice, European Defence: Core Documents*, Chaillot Paper 47, p.120.

⁹² *Ibid.*, p. 121.

⁹³ On 28 February 2000, just two days before the appointed date confirmed in Helsinki, a joint meeting of defence and foreign ministers in Sintra (Portugal) set up the new legal provisions for the new bodies of the ESDP (only as interim agencies). The RRP was declared officially operational at the Laeken summit. However, at the

In Nice, the European Council officially approved the report by the presidency on a European security and defence policy. The Nice treaty confirmed the EU's acquisition of the WEU. According to article 17 (TEU – NV), defence aspects of Europe's common foreign and security policy will no longer be framed by the EU's former defence arm, the Western European Union, but by the EU itself.⁹⁴

However, Art. V of the WEU treaty was left out because the »collective defence clause« was unacceptable for the five non-NATO-aligned Member States of the EU. With the removal of chapter 1 (subparagraph 2) and the erasure of chapter 3 of Article 17 EUV in the Nice Treaty, the relation between the EU and the WEU has been basically altered. The Western European Union is since Nice no longer simply an “integral component of the development of the union“, but rather, at the heart of the European Union itself.⁹⁵

In view of the newly created political and security committee (PSC), legal changes were also made. The treaty established the legal basis for the Political and Security Committee (Article 25 TEU NV). The PSC is now responsible for both CFSP and ESDP.⁹⁶ According to the treaty provisions, the PSC will have three major tasks: “[...] Monitoring potential crisis situations affecting the EU, helping to formulate EU foreign and security policies and, during a future crisis situation, contributing to decisions about the political control and strategic decisions of any EU-organised operations.”

In the CFSP pillar, closer cooperation can now be used to implement a joint action or common position, without the consensus of the entire European Union. However, according to a British interventional request, the flexibility clause shall not relate to matters having military or defence implications.⁹⁷ Moreover, the option of a national veto (Article 23.2 TEU AV) in form of a modified version of the Luxembourg compromise has to be taken into account.

Finally, after ratification of the Nice Treaty, the High Representative for common foreign and security policy will be nominated by QMV.

The ESDP is founded generally on the same legal basis as the CFSP. Decisions in crisis management will be taken on the basis of a joint action. Yet, the option of decisions carrying military or defence aspects to be taken by QMV was left out (s.a.). Also the Nice decisions on closer cooperation do not apply to this policy area.

end of 2002 the RPR could carry out just »minimum-sized« operations but it was not capable of a »full operation«. At the Defence Ministers Meeting, 19 November 2002, it was admitted that it may be after 2003 before the actual capability shortfalls are to be covered. The Greek defence minister said the body tasked to look at the »shortfalls« in EU military capabilities would end its work in March. At the moment, there are 36 such shortfalls, 18 of which are »major«. See *Financial Times*, 20 November 2002.

⁹⁴ Presidency Conclusions on the European Council of Nice, 9 December 2000, quoted in: Maartje Rutten (eds.): *From St-Malo to Nice, European Defence: Core Documents*, Chaillot Paper 47, p.168ff.

⁹⁵ The WEU-council in Marseille at the 13 November 2000 concluded that the WEU would perceive only residual functions in the future. In addition, the staff of the secretariat has been reduced until July 2001 to around 30 civil servants. After termination of the shift of the strategic functions of the WEU into the EU, the staff of the WEU-secretariat is supposed to be reduced even further. The satellite centre and the institute for security studies (ISS) are also due to be shifted into the EU. As a consequence, the WEU will be re-set in the old »resting status« characterising the EU until end of the 1980s. What remains unclear, however, is what should happen with the WEU-treaty and especially the obligations of Article V. A shift into the EU-treaties might be problematic, in particular for non-aligned members states of the EU.

⁹⁶ Presidency Conclusions on the European Council of Nice, 9 December 2000, quoted in: Maartje Rutten (eds.): *From St-Malo to Nice, European Defence: Core Documents*, Chaillot Paper 47, p. 191 f.

⁹⁷ The Nice IGC also approved 60 pages of documents on the implementation of the defence initiative.

This approach makes the PSC the linchpin of the ESDP and CFSP and is thus the link between them.

With regard to the inter-institutional relations, the relationship of PSC and COREPER is regarded as a basic problem, or as Howorth puts it: "The co-existence, in Brussels, of PSC and COREPER, both having responsibility for the preparation of the GAC meetings, is a politico-institutional time-bomb."¹⁰⁰ A special problem is that all decisions taken in the PSC are to be debated in COREPER. Another problem might be the relationship of PSC and the High Representative. The HR should participate in the meetings of the PSC only in cases of crisis whereby he should make (as chair) use of this body as an advisory body.

The PSC is also a key forum for the dialogue on ESDP matters with the six NATO but non-EU members as well as with NATO itself. In February 2001, a first joint meeting with NATO'S North Atlantic Council was held where both sides talked about the means to strengthen cooperation between NATO and EU and crisis management in practical terms.

1.5.1.2. The European Union Military Committee (EUMC)

The EU now also features a military committee. It is the highest military body established within the Council. The EUMC is composed of the Chiefs of Defence of Member States (first chairman is General Hägglund from Finland). Military delegates represent them in their daily work. Almost all countries with membership of NATO as well as of the EU have appointed their military representative at NATO as their representative at the EU in order to ensure coherence between both bodies. However, a problem might be that NATO has the total range of military tasks, while the EU solely takes on »Petersberg-tasks«.

The European Union Military Committee provides the PSC with military advice and recommendations on military matters and exercises military direction of all military activities. It is mandated for risk assessment of political crisis, the military dimension of a crisis situation for which it receives the analysis of the Situation Centre and elaboration, assessment and review of capability objectives according to agreed procedures. Moreover, the EUMC is in charge of the military staff.¹⁰¹

1.5.1.3. The European Union Military Staff (EUMS)

The military staff serves as a source for military technical knowledge. It has three principal operative functions: early warning, situation assessment and strategic planning for the Petersberg tasks. Thus, it generates military options from which the political decision-takers select those actions that they decide should be taken. The EUMS supports the EUMC regarding situation assessment and military strategic planning for all cases of EU-led operations whether or not the EU draws on NATO assets and capabilities. It is an aim of the Member States to avoid setting up in this military staff a comprehensive planning unit because they wish to rely on the planning units of NATO.¹⁰²

Thus, although the EUMS will not act as an operational headquarters according to its three main operational functions, early warning, situation assessment and strategic planning, it will act as an interface between the EU's political and military authorities offering military sup-

¹⁰⁰ Jolyon Howorth: European Defence and the Changing Politics of the European Union: Hanging together or hanging separately?, in: Journal of Common Market Studies 4 (2001), p. 775.

¹⁰¹ Presidency Conclusions on the European Council of Nice, 9 December 2000, quoted in: Maartje Rutten (eds.): From St-Malo to Nice, European Defence: Core Documents, Chaillot Paper 47, p. 193 f.

¹⁰² Formally, NATO had made such an offer at its summit in Washington 1999. However, Turkey is not prepared to allow closer strategic planning without having some influence over the decisions of the EU on EU military forces that involve NATO.

port.¹⁰³ The military staff is currently represented by around 40 military experts that are recruited from Member States to the General Secretariat of the Council.¹⁰⁴

1.5.1.4. The role of the High Representative

The role of the High Representative in ESDP is still very much unclear, but he is still providing political impetus to the development of new political and military structures, co-ordination between ESDP and CFSP structures as well as the development of crisis management in the military field. According to the Nice presidency report, in the case of a crisis management mechanism, the PSC has a central role to play in the definition of a EU response to crisis (s.a.). Since the High Representative maintains a privileged link with the PSC and may be its chairman, he gives political orientation and guidance as well as contributes to the effectiveness and visibility of the Union's action and policy.

However, since the High Representative is in charge of planning the military operation of the Rapid Reaction Forces while the External relations Commissioner is responsible for a non-military action, it should be up to each single case who will be accountable to the European Parliament. Such a regulation might also lead to confusion and potential institutional tensions. Moreover, to explain the current set-up, it is indispensable to relate Javier Solana's role to his former post as the secretary general of NATO, particularly considering the question of future relations between the EU and NATO. Currently, Solana has regular weekly meetings with the NATO secretary general Lord Robertson.

1.5.1.5. The Committee for Civilian Aspects of Crisis Management (CIVCOM)

While the public watches very carefully the military aspects of ESDP, it is the case that for a long time the civil dimension has remained almost unnoticed. As a result of an increasing awareness by the EU of the significance of the non-military sector (namely in the face of the experiences in the Balkan), this aspect of crisis management started to draw more attention. The experiences in the Balkans taught that the exclusive deployment of soldiers is insufficient for a persistent pacification.

The Committee for Civilian Aspects of Crisis Management forms the civil »counterpart« to EUMC. After the specifications of the Feira summit in the June 2000, its main tasks are that police officers, legal civil servants, and other non-military experts will be set in place, guaranteeing the targets of the EU in civil crises management in cases such as human rights, democracy and catastrophe management.¹⁰⁵

Moreover, a committee has been established to direct police operations and an »action plan«. Accordingly, so far four targets for action in civil areas have been defined: 1) police, 2) rule of law, 3) civil administration and 4) civil protection. First of all, the provision of up 5.000 policemen until 2003 was projected as an uppermost priority. Subsequently, an action plan has been actioned to realise this goal. A separate department for police missions has been installed in the Secretariat General in Brussels. In November 2001, the responsible ministers declared that the number of police officers needed had been achieved.

¹⁰³ Presidency Conclusions on the European Council of Nice, 9 December 2000, quoted in: Maartje Rutten (eds.): From St-Malo to Nice, European Defence: Core Documents, Chaillot Paper 47, p. 196 f.

¹⁰⁴ The tasks of the EUMS are often overlapping with those of the policy planning and early warning unit.

¹⁰⁵ See Presidency Conclusions on the European Council of Santa Maria da Feira, 20. June 2000, quoted in: Maartje Rutten (eds.): From St-Malo to Nice, European Defence: Core Documents, Chaillot Paper 47, p.122 ff.

1.5.2. The European Parliament, the (Nice) Treaty and the ESDP provisions

1.5.2.1. The Nice treaty

The Nice Treaty added little to the competences of the European Parliament in the second pillar.¹⁰⁶ However, via amendment the EP has been given access to information about the cases in the newly introduced provisions for closer cooperation in the second pillar.

Concerning ESDP, the EP had expressed a positive judgment on the setting up of a military crisis management capability and on the definition of military and civilian means for crisis management. However, the EP has also criticised the growing complexity of institutional realities between the first and the second pillar.¹⁰⁷ Essentially the EP is questioning the relationship between the High Representative and the institutional triangle, and raising the issue of democratic control of the High Representative.

During the IGC 2000 the EP regularly stressed the need for a higher legitimacy with regard to sensitive issues of security and defence and a better involvement of the EP as well as national parliaments. Though the impact of such attempts has been limited, the EP has already made clear that it will »struggle« for influence.

In addition, some informal improvements for the EP have to be recognised. Since »Nice«, the High Representative has informed the EP – or the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy more than necessary on foreign, and security affairs. Subsequent to each European Council and the meetings of the Council (of Foreign Ministers) he gave details and explained the decisions, which have been taken. Even before common strategies are taken he consults the European Parliament. However, it has also to be taken into account that Javier Solana has classified in September 2000 a large number of ESVP-relevant documents as confidential thus refusing the EP the access to these documents.¹⁰⁸

1.5.2.2. Budgetary affairs

At the beginning of 2001, the EP threatened to reject extra funds exceeding the budget for 2001, needed to pay for civil servants and for other expenses that governments say are crucial to set up the EU's rapid reaction force and its political back-up unit. The reason for breaking the 25-year-old agreement between the EP and the Council (about not scrutinising each other's administrative spending) was that members of the EP claim that the staff would be under the direct control of Member States instead of the Commission and as such the costs will not be subject to proper scrutiny. The MEPs also claimed that this might set a hazardous precedent, since the Council would have operational responsibilities normally reserved for the Commission.¹⁰⁹

Though this case is still pending, the EP has elucidated that it would like to be more involved in ESDP affairs. On the other hand, even if the EP exercises its powers in terms of the budget, the Council might take counter measures and cut some of the EP's administrative budget in return.

1.5.2.3. Positions and statements

Though in 2001 the European Union set up a number of new political and military bodies, the EP did not achieve any additional powers to supervise them. By delivering annual resolutions

¹⁰⁶ See Franco Algieri: Die Europäische Verteidigungs- und Sicherheitspolitik – erweiterter Handlungsspielraum für die GASP?, in: Werner Weidenfeld (ed.): Nizza in der Analyse, Strategien für Europa, Gütersloh 2001, pp. 161-201.

¹⁰⁷ See Agence Europe: EP concerned at institutional complexity of ESDP, 10th July 2000 and Elmar Brok, quoted in Atlantic News, No. 3250.

¹⁰⁸ See Gisela Müller-Brandeck-Boquet, op. cit., p. 21.

¹⁰⁹ See European Voice, March 2001.

on the process of implementing the CFSP, the European Parliament stressed its claim to be a relevant player in the process. The Parliament has paid particular attention to the evolution of security and defence policy over the last few years, particularly documented by the adoption of the Tindemans report on the gradual establishment of a defence policy for the European Union from May 1997 (1st part)¹¹⁰ and May 1998 (2nd part),¹¹¹ its resolution of 15 June 2000 on the establishment of a Common European Security and Defence Policy with a view to the European Council at Feira, or the adoption of the report Lalumière in November 2000 on the establishment of a Common European Security and Defence Policy after Cologne and Helsinki.

In view of further reform, the EP demanded in its reports not only a wide-ranging democratic debate on European security and defence but also the involvement of the EP and national parliaments. It also stressed that from the EP's perspective, that national parliaments, while being responsible for adopting defence budgets, are unable to obtain a global and coherent view of the CESDP. It will therefore be the responsibility of the EP to establish such a comprehensive approach and make it politically feasible.

1.5.2.4. The role of the national parliaments

The merger of some of the functions of the Western European Union with the EU resulted in a debate about whether the WEU Assembly should remain the forum through which parliaments co-ordinate their scrutiny of European security and defence issues. The Convention will deal with this question. But so far, the Convention has only mentioned that national parliaments and the EP could become jointly involved in scrutinising ESDP. There has been no real discussion about the scope of such supervision.

1.6. The further development of ESDP in 2001/2002: beyond slow adaptation?

With the institutional reforms in 2001 and 2002, the EU has started to develop military capacities in order to cover the entire spectrum of the Petersberg tasks. In the framework of the Swedish presidency in the first half of 2001, the progress in ESDP was again a key issue. In Gothenburg, the European Council decided to prepare the Union quickly for ESDP and to take, at the latest at the Laeken summit, further decisions.¹¹²

Through further development of ESDP and the strengthening of the Union's military and civil capacity, the EU should be enabled to carry out operations concerning crisis management. In the course of this further development, the Union should, slowly but surely, be able to carry out more demanding operations. On the basis of a practice program, the European Union has begun to test its structures and procedures with regard to the civil and military aspects of operations in crisis management.

At its Laeken summit in December 2001, the European Council officially announced that the EU would now be able to take part in crisis operations. On the first view, this explanation astonishes due to the serious criticism on the deficient military capacities of the Europeans. Though this announcement does not apply for all kinds of Petersberg tasks, especially military operations, it is valid for joint peacekeeping missions.

¹¹⁰ 51997IP0133 European Parliament recommendation to the Council on improving the impact of joint actions Official Journal C 167, 02/06/1997 p. 0147.

¹¹¹ Resolution on the gradual establishment of a common defence policy for the European Union Official Journal C 167, 1 June 1998 p. 190.

¹¹² The European Council has confirmed this target at its extraordinary meeting in Brussels at 21 September 2001: "It is by developing the Common Foreign and Security Policy (CFSP) and by making the European Security and Defence policy (ESDP) operational at the earliest opportunity that the Union will be most effective."

I.7. Conclusions: Trends of historical evolution in CFSP/ESDP: patterns of growth and differentiation without parliamentary involvement

Reviewing the institutional development of Europe's foreign policy in a primarily historical perspective means to observe over the last two decades a pattern of regular treaty revision in CFSP and ESDP affairs. Since the early 1980s, several IGCs and the European Council with its conclusions have set up subjects which will be covered at the European level and which then lead to a next step of shaping and fixing the institutional and procedural configuration of the EU system in general and the CFSP/ESDP pillar in particular. This surveillance is supported by three considerations:

- 1) The previous European defence institutions, namely WEU and ESDI (within NATO), were not effective and thus failed. The embarrassment caused by the failing of the European bodies and institutions in the crisis of former Yugoslavia throughout the 1990s forced the EU Member States to move one step further.
- 2) The EU has been developed, in view of its economical power, to be a relevant player in the international system. The development of trade- or development policy is closely interwoven with foreign and security policy. Hence, the European Union can no longer reject the need to play a more effective and visible role in the international system, also concerning security and defence issues.
- 3) The European Union is considered by its Member States as a working political system, offering the (most) appropriate framework for a higher involvement in international affairs.

Founded on these factors, the European Union has in the past years introduced ESDP in addition to the already existing elements of CFSP. New bodies have been created and existing ones have been fitted with more competences, in particular in the framework of the Council. With the operational capacity of ESDP, a new policy area was introduced at the European level. The setting-up of an (autonomous) rapid reaction force bears the consequence that the EU can no longer be considered solely as a »civilian power«. Though the second pillar of the European Union forms now more than a construction site, the steps in security policy of the years 1999-2002 can be considered as an unexpected but remarkable progress.¹¹³ These steps have the potential to establish the European Union as an authoritative actor on the international stage.

Despite the fact, that CFSP and ESDP are still intergovernmental, the new institutional set-up has shifted the decision-making process at least partially to the EU level in Brussels. This reveals a move towards »Brusselisation«, characterised by a gradual but constant pooling of foreign and security policy authority away from the national capitals. However, contrary to the EC-pillar, the European Parliament has not succeeded to become involved and also been unsuccessful in reinforcing its powers. It has neither been included nor taken substantial influence on the developments at the CFSP/ESDP policy cycle. The inter-institutional agreement from 1999 – concerning the procedures and categories of CFSP expenditures – signed by the Council, the European Parliament, and the European Commission – was one of the rare exceptions. In this specific case, parliamentary participation and some sort of control has been achieved since the Council is obliged to inform the European Parliament regularly on those

¹¹³ See Hanspeter Neuhold: *Die Europäische Union auf dem Weg zu einem politischen und militärischen Akteur in den internationalen Beziehungen*, in: Occasional Paper 4 (2000) der Diplomatischen Akademie Wien, pp. 63-80.

actions, which imply financial commitments.¹¹⁴ Nevertheless, the democratic accountability and legitimacy of ESDP have not substantially been improved.

¹¹⁴ See for such a conclusion as well Monja Warnken: *Der Handlungsrahmen der Europäischen Union im Bereich der Sicherheits- und Verteidigungspolitik*, Baden-Baden 2002, pp. 43 f.

Annex II: Formal and informal arrangements for parliamentary scrutiny in CFSP and ESDP at the European level

“The Union’s first step must be to reform governance successfully at home in order to enhance the case for change at an international level.”

EUROPEAN COMMISSION: WHITE PAPER
ON EUROPEAN GOVERNANCE,
JULY 2001

Detailed Table of Contents of Annex II:

<i>II. Formal and informal arrangements for parliamentary scrutiny in CFSP and ESDP at the European level</i>	85
<i>II.1. Empirical trends in CFSP and ESDP</i>	85
<i>II.2. The role of European Parliament in CFSP and ESDP</i>	87
II.2.1. Internal arrangements of the European Parliament	87
II.2.2. Parliamentary involvement in CFSP/ESDP matters	88
II.2.3. Internal arrangements of AFET	91
<i>II.3. The European Parliament vis-à-vis the European Commission and High Representative</i>	93
<i>II.4. The European Parliament’s relation to the Council of the EU and the Presidency</i>	94
<i>II.5. The European Parliament in relation to the Member States and the European Council</i>	95
<i>II.6. The European Parliament in relation to the National Parliaments and Parliamentary Groups</i>	96
<i>II.7. The European Parliament and »third countries«</i>	98
<i>II.8. The European Parliament and other actors at the European level</i>	98
II.8.1. The European Parliament and Parliamentary Assemblies of international organisations	99
II.8.2. The European Parliament and NATO	99
<i>II.9. Conclusions: channels for participation of the EP in foreign, security and defence matters</i>	100

II. Formal and informal arrangements for parliamentary scrutiny in CFSP and ESDP at the European level

This second annex of the study is focused on the present arrangements concerning parliamentary scrutiny in general and the parliamentary activities in the foreign, security and defence sector in particular (deliverable 2). In this regard, the study will look at the »access« of the European Parliament and its Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (AFET = Commission des affaires étrangères, des droits de l'homme, de la sécurité commune et de la politique de défense) in the institutional and procedural set-up of CFSP and ESDP from an overall perspective – including the European Council, the Council, the High Representative, and other institutions. Thus, this overview especially deals with attempts of the European Parliament to establish frameworks for involvement and participation. Identifying means and channels of participation for the European Parliament in view of the CFSP/ESDP policy cycle, this part of the study provides a first basis for assessing the EP's role in the CFSP/ESDP process.¹

II.1. Empirical trends in CFSP and ESDP

To explain the evolution of the security and defence policies in a comprehensive way, the analysis of legal provisions must be put in relation with »real« patterns of the »living constitution« over a considerable time span.² Given the features and the dynamics of the evolution of the EU system it seems helpful not only to examine how the scope of policy fields for common activities have been increased but also to analyse how the new articles, which define specific competencies and procedures have been used in practice. Especially, links between treaty-making and the »ordinary« patterns of political actors in institutions need to be considered. This »real use« of treaty provisions can be measured by the overall output of activity, taking the various forms of actions and non-binding recommendations.

As Table II.1.illustrates, the output of today's CFSP has largely increased compared to what the EPC produced before.³ Both in terms of quantity (i.e. agenda according to regional and

¹ This part has been carried out particularly by interviews with academics as well as civil servants from several EC/EU institutions in Brussels. Besides informal talks, the following (official) interviews were taken in the framework of the project: Prof. David Allen (Loughborough University) (19 September 2002); Prof. Christopher Hill (London School of Economics); (19 September and 3 December 2002); Prof. Gunilla Herolf ((Stockholm International Peace Research Institute) (19 September 2002); Dr. Ramses A. Wessel (Centre for European Studies, University of Twente) (19 September and 3 December 2002); Dr. Norbert Gresch and Dr. Christian Huber (European Parliament; Secretariat; Directorate-General 2) (20 September and 3 December); Dr. Norbert Gresch (16 October 2002); Dr. Elfriede Regelsberger (Institut für Europäische Politik, Berlin) (23 October and 3 December 2002); Dr. Thomas Grunert (European Parliament; Secretariat; Directorate-General 2) (5 November 2002); Dr. Jose Javier Fernandez Fernandez (European Parliament; Secretariat; Directorate-General 2) (5 November and 3 December 2002); Mark Otte (Policy Unit, Council of the European Union) (6 November 2002); Dr. Christoph Heusgen (Policy Unit of the Council of the European Union) (6 November 2002), Prof. Finn Laursen (3 December 2002), Jim Cloos (Secretary General of the Council of the European Union, Directorate-General E - External economic relations, common foreign and security policy) (6 December 2002); Klaus Schuwirth (Chairman EU Military Staff, 6 December 2002). The empirical data of this part derives from these interviews.

² See for such an approach Johan P Olsen: *Organising European Institutions of Governance, A Prelude to an Institutional Account of Political Integration*, Arena Working Papers WP 00/2 (2000). See also Edward C. Page and Dionyssis Dimitrakopoulos: *The dynamics of EU growth. A cross-time analysis*, in: *Journal of Theoretical Politics* 3 (1997), pp. 365-387.

³ This empirical part is mainly taken from: Elfriede Regelsberger/Wolfgang Wessels: *The evolution of the Common Foreign and Security Policy: A case of an imperfect ratchet fusion*, (to be published) and Wolfgang Wessels: *Security and defence of the European Union: The institutional evolution: Trends and Perspectives*, Contributions to the 6th ECSA conference December 6 December 2002, Brussels.

functional issues) and quality (i.e. differentiation of instruments and contents) the increase is apparent. Declarations still remain as an instrument of foreign policy despite considerable criticism about a European diplomacy that has solely declaratory character. Interventions against the violation of human rights also belong to the traditional arsenal of foreign policy instruments. They are frequently undertaken as silent diplomacy (175 demarches by the presidency in third countries in 2000), but it is also the EU's explicit understanding to work towards a strengthening of the human rights at international fora like the United Nations. In the UN bodies in New York – except in the Security Council – and elsewhere the »voice« of the EU is widely accepted by the other participants.

In order to become more pro-active in its performance the Maastricht treaty introduced new instruments such as »joint actions« and »common positions«. The latter are reflecting an overall approach of the EU towards a third country or contain specific sanctions against a state. »Joint actions« are to express a particular interest of the EU and its member states towards a country or region which manifests itself in visible activities "at place" (Art. 14.1 TEU – AV). The other new instrument, the »common strategy«, has been used three times so far. Designed to express the EU's vital interests towards a country or a region by formulating a comprehensive approach it is not surprising that Russia, the Ukraine and the Mediterranean were among the priorities, but strangely enough not yet the Balkans. Prepared by the Council and formally passed by the European Council these common strategies have received considerable criticism. They are seen as reflecting nothing but a shopping list without indications on the Fifteen's major fields of interests and recall what has been determined and implemented already elsewhere, some also inside CFSP argue.

Table II.1: (Legal) output of EPC/CFSP 1970-2001

	1970	1972	1973	1986	1987	1990	1994	1997	1998	1999	2000	2001	SUM
a) declarations	-	2	10	54	63	115	110	123	141	123	184	186	1111
b) Common positions ¹	-		-	-		-	8	13	22	35	33	20	131
c) Joint actions ²	-		-	-		-	14	15	20	20	21	19	109
d) Common strategies ³	-		-	-		-	-	-	-	2	1	-	3
e) Decisions ⁴	-	-	-	-	-	-	-	-	-	-	5	6	11
f) Conclusion of international agreement ⁵	-	-	-	-	-	-	-	-	-	-	-	2	2
g) Enhanced co-operation ⁶												-	-
¹ introduced in Maastricht (Art. 15 TEU A.V.) ² introduced in Maastricht (Art. 14 TEU A.V.) ³ introduced in Amsterdam (Art. 13 TEU A.V.) ⁴ on CFSP institutional aspects ⁵ according to Art. 24 TEU ⁶ introduced in Nice Treaty 2001 (Art. 27 a-e TEU N.V.) Source: Elfriede Regelsberger/Wolfgang Wessels: The evolution of the Common Foreign and Security Policy: A case of an imperfect ratchet fusion (to be published)) Calculations that are taken from the Bulletins of the EC/ EU and the Annual Reports of the Activities of the EC/EU. Legislative acts according to http://ue.eu.int/pesc/ .													

The European Parliament is involved in all of these instruments only to a negligible degree. Legal acts referring to the second pillar are carried out without parliamentary participation. According the treaty provisions, the European Parliament does not participate in decision-making. In addition, there even will be no consultation of the European Parliament in this area. The only kind of formal participation derives from general (general) information rights. Thus, it is difficult to discern any progress of the European Parliaments actorness in CFSP and ESDP, despite all legal amendments of the last years.

The already existing possibilities of formal participation of the European Parliament take place just via declarations or by attracting public attention. The case of the European Union after 11 September 2001 illustrated this observation: The terrorist attacks prompted an immediate and unequivocal reaction from the European Union and its Member States. Three days later in a joint declaration, the heads of state and government, the President of the Commission, the High Representative for the Common Foreign and Security Policy – and – on behalf of the European Parliament – the Presidents of the European Parliament expressed the "complete solidarity" with the United States.

II.2. The role of European Parliament in CFSP and ESDP

The European Parliament deals with political, economical, legal, commercial and other aspects of foreign and security policy. Generally, the participation of the European Parliament in CFSP and ESDP is based on Article 3 TEU (ex-article C). According to this treaty provision, the European Union shall consist of a »single institutional framework« in order to achieve coherence and continuity of the »acquis communautaire«. Title I and Article 2 (TEU) of the »Common Provisions« state that "The Union shall set itself the following objectives: (...) to assert its identity on the international scene (...)".

However, this provision falls short of a concise recommendation on how exactly an effective relationship between supranational and intergovernmental policies or on the institutional balance within CFSP and ESDP shall be attained. The provisions of CFSP and ESDP are lined out in Title V (TEU).⁴ However, since Article 21 (TEU) – in the frame of Title V – gives only imprecise evidence on competences of participation for the European Parliament, the involvement of the EP is based to a large extent on informal arrangements, long-established forms of co-operation and internal arrangements.

II.2.1. Internal arrangements of the European Parliament

The influence of parliaments in foreign, security and defence policy depends to a certain degree also on internal arrangements. According to Article 199 TEC, the European Parliament arranges its internal structures autonomously, adopting rules of procedure by the majority of its members. In order to cope with the wide range of tasks, the European Parliament has modified its internal modes of operation modes for several times.⁵

As parliaments generally do, the European Parliament carries out its work either by way of the plenary or in its committees. The plenary sessions of the European Parliament deal with newsworthy debates and statements by the Presidency or the adoption of committee reports and questions to the Commission and Council.

In order to handle its work efficiently, the European Parliament has set up a considerable number of internal bodies since the beginning of the 1980s.⁶ Committees, inter-parliamentary delegations, political groups and informal inter-groups are in charge of the preliminary tasks of the EP. Hence, besides in the plenary,⁷ the European Parliamentarians spend a lot of their

⁴ In addition, especially the provisions for the ESDP are fixed in several presidency conclusions.

⁵ See for the following J. Javier Fernandez Fernandez: Note to the Secretariat of the European Convention on the existing situation regarding external relations resources and structures, 3 October 2002.

⁶ See generally Eberhard Grabitz et alii: Direktwahl und Demokratisierung, op. cit.; Richard Corbett/Francis Jacobs/Michael Shackelton: The European Parliament, op. cit.; Andreas Maurer, Regieren nach Maastricht: Die Bilanz des Europäischen Parlaments nach fünf Jahren „Mitentscheidung“, in: integration 4 (1998), pp. 212-224. See additionally the web pages of the European Parliament.

⁷ The European Parliamentarians meet in plenary one-week per month in Strasbourg on a regular base. Additional plenary sessions are summoned in Brussels.

time in committee sessions⁸ and parliamentary groups⁹ as well as in meetings with representatives from other bodies and institutions such as inter-parliamentary delegations. With up to 20 committees, the EP has installed differentiated bodies for their work.¹⁰

In the current electoral period of 1999-2004, the MEPs are assigned to 17 standing committees, 14 joint parliamentary committees and 21 inter-parliamentary delegations. All former sub-committees have been abolished in the present electoral period. Additionally, there are temporary or »ad-hoc« committees such as the temporary »committee of inquiry into BSE«, the temporary »committee for human genetics and of the new technologies of modern medicine« or, more recently, the temporary »committee on foot and mouth disease«. In total, there are six temporarily committees working at the end of 2002. Each standing committee or delegation elects its own »bureau« consisting of a chairman and two or three vice-chairmen. The term of office for the standing committees lasts two-and-a-half years – the medium of the electoral period.

To support their work, the European Parliamentarians are able to resort to the expertise of the EP staff – especially the general secretariat. The number of staff of the general secretariat of the European Parliament has increased from only 64 persons in 1960 to 434 in 2000.¹¹ In addition, 248 civil servants are temporarily engaged in 2000. Thus, the European Parliament is equipped with a remarkable administrative infrastructure that makes it – to a certain degree – competitive with other international administrations such as NATO or WTO.¹²

Nevertheless, the internal structure of the EP displays several deficiencies. Especially the tripartite location of the EP with its seat in Strasbourg, the (official seat of the) secretariat general in Luxembourg and the plenary and Committee sessions in Brussels leads to high costs of organisation and coordination.¹³

II.2.2. Parliamentary involvement in CFSP/ESDP matters

Regarding its 18 weeks of plenary sessions in the year 2001, the European Parliament addressed foreign and defence issues in nearly 30 sessions. Thus, the European Parliament dealt with foreign and security aspects regularly in its plenary sessions. As the field of foreign affairs is exceedingly wide-spread, the scope of issues is considerable: The European Parliament has debated in the year 2001 for instance the international situation following the terrorist attacks of 11 September 2001 as well as on the process of stabilisation and association in the south-eastern countries of Europe. Questions of enlargement and the situation in the Balkans have been covered as well as the Middle East and other crisis areas of the world.¹⁴

⁸ Two weeks a month the Committees meet in Brussels.

⁹ The remaining week is »reserved« for the sessions of the parliamentary groups.

¹⁰ After the first direct election in 1997, 16 standing committees were established. In 1999, this number has increased up to 20 standing committees.

¹¹ See for the data – especially in view of long term trends – Wolfgang Wessels: *Die Öffnung des Staates, Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, p. 203. New data has been added according to the EC budget and the annual reports of the European Commission.

¹² The overall number of employees in the secretariat general of the EP is around 3.500 in the year 2000.

¹³ A protocol in the annex of the Amsterdam Treaty defines the current situation: "The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg. Due to practical reasons, nevertheless, a large part of the civil servants and the officials of the parliamentary groups are located in Brussels."

¹⁴ See for details European Commission: *General Report 2001*, Chapter IX: Institutions and other bodies, Section 1: Composition and functioning.

In contrast to national parliaments in Europe (which are often concerned only in a restricted number of sessions with foreign or security policy) the European Parliament offers a forum for international questions due to the multiplicity of issues caught up.

This has been especially apparent in view of the crisis in Yugoslavia. From March 1991 until July 1992, the EP concerned itself at nearly every meeting with the developments of the situation in Yugoslavia. Though it has only little impact on the decisions that have been taken, the Parliament's role was regarded as "useful in terms of publicising issues and mobilising public opinion".¹⁵ The communication function was less virtuous in the Gulf Crisis in 1990-91. According to Donatella Viola this depends to some degree on the "poor cohesion within the parliamentary forum itself, which had prevented the building of a solid bloc capable of exerting influence on the other EC institutions".¹⁶

Table II.2: Parliamentary involvement in questions on CFSP/ESDP in 2001

	EUROPEAN PARLIAMENT	AFET
Number of overall sessions		29
Sessions with issues on CSFP	29* (21 [•])	22
Sessions with issues on ESDP	3	3
Additional activities	Special hearings of AFET in plenary: - 26/02/2002 on: Iraq and the International Community - 10/09/2002 on: European position on the US Missile Defence Initiative	- 17/09/2002: First Parliamentary Conference EU – Stability Pact Countries

Data: own calculation based on information by the EP secretariat general and information of EPs website.

* One explicitly on the development of CFSP: Report by AFET Member Elmar Brok.

• Number varies due to possible distinction made between count of day of debate and day of vote.

The EP's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy is the body in parliament coordinating and carrying out international activities on behalf of the entire European Parliament. Traditionally, this committee always "included a high proportion of the better-known members" of the European Parliament.¹⁷

Corresponding to the name and the tasks of the committee (see annex VI.1 of the EP's rules of procedure: Powers and responsibilities of standing committees), AFET has covered foreign and security related issues in nearly every session.

However, the – limited – role of ESDP in the daily work of the committee is noteworthy. In 2001 there has been an overall number of 29 sessions of AFET. Around 22 of these committee sessions have touched upon CFSP issues while only three sessions dealt in particular with ESDP matters. For that reason, it can be concluded that ESDP plays no extraordinary role in AFET's daily work – despite the wide-ranging and substantial changes in defence policy at the European level in the year 2001. The possibility to develop a differentiated and elaborated opinion of ESDP as a starting point in order to achieve more distinct competences in view of ESDP was rarely used by AFET.¹⁸

¹⁵ See for this special case: Donatella M. Mola: European Foreign Policy and the European Parliament in the 1990s, An Investigation into the Role and Voting Behaviour of the European Parliament's Political Groups, London 2000, p. 177. However, Viola states in this context also that the attendance of the plenary was very low with just over 31%.

¹⁶ Ibid, p. 71.

¹⁷ Jacobs/Corbett/Shackelton, op. cit., fourth edition, p. 106.

¹⁸ Since several members of DG 2 of the secretary general of the European Parliament have stressed the work on ESDP issues, this rate has substantially improved in 2002.

One explanation for this observation might be found in AFET's far-reaching involvement in the legislative work of the EP. At first glance and in view of the quantity of legal acts, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy belongs to those committees with a comparatively low output. However, taking into consideration AFET's involvement in actual decision-making of EP, it is notable that it is not only the committee in charge of such difficult legal acts as association procedures with third countries, but rather actively involved in other legal acts – even in those policy fields – for instance such as such as development policies – that do not fall compelling into its area.

This trend can be observed for both of the two last legislative periods (see table II.3). The number of acts with AFET as the »responsible« committee might be explained with the fact that the committee attempts to make use of its »Selbstbefassungsrecht« in security and defence policy in order to obtain (further) rights of participation – even in policy fields which do not include parliamentary rights by the treaties. A similar statement can also be observed for other »CFSP-related« policies such as development policy.

Table II.3: Involvement of AFET in the legislative work of the EP 1994 –2002

1994 – 1999 PROCEDURE FUNCTION OF AFET	CONSULTA- TION	ASSENT	CO-DECISION (1 ST READING)	CO-DECISION (2 ND READING)	SUM
Responsible committee	13	36	-	1	50 (134*)
Opinion committee	87	19	3	6	115 (173 *)

1999 – Oct 2002 PROCEDURE FUNCTION OF AFET	CONSULTA- TION	ASSENT	CO-DECISION (1 ST READING)	CO-DECISION (2 ND READING)	SUM
Responsible committee	15	26	-	2	44 (108*)
Opinion committee	92	4	2	6	104 (185*)

Data: own calculation assembled from OEIL-database.

* Number of acts with procedure not explicitly stated in OEIL (note that not every act is precisely defined)

With this linkage of »classic« AFET affairs and »traditional« EC matters, the committee follows a strategy of including foreign and security policies by touching upon EC acts that are clearly delimited of the policy field of CFSP and ESDP.

This observation of consistent efforts of the Committee to augment its areas of involvement is also underlined by the number of reports adopted in the plenary of the European Parliament. During the 1994-1999 legislature, there has been an overall number of 2084 adopted reports by the EP. Around 127 of these reports originated in AFET, giving it the fifth rank of the overall committees.¹⁹ However, at second glance it becomes apparent that the largest cohort of these 127 reports deals with the consultation on non-legislative issues. Notably, this is the second range of all reports on Consultation on non-legislative issues.²⁰

All things considered, it can be concluded that AFET is a very active committee but since its legal competences are to a certain degree restricted, it is very much involved in »consultation acts« or has to build upon on legal issues from other policy fields. Due to the far-reaching and widespread number of policy areas covered by the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the ESDP does not attract an extraordinary role in the Committee.

¹⁹ More reports have been adopted in the plenary originating from the Committee on Economic and Monetary Affairs (288), Committee on the Environment, Public Health and Consumer Policy (207), Committee on Regional Policy, Transport and Tourism (165) and Committee on Industry, External Trade, Research and Energy (129).

²⁰ See for the statistical data Corbett/Jacobs/Shackelton, op. it, fourth edition, p. 116.

II.2.3. Internal arrangements of AFET

As already mentioned, foreign, security and defence policy is mainly the domain of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy. Nevertheless, due to the large scope of foreign policy, also – from case to case – the Committee on Development Cooperation, the Committee on External Economic relations, the Committee on Environment, the Budget Committee and the Committee for Civil Liberties and Home affairs are involved in foreign matters.²¹

AFET is based on the former »political committee«. Until 1992, this political committee was the parliamentary body in charge of foreign policy at the EU level. In view of the »Maastricht« treaty revisions, in January 1992, the EP transformed its political committee into a body responsible for foreign affairs, security and defence matters. In this context, EP has entirely amended its rules of procedure. Already in 1986, two sub-committees had been established: one for security and disarmament and one for human rights.²²

After the Amsterdam treaty, the rules of procedure of the EP were changed again. AFET also gained the general responsibility for the relations with the WEU and the WEU Parliamentary Assembly. In addition, AFET has become responsible for “opening, monitoring and concluding negotiations concerning the accession of European States to the Union (Article 49 of the EU Treaty)”. Since then, it is as well concerned with “association and partnership agreements (Article 310 of the EC Treaty) and other international agreements of mainly political nature”.²³ In addition, the Committee coordinates “the work of the inter-parliamentary delegations and the joint parliamentary committees and the cooperation committees and the ad hoc delegations, including those sent to monitor elections, both in preparing for and discussing the outcome of their meetings.”²⁴

In 1999, the two sub-committees of AFET were dissolved. At the present, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy has 69 members and the same number of substitutes.²⁵ Thus, it belongs to the largest committees of the European Parliament.

In general, the committee meetings are open to public. However, of the 18 meetings of AFET in 2002, four featured votes with public exclusion. Additionally, there were seven sessions of the “enlarged bureau”, which were also not open to the public.

Within the secretariat of the European Parliament, the General Directorate 2 (Committees and Delegations) organises the work of the various standing committees, of the joint parliamentary committees, inter-parliamentary and »ad-hoc« delegations.²⁶ Directorate A (external relations) in particular is in charge of the work of those Committees and Delegations especially

²¹ See Jose Javier Fernandez Fernandez, op. cit.

²² The committee comprised 56 MEPs, each of the sub-committees 25 MEPs. See for details Francis Jacobs and Richard Corbett: *The European Parliament*, first edition, Boulder 1990, p. 117.

²³ See European Parliament, rules of procedure, ANNEX VI; Powers and responsibilities of standing committees, Provisional edition – July 2002.

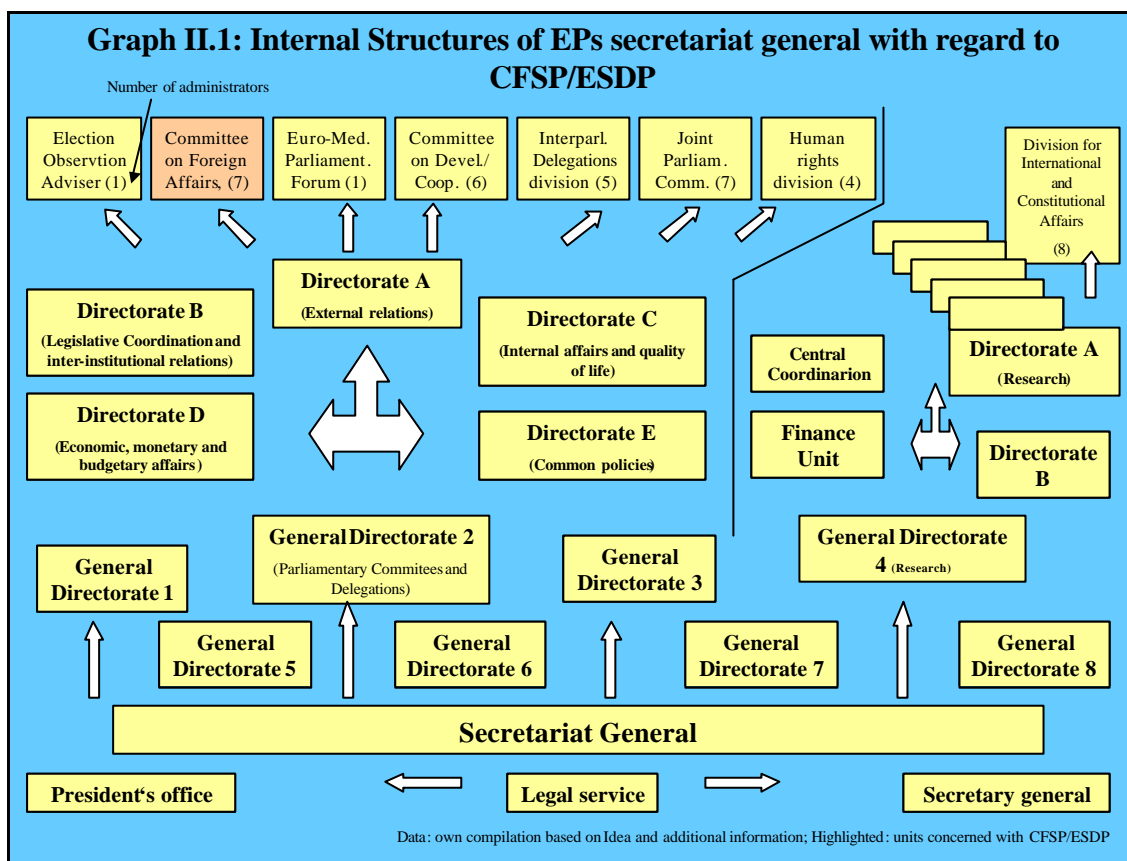
²⁴ See European Parliament, rules of procedure, ANNEX VI; Powers and responsibilities of standing committees, Provisional edition – July 2002.

²⁵ The current chairman of AFET is Elmar Brok (PPE).

²⁶ Other entities of EPs general secretariat are President's Office, Secretary-General, Legal Service, and the Directorate-General 1 - Presidency, Directorate-General 3 - Information and Public Relations, Directorate-General 4 - Research, Directorate-General 5 - Personnel, Directorate-General 6 - Administration, Directorate-General 7 - Translation and General Services, Directorate-General 8 - Finance.

involved in external, security and defence policies of the Union.²⁷ In general, Directorate 4 (Research), Directorate A (Division for International and Constitutional Affairs) also consists of some research divisions in force of external policy, but with a minor impact. The following graph (II.1) illustrates the organisational structures as well as the number of administrators engaged.

A number of 39 civil servant are directly involved in CFSP/ESDP affairs. Taking – more generally – the overall number of employees dealing with external actions of the EU, there are approximately about 79 staff persons (in all categories) of the Parliament engaged. In addition, political activities in foreign, security and defence issues are carried out by the political groups, which resort to their own structures.



Focussed on the committee in charge of foreign and security affairs, there are seven administrators assigned to AFET.²⁸ Compared to resources of foreign or defence Committees of national parliaments, the number of civil servants supporting AFET is on average. While there are some parliaments that can fall back on a larger number of administrators (especially the US Congress), other parliaments have even a less number of full-time staff supporting the respective committee.

²⁷ Directorate-General, Directorate B – Legislative coordination and inter-institutional and inter-parliamentary relations, Directorate C – Internal affairs and quality of life, Directorate D – Economic, monetary and budgetary affairs, Directorate E – Common policies.

²⁸ In several interviews, a number of eight civil servants was listed.

II.3. The European Parliament vis-à-vis the European Commission and High Representative

The interaction between the European Parliament and other bodies has reached a high degree of differentiation. Particularly with the European Commission and the High Representative for the CFSP, the EP has established regular contacts. In the plenary sessions of the European Parliament and in the sessions of the parliamentary committees the Commission is represented on a regular basis.

In addition, there is a large flow of information by means of written and oral questions and answers. All in all, in the year 2000 the Parliament directed 3975 questions to the Commission. Out of these questions 3.302 were written questions and 77 were oral questions. In »question time« 596 questions were directed at the Commission.

On the other hand, it has to be noted that the European Commission has developed a “comprehensive internal structure for maintaining contacts with the Parliament to ensure Commissioners and their departments are well informed as to parliamentary opinions and the state of play in the parliament”.²⁹ A so-called parliamentary attaché out of the respective cabinet informs the Commissioner about all relevant aspects of parliaments negotiations and planning.³⁰

Some other instruments have been developed: The President of the Commission, the President of the Parliament and the President of the Council come together once a month, usually in Strasbourg on the Wednesday of Parliament sessions (“trialogues”).³¹ Besides the President, Group chairs regularly meet with Commissioners, ministers and prime ministers (especially those of their own political family). The Committee chairs preserve also links with the Commissioners in charge for their respective area.

In view of CFSP and ESDP, the EP has also developed highly differentiated and well-established channels. The current Commissioner in charge of External Affairs and the High Representative “account to the European Parliament and/or the Foreign Affairs Committee much more often and more detailed than many of the national foreign or defence ministers actually do”.³²

Accordingly, the European Parliament appears more or less satisfied with the flow of information by the Commission. The Commissioner in charge of external relations generally provides the information of the committee on CFSP and ESDP. A general readiness for information is stressed by the MEPs. That willingness becomes apparent either by the responsible Commissioner Patten or by the High Representative of the CFSP. “The Commissioner comes as often, as he is asked to”.³³ Consequently, in the session of the committees of the European Parliament, the European Commission is regularly represented. In 2002, the Commissioner has attended four sessions of AFET (being substituted once by a fellow Commissioner),³⁴ but no plenary sessions of the European Parliament.³⁵

The High Representative is also generally ready to inform the EP. Especially in the course of the developments after 9/11/2001, there was intense communication between Javier Solana and the European Parliament just before his visit to Washington. However, it has to be noted that his attention shifts between the Parliament and the Committee. In the past, this had lead to some conflicts between AFET and other committees of the EP as well as the plenary in its

²⁹ See Corbett/Jacobs/Shackelton, op. it, fourth edition, p. 279.

³⁰ In addition, each GD of the European Commission has a coordinator in charge of parliamentary affairs.

³¹ See Corbett/Jacobs/Shackelton, op. it, fourth edition, p. 278.

³² Armin Laschet: *Parliamentarisation of the European Security and Defence Policy*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), working paper No. 82, August 2002, p. 4.

³³ Ibid.

³⁴ Data taken from Web Site of AFET: http://www.europarl.eu.int/meetdocs/committees/afet/default_en.htm.

³⁵ Data taken from Web Site of the EP: http://www.europarl.eu.int/plenary/default_de.htm.

entire composition. Besides the High Representative for CFSP Javier Solana (2 times), sessions of AFET were attended by several high-ranking officials in 2002: Commissioner in charge of enlargement Günter Verheugen (once), NATO Secretary General George Robertson (once), the chairman of EUMS Gustav Häggglund (once) and the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia Carla del Ponte (once).³⁶

Table II.4: Parliamentary questions to other institutions in 2001

	overall (Commission/ Council)	on CFSP (Comm./C.)	on ESDP (Comm./C.)
Written questions with answers (art. 44)	3715 (3302/413)	35 (14/21)	24 (15/9)
Question time (art. 43)	972 (596/376)	5 (4/1)	4 (3/1)
Oral questions (art. 42)	122 (77/45)	7 (3/4)	4 (3/1)

Data: Own calculation based on data by the European Parliament:
http://www.europarl.eu.int/questions/default_en.htm

II.4. The European Parliament's relation to the Council of the EU and the Presidency

Effective parliamentary scrutiny presupposes that the respective parliament receives draft proposals for legislation in due time, so that it has enough time for examination. Though foreign and security policy endure special circumstances, a substantial information by the EC/EU institutions and bodies is necessary. Information is provided either by the Commissioner, the Council and the High Representative or by the presidency.

The latter is represented at all plenary sessions. In addition, the presidency is represented in each committee's session two times per presidency. The presidency regularly answered questions of the European Parliament in view of CFSP and ESDP – especially in connection with meetings of the European Council.³⁷

Contradictory to the well-established information by the High Representative and the European Commission, Parliamentarians do not consider the information by the presidency as satisfying. The MEPs regularly criticise that the presidency perceives its information duties vis-à-vis the EP as only very generally and vague. Both with respect to the quality and the quantity of the information, the presidency is not considered as productive interlocutor by the parliamentarians – especially in view of foreign, security and defence issues.

Generally, the relation to the Council appears much better. The European Parliament has directed in year 2001 exactly 458 inquiries to the Council. Thereof, 413 were written inquiries and 45 were oral inquiries. In the parliamentary question time, 376 questions were placed at the Council in 2001. In view of foreign and security policy, however, the formal and informal relations to the Council are less well established. Especially in view of the (new) sub-structures of the Council, contacts are only marginal. Links depend primarily on coincidence or on close personal ties. Systematic and institutionalised structures of interaction are not established. The Policy Unit within the secretariat general of the Council, for instance, has only extremely loose contacts with the EP. The task force »ESDP« within this Policy Unit of the Council does not see any relevance for contacts with the EP or its respective bodies. On the other hand, the Policy Unit itself is also not or scarcely contacted by the MEPs. In addition, links of the European Parliament with the work of the new PSC or also the EUMC and CIVCOM are hardly existent. There are no specific references of the EP to the institutions relevant in security and defence.

³⁶ Data taken from Web Site of the EP: http://www.europarl.eu.int/plenary/default_de.htm.

³⁷ See Jacobs/Corbett/Shackelton, op. cit., fourth edition, p. 244.

II.5. The European Parliament in relation to the Member States and the European Council

Although the relationship between the European Parliament and the Member States are formalised only to a certain degree, several elements of interaction can be observed: On the one hand, the attention of governments and especially national administrations towards the European Parliament has increased since the first direct elections and the coming into force of the Single European Act. Special administrative units have been created in the national foreign offices or other ministries with a permanent observation of the plenary sessions of the EP. On the other hand, the European Parliament has also tried to establish interaction mechanisms with the Member States:³⁸

On behalf of the European Parliament, the EP President occupies several functions: During his term of office, he pays an official visit to each Member State. In this context, he is supposed to meet the head of state and government as well as relevant ministers. In addition, since 1988, the President of the European Parliament attends meetings of the European Council. This does not include the entire meeting but at least the opening of the European Council. Thereby, the EP president is given time to present EP's views on the issues to be discussed. Conversely, the chair of the European Council reports to the plenum of the European Parliament regularly on the summits of the European Council.

The most visible form of contact between the Parliament and national governments can be found in form of the visit of Heads of State and Government of the Member States in the plenary. This kind of interaction and communication has been increased considerably – including issues of foreign and security policy.³⁹ In view of CFSP/ESDP and according to the impression of several parliamentarians, it has, nevertheless, to be noted that those speeches are not considered as very substantial. When the Heads of Government use the parliament's plenary as a platform to address the Community, they usually remain quite general – giving just a rough political overview, but no detailed insight into plans on policy measures.⁴⁰

The staff of the Permanent Representations of the Member States carries out day-to-day communication. Each of the representations has at least one official administrator with particular responsibility for links with the Parliament. Regularly, they meet in a Council working group, the General Affairs Group, whose job includes approving replies to parliamentary questions to the Council. Such officials also attend the more important committee meetings, where they may sit in the seats reserved for Council, and report back promptly to their ministries on what is happening.⁴¹

From the point of view of the European Parliamentarians, meetings in the Member States are more efficient. Such contacts take place on a party – and sometimes even on an all-party basis – at the highest political levels in the Member States. The strongest political links and most regular contacts with national governments are likely to be those of MEPs from the same political parties as those in government. In Germany for instance, the former German chancellor Helmut Kohl met his CDU/CSU party MEPs every three months.⁴²

³⁸ See for following chapter especially Corbett/Jacobs/Shackleton, op. cit, fourth edition, pp. 278-287.

³⁹ Heads of Government (as opposed to Heads of State) or foreign ministers »of third countries« are not entitled to address the plenary. On such occasions [...] a special joint meeting of [AFET], the Bureau of Parliament and the inter-parliamentary delegation for the country concerned, or some variation thereof, may be held.

⁴⁰ According to the observations of Corbett/Jacobs and Shackleton, "plenary sessions also attract a stream of ministerial visits, with ministers generally holding a series of meetings with individual MEPs, a general meeting with those from his/her own party or country and perhaps a working dinner on a particular subject with a small group". See Corbett/Jacobs/Shackleton, op. cit, fourth edition, pp. 278 ff

⁴¹ Ibid.

⁴² Ibid.

In view of the internal structures of the European Parliament, it has to be taken into consideration that AFET itself has only limited institutional links either with the European Council or the Member States. These links are established more or less by the EP in its entire composition.

II.6. The European Parliament in relation to the National Parliaments and Parliamentary Groups

The co-operation with the national parliaments can be considered as an important gateway for the European Parliament to gain information and cooperation possibilities in the framework of CFSP and ESDP. Two institutionalised forms of cooperation have been developed: on the one hand, the conference of the parliament presidents (since 1981)⁴³ and on the other hand, the COSAC (Conférence des Organes spécialisées en Affaires communautaires, since 1989).⁴⁴ These two fora remained, however, without any considerable impact for several years.

The Conference of Speakers of Parliaments of the European Union suffers from the differences of competences of the national parliamentary presidents. According to the various rules of procedure, some presidents possess may even not speak on behalf of their parliaments. Due to these structural differences, the »Conference of Speakers« is not considered as an efficient instrument for the coordination of national parliaments and the European Parliament. However, there have been some serious efforts under the former EP president Nicole Fontaine to instrumentalise the »conference of the parliament presidents« as a forum for communication in CFSP. According to Nicole Fontaine this policy area was too important to leave it to a Committee.

Not sooner than in the framework of the Maastricht TEU, a co-operation between national parliaments and the European Parliament was mentioned for the first time in the framework of the treaties – explicitly in two declarations: In declaration No. 13 it was stressed that is “important to encourage greater involvement of national parliaments in the activities of the European Union”.⁴⁵ The governments of the Member States have been questioned to ensure “that national parliaments receive Commission proposals for legislation in good time for information or possible examination”. Moreover, the collaboration between the European Parliament and the national parliaments should be improved.⁴⁶ In addition to this – and as a consequence of the so-called »Assizes« held in Rome in November 1990⁴⁷ – in declaration No. 14 of the TEU, the summoning of a conference of the parliaments was enabled. According to this arrangement, both the European and national Parliamentarians to “meet as necessary as a Conference of the Parliaments.”

Though not legally binding, both explanations raised intense discussions on the involvement of national parliaments in the EC/EU policy cycle. These discussions finally led to a “Protocol on the role of national parliaments in the European Union”, attached to the (Amsterdam) Treaty on European Union. In its first part, the protocol includes binding regulations over the

⁴³ The Conference of Speakers of Parliaments of the European Union is based an initiative by former EP president Gaetano Martino. The first conference came to pass in January 1963. 1975 it was set on a regular basis by (two-year) intervals.

⁴⁴ COSAC was established in November 1989 in Paris. It was first based on the conference of the EU committees. A decision was taken by the conference of presidents of the Member State parliament and of the European Parliament. It was agreed that a body should be created, in which those national parliaments that had already installed a EU committee, – were able to dispatch its Europe-related representatives in order to act by a more intensive cooperation among each other and also with the European Parliament. Especially, a better exchange of information and a mutual support in the national work on Europe were envisioned.

⁴⁵ Declaration (No. 13) on the role of national parliaments in the European Union. (TEU – AV).

⁴⁶ A special impact derives from the former president of the Assemblée Nationale, Laurent Fabius.

⁴⁷ This meeting was the only Conference of the Parliaments of the EC.

information rights of national parliaments. In the second part, the Conference of European Affairs Committees (COSAC), established in 1989, was introduced into the framework of the treaties for the first time.

Thus, COSAC became an acknowledged institutionalised form of collaboration between the national parliaments and the EP. Specifically the examination of legal initiatives and proposals “in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals” are mentioned. Other issues are the principle of subsidiary and questions regarding fundamental rights.

Contributions of COSAC shall be forwarded to the EP, the Council and the Commission. In the protocol, however, it is clarified that the proposals and remarks of the COSAC remain non-binding. As it is stated in paragraph 7, “contributions made by COSAC shall in no way bind national parliaments or prejudge their position”.⁴⁸

In the rules of procedure fixed in 1991, it was agreed that the semi-annual COSAC meetings should be chaired and financed by the country that holds the EU presidency at that time. The meeting is usually summoned in close timely proximity to the meeting of the European Council. The conference consists of six delegates of the EP and of six delegates of each national parliament of the Member States. If the legislature of a Member State consists of two chambers, three representatives of each chamber usually take part. Moreover, up to three parliamentarians of the applicant countries have obtained an observer status.

COSAC meetings are prepared by the »chair«. This chair consists of the leaders of the national EU-committees from the Member State of the last, the current and the next presidency. In April 2001, working groups already met in advance of the XXIV. COSAC meeting for the first time. According to the position of the European Parliament, this is the highest possible degree of differentiation. An institutionalised regularity is criticised by the European Parliament, since its own institutional experience – before the MEPs were directly elected – had revealed the procedural and inter-institutional limits to a parliamentary body composed of delegates who were involved in the work of at least two parliaments.

Considering foreign and security policy, COSAC is not considered as major forum of discussion. In substance, COSAC deals particularly with institutional questions.⁴⁹ Representatives of the national governments or members of the European Commission are often invited and refer in the debates generally also to international issues.

In view of the »negotiation style« of COSAC, the parliamentarians act in a classic »diplomatic« style. Since the delegates understand themselves primarily as representatives of national groups, policy subjects are hardly discussed along party lines.

Although COSAC was re-valued by the Amsterdam Treaty and even though it is the only institutionalised body of national parliaments, its profile remains poor up to the present – both in general and particularly in view of foreign and security politics. It has to be added that the national level – especially concerning the national parliamentary committees – is scarcely affected by the COSAC. This can be explained by the heterogeneity of COSAC and the different competences of the respective national EU-committee on Europe. German delegates, for instance, frequently lament that the EU committee of the Bundestag is much better informed than COSAC and that the latter therefore rarely gives any new impulse.

Contacts to Member States’ politicians are predominantly based on personal strings. They have only a restricted influence on the work of parliamentary groups or the negotiations in the committees. All in all, a real and efficient coordination cannot be spoken of.

In contrast to the formalised collaboration in the framework of COSAC or the bilateral relations of national parliaments, the 90s have seen more intense informal contacts between the

⁴⁸ Declaration (No. 13) on the role of national parliaments in the European Union. Protocol on the role of national parliaments in the European Union, annexed to the TEU – AV, II. 7.

⁴⁹ Procedural questions at the beginning of the COSAC meeting take usually much time.

national parliaments and the European Parliament.⁵⁰ Especially at the level of the committees, there are often joint session of EP and national parliaments that can be traced back to initiatives of the EP. As Andreas Maurer has pointed out, the European Parliament invites frequently national parliaments to hold bilateral and multilateral meetings between specialised committees. These contacts between the European Parliament and national parliaments have grown from three or four a year in the late 80s and early 90s towards 20-25 in the late 90s. Though there are to a certain extent as well contacts established by AFET, it should not be overlooked that the focal point of AFET's work, however, is the collaboration with representatives of candidate countries.⁵¹

Table II.5: Inter-parliamentary co-operation of EP (1987-1998)

	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987
Joint Committee meetings	23	24	15	11	3	11	10	2	4	3	4	1
Bilateral meetings	19	18	19	14	7	12	4	2	9	6	11	4
Meetings between parliamentary Rapporteurs	4	11	5	0	2	3	1	3	0	1	0	0

Based on Data of Andreas Maurer, SWP

II.7. The European Parliament and »third countries«

The European Parliament has also developed regular interaction with parliaments and parliamentarians of third countries. Presently, there are 35 inter-parliamentary delegations (which have held, in sum, 131 meetings in 2002) and four joint parliamentary meetings. These inter-parliamentary »fora« will meet one or two times a year.

All in all, each member of the European Parliament can obtain a seat in a delegation. Many of these delegations are »sequence appearances« of agreements and associations of the EC with third countries or third country-groups. These institutional links with the third states are working quite well. Very often, ambassadors of non-EU-countries ask for the right to appear in the Parliament – or more particular in as session of AFET – and discuss and exchange views. By using these means, association agreements and other kind of agreements with third countries are shaped substantially by the European Parliament.

Regarding the quantity of work of AFET, these contacts with third states and foreign representatives take rather a large amount of time in the work of this Committee.

II.8. The European Parliament and other actors at the European level

Since the Single European Act and the Maastricht Treaty, interest groups started to pay more attention to the European sphere because the EU institutions made them aware of the importance of early-stage-information and contacts. Even the European Parliament has attracted attention. While still focussing on national ministries and on the EC-Commission, national interest groups and its European »umbrella organisations« address increasingly also to the EP.⁵² For the 90s, a number of 150 lobbyists can be estimated per plenary day in Strasbourg.⁵³

⁵⁰ See for details Andreas Maurer: *Parlamentarische Demokratie in der Europäischen Union*, Baden-Baden (forthcoming) 2002.

⁵¹ In addition, on inquiry of national committees, bilateral meetings with the respective committee of the EP have been held in order to provide the national committee with background information.

⁵² See Marinus P.C.M. van Schendelen: *Die wachsende Bedeutung des europäischen Lobbying*, in: *Zeitschrift für Parlamentsfragen*, 1 (1993), pp. 64-72; Beate Kohler-Koch, *Organized Interests in the EU and the European Parliament*, unpublished paper for: International Political Science Association, XVII World Congress, Seoul, 17-21 August 1997.

Hence, intensive interactions can be observed. Larger companies, especially multinationals, are aware of the strategic importance of EU-rules concerning competition, health, safety and environment, and of EU-programmes and initiatives concerning research and development.⁵⁴ However, although the number of offices run in Brussels by the various interest groups continues to rise, the policy field of security and defence policy remains comparatively uncovered. Being aware of the limited role of the EP in these policy fields, the interest groups primarily address the Council and the Commission but ignore the European Parliament. With the growing relevance of CFSP and ESDP, the European Parliament sometimes serves as a point of reference for interest groups (for instance of the armament industry) – still the number of meetings with single parliamentarians is not relevant.

II.8.1. The European Parliament and Parliamentary Assemblies of international organisations

As far as security and defence elements are concerned, the Parliamentary Assembly of the WEU is still of importance. In May 1998, the EP suggested the set-up of an inter-parliamentary delegation within the EP in which both the WEU Parliamentary Assembly and the EP would be represented on an equal basis with each delegation consisting of up to ten members. The main purpose of such a body was meant to be the improvement of information exchange between the EP and the WEU assembly. However, since 1998, the position of the European Parliament vis-à-vis the WEU has considerably changed. At the present, the EP is very much in favour of transferring the remaining competences of the WEU and in particular of its assembly to the European Parliament. Nevertheless, as long as the WEU Assembly formally exists, there are several informal means of contact. The European Parliament delegates observers to the WEU Assembly (Interim European Security and Defence Assembly), which take part in the sessions of this body. The same kind of interaction is applicable for the relationship between the European Parliament and the Parliamentary Assembly of the Council of Europe. Hardly any interaction exists with the Parliamentary Assembly of the OSCE.

II.8.2. The European Parliament and NATO

Between the European Parliament and NATO several formal and informal contacts can be observed. Formal links have recently improved by establishing links between the EP and the Parliamentary Assembly of the NATO. There are ten parliamentarians of the European Parliament who constitute the »Delegation for the relations with the Parliamentary Assembly (of the NATO)«.⁵⁵

In view of the short existence of this delegation, it cannot be comprehensively assessed yet. At the present, the 10 delegates of the European Parliament already possess some participa-

⁵³ Richard Corbett/ Francis Jacobs: Summary Report on the European Parliament's Current Activities and Working Structures, in: The European Parliament/ TEPISA, Beyond Traditional Parliamentarism: The European Parliament in the Community System, Internationales Symposium, Straßburg, 17/18 November 1988, p. 40; Jacobs/ Corbett, The European Parliament, first edition, op. cit., p. 257.

⁵⁴ See for detailed statistics Wolfgang Wessels: The Growth and Differentiation of Multi-Level-Networks: A corporatist Mega-Bureaucracy or an Open City?, in: Helen Wallace and Alasdair R. Young (eds.): Participation and Policy-Making in the European Union, Oxford 1997), pp. 17-41; Wolfgang Wessels: Die Öffnung des Staates, Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995, Opladen 2000, pp. 353-357.

⁵⁵ Currently ten parliamentarians are delegated: C. Heaton-Harris, P. Morillon, K. von Wongau, S. Zappalas (all PPE), H. Kuhne, C. Lalumiere, J. Wiersma (all PSE), W. Beysen (ELDR), E. Korakas (GUE/NGL), D. Cohn-Bendit (Verts/ALE).

tion rights. They might also take the floor in the committee or in the plenary. Moreover, they even are allowed to perform as Co-reporter in the Parliamentary Assembly of the NATO.⁵⁶

II.9. Conclusions: channels for participation of the EP in foreign, security and defence matters

In view of general patterns of parliamentary communication, the high degree of interaction at the European level corresponds with a low use of interaction mechanisms at the national level. While there are a lot of contacts with the European Commission and to a certain degree also the (higher levels of the) Council, the heterogeneity and plurality of the European Parliament as well as the wide range of tasks restricts the time budget for intensive relations to the national arenas.

In view of security and defence policy – a policy field that is according to its nature more confident and less public than other policy fields – the European Parliament is still limited to the outskirts of the European Union's foreign policy decision-making. This general observation refers in particular to an extremely restricted exchange of information. Despite the more or less satisfying information by the High Representative and the Commissioner in charge of external affairs, there are hardly any national contacts relevant for the Parliamentarians in ESDP matters. The European Parliamentarians are only scarcely presented in the inner-state decision groups of national parliaments and parties – particularly since the de-facto-abolishment of the double mandates.

Elements such as the right to take part and to speak in the sessions of parliamentary groups of the national parliament or to be included in specific forms of national parliamentary bodies (see more detailed on this annex III) could be examples for such a link. However, European Parliamentarians are in some respect not always welcome and sometimes considered only »second class«-participants. As a rule, the European Parliamentarians have no higher office in the national party.⁵⁷ Formalised representation forms of the European Parliamentarians in the national parliamentary groups and parties' executive board does not open a channel for efficient and substantial participation.

Conversely, in national parliaments, the effects of the EP activities are low as the German case illustrates: of the 39 resolutions transmitted by European parliament in the period of August 1984 until July 1987 at the Bundestag, the Bundestag has made only in two cases reports on which he has taken a decision. Even with the revaluation of the review of EU activities (starting in the early 90s) in the Bundestag, this has not changed significantly. Resolutions of the EP are routinely acknowledged, but only in collection with other EU documents (e.g. by the European Commission). Only in special cases and following the demand of a political group, resolutions might be debated separately. The high number of EU documents funnelled to the committee makes it hard for its members to measure the significance.⁵⁸ Nevertheless, it must be stated that the MEPs have apparently failed to convince their colleagues at the national level of the importance of the declarations they issue. COSAC that is considered as far from being efficient underlines this statement.

First operative conclusions that can be drawn from this empirical evidence prove the idea of a »triple-S« enforcement: the structures of the European Parliament have to be 1) more »STREAM-LINED«, 2) more »SPECIALISED« and 3) better »STAFFED«:

1) In order to give the European Parliament a say in CFSP and ESDP issues, it has to focus more concentrated and coherent on this policy field. The current committee structures reveal

⁵⁶ General Philippe Morillon has been elected Chairman.

⁵⁷ See Eva Thöne: Das direkt gewählte Europäische Parlament. Ein Beitrag zur Abgeordnetensoziologie, in: Zeitschrift für Parlamentsfragen, 2 (1982), p. 33.

⁵⁸ See Christian Sterzing/Stefan Tidow: Die Kontrolle der deutschen Europapolitik durch den EU-Ausschuss des Bundestages – Bilanz und Reformpotentiale, in: integration 3 (2001), pp. 274-288.

an extremely wide range of policy fields that AFET is involved. For this reason the internal committee structure of the EP should be revised in order to provide a more efficient way of coping with the heavy workload.

2) A specialisation of AFET is indispensable. This might be achieved either by a subdivision of tasks into several subcommittees or the division of AFET in two different committees: one covering the field of foreign policies and one focussing on defence and security matters.

3) Such new committee structures should go together with more efficient and better-staffed structures in the Secretary general of the European Parliament. The number of units involved in CFSP/ESDP should either be reduced – especially in view of the shared competences between General Directorate 2 and General Directorate 4 – and the number of administrators supporting AFET as a whole should be increased. In the long run, AFET should be able to develop a comprehensive expertise in CFSP/ESDP issues. Concepts such as to benefit of the remaining administrators from the WEU (Parliamentary Assembly) or to set-up a subsequently specialised »EP-Concours« on foreign, security and defence matters might contribute to this necessity.

Annex III: The comparative dimension: »national« parliamentary involvement in CFSP and ESDP: Lessons from other parliaments

“The Union had a relevant advantage over NATO in its ability to combine different resources, both military and non-military. But the difficulty for democracies lay not only in the political will to use force, but above all in maintaining that will once the operation had been launched. It was necessary to reconcile collective action and national responsibilities in each State answerable to its parliament for the lives and deaths of its citizens.”

GENERAL SIR RUPPERT SMITH

Seminar on Defence for Members of the Convention,

7 November 2002

Detailed Table of Contents of Annex III:

<i>III. The comparative dimension: »national« parliamentary involvement in CFSP and ESDP</i>	107
<i>III.1. Danish Parliamentary participation in foreign, security and defence policy: governmental prerogative versus democratic legitimacy</i>	107
III.1.1 Introduction	107
III.1.2. The national policy-cycle	110
III.1.2.1. The Government	110
III.1.2.2. The Parliament's Participation at the National Level	112
III.1.3. The Parliament's Participation at EU Level	121
III.1.4. Concluding Remarks	121
<i>III.2. French Parliamentary participation in foreign, security and defence policy: anaemic national performance and European potential</i>	125
III.2.1. Introduction	125
III.2.2. French Parliament participation to security and defence policy at the national level	125
III.2.1.1. French parliament participation at the different policy stages	126
III.2.1.2. French parliamentary institutional structures regarding security and defence questions	127
III.2.1.3. An emerging parliamentary diplomacy?	128
III.2.2. French Parliament participation in CFSP and ESDP affairs	129
III.2.2.1. The problematic scrutiny of CFSP documents	129
III.2.2.2. The parliamentary oversight of CFSP and ESDP	130
III.2.2.3. Interactions at the European level	131
III.2.3. Conclusions	132
III.2.3.1. Performance of the French Parliament	133
III.2.2.2. Perspectives and suggestions for the future	134
<i>III.3. German Parliamentary participation in foreign, security and defence policy: developing structures in a complex system</i>	137
III.3.1. Introduction: Divided competences in foreign affairs	137

III.3.1.1. The historical framework	137
III.3.1.2. General doctrines and guiding principles	138
III.3.2. The national policy cycle: a new role for the Bundestag?	138
III.3.2.1. The »hegemony« of the executive	139
III.3.2.2. The »weakness« of the legislature in decision-taking	140
III.3.2.3. Other Parliamentary functions in foreign policy	141
III.3.3. Other actors in Foreign policy	142
III.3.3.1 The role of the Bundesrat	142
III.3.3.2 The role of the Federal constitutional court	142
III.3.4. The Committee structure	142
III.3.4.1 The foreign committee	142
III.3.4.2 The Committee on European Affairs	143
III.3.5. Conclusions	144
<i>III.4. British Parliamentary participation in foreign, security and defence policy: adapting to Europe within a transformed world</i>	<i>147</i>
III.4.1 Introduction	147
III.4.1.1. Historical fundamentals	147
III.4.1.2 UK priorities re security and defence policy/CFSP and ESDP	149
III.4.2. The National Policy-Cycle	151
III.4.2.1. Actors	151
III.4.3. Conclusions	158
<i>III.5. Swedish Parliamentary participation in foreign, security and defence policy: a reform process focus at the national level</i>	<i>160</i>
III.5.1 Introduction	160
III.5.1.1 The Swedish Parliament – The Riksdag	160
III.5.1.2. Swedish Security and Defence Policy	160
III.5.1.3 General Division of Competences and Responsibilities in Foreign, Security and Defence Policy	161
III.5.2. The National Policy Cycle	161
III.5.2.1 The Government	161
III.5.2.2. The Riksdag	162
III.5.3. National Parliament Participation at the EU Level in ESDP Affairs	164
III.5.3.1. Governmental Coordination of EU Matters	164
III.5.3.2. Parliamentary Levels and Channels of Coordination with Regard to EU Policy Making	165
III.5.3.3. The Role of the Committee on EU Affairs	167
III.5.3.4. Interaction with the Brussels Institutions	168
III.5.3.5. Public Space for Information and Discussion	168
III.5.3.6. The EU Information Centre (EU-upplysningen)	169
III.5.3.7. The EU 2004 Committee	169
III.5.4 Conclusions	169
<i>III.6. Polish Parliamentary participation in foreign, security and defence policy: the search for parliamentary scrutiny</i>	<i>174</i>
III.6.1. Introduction	174
III.6.1.1. Poland after 1989	174

III.6.1.2. Polish Foreign, Security and Defence Policy_____	175
III.6.2. The national policy cycle _____	177
III.6.2.1. The Executive_____	177
III.6.2.2. The Parliament _____	179
III.6.3. Conclusion _____	184
<i>III.7. The US-Congress in foreign, security and defence policy: invitation to struggle</i> _____	188
III.7.1. Introduction: The ambiguous relationship of Congress and President in foreign affairs _____	188
III.7.1.1. The historical framework _____	188
III.7.1.2. General doctrines and guiding principles _____	189
III.7.2. The national policy cycle: Opportunity structures for control _____	190
III.7.2.1. Initiative powers _____	191
III.7.2.2. Budgetary powers _____	192
III.7.2.3. Legislative powers _____	192
III.7.2.4. Military powers _____	193
III.7.2.5. »Confirmation« powers _____	194
III.7.2.6. Ratification powers _____	194
III.7.2.7. Hearings _____	194
III.7.2.8. Informal powers _____	195
III.7.3. The Committee structure: the organisation of parliamentary work in foreign policy _____	195
III.7.3.1. The committee structure in general _____	195
III.7.3.2. The committee structure with regard to foreign policies _____	196
III.7.3.3. Long time trends with regard to foreign policies _____	197
III.7.4. The United States, the Congress and ESDP _____	197
III.7.5. Conclusion _____	198
<i>III.8. The Parliamentary Assembly of the NATO</i> _____	201
III.8.1. Fundamentals _____	201
III.8.2. Functions _____	201
III.8.3. Representation and Nomination _____	201
III.8.4. Committee Structures _____	203
III.8.5. Sessions and output of the Parliamentary Assembly _____	203
III.8.6. Conclusions _____	203
<i>III.9. The Parliamentary Assembly of the WEU</i> _____	206
III.9.1. Fundamentals _____	206
III.9.2. Functions _____	206
III.9.3. Representation and Nomination _____	206
III.9.4. Committee Structures _____	208
III.9.5. Sessions and output of the Parliamentary Assembly _____	208
III.9.6. The WEU Assembly and ESDP _____	208
III.9.7. Conclusions _____	208

Selected Bibliography	209
<i>III.10. The Parliamentary Assembly of the Council of Europe</i>	211
III.10.1. Fundamentals	211
III.10.2. Functions	211
III.10.3. Representation and Nomination	211
III.10.4. Committee Structures	212
III.10.5. Sessions and output of the Parliamentary Assembly	213
III.10.6. The relationship with the European Union	214
III.10.7. Conclusions	214
<i>III.11. The Parliamentary Assembly of the OSCE</i>	215
III.11.1. Fundamentals	215
III.11.2. Functions	215
III.11.3. Representation and Nomination	216
III.11.4. Structure and Committees	216
III.11.5. Sessions and output of the Parliamentary Assembly	216
III.11.6. Conclusions	217
<i>III.12. Assessing the involvement of parliaments and parliamentary assembly</i>	220
III.12.1. The fundamentals: the growing attention of national parliaments to foreign and defence policy	221
III.12.2. The foreign and security policy cycle: the imperfect parliamentary participation	222
III.12.2.1. Preparation of Decisions	222
III.12.2.2. Decision-taking: International treaties	223
III.12.2.3. Deployment of forces	224
III.12.2.4. Budgetary Powers	225
III.12.2.5. Control of decisions and public debate	225
III.12.2.6. The participation at the European level	226
III.12.3. The role of the Committees in foreign and defence policy	227
III.12.3.1. The Foreign Affairs Committees	227
III.12.3.2. The Defence Committees	228
III.12.3.3. The »EU«-Committees	229
III.12.4. The role of the Parliamentary Assemblies of international organisations	229
<i>III.13. Conclusions: Lessons from national parliaments</i>	230

III. The comparative dimension: »national« parliamentary involvement in CFSP and ESDP

The third annex of the study focuses on the role of parliamentary participation in security and defence matters by analysing the involvement of several national parliaments as well as western parliamentary assemblies in foreign, security and defence politics (deliverable 3). The chosen EU Member States are Denmark, France, Germany, Portugal, Sweden and the United Kingdom. This selection takes into account various »cleavages« including larger and smaller countries, northern and southern states, centralised and decentralised Member States, countries with a »strong« and a »weak« parliamentary representation on the national level as well as »aligned« and »non-aligned« states.

Apart from these states, Poland will be considered as representing the candidate countries. Finally, the role of the Congress in US foreign and security policy will be used as a background against which the EP's role can be measured and assessed.

In addition, the role and the involvement of several parliamentary assemblies of international organisation such as the NATO, the WEU, the Council of Europe and the OSCE will be analysed and assessed.

The assessing of strength and weakness will start from the question if there are cases or sectors where there is no common standard of EU-wide parliamentary control in the Member States and where therefore a European approach would be appropriate for filling democratic legitimacy gaps in security and defence policy. The premise of the analysis is that it is vital for the citizens all over the EU that a certain jointly accepted degree of parliamentary participation in security and defence policy would be respected and implemented. If certain standards are not coherently met at the national level, there could be a demand for the EP to step in and guarantee democratic control.

III.1. Danish Parliamentary participation in foreign, security and defence policy: governmental prerogative versus democratic legitimacy

(Finn Laursen)

III.1.1 Introduction

Foreign policy has usually been a category of its own compared to domestic politics. It is different from the kind of legislation and administration that takes place within states. Foreign policy concerns relations between states. States are supposed to be sovereign and equal in international law. Inter-state relations will partly be based on power and traditionally in Europe the heads of state have had the main responsibility for foreign affairs. Montesquieu for instance distinguished between "la puissance exécutrice des choses qui dépendent du droit des gens, et la puissance exécutrice de celle qui dépendent du droit civil" (*De l'esprit des lois*, livre XI, chap. VI).

While democracy has been extended to most aspects of domestic politics foreign policy poses special problems for democratic control and in most states foreign policy has remained a governmental prerogative with somewhat limited influence of parliaments. But many international agreements do affect internal affairs within the states. And international politics in an age of interdependence – and globalisation – have profound impacts on the wealth and security of states. It is therefore in accordance with democratic doctrine that the Parliament as the representative of the people should get involved in foreign affairs.

In the case of Denmark the parliament, the *Folketing*, does get involved in foreign policy in various ways. The Constitution contains important stipulations in article 19:

1. The King [read government] shall act on behalf of the Realm in international affairs, but, except with the consent of the Folketing, the King shall not undertake any act whereby the territory of the Realm shall be increased or reduced, nor shall he (sic) enter into any obliga-

tion which for fulfilment requires the concurrence of the Folketing or which is otherwise of major importance; nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing.¹

So treaties and obligations of major importance require parliamentary consent. And the Parliament will usually get involved when international law is transformed into or incorporated into national law. But it is the government, represented by the foreign minister and other ministers, that act internationally. The Parliament cannot represent the state externally according to Danish legal doctrine.²

Article 19 also stipulates:

2. Except for purposes of defence against an armed attack upon the Realm or Danish forces the king shall not use military force against any foreign state without the consent of the Folketing. Any measure which the King may take in pursuance of this provision shall forthwith be submitted to the Folketing. If the Folketing is not in session it shall be convened immediately.

So military actions normally require assent. This includes military actions under the UN or NATO. Peace-keeping activities under the UN, where the activities take place with the consent of the states in question, are not covered formally by article 19, but the government has nonetheless sought the assent of the Parliament for such activities, starting from the United Nations Emergency Force (UNEF) in 1956.³

Whenever international cooperation involves financial commitments the Parliament also gets involved through the annual finance bill.

A debate about parliamentary oversight in the area of foreign policy led to the establishment of a special parliamentary Foreign Policy Committee (*Udenrigspolitisk nævn*) in 1923. In connection with the latest change in the Danish constitution in 1953 this committee was explicitly mentioned in article 19:

3. The Folketing shall appoint from among its members a Foreign Affairs Committee, which the government shall consult before making any decisions of major importance to foreign policy. Rules applying to the Foreign Affairs Committee shall be laid down by statute.

So the stipulation is one of consultation in the case of decisions of major importance. Obviously the government has some discretion in deciding which decisions are of major importance, but it does risk criticism in the Chamber of the *Folketing*, if it pursues a policy not supported by a majority of the MPs – and in worst case a vote of no confidence. Denmark has had a system of parliamentary government since 1901, also »constitutionalized« in 1953.

The Constitution-based Foreign Policy Committee (*Udenrigspolitisk Nævn*) is based on confidentiality. The purpose, one could argue, has been to create broad support and continuity in foreign policy and minimize party-political polemics. An Act concerning the Council from 1954 mentions that the government shall discuss cases of importance for the country's foreign policy and keep the Council informed about important international events. The Council is only consultative. It does not give consent to specific actions. Nor does it issue reports to the Chamber of the *Folketing*.⁴ As such it is different from the standing committees that take an active part in the legislative process. Among the 24 standing committees mentioned in the Standing Orders of the *Folketing* we find another Foreign Affairs Committee (*Udenrigspolitisk Udvalg*).⁵ This committee, as we shall see later, has traditionally especially dealt with

¹ An English version of the Danish Constitution can be downloaded from the website of the Foreign Ministry: www.um.dk

² Max Sørensen: *Statsforfatningsret*, Copenhagen 1969, p. 273.

³ Sørensen, 1969, p. 280.

⁴ Sørensen, 1969, pp. 282-283.

⁵ An English version of the Standing Orders can be downloaded from the website of the Parliament: www.ft.dk.

development policy, but it also gets involved with other foreign policy issues that require legislation.

The Constitution-based Foreign Policy Committee (*Udenrigspolitisk Nævn*) has 17 members (and 17 substitutes) elected proportionally by the Parliament at the beginning of each annual session or after an election. The minister can impose professional secrecy on the members when he/she gives specific information to the Council. In such cases the members cannot even pass the information on to other members of their party.⁶ Also the standing committees mentioned in the Standing Orders of the Parliament have 17 members (but only 11 substitutes that take part in the work without a right to vote).

The 1953 Constitution further introduced stipulations about transfer of sovereignty to supra-national organization. Article 20 reads:

1. Powers vested in the authorities of the Realm under this Constitutional Act may, to such extent as shall be provided by statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and co-operation.

The 1953 Constitution established a very difficult decision rule for such transfer:

2. For the enactment of a Bill dealing with the above, a majority of five-sixths of the members of the Folketing shall be required. If this majority is not obtained, whereas the majority for the passing of ordinary Bills is obtained, and if the Government maintains it, the Bill shall be submitted to the electorate for approval or rejection in accordance with the rules for referendum laid down in section 42.

Sections (or Articles) 20 and 42 of the Danish Constitution were first used in 1972 when Denmark decided to join the European Communities (EC) by a referendum.

The Parliament had established a Market Committee (*Markedsudvalg*) to deal with Danish EC policy already in 1961 after the first Danish application for EC membership. This committee was made permanent in 1973, and after the adoption of the Maastricht Treaty it changed its name to the European Affairs Committee (*Europaudvalget*) in 1994. The European Affairs Committee has become a powerful committee in the Danish parliamentary system.⁷ It is one of the 24 standing committees mentioned in the Standing Orders of the *Folketing*.

How does the European Union's second pillar, the Common Foreign and Security Policy (CFSP) fit in with this system?

The short answer is that foreign policy falls under article 19 of the constitution, including the Foreign Policy Committee established by that article, while EC matters, i.e. first pillar issues in the EU, fall under article 20 and the mechanisms established since 1973 to control the government's EC policy, including the current European Affairs Committee. But where does pillar one finish and pillar two start? As a matter of fact, since the entry of force of the Maastricht Treaty the government has sent most foreign policy matters relating to the EU's second pillar, Common Foreign and Security Policy (CFSP), both to the Foreign Policy Committee and the European Affairs Committee. What happens then, because the former is purely advisory, while the latter can and does give negotiation mandates to the government? So far no cases have really forced the issue. But the issue is clearly on the Danish political agenda.

To finish this introductory overview of parliamentary committees it should be mentioned that there is also a Defence Committee – and if money is involved there is the Finance Committee responsible for the finance bill. So if we take a comprehensive view of foreign, security and defence policy, a number of standing committees of the *Folketing* can get involved. Because

⁶ Sørensen, 1969, p. 112.

⁷ See Finn Laursen (2001a): The European Affairs Committee of the Danish Folketing: 'Mini-Parliamentarism in Operation', *CFES Working Paper no 1*. Odense, also Finn Laursen (2001b): The Danish Folketing and its European Affairs Committee: Strong Players in the National Policy Cycle, in: Maurer, Andreas/Wessels, Wolfgang (eds.), *National Parliaments on their Ways to Europe: Losers or Latecomers?* Baden-Baden, pp. 99-115.

of Denmark's defence exemption, however, the Defence Committee has not played an important role in relation to the EU.

It may be relevant also to briefly reiterate the main lines of Danish foreign policy since 1945. Denmark joined the UN in 1945, and UN membership has been uncontroversial in Danish politics. Denmark joined NATO in 1949 somewhat reluctantly after plans for a Scandinavian defence union had failed. It was a somewhat low-level engagement. Denmark neither accepted the stationing of foreign troops on its territory nor nuclear weapons. Overall, however, with the exception of the 1980s when an alternative majority forced the Conservative-Liberal government to accept resolutions critical of NATO decisions, NATO membership has not been a major issue in Danish politics. Nordic cooperation also met with broad support. It was European integration, which was the most controversial issue in Danish relations with other countries.

As is well known the Danes first rejected the Maastricht Treaty in June 1992. It was only after negotiating four exemptions or opt-outs that the Danes accepted the Maastricht Treaty in May 1993. One of these dealt with defence policy. Denmark never joined the Western European Union (WEU) and Denmark does not take part in developing the EU defence policy under the second pillar.⁸ This is currently creating unsolved problems in connection with Denmark's relation's with the Common Security and Defence Policy (CSDP) which is being developed since 1999.

The current government of Liberals and Conservatives, which took power in November 2001, would like to get rid of the Danish exemptions. So would the leading opposition parties, the Social Democrats and Social Liberals. And indeed, it seems that currently a majority of the Danish people would vote for abolishing the defence exemption if a referendum were to be called today. But since the »no« in the referendum about Danish participation in the euro in September 2000 the political establishment has been extremely cautious about calling further referenda. The Treaty of Nice was ratified by Denmark without a referendum, the claim being that it did not fall under article 20 but article 19 of the Constitution. Ratification could thus be authorised by a simple majority in the *Folketing*.⁹ The Danish political establishment may deliberately try to limit the use of referenda, but the defence exemption – as well as the other exemptions – can only be abolished by (a) new referendum(s). The issue may re-emerge after the current Danish EU presidency. The ongoing European Convention and future Intergovernmental Conference (IGC) 2004 can be expected to force the issue on Denmark again.

III.1.2. The national policy-cycle

III.1.2.1. The Government

The government has set up an elaborate system to coordinate Danish EU policy. The lowest level consists of 35 EU Special Committees. (Until 2001 they were still called EC Special Committees). Nearly all of these deal with first pillar matters and draw in various ministries and affected interests. Two of them deal with Justice and Home Affairs, viz. number 32, which deals with Police and Legal Cooperation, and number 33, which deals with Asylum and Immigration Cooperation. There is also an EU Special Committee that deals with development policy. All Special Committees have clearly been established to coordinate Danish policy in respect to proposed EC legislation. There is no EU Special Committee for CFSP matters.

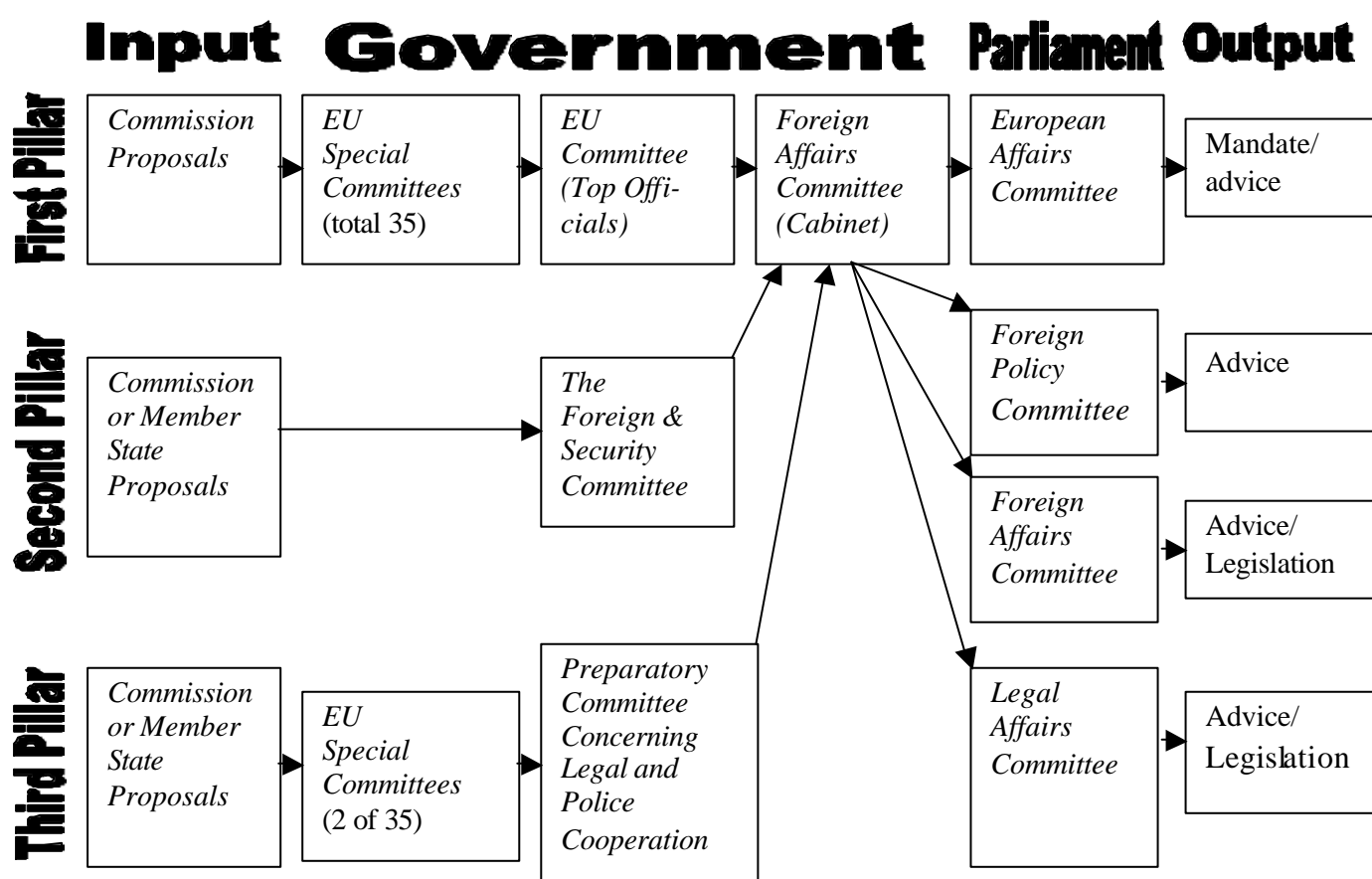
⁸ See Finn Laursen: Denmark and the Ratification of the Maastricht Treaty, in: Finn Laursen/ Sophie Vanhoo-nacker (eds.), *The Ratification of the Maastricht Treaty*. Dordrecht 1994, pp. 61-86.

⁹ See Finn Laursen: Denmark and the Treaty of Nice: The Battle to Avoid a Referendum, Paper prepared for delivery at conference at the Centre of European Studies, University of Southern Denmark, 6-7 September 2002.

The second layer in the system is an EU Committee of senior officials (*EU-Udvalg*) which co-ordinates the input of the Special Committees. The Foreign Ministry plays a central role in this committee. At this same level there is a separate committee of senior officials that deals with CFSP cases (*Udenrigs- og sikkerhedspolitisk embedsmandsudvalg*). In 1995 the members of this committee came from Foreign Ministry (chairman), the Prime Minister's Office, the Ministry of Defence, Environment and Energy Ministry, Ministry of Economics and the Ministry of Health. This Committee also used to handle Justice and Home Affairs (JHA) issues. In the latter case representatives from the Ministries of Justice and Interior will also take part.¹⁰

Graph III.1: The Danish Decision Process in EU Matters

Due to the Danish Defence exemption the Defence Committee has not been included.



Source: Compiled by the author with the assistance of Berenice Lara-Laursen

The third level is a cabinet-level Foreign Affairs Committee (*Udenrigspolitisk Udvalg*) composed of most affected ministers. Prior to 1994 the cabinet had two committees, a Common Market Committee and a Foreign and Security Committee. From February 1994 the two were merged into the Government's Foreign Affairs Committee that deals with pillar 1, 2 and 3 matters. As of 1 April 2002 the following ministers take part in this committee: The Foreign Minister, the Prime Minister, the Minister for Economic Affairs and Industry, the Finance

¹⁰ See EF-Udvalget: Den danske beslutningsprocedure i EU-sager: Sammenfatning, February 1995.

Minister, the Employment Minister, the Minister of Justice, the Minister of Culture, the Minister for Refugees, Immigrants and Integration (currently also European Affairs Minister), the Taxation Minister, the Minister for Food and Agriculture, the Minister for Defence and the Environment Minister. The agenda is divided into two parts: Part I dealing with EC cases and Part II dealing with CFSP and JHA cases. The composition of the committee varies for the two parts. For part II it is a smaller groups of ministers directly affected that meets.¹¹

III.1.2.2. The Parliament's Participation at the National Level

As already indicated a number of committees in the Parliament get involved in EU policy.

The Foreign Policy Committee (Udenrigspolitisk Nævn)

The English version of the Danish Constitution, which can be found on the website of the Danish Foreign Ministry, translates the article 19 committee as a Foreign Affairs Committee. To create a distinction with the standing committee on foreign affairs mentioned in the Standing Orders we shall refer to this Constitution-based committee as the Foreign Policy Committee. This is also the practice of the Parliament.¹²

As mentioned in the introduction this committee dates back to 1923 and was given a constitutional basis in 1953. As also mentioned earlier it is advisory. The Government must keep it informed about and discuss major foreign policy issues with it.

The Foreign Policy Committee is the oldest standing committee of the Danish Parliament. It was established on the initiative of the Social Liberal Party (*Radikale Venstre*). During the First World War the government had informed joint meetings of the two chambers of the Parliament (*Rigsdag*) behind closed doors of foreign policy issues. But apart from a brief period after the war, where the Parliament was informed about the peace negotiations in Paris, this practice stopped after the war.¹³ Some of the concerns of the Parliament in the beginning of the 1920s were a trade agreement being negotiated with the Soviet Union and the possibility of getting access to secrete documents concerning the reunification of South Jutland with Denmark after the 1920 plebiscite that returned Northern Slesvig to Denmark.¹⁴

The Social Democratic Party said during the proceedings about the creation of this committee that "It has been a disaster for the world that foreign policy was left in a darkness that hid it also from the representatives of the people".¹⁵ The Social Democrats suggested regular joint meetings of the two chambers of the Parliament, where the foreign minister should report about foreign policy issues, and where it should be possible for the MPs to ask questions to the minister. But on this matter the Social Democrats were in a minority. The majority of the Liberal Party and the Conservative Party eventually adopted the solution of the Foreign Policy Committee, which would meet behind closed doors under the rule of confidentiality. At the final vote the Social Liberals and the Social Democrats abstained. It was also at the final stage of the proceedings that it was decided to call it "*nævn*" (Council or Board) to distinguish it from normal Parliamentary "*udvalg*" (Committees).

When the Foreign Policy Committee was incorporated into the Constitution in 1953 the duty for the government to keep the Parliament, now the unicameral *Folketing*, informed was strengthened. The background for this was the German occupation on 9 April 1940. The gov-

¹¹ See EF-udvalget, 1995; Folketinget, EU-Oplysningen (2002b): *Folketingets Europaudvalg. Parlamentarisk kontrol med regeringens politik i EU*. Copenhagen, July 2002.

¹² See Folketing (2002c), *The Foreign Policy Committee*. Copenhagen, October.

¹³ See Knud Larsen: Lovgivningsmagten og udenrigspolitikken – historisk set, in: Niels Jørgen Haagerup and Christian Thune (eds.), *Folketinget og udenrigspolitikken*. DUPI-hæfte. Copenhagen 1986, pp. 11-23.

¹⁴ Eigil Andersen et al.: *Folketingets udvalg 1950-1975*. Aarhus 1977, pp. 118-119.

¹⁵ quoted from *ibid*, p. 120, authors translation.

ernment had known about the occupation a few days earlier but not shared this information with the Foreign Policy Committee. A new Act concerning the Foreign Policy Committee was adopted in February 1954. According to this Act the government must consult prior to any decision of greater foreign policy significance. The 1923 Act had said “as far as possible”.¹⁶ The chairman calls the meetings of the Committee. But a meeting must be called if requested by three members of the Committee or by the government. The minister or the chairman can impose the rule of silence on specific information given in the meetings. The members sign a written declaration that they will respect this obligation.

The Foreign Ministry used to act as secretariat for the Committee but there is now a secretariat in the Parliamentary Department of the *Folketing*. The Foreign Ministry is responsible for preparing draft agendas and the records of the meetings.

One of Denmark’s great constitutional lawyers, Alf Ross, saw the Foreign Policy Committee as a body where the government can inform leading politicians early on about future foreign policy decisions. This way decisions will not be presented to the Parliament in the last moment on a take-it-or-leave-it basis. In connection with negotiations with other states the government does not put its cards on the table, Ross emphasized. Secrecy is part of international politics. Foreign policy questions are often delicate and the danger of indiscretion works against closed meetings of the larger Chamber of the Parliament. A smaller committee will make it possible to exclude small disloyal parties, Alf Ross said. He also emphasised that the Parliament cannot give instructions to the Committee. “The Committee is an independent body which acts instead of the *Folketing*”.¹⁷

According to a study carried out in the 1970s the Foreign Policy Committee met every second or third week then. Both then and now the Prime Minister and Foreign Minister usually take part in the meetings, sometimes other ministers, especially the Defence Minister. The government will give an orientation. The members can make comments or ask questions. Part of the time is spent on what to tell the press afterwards. Major discussions in the Foreign Policy Committee seem rare. The fact that no decisions are made may also limit the motivation of the members.¹⁸ In the mid-eighties the Committee is said to have met an average of 15 times per year, with meeting usually taking between 30 and 90 minutes.¹⁹ According to a recent account the Committee meetings are normally held every three to four weeks and usually last two to three hours.²⁰

According to a member of the Foreign Affairs Council from the Socialist People’s Party for a number of years, Gert Petersen, the Council did discuss the Soviet invasion of Czechoslovakia in 1968 and the outbreak of the Middle East War in 1973. There was also a big discussion of a declaration on the Palestinian question agreed through European Political Cooperation (EPC), the forerunner of CFSP. The resolution was less pro-Israeli than Danish foreign policy had traditionally been, and it had not been discussed in the Foreign Policy Committee prior to being adopted through EPC.²¹

NATO policy has been one of the important issues on the agenda of the Foreign Policy Committee.

The latest developments have been affected by the Austria case, where EU heads of state and government imposed sanctions on Austria outside the usual EU channels. The case led to par-

¹⁶ See Knud Østergaard: *Det udenrigspolitiske Nævn*, in: Niels Jørgen Haagerup/ Christian Thune (eds.), *Folketinget og udenrigspolitikken*. DUPI Hæfte. Copenhagen 1986, pp. 25-34, p. 26.

¹⁷ See Alf Ross: *Dansk Statsforfatningsret I. Anden, gennemarbejdede udgave*. Copenhagen 1966, pp. 394-395, author’s translation.

¹⁸ Andersen et al., 1977, p. 125.

¹⁹ Østergaard, 1986, p. 30.

²⁰ Folketinget, 2002, p. 8.

²¹ Andersen et al., 1977, pp. 125-126.

liamentary criticism of the Danish government, the prime minister in particular, who had not consulted the Foreign Policy Committee. The Foreign Policy Committee prepared a report and discussed the issue at a meeting on 11 May 2000 where the Council decided to request a note (*Notat*) from the International Division describing the practice of parliamentary involvement in foreign policy issues of greater importance. This Note issued in October 2000 gives a useful overview of constitutional requirements and the development of EPC and CFSP.²²

From this Note we learn that it is normal practice that the meetings in the European Council are one the agenda of the Foreign Policy Committee and that they are dealt with by that Committee before being dealt with by the European Affairs Committee, but usually the same day. Afterwards an oral report will be given to the Foreign Affairs Committee as well as the European Affairs Committee. The content of the two oral reports tend to be similar, but will normally go into greater depth for CFSP matters in the Foreign Policy Committee than in the European Affairs Committee.

Prior to meetings in the EU General Affairs Council the meetings get on the European Affairs Committee as a separate point. This is not the case in the Foreign Policy Committee. Selected points will be covered. During the parliamentary year 1999-20 this included Russia, China, Western Balkan and the defence dimension. The attitude of the Foreign Minister is that issues only need to be discussed if there are important new developments or a new Danish line has to be decided. Afterwards a written report is sent to the Foreign Policy Committee as well as to the European Affairs Committee.

Informal Council meetings (foreign ministers) or informal meetings of ministers (defence ministers) are dealt with in the Foreign Policy Committee and the European Affairs Committee in that order. Afterwards written reports will go to the two bodies.

Meetings of Intergovernmental Conferences (IGCs) at the ministerial level will always be dealt with by the European Affairs Committee. The Foreign Policy Committee will only get involved when CFSP issues are on the agenda. A status report will usually be given to both bodies in connection with meetings of the European Council.

Issues dealt with by the Foreign Policy Committee will normally be given a comprehensive treatment – not just a CFSP perspective. As an example, when the Council dealt with Western Balkan the information provided by the government covered military, political as well as humanitarian aspects of the situation.

The CFSP uses a number of instruments: common strategies, joint actions, common positions and declarations. There is no fixed practice for which instruments must be dealt with by the Foreign Policy Committee. It is the importance of the measures that determine whether the case will go to the Foreign Policy Committee.

The Foreign Affairs Committee (Udenrigspolitisk Udvalg)

The English version of the Standing Orders of the *Folketing* translates this committee as The Foreign Affairs Committee. It was created in 1972 when the Market Committee, now European Affairs Committee, was also given a place in the Standing Orders. Since the beginning of Danish membership of the EC there have thus been three standing committees that could claim part of the action in relation to the EC/EU.

The thinking at the outset was that the Foreign Affairs Committee (*Udenrigspolitisk Udvalg*) would get involved in connection with foreign affairs issues that would require legislation except those falling under the EC. Further the Committee has been the lead committee in respect to Danish development aid policy. The original scope included “international law issues, UN, NATO, Council of Europe, Nordic Council and other international organisations,

²² Appendix 1 in *Folketing: Det Udenrigspolitiske Nævn: Beretning om Det Udenrigspolitiske Nævns inddragelse i sager vedrørende EU's fælles udenrigs- og sikkerhedspolitik (FUSP)*, 16 March 2001.

development aid etc.” The original scope was somewhat narrowed in 1975-76 towards development issues and issues requiring legislation.²³

In its early years the Foreign Affairs Committee took cases like sanctions against Rhodesia and policies towards South African apartheid.²⁴

Current information on the website of the *Folketing* says that the Committee traditionally focussed upon development policy. But in 1997 the possibility of dealing with security and foreign policy in a broader sense was opened up.²⁵ This means that the Foreign Policy Committee and the Foreign Affairs Committee can now largely deal with the same issues. The reason for expanding the agenda of the Foreign Affairs Committee was to allow for a more thorough and open treatment of foreign policy questions than the one allowed by the Foreign Policy Committee’s more traditional ways of working. Another reason was the view that development policy should be seen as an integral part of general foreign policy.

While the Foreign Policy Committee deals with current foreign policy issues the Foreign Affairs Committee tend to deal with general foreign policy questions from a broader perspective, often looking at the connection between security and development policy. But the Committee also deals with concrete foreign and development policy issues, including the Danish development strategy for countries in the third world and Danish assistance to Central and Eastern European Countries.

As a normal standing committee the Foreign Affairs Committee gets involved in legislation. It issues reports to the Chamber. After the first reading of a bill in the Chamber the bill will be sent to a committee that then issues a report which will be dealt with in the second reading before it goes back to the committee that has the option of issuing a new report before the third and final reading in the Chamber of the Parliament.

The Committee can ask questions to the Minister. It can ask for a written answer within a certain period. If no period is indicated the rule according to the Standing Orders is that the minister must answer within 4 weeks. Some questions are answered orally by the minister in the Committee, where a discussion can take place (known as *samråd*).

Private persons and organisations can send enquiries to the Committee. And they can meet with the Committee to put forward their ideas (known as *deputation*).

The work in the Committee is in principle confidential, but members of the Committee can tell the press what they themselves have said during the meeting. The Committee as such can also decide to inform the press about aspects of its work.

Most of the documents (*bilag*) that go to the Committee are now public, many of them go on the website of the *Folketing*. Some documents are internal and others are confidential.

All in all, the Foreign Affairs Committee works in a more open way than the Foreign Policy Committee.

The Foreign Affairs Committee meets approximately twice a month. It also holds theme meetings and hearings.

The European Affairs Committee (Europaudvalget)

The current European Affairs Committee goes back to the Market Committee established in 1961 in connection with Denmark’s first application for membership in the European Communities. The government’s proposal to seek membership was accepted by the *Folketing* by a resolution in which the Parliament also called for a committee of 17 MPs to follow the government’s accession negotiations. The resolution was accepted by 152 votes in favour (the four old parties, Social Democratic Party, the Liberal Party, The Conservative Party and the

²³ Kristensen, B: Folketingets Udenrigsudvalg, in: Haagerup, Niels Jørgen/Thune, Christian (eds.), *Folketinget og udenrigspolitikken*. DUPI-hæfte. Copenhagen 1986, pp. 41-46, p. 42.

²⁴ Andersen et al., 1977, p. 128.

²⁵ See also Folketing (2002d), *The Foreign Affairs Committee*. Copenhagen, November.

Social Liberal Party) and 11 votes against (The Socialist People's Party). During 1962 the Committee produced six reports, but after De Gaulle's veto of British membership in 1973 the committee was left without work the following years since the Danish application was linked with the British application. The Market Committee though did consider the plans for Nordic economic cooperation, known as Nordek, during the years 1967-70.²⁶

In relation to the EC the Market Committee resumed the work when negotiations started again in 1970. During the parliamentary year 1972-73 it became a standing committee mentioned in the *Folketing's* Standing Orders. It was also mentioned in Article 6 of the Accession Act of 1972:

The Government shall report to the *Folketing* on developments in the European Communities. The Government shall notify a committee appointed by the *Folketing* of proposals for Council decisions which will become immediately applicable in Denmark or whose implementation requires action by the *Folketing*.²⁷

It was a political event in January 1973 that led to the strengthening of the Market Committee in relation to the government. The EC Council of Ministers adopted some interim prices for Danish export bacon which were accepted by the Danish minister of agriculture. The Parliament disagreed with the minister and a political crisis ensued where the parliament insisted on the notion of a mandate. This entered the first report on the Market Committee on March 29, 1973:

In view of securing the *Folketing* the greatest possible influence in market political affairs the Government shall ... inform the *Folketing's* Market Committee about proposals for Council decisions that will become immediately applicable in Denmark or for whose implementation the cooperation of the *Folketing* is required.

....

The Government consults with the *Folketing's* Market Committee on market political questions of major importance so that both the regard for the *Folketing's* influence as well as the Government's negotiation freedom is respected.

Prior to negotiations in the EC Council about decisions of wider scope the Government submits an oral negotiation proposal. If there is no majority in the Committee against the negotiation proposal the Government negotiates on this basis.²⁸

The exact system of control of EC legislation and policy has developed during the years since 1973 through a number of reports negotiated between the Committee and the Government. During the period of EPC (until 1993) these reports did not mention foreign policy.

The line of demarcation has never been very clear between the three committees, the Foreign Policy Committee, the Foreign Affairs Committee and the Market/European Affairs Committee. At the outset market related matters would clearly fall under the Market Committee and EPC matters under the Foreign Affairs Committee. We do not have detailed information on the extent to which EPC may also have been discussed in the Market Committee, but since EPC did not involve legislation it is fair to assume that EPC was not normally discussed in that committee.

It is known however that both the Market Committee and the Foreign Policy Committee discussed the Tindemans Report in the mid-1970s. The report dealt with both EC and EPC developments. Also the decision to have the European Parliament elected directly was discussed by both the Market Committee and the Foreign Policy Committee. According to one source,

²⁶ Andersen et al, 1977, pp. 128-130.

²⁷ Quoted from Françoise Mendel: The Role of Parliament in Foreign Affairs in Denmark, in: Cassese, Antonio (ed.), *Parliamentary control over Foreign Policy: Legal Essays*. Alphen an den Rijn 1980, pp. 53-64, p. 58.

²⁸ Quoted from Folketing, Markedsudvalget: Beretning fra markedsudvalget, 29 March 1973, authors translation.

at least, there were also some joint meetings of the Market Committee and the Foreign Policy Council in the early years of EC membership prior to meetings in the European Council.²⁹

According to Gert Petersen, MP for the Socialist People's Party for a number of years, the government, at least in early years, hesitated to move competences from the Foreign Policy Committee to the Market Committee because the latter is a stronger committee which can bind the government through its mandates.³⁰

It was only in 1994 that one of the Market Committee's reports, after the entry into force of the Maastricht Treaty, mentioned the new second pillar, CFSP. In a brief paragraph it was stipulated that pillar 2 questions should be given a parallel treatment in the Foreign Policy Committee and the Market Committee and that pillar 3 questions should have a parallel treatment in the Legal Affairs Committee (*Retsudvalget*) and the Market Committee. Proposals should go to the Foreign Policy Committee and the Legal Affairs Committee respectively before going to the Market Committee.³¹

In 1995 a working group was set up to make suggestions on how to increase the influence of the Parliament on foreign policy issues. Various proposals were accepted and implemented.³²

The Note worked out for the Foreign Policy Committee in October 2000 also outlines the current practice for dealing with CFSP issues in the European Affairs Committee.³³

As mentioned, since the entry into force of the Maastricht Treaty CFSP issues automatically go on the agenda of the European Affairs Committee. The agenda does not divide the points according to the pillar structure of the EU. Some issues cut across the pillars. If the Foreign Ministers can agree to a common foreign policy the EU speaks with greater weight because the EU is an economic superpower, the Note to the Foreign Policy Council claims. If for instance the EU wants to strengthen the respect for human rights in some country the EU can threaten trade sanctions or stop development aid if human rights continue to be suppressed.

The government will inform the European Affairs Committee about CFSP issues in the same way as first and third pillar issues through written notes. They will be included in the summary notes that go to the committee prior to each meeting (*sammenotat*). At the meeting the Foreign Minister will orally inform the European Affairs Committee. Examples of issues dealt with during the parliamentary year 1999-2000 include: the EU's common strategy for Russia (and the war in Chechnia), the Free Trade Agreement with Mexico (and human rights), financing the UN, the EU-Africa summit in Cairo, mine clearing in Croatia and weapons embargo against Ethiopia and Eritrea.

The distinction between the pillars does get in when it comes to the way the Committee deals with the issues. At the meeting the government presents a proposal for negotiations within the EC, which will lead to a negotiation mandate for the government prior to the following EU Council meeting. The same system was extended to pillar three issues in 1996. For pillar two issues the main purpose is consultation and the government is not obliged to propose a negotiating mandate, but in some cases it actually does do just that. During the parliamentary year 1999-2000 this included the following cases: European security and defence dimension, joint action on the basis of article 14 TEU concerning control of technical assistance related to certain forms of military use, and the EU's enlargement with Central and Eastern European Countries, Cyprus and Malta.

²⁹ Andersen et al, 1977, p. 127.

³⁰ *ibid.*, p. 128.

³¹ Folketing, Markedsudvalget, Beretning om regeringens orientering af Folketinget om EU-sager, 20 May 1994.

³² See also Von Dosenrode, Søren Z.: Danish EU -Policy Making, in: Branner, Hans/Kelstrup, Morten (eds.), *Denmark's Policy Towards Europe After 1945: History, Theory and Options*. Odense 2000, pp. 381-402, p. 392.

³³ Folketing, Det Udenrigspolitiske Nævn: Beretning om Det Udenrigspolitiske Nævns inddragelse i sager vedrørende EU's fælles udenrigs- og sikkerhedspolitik (FUSP), 16 March 2001, appendix 1.

The discussion in the European Affairs Committee does not depend on which article in the Treaties forms the basis for the proposal. Nor does it depend on whether the instrument is a regulation, directive, common strategy, joint action or other. Decisive for the debate in the European Affairs Committee is the political interest in the substance of the matter. The political salience of an issue is thus decisive.

Meetings in the European Council will be on the agendas of both the Foreign Policy Committee and the European Affairs Committee. But since the European Council normally does not take legally binding decisions the government will normally not ask for a negotiation mandate. But it does happen, for instance in relation to Western Balkan, including economic support to Montenegro. After the meetings the Committee will receive the Presidency Conclusions and the Prime Minister will give an oral report.

In relation to IGCs the government will discuss the issues with the Committee on a continuous basis. All documents, from the presidency and the Member States will go to the European Affairs Committee. Concrete Danish proposals will also go to the Committee before they are forwarded to the IGC. Prior to the meeting of the European Council in Amsterdam in June 1997, for instance, the government put forward a detailed negotiation proposal, which secured the government of parliamentary support for its attitude to the Amsterdam Treaty.

The role of the European Affairs Committee has been developed through a series of reports agreed between the committee and the government. In the most recent report in 2001 there were references to the second pillar of the EU. It referred to the report from the Foreign Policy Committee from 16 March 2001 dealing with the Foreign Policy Committee's involvement in CFSP that has been mentioned in the sections above. The European Affairs Committee stated that the report from the Foreign Policy Committee did not lead to any changes in the role of the European Affairs Committee in respect to CFSP. Then an interesting addition followed in italic:

Because of the current case about Danish participation in a vote in the EU's interim Military Committee it has been agreed with the Government that it will at a later stage put forward guidelines for Denmark's participation in CFSP cooperation and that in this connection it shall be discussed with the European Affairs Committee how such cases shall be submitted to the European Affairs Committee.³⁴

These talks between the government and the European Affairs Committee have still not taken place.³⁵

The current situation of parallel treatment of CFSP issues in both the Foreign Affairs Committee and the European Affairs Committee has also sparked a legal discussion. Can the European Affairs Committee bind the government in CFSP cases as it does in EC cases? Could the binding even be legal?³⁶ Many observers, given the Danish parliamentary system, would see the issue as more political than legal. The threat of last resort, a vote of no confidence, applies to both first and second pillar issues.

The Defence Committee (Forsvarsudvalget)

Danish defence policy has been a relatively autonomous policy within the NATO framework. Denmark never joined the Western European Union (WEU). The political establishment in Denmark has had a clear Atlantic orientation in the defence area.

As mention in the introduction, Denmark also has a defence opt-out in the EU, which dates back to the Edinburgh Agreement in December 1992. According to this agreement Denmark

³⁴ Quoted from Folketing, Europaudvalget: Beretning om Europaudvalgets fremtidige arbejde, 10 May 2001, p. 16, author's translation)

³⁵ Communication from Rasmus Baastrup, EU-Information of the Folketing, to the author, 19 September, 2002.

³⁶ Krunke, Helle: Folketingets kontrol med den europæiske udenrigs- og sikkerhedspolitik, in: *Ugeskrift for Retsvæsen* No. 40 (6 October) 2001, pp. 401-409.

is not obliged to join the WEU. And “Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications, but will not prevent the development of closer cooperation between Member States in this area”.³⁷ The Edinburgh agreement was rather innocent as long as the development of the EU defence dimension moved slowly under the WEU, which the Maastricht Treaty had made the defence policy arm of the Union. When the Amsterdam Treaty explicitly incorporated the so-called Petersberg tasks of peace-keeping and peace-making as part of EU defence policy the situation started getting a little more problematic for Denmark, but the official line remained non-participation according to the Edinburgh agreement, which had formed part of the package adopted by the Danish people in the referendum in 1993.

The EU’s defence dimension then started to move in 1999 with decisions by the meetings of the European Council in Cologne and Helsinki. But Denmark remained outside and could not commit soldiers to the Rapid Reaction Force being developed at the moment.

In the process of establishing new bodies to be in charge of the European Defence and Security Policy (EDSP) a curious event took place. A Danish general voted for a Finnish general, Gustav Hagglund, to be in charge of the new Military Committee.³⁸ Given Denmark’s defence exemption this upset some of Denmark’s partners, especially Italy, a NATO country that also had a candidate, General Mario Arpino. The Danish government was also much criticised by opposition parties in Denmark.

After the event the Danish Foreign Minister at the time Mogens Lykketoft announced that Denmark would no longer take part in votes on common defence issues within the EU. But Denmark intended to continue to take part in meetings in the Military Committee.³⁹

During the Danish Presidency special arrangements have been put in place. According to a report submitted by Denmark to the other Member States:

1. Denmark will not preside in fora where topics are predominantly of a defence character, i.e. meetings of defence ministers (irrespective of the format for the meeting), meetings in the Military Committee and its subgroups and in other working groups that primarily discuss defence-related issues.
2. Denmark will preside in fora dealing with topics of general ESDP, i.e. in the European Council, in the General Affairs Council in the Political and Security Committee (PSC) and in the traditional CFSP working groups
3. For meetings with international organisations or third countries the same principle will, as far as possible, apply, i.e. where topics are predominantly of a defence character, Denmark will refrain from presiding.⁴⁰

For defence issues Denmark has been replaced by Greece (which will follow Denmark in the presidency in the first half-year of 2003) during the presidency.

There can be no doubt that the Danish defence exemption is under pressure. Especially the case of NATO activities in Macedonia, which may become EU activities upon US withdrawal, has been discussed. Denmark’s participation will become impossible if it becomes an EU activity because of the opt-out. For a country with a proud tradition for participation in UN peacekeeping activities – and lately also NATO sponsored activities – this is an obvious problem, which eventually will have to be dealt with.

It should be expected that the whole issue of the Danish exemptions will creep back on the political agenda after the end of the Danish presidency, which has secured the government a certain freedom to concentrate on that job during the second part of 2002.

³⁷ quoted from text in Finn Laursen/Sophie Vanhoonacker (eds.): *The Ratification of the Maastricht Treaty*. Dordrecht 1994, p. 438.

³⁸ Agence Europe, 10 April 2001.

³⁹ Agence Europe 21 April 2001.

⁴⁰ Agence Europe 2 July 2002.

Committee Membership

If we look at who are members of the main foreign policy related committees we will notice that a total of 47 MPs are members of at least one of the four committees. Of these 33 are only members of one committee, 11 are members of two committees and only three are members of three committees, namely Peter Skaarup from the Danish People's Party, Jann Sjursen from the Christian Peoples Party and Mogens Lykketoft from the Social Democratic Party, former Foreign Minister and likely future leader of the party.

Table III.1 Current Members of Foreign Policy Related Committees of the *Folketing* (November 2002)

	FOREIGN POLICY COMMITTEE (DET UDEN- RIGSPOLITISKE NÆVN)	EUROPEAN AF- FAIRS COMMIT- TEE (EUROPAUDVAL- GET)	FOREIGN AFFAIRS COMMITTEE (UDENRIGSUD- VALGET)	DEFENCE COM- MITTEE (FORSVARSDUD- VALGET)	TOTAL
Charlotte Antonsen (V)	v	v			2
Jens Hald Madsen (V)	v			v	2
Troels Lund Poulsen (V)	v		v		2
Jens Rohde (V)	v				1
Eva Kjør Hansen (V)		v			1
Jens Kirk (V)		v			1
Thor Gunnar Kofoed (V)		v			1
Tina Nedergaard (V)		v			1
Pia Larsen (V)			v		1
Henrik Vestergaard (V)			v		1
Hanne Severinsen (V)			v		1
Kim Andersen (V)				v	1
Søren Gade (V)				v	1
Ulrik Kragh (V)				v	1
Pia Kjærsgaard (DF)	v		v		2
Peter Skaarup (DF)	v		v	v	3
Kristian Thulesen Dahl (DF)		v			1
Karina Sørensen (DF)		v			1
Søren Krarup (DF)				v	1
Gitte Seeberg (KF)	v		v		2
Pia Christmas-Møller (KF)	v		v		2
Lars Barfoed (KF)		v			1
Helle Sjelle (KF)		v			1
Helge Adam Møller (KF)				v	1
Kaj Ikast (KF)				v	1
Jann Sjursen (KRF)	v		v	v	3
Claus Larsen-Jensen (S)	v	v			2
Jeppe Kofod (S)	v		v		2
Mogens Lykketoft (S)	v	v	v		3
Poul Nyrup Rasmussen (S)	v				1
Henrik Dam Kristensen (S)		v			1
Jacob Buksti (S)		v			1
Ritt Bjerregaard (S)		v			1
Carsten Bo Jensen (S)			v		1
Jan Petersen (S)			v		1
Nikolaj Wammen (S)			v		1
Holger K. Nielsen (SF)	v				1
Villy Søndal (SF)		v		v	2
Margrete Auker (SF)			v		1
Niels Helveg Petersen (RV)	v				1
Elisabeth Arnold (RV)		v			1
Morten Helveg Petersen (RV)			v	v	2
Søren Søndergaard (EL)	v			v	2
Pernille Falcon (EL)		v			1
Pernille Rosenkrantz-Theil (EL)			v		1
Kuupik Kleist (IA)	v				1
Lars Emil Johansen (SIU)				v	1

Source: Compiled by Finn Laursen

The fact that membership of the Foreign Policy Committee (*Udenrigspolitisk Nævn*) tends to include heavy-weight politicians, including the leaders of the opposition parties, suggest that this is the most prestigious among the committees.

III.1.3. The Parliament's Participation at EU Level

The parliament's participation at the EU level is very limited. At the formal level there are the half-yearly meetings of representatives of European Affairs Committees within the so-called COSAC (*Conférence des Organes Spécialisés dans les Affaires Communautaires*). A delegation from the European Parliament also takes part in these conferences. The meetings deal with contemporary European questions. If agreement is reached contributions can be sent to the European institutions. But the meetings are first of all an occasion for exchanging views. The meetings are hosted by the countries having the presidency.⁴¹

The European Affairs Committee also receives visits from politicians from other Member States and applicant countries. The European Affairs Committee further organises visits to other Member States especially the country having the presidency. In recent years visits to the applicant countries have also been organised.

The European Parliament regularly organises conferences and meetings where national MPs take part. Often the *Folketing* will send two MPs to such meetings, one from the European Affairs Committee and one from the relevant specialist committee (*fagudvalg*), if possible one from the government parties and one from the opposition parties.

Participants in these various activities – and networks – cannot bind the parliament. They can express their own views and the views of their parties.

Danish MEPs receive all the official government notes and information notes going to the European Affairs Committee as well as the agendas of the European Affairs Committee. On the other hand the EU Information office of the *Folketing* receives documents from the European Parliament so that Danish MPs can consult these.

At the personal level there are also co-operation between Danish MEPs and their political parties in Denmark. Since 1998 the Danish government has regularly invited the Danish MEPs for informal meetings, where members of the European Affairs Committee have also been invited. There are also open meetings and hearings of the European Affairs Committee, where MEPs can take part.

Available information does not suggest the CFSP matters have been especially important in these different transnational party activities.

Similarly, available information does not suggest that transnational contacts of representatives of regions (counties in the Danish case) and local authorities have been much interested in CFSP matters.

III.1.4. Concluding Remarks

The issue of Parliamentary involvement in foreign and security policy is on the agenda in Denmark. The Austria case lead to new analyses and the Danish participation in the election of the leader of the new Military Committee of the ESDP has produced the need for further clarification. This process is still going on – on a backburner at the moment because of the presidency, it seems.

Developments in Denmark show that the Parliament has gradually got more involved with these matters over the years, the Maastricht Treaty leading to parallel submission of CFSP matters to the Foreign Policy Committee and the European Affairs Committee. Increasingly the Foreign Affairs Committee also gets involved with some of the issues. Foreign policy is still considered a governmental prerogative because of the nature of the international system.

⁴¹ Folketinget, EU-Oplysningen (2002b): *Folketingets Europaudvalg. Parlamentarisk kontrol med regeringens politik i EU*. Copenhagen, July.

The feeling is that secrecy is still called for. Committee involvement therefore takes the form of normally closed meetings, but foreign policy issues can also be discussed in the Chamber of the *Folketing*, and in principle the rules of parliamentary government, with cabinet responsibility towards the Parliament, applies.

As the CFSP is developed and the EU increasingly speaks with one voice in international affairs the democratic deficit will become more visible in this area too. So far the Danish debate about the democratic deficit has mainly dealt with EC issues. And the traditional Danish contribution has been to emphasise the role of national parliaments, where the *Folketing*, through the European Affairs Committee has more control over the government than most other Parliaments. An important reason for this is that Denmark most often has minority governments. Such governments must negotiate continuously with other parties in the Parliament to survive. Broad consultation is in the interest of a minority government.

The increased committee involvement with CFSP matters in Denmark could be of inspiration for other national parliaments, and possibly the European Parliament. But the EU does not have parliamentary government. Should it get it a similar system would naturally be called for. In the meantime the main argument for increased EP involvement is one of increasing democracy in the EU, also in the second pillar, as long as the Union's pillar structure survives. Should the European Convention and IGC 2004 abolish the pillar structure the issue of parliamentary control of CFSP and ESDP will become one of the greatest decision problems.

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III.2. French Parliamentary participation in foreign, security and defence policy: anemic national performance and European potential

(Olivier Rozenberg)

III.2.1. Introduction

French Parliament participation in security and defence policy has been strictly bounded under the Fifth Republic. This limitation is not specific to international affairs since the Constitution of 1958 tends to rationalise the whole involvement of the Parliament. Regarding European affairs, the opposition to the CED (Defence European Community) by the National Assembly in 1954 has for long been kept in mind and may additionally explain the reluctance of the government to involve the Parliament on CSFP and ESDP affairs.

Following De Gaulle's principles, French political priorities with regard to both security and defence policy as for long been obsessed by the desire to maintain France's position among the leading countries of the world. From the decision in the sixties to keep at a distance of the NATO to the building in the nineties of a nuclear aircraft carrier, this policy has been followed by all the Presidents of the Republic whatever their political origin. The paradoxical French attitude towards CSFP and ESDP should be understood in that perspective. There has been for long a strong willingness of the government to develop a common security and defence policy. Europe is indeed considered as an effective level of governance in order to maintain – or to recover – some influence in international relations. French efforts during the whole nineties to build a European defence identity independent from the NATO illustrate this priority. However, for the very same reason, French political elite is somehow reluctant to share its prerogative with EU Members States as illustrated by the refusal to extend the qualified majority vote procedure to the second pillar at the Council of Nice in December 2000. Europe is both considered as an opportunity regarding France's influence and as a threat regarding France's independence.

Those guiding principles do not constitute a matter of debate among the major political forces. Public opinion also shows a strong support for this policy and towards the development of a common security and defence policy. However, opinion polls pointing for example to the popularity of the idea of a European army should not hide the fact that international questions are not among French citizens priorities.

III.2.2. French Parliament participation to security and defence policy at the national level

The current institutional framework regarding security and defence policy is characterised at the executive level by the duality between the government and the Presidency of the Republic. Following De Gaulle's interpretation of the Constitution and Mitterrand's practice of the power, international affairs make part of the »shared domain« of the Prime minister and the President. Concretely, the main actors are : the President of the Republic, the cabinet of the President, the Prime minister, the Foreign affairs minister, the Defence minister and their administration. Usually Prime ministers tend to concentrate on national affairs but a consensus between the President and the Prime minister on international questions is necessary when they belong to opposite political parties (cohabitation). Regarding defence policy, as chief of the armies" (article 15 of the Constitution) the President is in a dominant position towards the Prime minister which is "responsible for national defence" (article 21). The executive framework particularly supposes a high degree of co-ordination between the Foreign affairs ministry and the cabinet of the President which may turn out to be difficult in case of cohabitation. As a result of the centrality of the French State, sub-national actors are remarkably absent in the conduct of security and defence policies.

III.2.1.1. French parliament participation at the different policy stages

The letter and the spirit of the Constitution of 1958 attribute to the executive the monopoly in conducting the diplomacy and the defence. The Parliament controls the government policies and may express opposite views but both assemblies are not supposed to act autonomously regarding international affairs. Thus, the participation of the Parliament in the elaboration of security strategy is limited, if not non-existent. Regarding defence policies, the Government presents on an irregular base (about twice a decade) a project of law presenting the evolution of the defence forces for the coming years (*loi de programmation militaire*). This constitutes a rare opportunity for the parliament to give its views on defence policy and to try to influence the government. However, the experience has showed that this predicting king of law hardly ever successes in reaching its objectives.

As concerns the negotiation of an international agreement, be it a convention or a treaty, the Parliament as a whole or single deputies are not supposed to intervene before the agreement is reached. As a result, the parliamentary activity regarding international affairs is very often limited to its legislative prerogatives through the formal vote of ratification of treaties and conventions. Quantitatively speaking, the authorisations of international agreements constitute about half of the projects of law submitted to the parliament. However this activity represents much less time since the parliamentary examination of the projects of ratification is usually (but not always) limited to the publication of a short report followed by a rapid vote. The projects of ratification of an international convention have always been presented by the government but the Constitution does not prohibit the presentation of a proposal of law initiated by parliamentarians. Beyond the acceptance or the refusal, the ratification of an international agreement does not allow deputies and senators some latitude. Logically, they cannot amend a treaty or a convention. Moreover, the project of law asking for the ratification cannot be amended either. The only exception for this constitutional limit has been the ratification of the Amsterdam treaty in 1999. Under pressure of some deputies and notably former President Giscard, the government accepted to add a second article to the project stressing the necessity to reform EU institutions before the enlargement. The only opportunity for the parliament to express its view when ratifying an international agreement is to decide to postpone the vote. Thus, French parliament has refused for several years to ratify the association agreement between Israel and the EU or the extradition convention with the United States.

Regarding parliamentary competencies in decisions on employment of military forces abroad, the article 35 of the Constitution stipulates that “the declaration of war is authorised by the Parliament”. As nowadays wars do not need to be declared any more, the obsolescence of the article gives governments the opportunity to decide whether a parliamentary authorisation is required. The employment of military forces usually necessitates a parliamentary debate on the floor followed by a formal vote if the executive finds interest to it. Thus, President Mitterrand asked for a vote in January 1991 at the beginning of the Gulf war whereas Prime minister Jospin refused a vote during the Kosovo crisis in April 1999 given the divisions of its majority on the question. Moreover, the Constitution does not impose a parliamentary ratification for military co-operation agreements, defence treaties and security agreements. Thus, most of the international texts regarding defence are not controlled by the assemblies. In addition, the Parliament does not participate in nomination of high-ranking officials in diplomatic and military service.

The annual vote of the budget from October to December constitutes the main opportunity for deputies and senators to control foreign and defence policy. However, the opportunity to change the project of budget (*loi de finance*) is strictly restricted by the Constitution (article 40). From a political standpoint, the scrutiny of the budget is usually framed by economic and social considerations. Thus, the debate over defence and diplomacy tends to be less visible and to interest a limited number of MPs. The parliamentary control of the foreign affairs and defence policies is thus realised through the annual vote of the budget, notably concerning the

expenditure of the government departments and of the armies. Each parliamentarian may also ask written or oral questions to the ministers. The study of those questions reveals that they are less frequent than for other policy sectors but that they are not absent. Questions may regard the respect of human rights, major international crisis (September eleven), the employment of military forces or the use of the French by international organisations. Whether oral questions constitute an efficient parliamentary tool of control is delicate. Indeed, foreign affairs or defence ministers usually ask MPs from their party to address them a question in order to get more political visibility. Regarding the ministerial responsibility, the government can submit a motion of confidence to the National Assembly (and not to the Senate) and deputies (and not senators) can submit a motion of censure against the government. Those two kinds of motion can deal with foreign and defence affairs but it is hardly ever the case as international questions are not a matter of conflict between parties and are not said to interest citizens. However, the authorisation on deployment of military forces during the Gulf war took the form of a motion of confidence regarding the government policy in the Middle-East.

III.2.1.2. French parliamentary institutional structures regarding security and defence questions

The analysis of the institutional structure of the Parliament regarding security and defence policies leads to differentiate the National Assembly (*Assemblée nationale*) from the Senate (*Sénat*). The National Assembly includes a foreign affairs committee (*Commission des affaires étrangères*) and a committee for national defence and army forces (*Commission de la défense nationale et des forces armées*) whereas the Senate has fused the two structures into a single committee (*Commission des affaires étrangères, de la défense et des forces armées*). The number of committee in each assembly being limited to six (article 43 of the Constitution), the member of the committees are quite numerous: the two committees of the National Assembly are composed of about seventy members each and the committee of the Senate comprises about fifty members. The large number of members could lead the committees to work less efficiently. However, the attendance to the meeting is far less important. In practice, the committees join a limited number of motivated MPs (from 15 to 25). The membership to a committee is partly decided by parliamentary groups and by individual MPs according to complex informal rules. Each committee does not have the same prestige. The foreign affairs committees of the Senate and the National Assembly have a good reputation (the fact that they provide opportunities to travel abroad may not be exterior to that). The defence committee of the National Assembly is less prestigious. The dynamism and the political weight of a committee largely depend on the personality of its president. The presidents of the foreign affairs committee at the National Assembly are usually famous political leader and former responsible, for example former President Giscard and currently former Prime minister Balladur. The committees also comprise recognised specialists of foreign affairs or defence policies such as former foreign affairs ministers. For example, the defence committee is now presided by a former military.

The foreign affairs committees scrutinise the project of ratification of international agreements. The rapporteur of the project is always a member of the committee. They proceed to the auditions of various personalities: the foreign affairs minister but also ambassadors, experts and leaders from other countries. Thus, in 2000, the National Assembly foreign affairs committee has received personalities as President Wade, President Estrada, the ministers Fischer and Cook. The president of the committee can consult about 500 diplomatic telegrams daily. The committee can decide to create an inquiry committee or a mission of information. If the inquiry committees are not numerous, the missions of information related to a specific topic are more and more frequent. For example, the foreign affair and the defence committees of the National Assembly created in 1998 a mission about the Rwanda genocide and in 2001

another mission about Srebrenica. If their conclusions regarding France's responsibility in both cases have been judged too moderate by some journalists, those two missions realised an important work, notably with the auditions in camera of various military chiefs. The National Assembly defence committee is less active. Its main part consists in the annual scrutiny of the budget. The committee also requests oral evidence from military chiefs. Both assemblies comprise an international relations service that is generally recognised for the high quality of its administrators.

III.2.1.3. An emerging parliamentary diplomacy?

The assemblies play a specific diplomatic role in the field of parliamentary co-operation and with the establishment of relations with other parliaments in the world. The inter-parliamentary technical co-operation service of each assembly has formed many civil servants of various assemblies in the world, mostly in Central and Eastern Europe and in Africa. If the quality of its service is recognised, French inter-parliamentary co-operation suffers from its reduced financial means and also from the concurrence between the Senate and the National Assembly. However, the two assemblies associated together in order to bring a technical assistance to the Douma from 1996 to 2000 with the help of the TACIS program. Likewise, they co-operated with the Polish Parliament as part of the PHARE program. The missions of observation during elections also make part of the parliamentary assistance. A group of two or three MPs visits a country, for example Peru, Ukraine or Indonesia, during several days in order to control the elections. French parliamentarians also make part of several parliamentary delegations for international or regional organisations such as Inter-parliamentary Union, the parliamentary Assembly of the Council of Europe or of the NATO. Last but not least, each assembly possesses a solid network of groups related to a specific country called friendship groups (*groupes d'amitié*). Each group establishes relationships with parliamentarians and political leaders from a particular country. The National Assembly and Senate can also develop special dialogue groups with their counterparts from a single country. For instance, a parliamentary committee made of MPs from the National Assembly and the Russian Douma was created in 1994 and has met each year since. Lastly, a particularity of the Senate should be noted. Twelve senators are elected by representatives of French citizens living abroad which created specific links with countries including an important French community. The President of the Senate also created in 2000 the Forum of the Senates of the world and in 2001 the association of the Senates of Europe.

The technical co-operation, the delegations for international organisations and friendship groups may be considered as examples of classical ways for Parliaments to establish relationships with other countries. For some years, a reflection about parliamentary diplomacy has emerged from the assemblies themselves. Some deputies and senators have assumed that, beyond those traditional tools, the parliament could play a proper international role. The visit of some deputies to President Hussein in Iraq in 1990 to the initiative of President Mitterrand can be considered as the birth of parliamentary diplomacy. In the spirit of the promoters of this concept the institutional characteristics of a Parliament offer two opposite assets. First, a parliamentarian is less official than a minister or even an ambassador. Its presence in a foreign country does not commit France as a whole. Thus, the MPs can visit more easily some countries, for example Libya during Gulf war or Russia during the coup d'état against Gorbachev. The assemblies can also receive delegations from countries that have tense relations with the French government. For example, the Delegation for the EU of the Senate heard the Austrian foreign affairs minister in 2000. Delicate questions may be discussed more easily between or with parliamentarians. The French Russian parliamentary committee has for long evoked Kaliningrad. A mission in Iran during the nineties permitted to establish the first contacts between France and this country after a long period of tension. Second, a Parliament is consid-

ered to be endowed of a particular prestige that would give to some international actions a greater significance. The President of the National Assembly and/or of the Senate usually receives France official visitors. They can also be auditioned by foreign affairs committees or express themselves in front of the whole parliament. For example, President Bouteflika made a speech in the chamber at the National Assembly in 2000. Likewise, the parliamentary missions out of France are usually (but not systematically) received by the government of the visited country. The Presidents of the assemblies or some MPs may also use the specific legitimacy of the Parliament in order to promote internationally some ideas. Thus, the former President of the National Assembly Raymond Formi contributed to the demand of the Presidents of Parliament in favour of moratoria of death penalty in 2001. He also invited together in Paris the Presidents of the Knesset and of the Palestinian legislative council.

Which conclusion can be made about the parliamentary diplomacy? The idea is mainly promoted by the Presidents of the assemblies in order to legitimate their international action as proved by the joined organisation by the Assembly and the Senate of an important symposium on that topic in 2001. The idea is largely unpopular at the foreign affairs ministry. Diplomats put emphasise on the risk of duality between government and Parliament in international affairs. Some recent examples as the visit of three MPs to President Hussein illustrate the difficulty to canalise the parliamentary activity in this field. The institutional position of the ministers and of the MPs may lead them to adopt different views on international problems. Traditionally, the government is said to be pragmatic when the parliamentary representation is more sensible to human rights questions as illustrated by the reactions of many MPs during the official visits in France of Russian or Chinese officials. However, the progressive assertion of the concept of parliamentary diplomacy illustrates a changing conception of the international role of the Parliament. The idea that the government does not have any more an absolute monopoly regarding foreign affairs and that the Parliament should play a more important role than in the first decades of the Fifth Republic is winning ground. This evolution can be observed through the establishment of closer links between both houses and the foreign affairs ministry. Parliamentary delegations receive a dossier prepared by the ministry before a visit abroad. When arriving in a foreign country, the French ambassador first receives them. The presidents of the friendship groups are usually invited to join the French delegation during the President of the Republic or the Prime minister official visits to a foreign country. The ministers are more and more escorted by a delegation of MPs during international conferences as the General Assembly of the UN, the WTO meetings or the Kyoto conference about environment. However it should be add that such evolution is less perceptible regarding defence affairs.

III.2.2. French Parliament participation in CFSP and ESDP affairs

III.2.2.1. The problematic scrutiny of CFSP documents

According to the Loi Josselin of 1990 modified in 1994, the Parliament should be informed of any EU documents and among them documents related to security and defence policies. However, the right to be informed is not tantamount to the right to give an opinion. After the establishment of a second pillar by the treaty of Maastricht, both houses of Parliament asked for the right to scrutinise EU documents related to CFSP. For several years, different governments refused such evolution arguing that that the Parliament could not be endowed more prerogative in this field than in the control of national foreign policy. A first proposal of reform was refused in 1995. However, the government Juppé found an agreement in 1996 with the assemblies authorising the transmissions of common positions and strategies before the adoption by the Council. The constitutional reform of 1999 preceding the ratification of the Amsterdam treaty gave eventually the right to the assemblies to produce resolutions about a

project of the EU and not only of the European Communities (article 88-4 of the Constitution). Since 1999, each assembly has the right to give a facultative opinion – the resolutions – about a project of acts related to the second pillar. The project should first be scrutinised by the Delegation for the EU of the Assembly or of the Senate. Constitutionally different from the committees, those delegations assemble MPs interested in European business and select EU documents of importance. Then, the project of resolution should logically be transmitted to the foreign affairs committee. The government adopted a specific system of transmission of documents to the assemblies for the second pillar. On the other pillars, the transmission is realised by an inter-ministerial board specialised in EU affairs called the SGCI (*Secrétariat général du comité interministériel*). On the second pillar, the foreign affairs ministry plays that role.⁴²

From a legal point of view, the extension to the second pillar of the right to produce resolutions represents a major change since parliamentary attributions regarding foreign affairs and defence have been traditionally weak under the Fifth Republic. Even today, the Parliament does not have the right to take by itself a collective position on an international problem, except for CFSP. However this original institutional tool has not been used since its creation in 1999. Four types of reason can explain this paradox. First, the Constitution of 1958 is based on a cleave between legislative and statutory rules (articles 34 and 37). The Parliament has the right to produce resolutions on the projects of the EU of legal nature. The Council of State (*Conseil d'Etat*) decides of this legal nature. The government can authorise the Parliament to produce a resolution about a statutory project of norms but it has no obligation to do so. The problem is that projects related to CFSP of legal nature are not frequent. Second, members and officials of the delegations for the EU stress that some projects are not transmitted to them due to their confidentiality. This is even truer for documents related to ESDP. One of the main question related to defence, that is the relation between a European identity of defence and NATO, is not considered by the assemblies because of the confidentiality rule imposed by NATO. Third, the question of time. Formal (common positions) or informal decisions of the Council related to security policy are often taken under pressure. In many cases, the Parliament does not have sufficient time to scrutinise those projects before the decision. It happens that the presidents of the delegations for EU are the only persons informed of the project. In other cases, assemblies discover the document after the decision of the Council. Lastly, it should be add that the imperfect scrutiny of CFSP projects is also linked with the little interest shown by the parliamentarians themselves. Many MPs are not familiar with both the concept and the institutional framework of common security and defence policy. Most of the MPs consider that this domain is not developed enough in order to necessitate a serious parliamentary control even if the Council of Helsinki may have started to change their perception. Most important, the electoral benefits associated with the parliamentary activities related to common and security policies are at best uncertain.

III.2.2.2. The parliamentary oversight of CFSP and ESDP

Out of the scrutiny of projects of documents, the French Parliament activity related to CFSP and ESDP is realised trough the publication of reports, the auditions of personalities and the missions of information. At different intervals of time, the presidents of the committees or of the delegations for EU decide to present a report of information presenting globally security and defence policies at the European level. Generally, one to two major reports are published by each assembly per one legislature (5 years). An MP interested on those topics and belonging to the committees or/and to the delegations can also decide to present a report as did the expert of strategy Pierre Lellouche. The principle aim of such report is to inform other mem-

⁴² Circulaire du Premier ministre du 13 décembre 1999 relative à l'application de l'article 88-4 de la Constitution.

bers of the delegation or committees of the last development of CFSP and ESDP. From the presidents of delegation point of view, there is also an interest to show that the delegation is as legitimate as the foreign affairs and defence committees to control such policies. The parliamentary reports drafted recently can be judged as quiet comprehensive and rich. They deal with long terms perspective rather than precise details. Before and after each IGC or when France presided the European Council in 2000, a report dealing with the global evolution of the EU is drafted and a chapter is generally dedicated to the second pillar. Less frequently, other reports can deal with a precise topics related to CFSP and ESDP. For example, René André presented on February 2002 to the National Assembly delegation for EU a report about the stability pact for South Eastern Europe. For this report, he took oral evidence from about eighty persons in Paris, Brussels, Sarajevo, Skopje, Belgrade and Tirana. In Brussels, he met a chief of the Task force, a civil servant of the external relations general delegation of the Commission and a member of the French permanent representation. In South Eastern Europe, he met ministers from different governments, a large number of MPs, Western diplomats, journalists and representative of different organisation (EU, European Commission, SFOR, IMF, BERD, World Bank...). This particular example illustrates that if the reports dealing with a precise topic are not numerous the one that are drafted tend to be as complete as possible. Likewise, the defence committee of the National Assembly organised several missions of information after the Kosovo crisis. The reports tried to take into account the EU dimension of the conflict and MPs visiting Kosovo met EU representatives.

Apart from the reports and the missions, the assemblies organise auditions dealing with CFSP and ESDP. Most of the auditions are open to the public. At the National Assembly, the foreign affairs committee and the delegation for EU tended to organise joint auditions but it has no longer been the case since the last general elections. The French foreign affairs minister and the minister delegated to EU can be questioned during the auditions on CFSP topics, particularly after each European Council. Foreign affairs ministers from EU member States are also often heard. Lastly, the committees and the delegations can take oral evidence from a person specialised in CFSP and ESDP. For example, the Senate foreign affairs committee heard Xavier Solana during the Kosovo conflict. Chris Patten was auditioned in camera by the National Assembly foreign affairs committee on the 20th of November 2002. The questions of the MPs were related to the creation of a European army and to the clarification of the respective role of the exterior relation commissioner and of the high representative for the CFSP.

III.2.2.3. Interactions at the European level

The interactions between Brussels institutions and French MPs related to CFSP and ESDP are very limited. The assemblies can hear commissioners. An MP can take oral evidence from a member of the Commission, usually a director or a vice-director of a general delegation, as part of an information report. But the Parliament has not established relations on a day-to-day basis with the European Commission. The relations with the European Parliament (EP) are not developed either. Many MPs express a certain suspicion against the EP, which does not favour co-operation with this institution. The prevailing idea of the French MPs is that common foreign and security policies are a matter of relations between member States rather than of creation of an integrate community process. On that basis, national parliaments are considered as more legitimate than the EP to scrutinise those policies.

Thus, French MPs try to collaborate with National Parliaments rather than EU institutions. The presidents of the foreign affairs committees of each assembly meet twice a year with their counterparts from other member States. During France presidency of the Europe Council in 2000, Paul Quilès, president of the defence committee of the National Assembly decided to create a conference of the presidents of the defence committee of the national Parliaments of

the EU especially devoted to CFSP and ESDP. The presidents have met twice a year since. His idea was that national members of parliament needed to create an informal forum in order to talk of European defence and especially of the future parliamentary control of the ESDP. Such forum would be more efficient because it is composed of presidents of committee and not of basic backbenchers. This conference would be only a transitory group before the establishment of a mechanism of collective parliamentary control of the ESDP. Apart from the conferences of presidents, the committees have developed bilateral relations with their counterparts from other member States. The Senate foreign affairs committee received for example a delegation of Lords in order to talk about CFSP. During the last legislature (1997-2002), the National Assembly defence committee visited twice its counter-part at the Bundestag and received it twice in Paris. At those occasions, French and Germans MPs talked for example of the question of the A400M, which helped to understand each country attitude. Such visits are quiet difficult to organise due to their financial cost and to the difficulty to compose a representative delegation of a large committee. Yet, they can bring a considerable amount of information thanks to their informal nature. MPs from the National Assembly defence committee explain for instance that their bilateral contacts with their German counterparts have permitted them to observe the evolving German point of view about the NATO during the Kosovo conflict.

If the contacts with candidate countries cannot be strictly considered as CFSP, French Parliament has developed significant diplomatic efforts on that question. Parliamentary or governmental delegations from candidate countries have been received several times by the two assemblies. A lot of French MPs have visited those countries and drafted information reports about the state of the negotiations of adhesion. In each EU delegation, an MP has been designed as the specialist for the relation with one of the candidate country. This distribution has ensured a continuity to the parliamentary action. Both houses have developed actions of parliamentary co-operation with Parliaments from East and Central Europe. This assistance has even gone beyond parliamentary questions. For example, the Senate has developed with the Hungarian Parliament a program related to legislation protecting environment, this question being a break to the adhesion of Hungary. Generally speaking, French parliamentarians are deeply in favour of a rapid enlargement of the EU. For the last ten years, they have tried more or less successfully to put a pressure on the government on that stake.

Regarding the European Convention on the future of Europe, Pierre Lequiller, representative for the National Assembly, belongs to the working group exterior action. He drafted a working document on the 21st of November 2002 related to EU common foreign policy⁴³. In this document, he agrees with the idea of a fusion between the exterior relation commissioner and of the high representative for the CFSP into a unique foreign affair minister of the EU. In addition, he proposes the creation of a pact of convergence between member States related to CFSP. The principle of this pact lies on a global examination by the member States of CFSP in view of identifying the field where a common policy could be developed. The EU foreign affairs minister would present each year a report on the progress of convergence to the EP and to national Parliaments. The modalities of such presentation are not specified but P. Lequiller is of the opinion that a Congress of the people made of MEPs and MNPs would be the ideal mean.

III.2.3. Conclusions

⁴³ Workin g group VII, Working document 49, 21st November 2002.

III.2.3.1. Performance of the French Parliament

The strong points of French Parliament activities regarding foreign and defence affairs at the national and European level rest mainly on the capacity of both houses to develop long term analysis. As generalists of politics, MPs tend to adopt a global point of view on that matters rather than a technical one. In so doing, they may contribute to the discussion of security stakes in the wider arena of the public space. The auditions of personalities by the committees or delegations can also be considered as a strong point by their frequency, their quality and the fact that they are generally open to the public. At the national level, the recent development of missions of information specialised in one topic has proved to be an efficient institutional tool in order to realise a significant parliamentary investigation. The restricted membership of those missions, the definition of a unique and clear subject of interest and the institutional independence of the missions from committees can indeed be considered as major assets. The classical parliamentary diplomacy made of technical co-operation and a set of friendship groups is also rooted in a long tradition in the French Parliament. Regarding CFSP and ESDP, the constitutional tools for the scrutiny of European projects are robust. The Parliament can express resolutions related to the second pillar whereas there is not such a possibility regarding national diplomacy. This constitutional particularity indicates that French MPs but also the government tend to consider European defence and security as a matter of co-operation between member States that should be controlled in priority by national Parliaments rather than the EP. In consequences, the available information to the MPs related to CFSP and ESDP is quite significant. Another strong point related to defence and security at the European level rests on the elaborate set of contacts established with National Parliaments from both other member States and candidate countries. For the last decade, the two houses have successfully and autonomously developed strong relations with their European counterparts. CFSP and ESDP constitute – with institutional questions – one of the major elements under discussion between Parliaments.

The constitutional French culture derived from the Fifth Republic spirit can be considered as the major limit to the development of parliamentary activities in the field of defence and foreign affairs policies. The dominant conception is that the government exercises a kind of monopoly on that matters. Mentalities have started to change slowly for the last five years but this attitude is still dominant and the evolution are more visible concerning foreign affairs than defence. The culture of secrecy and the limited activities of the Parliament before the decision is taken derive from this perception. The information available to the MPs is far from being complete and transparent, notably on strategic stakes. The participation of the Parliament to the elaboration of security and defence strategies and to international negotiations is sharply restricted. At the national level, the budgetary powers for foreign and defence policies are strictly limited. In practice, the two assemblies do not have any real opportunity to change the credits devoted to each administration. The activities of the Parliament are particularly bounded regarding national defence: public debates are not frequent, the defence committees are as a rule not very active and the laws presenting the evolution of the defence forces for the coming years are not realistic. Regarding French Parliament weaknesses related to CFSP and ESDP, three kinds of problem can be identified. First, the scrutiny of European projects of acts is confronted to the constitutional definition of the law and to the questions of time and secrecy. The specific nature of the documents produced under CFSP and ESDP would require a rather flexible participation of the Parliament to the definition of those policies. Yet, French institutional framework is not characterised by its capacity to adapt to informal/specific practices regarding for example the transmission of confidential documents or the rapid scrutiny of the Parliament. Even if the critic should not be exaggerated, the foreign affairs administration is also reputed for its reluctance to co-operate with assemblies. Second, the institutional organisation of the assemblies does not favour an effective control of CFSP and ESDP. The division between a foreign affairs and a defence committee at the National Assembly and be-

tween committees and EU delegation in both houses tends to create effects of competition between those structures and to slow the scrutiny process. However, it should be added that members of the Delegations for European Union of the two assemblies have drafted major parliamentary reports regarding CFSP and ESDP. In that respect, EU delegations have developed for the last years quite a strong capacity to control the progress of CFSP. Yet, the division between the delegations and the committees does not favour the emergence of a unique and coherent centre of expertise within the assemblies.⁴⁴ Third, the relations with the European Commission and Parliament are dramatically under-developed.

Lastly, the principal actors of the parliamentary control should be mentioned. French political culture regarding the parliamentary control of foreign affairs and defence is not specific to the government or the administration. Many MPs still think that the government has more or less the right to do what he wants on those public policy sectors. Here again, things have started to change and some parliamentarians assume that the control over CFSP and ESDP could be a way of restoring some powers. The dominant idea is that in the future the parliamentary activities regarding a common foreign policy or the European defence will give more prerogatives to the assembly than it has been the case since the beginning of the Fifth Republic for »national« security and diplomatic affairs. However, most of the MPs assume that currently CFSP and ESDP are not developed enough to justify an important parliamentary oversight. In addition, those topics do not constitute a major electoral stake: public opinion is supportive or ignorant of the European projects; international affairs are hardly ever a matter of conflict between parties; and most of the MPs support the President policy. In the end, ten to twenty deputies among the 577 members of the National Assembly are really interested and/or competent regarding international questions. The plurality of offices, a French speciality, does not favour either a significant involvement of the MPs on topics removed from their constituency.

III.2.2.2. Perspectives and suggestions for the future

Different types of reforms may be envisaged for the future. First, the former National Assembly defence committee President Paul Quilès has proposed a revision of the article 35 of the Constitution. In a modern democracy, it seems necessary that the Parliament authorises and controls the employment of military forces abroad. The major military international conventions should also be ratified by the Parliament. From an institutional perspective, the fusion of the defence and the foreign affairs committees of the National Assembly could also avoid the concurrence of the two organs and the associated problems of shared competence. This objective seems plausible since the Senate already realised it. P. Quilès also proposed the creation of a permanent parliamentary delegation for intelligence. This structure would aim at addressing the problem of access to confidential documents related to national diplomacy as well as CFSP and ESDP. The delegation for intelligence could be composed of a limited number of senior MPs committed to respect the total secrecy of the policies under control.

At the European level, three suggestions for involving French Parliament can be made. A delegation of MPs could joined French representatives during the official bilateral summits between France and its main partners (Germany, United Kingdom, Italy and Spain). In so doing, deputies and senators could establish long-term contacts with their counterparts from other member States. This suggestion would also contribute to develop internally the co-operation between executive and legislative powers. Likewise, MPs could be added to the French delegation to major European Councils. This suggestion is under discussion in the European Convention. Some former French ministers have stressed that the presence of two

⁴⁴ See Andrea Szukala, Olivier Rozenberg: The French Parliament and the EU, in: Andreas Maurer, Wolfgang Wessels (eds), *National Parliaments on their Ways to Europe: Losers or Latecomers?*, Baden-Baden, Nomos Verlagsgesellschaft, 2001, pp. 223-250.

or three MPs from opposite parties could help them to take difficult decisions, notably concerning international and security affairs. However, the Senate is globally opposed to this project arguing that major decisions are taken during the preparation of the Councils. At least, one could imagine that national MPs are associated to the European Councils when the country exercises the Presidency. Lastly, both chambers could organise once or twice a year a debate on the floor dealing with CFSP and ESDP. Related questions could be asked on that occasion to the foreign affairs, defence and Europe ministers. This debate could also be an opportunity to evoke the activities of the parliamentary delegations for international assemblies (NATO...). Indeed, the feedback brought by those delegations is commonly judged unsatisfactory. If any special parliamentary assembly should be created with the development of ESDP, the institutionalisation of a journey of debate on the floor seems a prerequisite for such evolution.

Eventually, the question of the links between national Parliaments and European institutions is the most difficult to tackle. Contacts with the Commission or the EP most of the time rely on personal networks of specialised MPs. Whether those networks could be transformed into real channels of co-ordination is unsure. A pragmatic suggestion could consist in institutionalising the various meetings between national MPs devoted to foreign affairs and defence questions. A delegation of MEPs could join such forums. As noted before, Pierre Lequiller also proposed that a EU foreign affairs minister present each year a report on CFSP to the EP and to national Parliaments. An ad hoc temporary assembly made of a delegation of MEPs and MNPs (the presidents of the foreign affairs and defence committees for instance) could scrutinise the report. The Congress of the People could also fill that part.

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III.3. German Parliamentary participation in foreign, security and defence policy: developing structures in a complex system

III.3.1. Introduction: Divided competences in foreign affairs

III.3.1.1. The historical framework

With the collapse of the Soviet Union and the subsequent end of the Cold War (»1989«), the world has experienced dramatic and fundamental changes, with substantial implications on foreign policy. The impact on Germany is particularly high.⁴⁵ Since reunification, expectations on German foreign policy have tremendously changed although the structures have remained more or less unchanged.⁴⁶ On the one hand, the involvement of Germany in western co-operation (particularly EU and NATO), the bilateral and international treaties, the normative provisions by (constitutional) law (Grundgesetz - GG) and the relevant actors as well as interests, values and history still exist. On the other hand, geo-political and geo-economical changes, new threats such as terrorism or international crime have unfolded and the use of military action as an instrument in German foreign policy can be observed. In addition: Though there are some concerns about the new Germany,⁴⁷ with the ending of the division of Europe, Germany has to contemplate assuming a political role in the world and in Europe more corresponding to its economic weight. Furthermore, the partner and allied governments have repeatedly been demanded a responsibility sharing including military aspects. The dilemma of the will to meet this demand on the one hand but anxieties towards Germany both by itself and possible criticism from the outside has shaped German foreign policy making throughout most of the 1990s.⁴⁸

Especially, the speed of European integration calls for an ever-greater solidarity in the field of foreign, security and defence policy. Collective defence remains the domain of NATO. But with the decisions of the European Council in Cologne, the development of a European security and defence policy has become a key project.⁴⁹

⁴⁵ See basically Christian Hacke: *Die Außenpolitik der Bundesrepublik Deutschland: Weltmacht wider Willen?* Berlin 1997 and Helga Haftendorn: *Deutsche Außenpolitik zwischen Selbstbeschränkung und Selbstbehauptung: 1945-2000*, Stuttgart 2001. See also Karl Kaiser/Hans W. Maull: *Deutschlands neue Außenpolitik*, Band 1 Grundlagen, München 1994; Hans Peter Schwarz: *Die Zentralmacht Europas, Deutschlands Rückkehr auf die Weltbühne*, Berlin 1994; Karl Kaiser/Hans Peter Schwarz (eds.): *Die neue Weltpolitik*, Bonn 1995; Wilfried v. Bredow/Thomas Jäger: *Neue deutsche Außenpolitik, Nationale Interessen in internationalen Beziehungen*, Opladen 1993.

⁴⁶ See Wolf-Dieter Eberwein/Karl Kaiser (eds.): *Germany's New Foreign Policy: Decision-Making in an Interdependent World*, New York 2001; Volker Rittberger (ed.): *German foreign policy since unification. Theories and case studies*, Manchester 2001.

⁴⁷ See for discussion William E. Paterson: *Muss Europa Angst vor Deutschland haben?*, in: Rudolf Hrbek (ed.), *Der Vertrag von Maastricht in der wissenschaftlichen Kontroverse*, Baden-Baden 1993, p. 10 and Wolfgang Wessels: *Zentralmacht, Zivilmacht oder Ohnmacht? Zur deutschen Außen- und Europapolitik nach 1989*, in: Peter Weilemann/Hanns Jürgen Küsters/Günter Buchstab (eds.), *Macht und Zeitkritik. Festschrift für Hans-Peter Schwarz zum 65. Geburtstag*, Paderborn 1999, pp. 389-406.

⁴⁸ See Uwe Schmalz: *Deutsche Außenpolitik und die EPZ/GASP nach 1990*, in: Heinrich Schneider/Mathias Jopp/Uwe Schmalz (eds.): *Eine neue deutsche Europapolitik? Rahmenbedingungen – Problemfelder – Optionen*, Bonn 2001, S. 515-582.

⁴⁹ See speech by Federal Foreign Minister Joschka Fischer at the opening of the III. Conference of the Heads of German Missions, 27 May 2002, see http://www.auswaertiges-amt.de/www/en/index_html.

III.3.1.2. General doctrines and guiding principles

According to the German (constitutional) law, the division of competences and responsibilities in »foreign force« is not without ambiguity. Besides the provision that the federal level has the exclusive legislation in the area of foreign affairs (Article. 73 GG) and to watch over foreign relations (Article 32 I GG), the distribution of responsibilities is not determined strictly. Consequently, there are discussions as to whether the foreign policy should be exclusively a matter of the executive or has to be considered as a mixture of government and parliament competences.⁵⁰

Concerning negotiations and conclusions of treaties with third parties, establishing contacts with foreign countries and representing Germany on international conferences, the federal government (Bundesregierung) plays the essential role.⁵¹ Thus, the head of the government, the foreign minister and the minister of defence are the »classical« actors of the executive in foreign relations: The chancellor has the guideline competence (see below), the »organisation force« as well an independent apparatus in his chancellor's administration (Kanzleramt) for foreign affairs. Moreover, he is the »commander-in-chief« over military forces in case of defence. These competences offer him an exceptional position in German foreign policies.

The German »Bundestag« itself has cooperation rights primarily in the field of the ratification of international treaties as well as in the transfer of competences to supranational or international bodies.⁵² Moreover, in the case of defence (of the country) it obtains the task to control the federal government and makes use of its budget rights. In this context, according to Article 45a, especially its foreign committee assumes some significance as well as its defence committee. These committees may give impulses, but they do not make binding decisions. The German »Bundesrat«, the second chamber representing the governments of the states (Bundesländer), has competences solely in the frame of the »ordinary« legislation procedure, e.g. objection against laws or control rights. The President of the Federal Republic of Germany has just formal competences – according to the general character of his position, which is mostly reduced to representation and giving speeches.

III.3.2. The national policy cycle: a new role for the Bundestag?

In view of the limited number of significant international initiatives of the Federal republic, general statements on the actors in foreign policy cycle are scarcely possible. Though the growing complexity of international decision-making processes restricts the autonomy of unilateral action, the chancellor and the foreign minister are the main actors in German foreign policy. The division of powers, however, is grossly affected by the personality of the respective actors and their political standing both with the public and within the cabinet and their party.⁵³

While the traditional legal perspective considers the foreign policy as a »privilege« of the executive, today the view prevails that the »Grundgesetz« has set up a situation of latent com-

⁵⁰ See for the traditional position Hans W. Baade: *Das Verhältnis von Parlament und Regierung im Bereich der auswärtigen Gewalt der Bundesrepublik Deutschland*, Hamburg 1962. See also – more critically on »traditional« approaches – Werner Link: *Die außenpolitische Rolle des Parlaments und das Konzept der kombinierten auswärtigen Gewalt*, Probleme der Demokratie heute, PVS Sonderheft 2 (1970), pp. 359-387.

⁵¹ See Hans-Georg Kamann: *Die Mitwirkung der Parlamente der Mitgliedstaaten an der europäischen Gesetzgebung. National-parlamentarische Beeinflussung und Kontrolle der Regierungsvertreter im Rat der Europäischen Union im Spannungsfeld von Demokratie und Funktionsfähigkeit des gemeinschaftlichen Entscheidungsverfahrens*, Frankfurt am Main 1997, p. 309.

⁵² Joachim Krause: *Die Rolle des Bundestages in der Außenpolitik*, in: Wolf-Dieter Eberwein/Karl Kaiser (eds.), *Deutschlands neue Außenpolitik*, Bd. 4, Institutionen und Ressourcen, München 1998, pp. 137-166.

⁵³ See Wolf-Dieter Eberwein/Karl Kaiser (eds.): *Deutschlands neue Außenpolitik. Band 4: Institutionen und Ressourcen*, München 1998, here p. 13-45.

petition between the executive (the government) and legislative (the parliament), although more weight is imparted to the executive level.⁵⁴ This trend is reflected also in the decisions of the constitutional court, above all in its decisions on the termination of international law and the so-called »out of area« deployments of the armed forces.⁵⁵

III.3.2.1. The »hegemony« of the executive

Within the executive, the division of responsibilities between the so-called »classical« institutions – the foreign office, the chancellery (Kanzleramt) and the ministry of defence is fluent. The arrangements depend on the historic background and the personalities of the incumbent. However, the general opinion is that the chancellor is the key person.

Three constitutional rules govern the executive framework of decision-making: the principle of ministerial responsibility (»Ressortprinzip«), according to which ministries at the federal level are independent and competing actors. Secondly, the decision-making process is affected by the so-called »Kanzlerprinzip« or guidelines competence⁵⁶ which empowers the chancellor to guide the government and to define the ministerial portfolios, and which can be mobilised when serious challenges and inter-ministerial bottlenecks evolve. However, the Chancellor is not entitled to finally decide on matters where ministers battle for different views or positions. Hence the principle of collective government (»Kabinettsprinzip«) ensures that the whole cabinet of the federal government decides upon pending conflicts between ministries.

Making use of his strong constitutional position, determined in the »guidelines competences« (Art. 65 GG), in the organisation force (Art. 64 GG) as well as in the constructive mistrust vote (Art. 67 GG), the chancellor has a remarkable leeway in the field of foreign policy. In the past years, decline in power of the foreign ministry could be observed. The effects of growing international interdependence in practically any policy field has led to the successive involvement of almost all departments in the area of international relations, thus dismantling the exclusive position of the foreign office to a considerable extent.

The EC/EU Council consequently holds that more and more areas of »domestic« policies pass over to the international level. In addition, the summit diplomacy of the European Council has led in general to a power increase in the chancellery. Finally, it has to be taken into account the impact of (informal) bodies – besides the cabinet. The central decision group today is the coalition round. This semi-official body meets weekly and consists of the chancellor, the government, an altering number of ministers, policy specialists and coalition members.⁵⁷

According to Article 11 of the rules of procedure of the federal government, the foreign minister is in charge entirely of international and multilateral politics – with the exception of foreign trade, money and partially development policy. In the framework of the »guideline competences« of the Federal Chancellor and the decisions of the colleague of cabinet, the foreign minister runs his department independently. In practice, however, the formal coordination competences of the foreign office is becoming more and more weakened, due to the involvement of a multitude of other ministries (s.a.) – as in particular the ministry of defence or the ministry of commerce.⁵⁸ According to each single case, special problem definitions, inter-ministerial co-operation and decision-making procedures have been developed.

⁵⁴ See Hans-Peter Schwarz: Die verfassungsrechtliche Kontrolle der Außen- und Sicherheitspolitik: Ein Verfassungsvergleich, Berlin 1995.

⁵⁵ See Stefan Bierling: Die Außenpolitik der Bundesrepublik Deutschland: Normen, Akteure, Entscheidungen. München 1999, p. 31.

⁵⁶ See Article 65 of the German Basic Law

⁵⁷ See Wolf-Dieter Eberwein/Karl Kaiser (eds.): Deutschlands neue Außenpolitik. Band 4: Institutionen und Ressourcen, München 1998, here p. 13-45.

⁵⁸ Walter Eberlein: Globalisierte Politikfelder mitgestalten. Zur Rolle des Auswärtigen Amtes in der deutschen

III.3.2.2. The »weakness« of the legislature in decision-taking

Unlike in the United Kingdom and France, the overall mentality of members in the German two-chamber parliament – Bundestag and Bundesrat – on foreign policy issues is characterised rather by co-operation and less by partisan currents and conflicts between loyalty and discipline. Particularly in times of crises, foreign politics seems to be above all matter of the government. In the media, the parliament attracts only a minor role. Only the assent of the Bundestag on actions of the armed forces or, lately, the fight against terrorism regularly attracts special attention. But even here, the government appears as the decisive actor.

The long-time perception was that the parliamentarians are, nevertheless, bound into some aspects of international affairs in several ways. In particular, the members of the Bundestag give important impulses in the area of human rights. In contrast to such »soft(er) issues«, the Bundestag has only a weak profile of in security and defence aspects.

But the Bundestag has also improved its role in »high politics«. The key decision was a ruling by the Federal Constitutional Court. Germany's highest court on 13 July 1994 paved the way for German forces to take part in military operations beyond the country's borders if Parliament approves beforehand. This decision was important in two ways: On the one hand, it strengthened Germany's role in the international system. Although small numbers of German troops had already supported multinational peacekeeping operations from 1990-94 (mostly contributing medicinal and support troops), West Germany had maintained a scrupulously non-interventionist foreign policy for half a century before that. With the decision of the Court, Germany started to be able to take a more exposed stand on the world stage, a role that it had been encouraged to assume by the United States and other allies within NATO.

In view of a parliamentary dimension of foreign policy, the core of the decision of the Federal Constitutional Court was the finding that explicit parliamentary approval, by a simple majority, was needed for all German armed military missions: "The Constitution obliges the Federal Government to seek enabling agreement by the German Bundestag, as a rule in advance, before committing the armed forces to action," the court ruled, adding that chancellor Kohl's Government had violated it by going ahead in Somalia, in the Adriatic, and over Bosnia without the approval.

According to this decision, the constitution (»Grundgesetz«) had to be changed. Since then, the German government, unlike most of its NATO partners, would have to obtain parliament approval for any deployment of troops abroad. After the Karlsruhe judges found »out-of-area« operations to be legal, the new type of mission was tested in Cambodia, Somalia, Bosnia and in Kosovo. Hence, in June 1995, the German Bundestag voted to send a missile-equipped attack aircraft to Bosnia-Herzegovina. This vote has brought Germany its first military combat since the end of World War II.

Though this decision was considered as the beginning of a more important role of the Bundestag in foreign policies, there was another ruling of »Karlsruhe« (the constitutional court) that changed again the weights in foreign policy and strengthens the government's hand: On 22 November 2001, the Federal Constitutional Court decided that the Federal Government could decide on an expansion of NATO tasks in peace-keeping actions without the assent of the Bundestag. The Federal Constitutional Court rejected a complaint of the PDS (the successor party of the East-German SED) Bundestag parliamentary group and confirmed that the government did not illegally by-pass parliament in 1999 when it backed a NATO accord to allow the alliance to enter »out-of-area« conflicts.⁵⁹ Thus, the court supported the

Außenpolitik, in: Thomas Fues/Brigitte Hamm/Burkhard Könitzer (eds.), *Die Weltkonferenzen der 90er Jahre Baustellen für Global Governance*, Bonn 2001, pp. 225-261.

⁵⁹ see Federal Constitutional Court, Decision 2 BvE 6/99 from 22 November 2001, paragraph-no. 1 - 164,

view of the government stating that NATO moves were simply alterations of the original NATO treaty of 1949 signed by West Germany and therefore needed no parliament's approval.

According to the view of the PDS, the bases of the alliance have been expanded in such a substantial manner that Germany would have been allowed to agree only with the assent of parliament. The Court rejected this view. From the point of view of the judges, the government enjoys "autonomy of action" in international questions. According to the words of the second senate under the chair of Jutta Limbach, the allies expanded the tasks of NATO through the Washington document. To be sure the NATO treaty had only been developed further, but not basically changed. The rights of the Bundestag are secured after the judgment also in that each armed foreign deployment of German soldiers is tied to its approval.

But there are even powers inside the Bundestag which neglected Parliaments claim for a stronger role in foreign affairs. The former chairman of the Bundestag's committee on legal affairs Rupert Scholz (Christian Democratic Union), had explained as a representative of the Bundestag in the oral negotiation in the context of the debate around an approval to the new strategic concept of NATO before the Federal Constitutional Court: "Müsste der Bundestag zu jeder außenpolitischen Detailfrage gehört werden, wäre er überfordert."⁶⁰

III.3.2.3. Other Parliamentary functions in foreign policy

The basic (constitutional) law offers the Bundestag in foreign matters no initial, but rather cooperation competences. Nevertheless, the legislature is able to make use of a set of indirect instruments to participate actively in foreign policies.

Budget function

First and foremost, the parliament can use its budget right as a steering instrument. Keeping an eye on the budget, the Bundestag is able to influence – for instance – the goals or strategies in foreign policy or the equipment of the armed forces.

Control function

The Bundestag is capable of accompanying the executive in foreign policy according to its regular control instruments, especially through questions at the Federal Government⁶¹ as well as in the Committees for foreign affairs or defence. The Parliamentarians can make use of its »customary« instruments of control such as (public) hearings, »Aktuelle Stunden« (ad-hoc plenary sessions dealing with a current urgent issue) as well as oral and urgent inquiries in order to be involved in discussions of international subjects.

Public function

Moreover, the parliamentarians can use plenary debates to set the agenda and to influence German foreign policy.⁶² Almost regularly, the chancellor reports on sessions of the European Council or other international summits. In the »Aktuelle Stunde« and in the inquiries (»Große

<http://www.bverfg.de/>.

⁶⁰ See for the quotation: http://www.e-politik.de/beitrag.cfm?Beitrag_ID=1404.

⁶¹ Vgl. Wissenschaftliche Dienste des Bundestags: Datenhandbuch zur Geschichte des Deutschen Bundestags 1980 bis 1987, Baden Baden 1988, pp. 642f.; Wissenschaftliche Dienste des Bundestags: Datenhandbuch zur Geschichte des Deutschen Bundestags 1983 bis 1991, Baden Baden 1994; see as well Rainer Seider: Die Zusammenarbeit von deutschen Mitgliedern des Europäischen Parlamentes und des Deutschen Bundestages und ihr Beitrag zum Abbau des parlamentarischen Defizits in der Europäischen Gemeinschaft, Frankfurt am Main 1990, p. 81f.

⁶² See Stefan Bierling: Die Außenpolitik der Bundesrepublik Deutschland: Normen, Akteure, Entscheidungen. München 1999, p. 34.

Anfragen«), the portion of »international« subjects is between 25 and 50%.⁶³ Therefore, the Bundestag is able to substantially legitimate foreign political decisions. Nevertheless, it has to be taken into account that there is generally a co-operation between government and the majority parties of the parliament, in which primarily the opposition tries to influence the government's decisions by a wide range of technical-concrete rather than political-general instruments.⁶⁴

Although the Bundestag may not act in international law, its members have a wide range of instruments including their personal foreign country trips as well as meetings with delegate and executive representatives of other countries, invitations at foreign politicians and heads of governments to speak before the parliament and the collaboration with parliamentary groups of international organisations or the European Parliament.⁶⁵

III.3.3. Other actors in Foreign policy

III.3.3.1 The role of the Bundesrat

The second chamber of the German parliament, the Bundesrat, participates solely in the frame of the normal legislation procedure in foreign matters. It can voice objection against contract laws. However, this almost never occurs. Only in one area, the Bundesrat was able to gain stronger influence on German foreign policy: in EU-matters. The new Article 23 (Grundgesetz) does not only oblige the transmission of rights (to a higher level) to the Bundesrat, but rather forces the Federal Government to a comprehensive duty of information vis-à-vis the Bundesrat. In addition, within the last years, an ever more increasing (foreign) diplomacy of Prime Ministers and »Länder« ministers is recognisable. The representatives of the »Länder« are to be counted in questions of Europe politics as relevant actors.

III.3.3.2 The role of the Federal constitutional court

In recent years, the constitutional court (Bundesverfassungsgericht) has been increasingly pressed by the political actors to encounter the last decision in political debates. Examples in the past have been the procedures over the (Maastricht) Treaty on European Union, the action of the armed forces in Somalia or the supervision of the conflict in former Yugoslavia with AWACS-airplanes.

Thereby, the court has become a part of the international discourse structure of the Federal Republic. However, although the Federal Constitutional Court has put a formal end to the debate over the participation of the German Armed Forces in »out of area«-operations by judgment of the 12 July 1994, the political discourse and the argumentation on the moral bases of such inserts continued until 1998.

III.3.4. The Committee structure

III.3.4.1 The foreign committee

National parliaments in Western Europe and its committees regularly shape the official formation of foreign policy and the negotiation of treaties with third countries only to a minor

⁶³ Vgl. Wissenschaftliche Dienste des Bundestags: Datenhandbuch zur Geschichte des deutschen Bundestags 1983 bis 1991, Baden Baden 1994, Chapter 11.1, 11.2.

⁶⁴ See Phillipe A. Weber-Panariello: Nationale Parlamente in der Europäischen Union, Baden-Baden 1995, p. 198.

⁶⁵ See Ulrich Fastenrath: Kompetenzverteilung im Bereich der auswärtigen Gewalt, Münchener Universitäts-schriften, Bd. 66, München 1986, p. 245 f.

degree.⁶⁶ In a close informal dialogue, however, leading Parliamentarians – especially of the government parliamentary group, but frequently also the opposition – are informed and consulted. The German Bundestag is no exception. Especially the Foreign Committee of the Bundestag, consisting of »elder statesmen«, maintains a highly confidential dialogue in order to produce a broad consent by an intensive exchange of opinions. The indispensability of a close dialogue between Committee and government has proved itself especially in times of crisis. The sessions of the Committee are – as a rule – excluded from public view.

In order to be able to reflect the width of the international subjects more appropriately, the Foreign Committee had set up in the last year several sub-committees: for instance for disarmament and armament control, for foreign culture politics or for the United Nations and human rights and humanitarian aid.⁶⁷ In the 15th legislative period, the Foreign Committee comprises of 38 parliamentarians. The equipment of the Committee is rather poor: it consists of a secretary and three further officials of the higher service. In general, the Bundestag administration in the year 1995 includes altogether 2234 employees, among them about 40 research assistants. Thereby, the Bundestag does not gain efficient structures (as opposed to, in comparison, the Congressional Research services in Washington does: It comprises currently over 4.500 civil servants, including around 1000 research assistants. The work in the Committees would not be possible without the support of the parliamentary groups. Also the parliamentary groups support the work in the Foreign Committee. These units consist of advisors, who are »borrowed« frequently out of the Foreign Office or other ministries, and long-time colleagues, who embody an »institutionalised knowledge« of the parliamentary groups and guarantee continuity. In 1995, the Bundestag had around 840 research assistants of the parliamentary groups and 1471 personal assistants of the Parliamentarians.

III.3.4.2 The Committee on European Affairs

Next to the Foreign Committee, also the »Committee on the Affairs of the European Union« plays an important role. It was introduced apart from the general committee structure as it collaborates not only with the Federal Foreign Office but also with a number of other government departments.

Serious concerns have led to the discharge of the »Europe-Commission« of the Bundestag and to the foundation of a subcommittee of the Foreign Committee on questions of the European Community at the end of the 10th election period. However, the possibilities of participation accumulated by this body were limited. That was, above all, the result of tensions with the Foreign Committee itself.⁶⁸ The German Bundestag set up an independent »Europa-Committee« with 33 members in 1991. It includes also 11 delegates and observers of the European Parliament as participants, i.e. without right to vote. However, the role of this group was also disputed both in the relation to the branch committees of the Bundestag which preferred it being responsible for the respective legal acts in the EC-legislation and also in the ratification of the Maastricht Treaty, for which the Bundestag inserted a special committee »European Union« including members of all involved Committees. The »Europe-Committee« developed no significant profile.

Since the coming-into-force of the (Maastricht) Treaty on European Union, the parliaments have substantially expanded its participation rights in the 90s. In this frame, the »Committee on the Affairs of the European Union« was established. According to the new article 23 this committee may »exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal

⁶⁶ See the contributions in: Antonio Cassese (eds.): *Parliamentary Foreign Affairs Committees, The National Setting*, Padova 1982.

⁶⁷ Some of these committees have now an autonomous status.

⁶⁸ See Alwin Brück: *Europäische Integration und Entmachtung des Bundestags: Ein Unterausschuss ist nicht genug*, in: *Zeitschrift für Parlamentsfragen*, Opladen, Juni 1988, No. 2., pp. 220-224, p. 223f.

Government”.⁶⁹ Hence, the Committee got the right – constitutionally anchored – to participate in the process of the EU.

III.3.5. Conclusions

Due to the supremacy of national government in foreign policy on the one hand, and because of governments’ ability to use the knowledge and powers of their administrations on the other, the German Bundestag is only to some extent involved in foreign policy. One has to distinguish between direct and indirect instruments:

The German Bundestag operates only to a lesser degree directly – in decision-making – in foreign policy. Nevertheless, compared to its European counterparts, the Bundestag has attracted a substantial role even in the decision-making process, since the German government is obliged to obtain parliament approval for any deployment of troops abroad.

In view of the indirect rights of the Bundestag, the impact of the Bundestag is even more important. The legislature is able to make use of a set of indirect instruments to participate actively in foreign policies.

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⁶⁹ See for the quotation: http://www.bundestag.de/htdocs_e/info/gg.pdf.

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III.4. British Parliamentary participation in foreign, security and defence policy: adapting to Europe within a transformed world

(David Allen)

III.4.1 Introduction

III.4.1.1. Historical fundamentals

Britain is a former major global power with a long and proud military tradition. Successful involvement in the two great World Wars of the twentieth century confirmed the United States as Britain's closest ally and underlined the fact that the UK-US relationship was most 'special' in its military manifestation. During the cold war it became clear that of the five great powers whose predominance was enshrined in their permanent membership of the UN Security Council, the US and the USSR alone had become military superpowers. Britain remained as a second rank power destined to spend the second part of the century adjusting to the decline of its colonial empire and seeking to come to terms with the problem of 'rising demands and diminishing resources'. Britain's strategic direction was perceived to revolve around the need to reconcile what became known as the three overlapping 'circles' of British interest – the Commonwealth (as successor to the Empire), the special relationship with the United States and Europe. Britain's difficulties in managing these sometimes competing areas of interest led American Secretary of State, Dean Acheson to comment that Britain had 'lost an empire but not yet found a role'.

The retreat from Empire was achieved in relatively good order and after gaining considerable experience of the new art of counter insurgency warfare; it was most significantly marked militarily by the decision in the late 1950s to abandon conscription and go for all professional armed forces and, in the late 1960s, to withdraw from having a permanent military presence 'east of Suez'. Throughout this time Britain struggled to retain its independent nuclear deterrent and came to rely on the US to supply its prime means of delivery – first Polaris then Poseidon submarine launched ICBMs. Britain also played a leading role in arrangements for collective European defence, initiating the Dunkirk treaty (with France) and then the Brussels Treaty Organisation, rejecting and thereby probably preventing the planned European Defence Community but establishing instead Western European Union as a vehicle for European defence cooperation and for rehabilitating a rearmed West Germany in the mid 1950s. As a leading member of NATO and keen to preserve the American commitment to Europe as well as its own special relationship, Britain consistently opposed what it saw as French led efforts to create any European defence structure that might be seen as either a replacement for or a challenge to NATO. On the other hand Britain consistently supported any efforts (such as the formation of the Eurogroup or joint European collaborative procurement initiatives like the Jaguar or Tornado fighters) that were designed to enhance the collective European contribution to NATO effectiveness – to this extent Britain has often had cause to reject the view that a choice had to be made between a strategic commitment to European unity and the maintenance of the special relationship with the US.

Britain joined the EU in 1973 and whilst British enthusiasm for the 'community' method of integration and for a federal ambition for the EU has never been great, attempts by the EU Member States to work more closely together in the field of first foreign policy and then foreign and security policy (via progressively EPC, CFSP and ESDP) have always received pragmatic support from Britain. This enthusiasm for European cooperation in the foreign and security policy area is partly explained of course by a desire to privilege intergovernmental cooperation over the supranational community method but it is also driven by a growing acceptance of the fact that, both during and after the cold war, Britain's chances of achieving its international ambitions alone have been progressively reduced such as to make European cooperation an imperative.

Nevertheless concern to reconcile the three 'circles' remains and no British government since the second world war has been prepared to countenance any strategic vision that did not involve Britain playing an active global role and preserving its special relationship with the US whilst at the same time becoming more involved in the mainstream of European unity. No British Prime Minister since Edward Heath has considered leaving the EU but equally no Prime Minister has considered giving up Britain's unilateral nuclear status or its individual permanent seat on the UN Security Council or indeed its ability to intervene unilaterally as well as multilaterally using military force in conflicts around the world.

Britain has by and large made its strategic and military adjustments to the post cold war world without claiming quite the peace dividend that many hoped would accrue. In the early 1990s the Conservative Government sought what savings it could through its defence review entitled Options for Change and in the late 1990s the Labour Government held its own Strategic Defence Review (SDR) which aimed to outline a coherent defence policy for Britain up to 2015. The SDR which involved quite wide consultation but which was in the end easily controlled by the government made few radical changes but a number of significant adjustments and was seen as reassuring (i.e. that there were to be no fundamental cuts or rearrangements to the British armed forces) by those involved with Britain's armed forces. The SDR confirmed that Britain would remain a nuclear power albeit with what was now described a 'minimal deterrent capability' and that future forces would be designed to deal with the new security agenda which increasingly involved potential threats that called for flexible, rapidly deployable and integrated (involving all three branches of the armed services) forces that could be used to 'intervene' in a number of different military, peacekeeping and relief operations. The commitment to procure three new large aircraft carriers combined with the PM's rhetoric about the need to intervene to preserve world order and to support various humanitarian objectives suggested that Britain did not perceive any fundamental change in its global role, more in the way that it might be projected. The decision to maintain an integrated capacity to intervene using air, land and naval forces suggested that whilst Britain might be ready to participate in collective European action it was not prepared to rationalize its defence effort (for instance by specializing in either naval or land or air forces) in such a way that would prevent it from also undertaking military operations on a unilateral as well as multilateral basis.

Thus whilst the world has changed a great deal since 1989 and whilst Britain is now much more of a mainstream member of the European Union than it was ten years ago the weight of history remains making Britain a fundamentally different sort of international actor to most of its partners (with the obvious exception of France) inside the European Union. Britain's growing commitment to the EU and particularly the CFSP and ESDP does not mean that its strategic vision has been 'Europeanised'. The present government clearly believes that its global strategy, which is based on an assumption that British interests will require a continuing capacity for world wide intervention is quite compatible both with the exercise of constructive leadership within the EU and the maintenance of special relationship with the US – in one sense the three circles are alive and well and reflect the fact that the historical fundamentals remain an important part of Britain's contemporary strategic vision.

III.4.1.2 UK priorities re security and defence policy/CFSP and ESDP

The current British government has been in power since 1997 and is likely to remain in power at least through the lifetime of this and the next parliament (say up to 2008 or 2009) partly because of its huge parliamentary majority and partly because of the total disarray of the Conservative opposition. It seems likely therefore that Britain will remain committed to membership of the EU and to the initiatives that it has taken with regard to the CFSP and the ESDP although there must be some doubt about how far Britain is prepared to down the path of European defence integration as opposed to cooperation. The major stumbling block to Britain playing the major leadership role within the EU that Tony Blair clearly aspires to is the ongoing internal argument about British membership of the EMU and participation in the Euro. Some would see Blair's enthusiasm for ESDP and his willingness to first initiate and then support its continuing development as being at least partly explained by a frustration with the poor recent military performance of the Europeans in the Balkans but also by a desire to distract attention away from Britain's continuing hesitations about the Euro.

Britain has always been an enthusiastic supporter of foreign and security policy cooperation from the time when Mr. Callaghan stated, only half in jest, that he would be happy to leave the EC if he could remain as a participant in the EPC process. Of course the British have always been theologically predisposed towards intergovernmental rather than supranational or federal cooperation but this alone does not satisfactorily explain the high priority that the British have always given to the pragmatic evolution of the EPC/CFSP/ESDP process. It was, after all, the *London* report that significantly reformed EPC in the early 1980s, it was the British inspired WEU that created an organization that was to be revived in the 1980s and which in the 1990s laid the foundations for ESDP, it was Mr. Blair's St Malo initiative (with Jacques Chirac) that saw the defence ambitions of the Maastricht Treaty (the wording of the defence references in the TEU had in the past been ascribed to British duplicity!) eventually realised and it was the British whose ideas lay behind the establishment of the Political and Security Committee as the Brussels-based institutional expression of the new CFSP/ESDP arrangements.

Britain, as we stated above, has never been prepared to countenance either foreign or defence policy cooperation within the framework of the EU that could be seen as either opposed to or challenging of NATO and continued cooperation with the United States. In the past when forced to choose the British have made it clear that they would stick with the Americans but Mr. Blair clings to the hope (harder to sustain under Bush than under Clinton) that the choice does not need to be made and that the evolution of ESDP can be seen as strengthening rather than undermining or replacing NATO. This does mean that of the three potential options for the collective use of force by the EU the British are most interested in those situations where either NATO including the US takes the lead or where NATO excluding the US still chooses to act with, as it were, US support. Probably the UK is least interested in scenarios where the EU seeks to act militarily in a situation where US opposition precludes NATO action. The British have never really accepted a tacit division of labour in which the EU specializes in the 'Petersberg' tasks whilst NATO continues to concentrate on the grander 'article V' obligations. The fact that NATO now sees all the Petersberg tasks as within its remit and that NATO too plans a Rapid Reaction Force like that of the EU is a source of pleasure to the British rather than disappointment. The British in other words have no 'integration' aspirations as far as either the CFSP or ESDP is concerned. Their interest has always been pragmatic (doing necessary collective things more efficiently and more effectively) rather than theological or ideological. The British want NATO to survive and they want the Europeans to make a more effective military contribution than they managed in Former Yugoslavia but that is about the extent of their ambition. They see the EU playing a role in this, which is why they advocated the ESDP when they did but they do not see this as part of a process whereby the EU, be-

comes more integrated or »statelike«. The British are most certainly not interested in participating in either the CFSP or the ESDP on anything other than the current terms. They would not for instance be prepared to consider the »communitisation« of either the CFSP or ESDP and they have made that abundantly clear at the European Convention currently being held in Brussels.

The British under Blair are as keen as they have ever been to preserve the separate pillars of the EU and thus to keep the CFSP and the ESDP firmly intergovernmental (although they see no problem in keeping the pillars but merging the separate provisions into a single Treaty structure. For several years now Blair has spoken of his desire to create a »superpower but not a superstate« and of his aim at the next IGC (which the British see as being not entirely determined by the outcome of the Brussels Constitutional Convention) to significantly enhance the power of the European Council and the Council of Ministers (and its supporting structures) but not that of either the Commission or the European Parliament. Blair argues that the European Union needs to be »democratized rather than centralized« and that this is best achieved by increasing the power of the European Council and the Council of Ministers. Especially when it comes to foreign and defence policy the British remain determined that the EU should not be seen as an alternative to nation states but as a means of enhancing those issues (like foreign and defence policy) which Member States ultimately handle themselves but which can be done better by working together. Blair sees a President of the European Council (elected by his peers) as the EU's ideal figurehead on the world stage capable of carrying out the collective wishes of his (or her) fellow leaders.

The British would be glad to see the back of the six monthly rotating presidency and have always supported the process of »Brusselisation« that best characterizes the way that both the CFSP and the ESDP have evolved in recent years. »Brusselisation« refers to a process of gradually moving the meetings and ongoing management of CFSP/ESDP from the national capital of the rotating presidency to the structures of the Council (High Representative, PSC, Policy Unit, Military Staff based in Brussels).

When it comes to the CFSP and ESDP the British are not in fact opposed to »Brussels« per se even though British politicians constantly refer to the need to limit the power of »Brussels«. The fact that the British are keen to see the Council and its secretariat develop, that they support the introduction of the Political and Security Committee, the Military Committee, the Policy Unit including the Military Staff and an enhanced role for the CFSP High Representative could be said to be at odds with the Prime Ministers stated desire that power be rooted in the democratic institutions of the Member States with accountability through national governments and national parliaments. As we shall in the next section the British Parliament is one of the more active (only surpassed by the Danish Parliament) when it comes to attempting to scrutinize the workings of the EU but its effectiveness has been limited mainly to the EC pillar rather than EPC/CFSP. By advocating support for the Council system and effectively for even more »Brusselisation« of the CFSP/ESDP the British are ensuring that collective foreign and security policy-making remains in a kind of democratic vacuum or black hole – beyond the effective reach of Westminster but also protected from Strasbourg as well. The British have always argued that the combination of intergovernmental procedures and the retention of national vetoes means that accountability is assured through national parliaments because national foreign, defence and prime ministers can veto any action at the EU level and can be held accountable for that action or for any failure to veto in their national parliaments. In fact Westminster has found it almost impossible to effectively keep track of collective decisions and action that are not underpinned by EU law and indeed few Westminster MPs have shown much interest over the years in the intricacies of either EPC or the CFSP – it was however the case that more interest was expressed about ESDP and what it might mean but this was easily dealt with by the British government when it became apparent that the main target of the Opposition was the idea of an European Army which the government had no intention

of supporting. Westminster is often reduced to being the recipient of information about the CFSP/ESDP after rather than before the event. It could be said to be hypocritical of the British government to, on the one hand argue for the desirability of democratic accountability through national parliaments and on the other hand argue for an effective extension of »Brusselsisation« of the CFSP/ESDP.

The British do want the EU to become a more effective (and British led!) actor on the world stage. They supported the Seville reforms of the European Council and introduction of the General Affairs and External Relations Council and they would like to see the external relations sub-formation of the GAC chaired in future by the High Representative rather than the presidency (replacing an elected politician answerable to his or her national parliament with an unelected official answerable to the collective Council which is inevitably dominated by the larger states). The British believe that a high profile official will be less likely to be ignored than the Foreign Minister of a »low profile« member state. The British would also like to give the High Representative the same right of initiative in the European Council and the GAERC as is currently enjoyed by the European Commission. Moreover they are also willing to compromise for pragmatic rather than theological reasons on their otherwise absolute insistence that in the area of CFSP/ESDP national vetoes must be preserved. Citing Elmar Brok, the British Minister for Europe, Peter Hain, recently argued that the notion of »coalitions of the willing« should be seen as an asset to the union rather than as a challenge to the principle of solidarity. He also made it clear that he saw no difficulty in reconciling the ambitions of the CFSP and ESDP with Britain's wish to, on occasion to act alone when the EU chooses not to, as in Sierra Leone in the recent past and probably in Iraq in the near future.

III.4.2. The National Policy-Cycle

III.4.2.1. Actors

Government

The British system seeks to coordinate the external activities of a number of Government Departments through the central coordinating mechanism of the Cabinet Office and Downing Street. There are Ministries with direct responsibility for Foreign Policy, Defence Policy, Trade Policy and International Development Policy and all these (the Ministry of Defence only recently) play a major part in the making of European Union Policy although the FCO still plays the most significant role. All government Departments are also faced with the challenge posed by the growth of the Prime Ministers own office in Downing Street and the Cabinet Office. So-called »presidential power« in Britain threatens the role of Parliament but it also threatens the role of departments like the FCO and the Ministry of Defence. In recent years the FCO has faced a number of specific issues in addition to the general problem of managing the consequences of Britain's general decline in the international hierarchy. The biggest external challenge has arisen from the need to adjust both the procedures and substance of British foreign policy to the growing importance of the European Union. Participation in the European Union has given particular emphasis to the blurring of the boundaries between domestic and foreign policy. A considerable amount of EU business is conducted by officials from the Home Civil Service working in domestic ministries such as the Department of Trade and Industry (DTI) and the Ministry of Agriculture, Fisheries and Food (MAFF now known as DEFRA) and, since the rise of ESDP and the events of September 11th, the Ministry of Defence and the Home Office. Where once all dealings with foreign governments were conducted through the FCO and Britain's embassies abroad, now there are direct dealings between domestic ministries and their opposite numbers in the other EU Member States. This

has highlighted a number of issues of both coordination and control that have challenged the FCO's dominant role in the identification and pursuit of the British interests overseas.

In the past a separate European Ministry has been proposed and, under Edward Heath in the 1970-74 Conservative administration, a Cabinet minister with EU responsibilities (Geoffrey Rippon) was appointed to support the Foreign Secretary, although, once the accession negotiations were completed, the post was soon abolished. The FCO has always resisted attempts to separate EU business from the overall responsibilities of the FCO and successive Foreign Secretaries have shown little enthusiasm for suggestions that the present Minister of State for Europe be elevated to Cabinet rank. A Foreign Secretary stripped of his EU responsibilities would suffer an enormous loss of stature so central is the EU to so many internal and external policy issues. Nevertheless the idea has been raised again recently with the suggestion that senior cabinet ministers (Jacques Delors even suggested deputy prime ministers!) reporting directly to prime ministers might be permanently based in Brussels and charged with sustaining the authority of the European Council between the six-monthly summits. This would indeed have called into question the role of the FCO and of the Foreign Secretary, especially if, as was mooted at the time, the UK candidate had been Peter Mandelson. Proposals to transfer the management of European business to the Cabinet Office would have had the same effect.

The FCO has undoubtedly gained from the centralising tendencies that EU membership has encouraged and Smith has identified the rise of »an informal, yet powerful elite comprising Number 10, the FCO, the Cabinet Office and the UK permanent representation (UKREP)«. However the British system of coordination, whilst it gives the FCO by far the major role, is also designed to ensure that where necessary the FCO is treated as another interested Department and not as the sole determinant of the UK national interest. The role of the European Secretariat of the Cabinet Office which arranges, chairs and records the results of interdepartmental discussions at all levels ensures that the FCO can not claim sole ownership or authorship of EU policy. The Cabinet Office is also responsible for the process whereby Parliament is informed and consulted about EU legislation. The FCO is usually represented in the European Secretariat of the Cabinet Office but only with one official in a team of about seven – the rest coming from the home civil service.

However one has to be careful about making too much of the restraints on the FCO's role in EU policy-making and coordination. The European Secretariat of the Cabinet Office is quite small, although large by Cabinet Office standards, and it does rely heavily on FCO support. Similarly whilst UKREP is indeed an unusual embassy, with more than 50% of its staff being drawn from the home civil service, an ambassador from the FCO has always headed it and the FCO retains the right to oversee its instructions. The position of Permanent Representative is an extremely powerful one with the incumbent responsible for the day-to-day management of EU business in Brussels as well as usually playing a pivotal role in Treaty negotiations within the Intergovernmental Conference framework. The UK Permanent Representative, additionally gets to return to London each Friday to participate in EU policy-making meetings both within the FCO and the Cabinet Office – an opportunity resented by many home based officials and much envied by all other UK ambassadors.

Thus, despite the constraints mentioned above and elsewhere in this chapter, the FCO probably has succeeded in retaining a predominant EU role within the UK system. This is partly because in its competent handling of EU business the FCO has earned the respect of those working within other government departments and partly because the FCO itself has been quite relaxed about allowing other government departments to get on with EU business that clearly lies within their exclusive competence. Although it has been argued that as EU business increases, the FCO and the Cabinet Office are losing control and departments are increasingly conducting business with the Commission and other Member States directly and that the FCO is incorrect in its belief that it still controls contact with Brussels, the counter to this is that, on the important EU matters, the FCO retains a controlling interest and that it is

probably wise to not try and take on business that it is beyond both its competence and its resources. It is certainly the case that all major initiatives by the UK in the EU are primarily discussed within and between the FCO and the growing office of the Prime Minister in Downing Street

Within the FCO, following several recent reorganisations, EU matters and bilateral relations with individual EU Member States are now handled within the same Command – the EU Command which now has four departments (CFSP, EU Internal, EU External and EU Bilateral) who report to the FCO Director EU and then (except for CFSP Dept, who report to the Political Director) to the Director Economic and EU. CFSP Department, in effect, provide a secretariat for the FCO Political Director who has chief operational responsibility for the UK's input into the CFSP process. The Wider Europe Command brings together all the Departments dealing with Central and Eastern Europe (except the Balkans, which has a separate Command) and Western European countries, which are not in the EU.

Finally we should mention the efforts made by Mr Blair and Mr Cook, when he was Foreign Secretary, to broaden the nature of the UK government's relationship with its EU partners because these too may challenge the role of the FCO in the future. The Prime Minister is keen to establish stronger links between the centre-left parties in power in a number of the 15 EU states. For a brief period Mr Blair appointed Mr Mandelson, seemingly with Mr Cook's blessing to act as a »roving ambassador« but this did not appear to last long or bear much fruit.

For his part Mr. Cook when Foreign Secretary, set up a powerful committee to increase the Labour party's influence in Europe. The committee, which is chaired by the Minister for Europe (a post which has had a surprising number of incumbents since Labour returned to power), included policy advisors from Downing Street, the FCO and the Treasury. It represents the kind of development that the FCO has to embrace but, one suspects, with the intention of smothering rather than nurturing a potential challenger to its control of UK relations with European governments. The idea of someone like Mr. Mandelson becoming a »roving European Ambassador« was about as pleasing to the mandarins within the FCO as the idea of a foreign policy unit in Downing Street or a Minister for Europe in the Cabinet Office. In any case the Labour government these days has far fewer left leaning governments in Europe to work with.

Within the present government Mr Blair is the dominant actor in all aspects of foreign and security policy. St Malo was very much his initiative with the Ministry of Defence following in his wake and he has been careful to appoint both a Foreign Secretary (Jack Straw) and a Defence Secretary (Geoff Hoon) who are content to run their departments in a supportive manner whilst the PM dictates the broad outlines of policy towards both the US and the EU. Mr Blair like all Prime Ministers before him has grown to like the diplomatic round and has increasingly pursued a personal style of diplomacy at both the EU and global levels. Blair is a strong PM whilst his predecessor John Major was a weak PM. Blair has few challengers at present whilst he remains strong but there are of course plenty of potential rivals waiting in the wings should he falter on a foreign policy or security issue. Under Blair the Department for International Development headed by Claire Short plays a greater role in foreign policy making than under the Conservatives and she is a constant reminder to him that one of his early objectives was to add an ethical dimension to British foreign policy. Blair has appointed a surprising number of FCO Ministers for Europe suggesting that he does not see the post as that significant given his own determination to play a major role in Britain's EU policy-making.

Parliament

a) National level - Britain has two parliamentary chambers – the elected House of Commons which alone provides the majority required to form a government and pass legislation and the (at present) unelected House of Lords which has delaying power but no final veto on government legislation. The House of Lords currently consists of hereditary and appointed members. The House of Commons holds set debates on foreign and security policy, questions can be put to the prime minister (although Blair has significantly reduced the impact of this by changing Prime Ministers Question Time from twice to once a week) and other ministers and it commands the power of the purse which is more relevant to the control of defence policy than foreign or European Union Policy. Foreign and Security Policy is considered by a number of Select Committees in both Houses. They publish Reports based on evidence both written and oral, which is also published.

In the Commons the three most important Select Committees are the Defence Committee, the Foreign Affairs Committee and the European Scrutiny Committee. The Defence Committee examines the expenditure, administration and policy of the Ministry of Defence. It has published recent Reports on The UK Strategic Defence Review., the Future of NATO, ESPD and Kosovo. The Foreign Affairs Committee covers the expenditure, administration and policy of the FCO. Its recent publications include reports on European Council meetings (Seville, Barcelona, Laeken), the reform of EU Development Assistance and Foreign Policy Aspects of the war against terrorism. The European Scrutiny Committee, which has two standing committees, assesses the legal and political importance of each EU document, decides which EU documents are debated, monitors the activities of UK Ministers in the council, and keeps legal, procedural and institutional developments in the EU under review. It has recently reported on Democracy and Accountability in the EU and the Role of National Parliaments and on ESDP: Financing of Operations. The two standing committees (known as A and B) each consist of around a dozen MPs who are appointed for the whole parliamentary session.

In the Lords the relevant Committee is the European Union Select Committee whose brief is to consider EU documents and other matters relating to the EU. The Committee has six sub-committees. A) economic and Financial Affairs, Trade and External Relations, B) Energy, Industry and Transport, C) Common Foreign and Security Policy, D) Environment, Agriculture, Public Health and Consumer Protection, E) Law and Institutions, F) Social Affairs, Education and Home Affairs. The full EU Committee oversees the work of the sub-committees, conducts inquiries into cross cutting issues such as the proposal for a Second Chamber for the European Parliament (which it opposed despite the British Government's continued advocacy of the idea at the Convention. It also hears evidence from every incoming EU Presidency and from the UK Minister for Europe after every European Council. The House of Lords EU Select Committee is one of the best sources of information on the EU in Britain. Its power to hold hearings and to call expert witnesses from a broad cross section of »informed society« is second to none and its reports are most impressive.

This form of scrutiny however is typical of the Whitehall system,. It is essentially an »in house« form of scrutiny and information exchange whereby the British administrative, political and economic elites keep each other informed but still keep themselves aloof from the wider British society so that the reports of both the Lords and Commons select Committees rarely receive much publicity outside of the circles of government. Both Committees spend a great deal of time wading through the mass of proposed EU legislation but the Commons as a whole has shown little real interest in using its committees to exert significant control over the growth and nature of EU legislation. Parliamentary scrutiny is essentially reactive and does not constitute a significant check of government EU policy-making partly because few MPs are actually that interested in the detail of EU policy and partly because in Britain the government exerts a strong control of the legislature.

Signing treaties and Going to War

The British government is quite clear that it alone will take decisions about the commitment of British forces to military action whether that action is unilateral or within the context of the ESPD and the Rapid Reaction Force. Those interested in the parliamentary control of the use of military force have a good opportunity to study the British case as the UK faces up to the prospect of involvement in a war with Iraq. The British Prime Minister is not known as the commander-in-chief as is the US president but his powers in many ways are even greater when it comes to committing British forces to battle. The Prime Minister alone can do this and is not required formally to account for his decision to either the cabinet or the House of Commons. The US President is required by the War Powers Act to go to Congress within 90 days of hostilities breaking out and explains his actions.

Britain has gone to war three times since 1980. Mrs Thatcher used almost all of Britain's military capabilities to recapture the Falklands, Mr Major contributed 30000 soldiers to Desert Storm –the campaign to liberate Kuwait from Iraqi invasion and occupation and Mr Blair committed British forces to action in Kosovo. In each case the Prime Minister had clear public backing and would have obtained parliamentary support if it had been necessary. Both of these facts are in doubt with regard to the possible use of British troops in an assault on Iraq and so there has been considerable pressure on the government to consult parliament as Mr. Blair has so often said it would. Many have noted that Mr Blair has been more willing to talk to the US and Russian Presidents and to the British Trade Union Congress than to the British Parliament and the FT noted that his critics have argued that his muscular defence of democracy abroad was unmatched by democratic enthusiasm at home. The decision to eventually hold a debate in September 2002 on the situation with regard to Iraq was finally taken when the pressure on the Prime Minister became overwhelming. Concerned MPs last summer could not hold a debate (although some threatened to simply turn up and hold one in impromptu fashion) without the government acting as Parliament was in recess for its extended summer break. The Government alone has the power to recall parliament when it is in recess and it was argued in the summer that this power should be extended to allow perhaps 25% of MPs to request such a recall. Many are also arguing for some equivalent of the US War Powers Act enabling Parliament to at least review any decision to involve Britain in a protracted war.

Doubts about the situation, even after the decision to hold a one day debate on September 24th, continued with the Leader of the House of Commons (Robin Cook ex Foreign Minister) stating that »it is inconceivable that any government could commit British forces to military action without the consent and support of parliament« but this is exactly what Mr Blair is planning to do with his one day debate without any substantive vote. There was a vote on adjournment but this was not specific and did not really enable MPs to register their views on the use of British force. For differing reasons now both the Tory party and Labour left-wingers would like a more specific vote but the government continues to deny them this and will be well within their constitutional rights to do so.

The Cabinet is in much the same position as parliament. It met for the first time since July on September 23 with MPs summoned for a special sitting the next day – in between the government released its long awaited dossier on the case for removing Saddam Hussein.

In late November the government under further pressure to give Parliament a say in Britain's decision or not to go to war agreed to hold another debate this time on the UN Security Council resolution. The rebels once again want a second vote later on to approve the use of force against Iraq whereas the government just want MPs to back a motion endorsing the UN Resolution. The aim is to exploit goodwill for the UN to get a vote for the Resolution and then to argue that the vote would justify military action if Iraq then failed to comply with the inspectors. The government will not agree to a second vote because it says it would go against parliamentary precedent

In Britain's unwritten Constitution the power to agree Treaties and to declare war and peace lies under what is known as the royal prerogative. The royal prerogative sanctions a whole category of government actions that can be undertaken lawfully without the authority of an Act of Parliament. In the British system the powers that are part of the royal prerogative theoretically remain with the Crown but in practice are used by the government uncontrolled by either the Courts or by Parliament. Thus governments can sign Treaties and they can go to war under this prerogative. Usually the government does give parliament a chance to debate its actions after they have taken place but the prerogative allows it to dispatch (in the name of the Crown) the armed forces without first seeking parliamentary approval. The same would apply if the Government were to agree within the Council to the rapid Reaction Force participating in military conflict under the auspices of the ESDP. The British government will resist the idea that the European Parliament should be given the power of assent over EU military action because it would not concede such a power to its own parliament.

The royal prerogative also applies to treaties which is why the EPC part of the Single European Act and the second and third pillars of the Treaty on European Union have never been passed approved by the British Parliament – nor for that matter has the North Atlantic Charter and British membership of NATO. The British government under the royal prerogative can sign Treaties without the approval of Parliament (making the Westminster Parliament less powerful in this area of foreign policy than the European Parliament which does have the power of assent over all treaties that the EU signs which have financial effect and over all Accession Treaties. Thus when the British government took the UK into the EU by acceding to the Treaty of Rome it had to get Parliament to pass a statute – the European Communities Act of 1972 so that Community Law became part of British law. When the Treaties were subsequently amended by the Single European Act, by the Treaty on European Union and by the Treaties of Amsterdam and Nice, the British government signed these Treaties but did not have to get them passed in their entirety by Parliament. Instead they merely amended the European Communities Act to allow for the changes to the European Community but they were not obliged to mention all the intergovernmental aspects of the subsequent Treaties. The British Parliament has never therefore formally passed into law any aspects of EPC, CFSP or ESDP because these are the subject of a traditional Treaty which the Parliament is allowed to observe (via the Ponsonby rule) but neither accept or reject.

b) EU level In October 1990 the British Government made a major statement on its position with reference to accountability and ESDP. In the 1999-2000 parliamentary session the House of Lords Select Committee on the European Union produced its 15th report on the CESDP and its Response to the Report the Foreign Secretary said the following about accountability. "The Government welcomes the Committee's view that defence is a responsibility of national governments and parliaments. It is proper that scrutiny of operations involving British forces and of policy issues with operational potential should rest primarily with Westminster. There may be a case for some multi-national consideration of some aspects of ESDP. Given the intergovernmental nature of ESDP, on which all the Member States agree, we do not see an enhanced role in this for the directly-elected European Parliament, over and above its existing involvement in CFSP. In his Warsaw speech on 6 October the Prime Minister proposed that the European Union should consider the establishment of a second chamber from national parliaments. The Prime Minister suggested that such a chamber could help provide democratic oversight at European level of CFSP".

In the Spring of 2002 the House of Lords Select Committee on the European Union published its Eleventh Report which was an update of developments within the ESDP. The report had this to say about the subject of democratic accountability. "In our last report we noted concern about the mechanisms for parliamentary accountability of ESDP and this remains an unresolved issue. Since this EU policy is intergovernmental, we are principally concerned with

arrangements for national parliaments to hold their own executive to account. In particular there needs to be a suitable accountability mechanism for decisions taken in the Council of Ministers by British ministers regarding matters which are less than war, but which cover humanitarian and crisis management decisions in which British lives are at stake. Developing such mechanisms requires further attention.

However we also note the European Parliament's aspiration to take over the responsibilities of the WEU Assembly and take responsibility for scrutinizing collective decisions of the Council of Ministers. There have also been competing proposals to create a European defence assembly and plans to improve national parliamentary contributions to EU decision making. We believe this is unnecessary in view of the existence already of a number of informed parliamentary assemblies. However, democratic accountability is inadequate and the matter must be addressed at both national and European levels if ESDP is to have widespread support of EU citizens. The Government have made clear that they do not believe that the WEU Assembly should take on this role. When asked whether the Government would block attempts by the Assembly to take on the formal role of parliamentary oversight of the ESDP, Mr. Bradshaw (an FCO Minister) replied, simply, »Yes« They have also suggested that in the interim period before the Inter-Governmental Council in 2004, the work of parliamentary scrutiny could be carried out by the existing international parliamentary bodies: the NATO Assembly, the WEU Assembly and the OSCE Assembly. We support this view and recommend that each of these bodies establish working groups together with a representative from the European Parliament to carry out this work”.

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Other actors

a.) sub national - The Labour Government’s devolution policies may well eventually have an impact on the way that the UK relates to the EU although the Government seems determined to try and retain London’s control over these matters. Each of the devolved administrations (Scottish Executive, Welsh assembly, Northern Ireland Executive) has agreed a *concordat* with the Westminster Government covering their role in international relations in general and the EU in particular. These were agreed without undue difficulty and the arrangements so far seem to be working well. The anticipated problems and disagreements have not so far materialised, with the result that the FCO has now disbanded its short-lived Devolved Administrations Department. Whilst the UK government is determined to remain responsible for international relations, including relations with the EU, it may well find itself under pressure from the devolved administrations as their work develops. Already there have been suggestions that Scotland might seek to expand the level of its separate representation in Brussels and this would eventually threaten the role of UKREP and the UK Permanent Representative. Com-

parison with the growing EU role of the German Lander in this context may well be instructive in the future. In the long term, of course, the possibility of devolution leading to independence would challenge the whole concept of UK foreign policy and the role of the UK FCO. The Scottish Executive has recently expressed unease about its lack of formal representation in the European Convention arguing that Poland has a better-defined role than Scotland in determining the future of Europe.

III.4.3. Conclusions

a) *national parliamentary performance - strengths and weaknesses*

The British parliament is a relatively poor scrutinizer of British EU policy in general and foreign and defence policy in particular. Although it has well-established scrutiny committees there work is inevitably reactive although some of the best information available is to be found in the reports of the House of Lords EU Select Committee. The British Parliament formally takes the scrutiny of EU business very seriously but in practice the volume of legislation overwhelms the system. Control of CFSP/ESDP is less effective because it has no legislative base and because, despite its well informed Select Committees, the House of Commons is forced to be essentially reactive. Control and scrutiny of both Foreign and Defence policy is most effectively criticised after the event when both expenditure and policy experience can be quite harshly examined. It is meant to be the knowledge that it will eventually be held to account by Parliament that effectively »controls« the Government although even here the executive has many defences against a prying legislature.

We have seen that the government has gradually increased its control of the legislature in the UK and that within the government the Prime Minister is becoming increasingly Presidential without any of the checks that Presidential systems usually impose on incumbents. The main problem though is that it is becoming harder and harder to control the activities of the British government when it acts multilaterally in partnership with other states and this it does most within the framework of the European Union. When action is taken under the first (EC) pillar then some democratic control is exerted both by the European parliament and by the Westminster EU legislative committees but when action is taken within the framework of the second pillar then this is not the case. The more that the CFSP/ESDP »action« takes place in Brussels then the less effective will the national scrutiny be partly because national parliaments have little information about what is happening and partly because British MPs show little interest in finding out more. The British government is clearly content to work within an increasingly »Brusselised« CFSP/ESDP because in this way it escapes close parliamentary scrutiny.

b) *necessary reforms*

In the House of Commons British MPs would clearly benefit from more information about the workings of the CFSP and ESDP and one way to improve this would be to find ways of linking Westminster more effectively with Strasbourg. At present there is little contact between the national and European representatives of the major British parties and both would benefit. Ways need to be found to enable MEPs to participate more in the activities of the British parliament (possibly by sitting on select committees) and national MPs need more chances to experience contact with those who understand the EU system and who have access to information about what is happening both in Brussels and in the other Member States. In the past the WEU and north Atlantic Assemblies did provide, via their dual mandate system for national MPs to come in to contact with representatives from other national parliaments.

The real problem is that the British government does not want to expand the power of the European Parliament but its collective foreign and defence policies are not effectively controlled at national level. This however is a problem that is as much related to the area of foreign and security policy, as it is to the specific level at which decisions are taken. Any scrutiny of this policy area is likely to be reactive rather than active and to take place after rather than before foreign or military action. The British have always maintained that it is hard to openly debate foreign and security options before they are taken. Foreign and Defence policy is by definition an executive dominated policy area where the certainty of effective scrutiny and evaluation of policy *after* the event is perhaps the most effective way of ensuring that governments either unilaterally or in cooperation with one another proceed in a considered and careful manner. The British Parliament has quite successfully and publicly evaluated British external policy over the years and Ministers have sometimes resigned in anticipation of such a reckoning. Perhaps the European Parliament and National Parliaments should focus their attention on evaluation of the effectiveness of actions that have been taken in the CGFSP/ESDP area rather than in trying to actively participate in an already opaque policy-making process. I would argue that the great thing that the British would have to contribute in this area of retrospective evaluation rather than active policy-making would be the model of the House of Lords Select Committee on the EU; its gathering of evidence, its examination of witness's and its powerfully written reports.

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III.5. Swedish Parliamentary participation in foreign, security and defence policy: a reform process focus at the national level

(Gunilla Herolf)

III.5.1 Introduction

III.5.1.1 The Swedish Parliament – The Riksdag

Since 1971 Sweden has a unicameral Parliament of 349 members. The election period is four years. The earlier system of a bilateral chamber came into being in 1865, when it replaced a parliament consisting of four estates. Universal and equal franchise for men was introduced in 1909 and for women in 1921. The parliamentary system was introduced with the universal franchise, the Government thereby needing the Parliament's confidence and support for all major decisions.

The parties have a strong position in Swedish political life. Personal campaigns are a recent and – at least as yet – a rare phenomenon, usually used by ambitious candidates who seek to get elected even though the party has given them a position on the ballot paper that makes this unlikely. The party groups, consisting of Riksdag members of each party, shape and coordinate the party's policies in the Riksdag.

In order to be represented in the Riksdag parties must receive four per cent of the total number of votes given or 12 per cent of the votes within one constituency. All Swedish citizens above 18 years may vote at parliamentary elections. (Nordic and EU citizens may vote in municipal and county council elections after residence for more than three years).

III.5.1.2. Swedish Security and Defence Policy

Sweden is since long non-aligned. Substantial changes have, however, taken place in its policy after the end of the Cold War. As the need to form a strong territorial defence against the Soviet Union no longer existed, the defence forces have been restructured in order to be able to take on more international tasks. Membership of the European Union and close cooperation with NATO are other consequences of the fall of the Berlin Wall.

Sweden, like Austria and Finland, became member of the EU without having made any promises of changing its non-aligned status. Generally, the Swedish attitude has been one of strong interest to participate in the ESDP, but also with a strong interest of making the border-line to common defence very clear. The Finnish-Swedish proposal for making the Petersberg Tasks part of EU activities is a good example of this. These tasks are largely seen as a natural continuation of the long-term Swedish interest in United Nations peacekeeping. It is endorsed not only by the government but also by public opinion. At the same time public opinion is also strongly for continued non-alignment.⁷⁰

While the Swedish Government is usually seen as Atlanticist, increased unilateralism in the United States has resulted in statements on the need for Europe playing an important role in world affairs.⁷¹

⁷⁰ Public endorsement of Swedish participation in ESDP (also when including peace enforcement tasks) amounts to 67 per cent, which is higher than that for the EU in general Source: Arne Modig and Kristina Boberg, Svenska folket om EU-medlemskapet (The Swedish People on EU Membership), *TEMO* 24 May 2002. As for NATO membership, a poll of January 2002 gives the result that 27 per cent of those interviewed declared that they were positive towards joining NATO, whereas 46 per cent preferred to remain non-aligned and 26 per cent were undecided. Source : *Svenska Dagbladet/SIFO*, 20 Jan. 2002)

⁷¹ 'From Promise to Practise: Strengthening Global Capacities for the Prevention of Violent Conflict', Speech by Anna Lindh, Minister for Foreign Affairs, at the Wilton Park, 2 July 2002.

III.5.1.3 General Division of Competences and Responsibilities in Foreign, Security and Defence Policy

According to Swedish fundamental law, the general principle is that the Governments conclude agreements with other states or with international organizations. The Government may, however, not conclude a binding international agreement without Riksdag approval in cases such as when the agreement presupposes the amendment or abrogation of a previously existing law or the creation of a new one or is otherwise within the decision sphere of the Riksdag or of major significance.⁷²

Until late November 2002 fundamental law stated that the Riksdag may transfer its rights of decision-making to the European Communities, when authorizing this in a decision that has the support of at least three quarters of those voting. This rule has now changed in order to include also the second and third pillars of the EU in this rule.⁷³

The Advisory Council on Foreign Affairs (Utrikesnämnden) serves as an advisory body to the Government, which is obliged to keep it continuously informed of significant foreign relations matters. The Government shall confer with the Council when necessary and, if possible, before making decisions. The Council is convened by the Government (or by four members requesting consultations). It consists of the Speaker and nine other members (including the opposition) elected by the Riksdag and is chaired by the King.⁷⁴

The Government may commit the Swedish armed forces to battle in order to repel an armed attack on the country or prevent a violation of Swedish territory in case of war between two foreign countries. In other cases than a previous attack, the consent of the Riksdag, an act of law setting out the prerequisites for this or a commitment following from an international agreement or obligation approved by the Riksdag must be present.⁷⁵

III.5.2. The National Policy Cycle

III.5.2.1 The Government

The Swedish Government on two particular accounts differs from other governments. One of them is that all decisions by the Government are taken collectively. The minister, who is responsible for a certain matter presents a proposal to the Cabinet, which then takes a decision. Before this, and in order to reach consensus, the lead ministry has submitted a proposal to the other ministries, which usually leads to a consensus reached at working level. If this is not possible the matter is raised to the level of head of department, thereafter to state secretary level, then to ministers and finally, if needed, to the Cabinet itself, whose meetings are held once a week.

The other particular characteristic of Swedish administration is that ministries are small. They are dimensioned for the role of being a secretariat of the Government, concentrating on political issues. The administrative work is instead carried out by separate Government agencies, which are responsible to the Government, not to a particular ministry. The employees of the Government agencies are to be politically neutral and ministers have no right to interfere in their work.

⁷² See the English version of Swedish fundamental laws, The Instrument of Government, Chapter 1, Basic principles of the form of government, Chapter 10. Articles 1 and 2, <http://www.riksdagen.se/english/work/fundamental/government/government.htm>.

⁷³ Ibid. Chapter 10, Article 5 and *Svenska Dagbladet* 20 Nov. 2002.

⁷⁴ Ibid. Chapter 10, Articles 6 and 7.

⁷⁵ Ibid. Chapter, 10, Article 9.

III.5.2.2. The Riksdag

The Parliament has several kinds of roles. One important role is to prepare major decisions, which for several years determine Swedish security and defence policy. Three other roles are of continuous character: (1) decision-taking, (2) budgeting and (3) decision-implementation and control of executive bodies.

Decision-Preparation Function

Swedish defence policy has since 1911 been characterized by the important role played by the parliamentary *Defence Commissions* (*Försvarsutredningar* or *Försvarsberedningar*). This means that major decisions have been prepared by, and are in reality shaped by, a group of parliamentarians and officials. Usually the reports deal with a time perspective of five years. The dominant issue has been the size of appropriations and, within this given framework, which major investments may be undertaken. The political parties have within these committees sought to agree on compromises in order to be able to present common reports. The single most important undertakings in Sweden since the early 1960's have concerned the development and production of military aircraft.

Decision-Taking Function

Decision-taking includes decisions of various kinds, including legislation. The majority of proposals are introduced through the Government bills. Other types of motions are party motions, which are signed by the party leader and others, committee motions, signed by representatives of the committee dealing with the area in question and private members' motions. The general principle is that motions (including also Government bills) are dealt with by a committee before being brought up in the Chamber.

Private members' motions may be introduced once a year, during the general private members' motion period, (*allmänna motionsperioden*) on any question falling within the jurisdiction of the Parliament. Like other motions they can also be submitted after a proposition has been laid. Private members' motions (if authored by at least ten members) may also be introduced after an occurrence of major nature that could not have been foreseen during the general private members' motion period.⁷⁶

The role of the committees (see annex 1) is particularly important. The Riksdag has 16 standing committees, each including 17 members and at least as many deputies. The parties are represented in proportion to their representation in parliament.

The Committees are important: all matters have to be prepared in committees before being taken to the Chamber (*beredningstväng*). Generally, the meetings are not open to the public, since this would make it harder to achieve compromises between the political parties. The Committee may, however, decide that a meeting is to open to the public and to media. Many open meetings (*offentliga utskottsutfrågningar*) have taken place since this rule was introduced in 1988. After the Committee has taken a decision the Secretariat in a report (*betänkande*) presents the argumentation and the Committee's proposed decision to be taken by the Chamber.

The most relevant Committees for the area of foreign, security and defence matters in terms of decisionmaking are the Committee on Foreign Affairs (*Utrikesutskottet*) and the Committee on Defence (*Försvarsutskottet*).

Deployment of Forces Abroad

The Government may send peacekeeping forces without asking for the consent of the Riksdag. For peace enforcement tasks, the Riksdag must, however, give its approval. In order to

⁷⁶ See *The Riksdag Act*, <http://www.riksdagen.se/english/work/fundamental/riksdag/riksdag.htm>, Chapter 3, Articles 10-15.

give flexibility during an operation the Riksdag has approved troop deployments also when they concern only peacekeeping missions.

Budgetary Powers

The Swedish Riksdag works with two types of budget: In the first stage, during the spring, the Government submits its Spring Finance Bill, after which the Riksdag decides on the expenditure ceiling for the coming three years. This is a guiding decision, which may be changed by, for example, a new government. The Committee on Finance, to which the other committees submit their views on their respective expenditure areas, handles the budget work.

The Riksdag after the debate in the Chamber concludes with a single decision, which determines the expenditure ceilings for the following three years as well as the level of expenditure, the allocation of expenditure between different expenditure areas, changes in taxes and charges as well as an estimate of central government revenue for the coming year.

The second stage starts with the presentation by the Government of its budget bill for the coming year. This takes place on September 20 (non-election years). The reports by the Committees are finalised at the beginning of December. After the debates in the Chamber, decisions are made on the various appropriations for the coming year. When all the Committee reports have been dealt with, the Riksdag puts together the now finalized central government budget for the coming year and hands it over to the Government some days before Christmas.

Decision-Implementation and Control of Executive Bodies

The Riksdag has five instruments of parliamentary control:

- Scrutiny of the Government by the Committee on the Constitution
- Declaration of no confidence – a declaration that a minister no longer has the confidence of the Riksdag
- The Parliamentary Ombudsmen
- The Parliamentary Auditors
- Interpellations and questions to ministers by members of the Riksdag

Committee on the Constitution:

The task of the Committee on the Constitution is to ascertain whether the Government and individual ministers have complied with current rules and established practice in their handling of Government business. This is an investigation of compliance with express provisions and suitability of measures.

The Committee scrutinizes matters of its own initiative but more often when requested by members of the Riksdag. Persons outside the Riksdag can, however, not request a scrutiny. The Committee on the Constitution has a right of access to all Government documents relating to a particular matter, even if they contain classified information. It can summon both ministers and officials as well as persons from outside this circle to supply oral information but cannot force anyone to appear before it.

The results of the Committees work are submitted to the Chamber once a year in a special report. The findings of the Committee may result in criticism but not in action or formal reprimand. They may, however, lead to criminal proceedings or to a declaration of no confidence or to reconsiderations of certain routines.

Declaration of no confidence

The Riksdag can force a minister's resignation by declaring that the minister no longer has its confidence. A declaration of no confidence in the Prime Minister means that the entire Government must resign unless it opts for an extraordinary general election instead. A declaration

of no confidence must be supported by at least 35 members in order to be dealt with. In order to result in resignation at least 175 members must vote in favour.

Parliamentary Ombudsmen

The Parliamentary Ombudsmen (a function established in 1809) have the task to investigate whether courts, central and local government authorities apply the rules correctly. The Ombudsmen inspect authorities and inquire into matters that have received media coverage. Above all, however, it is a body to which individual persons can turn with complaints about incorrect or inappropriate decisions.

The Ombudsmen usually write to the authority in question, criticizing its behaviour. If the matter is more serious they may request disciplinary measures or bring a criminal action for dereliction of duty.

Ombudsmen are also required to work to remedy shortcomings in existing legislation. When they find reason to suggest changes they may approach the Riksdag or the Government directly with their proposals.

The four Parliamentary Ombudsmen are elected for four years and have a staff of 60 persons.

Parliamentary Auditors (Riksdagens Revisorer)

The twelve auditors are also members of the Riksdag and appointed by it. Their role is to scrutinise national government activity, which includes not only state authorities but also state-owned companies and foundations. The scrutiny focusses on how the authorities use the funds allotted for their activities. The Parliamentary Auditors have a staff of 25 persons.

Interpellations and questions to ministers

Interpellations are submitted in writing and answered orally during meetings in the Chamber. Once a week during Question Time a ministers answer oral questions from the members directly. Questions may also be submitted in writing and are then answered in writing, whereupon they are published in the Riksdag minutes. Answers may give rise to a declaration of no confidence or some other response if found unsatisfactory.

III.5.3. National Parliament Participation at the EU Level in ESDP Affairs

III.5.3.1. Governmental Coordination of EU Matters

The Prime Minister has the overall responsibility for coordination of issues related to the EU. The State Secretary for EU Affairs of the Prime Minister's Office handles day-to-day coordination and, in particular, the preparation of Swedish positions before meetings of the European Council. The Prime Minister's Office also had the primary responsibility for the Swedish presidency of the EU.

The Department for EU Affairs at the Ministry for Foreign Affairs has the task to assist the Prime Minister's Office with coordination, such as to create a coordinated approach in different EU institutions. In order to accomplish this, it keeps close contacts with coordinators of the other ministries. It also handles matters with other EU countries as well as other European countries and with the General Affairs Council. While each ministry responsible for a certain policy area has the lead when giving instructions to working groups and Commission committees, the Department for EU Affairs at the Ministry for Foreign Affairs is in charge of giving instructions to COREPER.

A third crucial element is the budget department of the Ministry of Finance, which is also involved in consultations.

Decisions on EU matters are taken in the same manner as other decisions. Positions are formed in cooperation between all ministries, one ministry having the lead, in order to reach consensus. The difference when forming positions on EU matters is that when there are prob-

lems to reach a common position they are seldom referred to the Cabinet. Instead, in order to speed up the process, the State Secretary for EU affairs at the Prime Minister's Office may intervene.

III.5.3.2. Parliamentary Levels and Channels of Coordination with Regard to EU Policy Making

For the Swedish Riksdag the involvement in EU matters concerns the whole field of EU activities that is also the ESDP. Therefore this section will deal with the EU as a whole.

The Framework for Dealing with EU issues

The accession to the EU has led to some changes in the way in which the Riksdag works. These changes have, however, mainly been in the form of additional tasks. The Chamber takes its decisions on EU issues in the same manner as on other issues. The roles of the standing committees when dealing with bills and motions have also remained largely unchanged. In addition to the obligation of following EU activities, the committees, within their respective fields, handle bills and motions relating to EU matters according to the same procedure as for other types of issues. This also means that an issue that is related to EU matters will be treated within the same committee, as it would have been before joining the Union.

The new demands on the Government in connection with the entry into the Union has, however, led to one major institutional addition, the establishment of the Parliamentary Advisory Committee on European Union Affairs (EU-nämnden).⁷⁷ The new tasks, related to these demands and the manner in which they will influence the work of the various committees and of the chamber of the Swedish Riksdag will be described below.

Information and Consultation

The new demands on the Government have been spelled out in the Riksdag Act and entered into force on January 1 1995 as Sweden joined the EU. The Government must *inform the Riksdag* continuously of developments within the framework of European Union cooperation. It must furthermore submit a written communication to the Riksdag each year on activities at the European Union. The Government must also keep the Riksdag informed of its views concerning those proposals put forward by the Commission that it deems significant. The committees of the Riksdag are furthermore to monitor European Union activities in the subject areas laid down for each Riksdag committee.⁷⁸

The Government must also *confer with the Riksdag* on Sweden's position when important matters are to be discussed in the EU. The establishment of the Advisory Committee on EU Affairs performs this function. The Government shall inform this Committee of matters before meetings of the Council of the European Union. It must furthermore confer with the Committee regarding the conduct of negotiations in the Council prior to decisions that the Government deems significant and on other matters that the Advisory Committee determines. The Government must agree to consult with the Committee if at least five members of the Committee demand it.⁷⁹

The Procedures for work within the Chamber and the Committees

⁷⁷ Whereas in English the name is "committee", the Swedish name is "nämnd" instead of "utskott". This is in order to underline the fact that the EU Committee is not, like other committees, dealing with proposals for parliamentary decisions but is a body for consultation.

⁷⁸ The *Riksdag Act*, <http://www.riksdagen.se/english/work/fundamental/riksdag/riksdag.hm>, Chapter 10, Articles 1-3.

⁷⁹ *Ibid.*, Chapter 10, Articles 4-5.

Parliamentary work on EU matters is pursued within several time horizons. The procedure is that when the European Commission or a member state submits a proposal the Council secretariat first sends the proposal to the government of Member States. The Swedish Government must thereafter within a period of five weeks deliver a fact sheet describing the proposals that are of more important nature to the Secretariat of the Chamber. These must be accompanied by a written account of the effect of the proposal and the view of the Government on what position it intends to take. The proposals and accounts are thereafter forwarded to the relevant standing committees and to the Advisory Committee on EU Affairs.

The Standing Committees

As the different committees monitor EU work within their different fields they can ask the Government for further information. The different ministries also continually inform the respective standing committees at meetings and by delivering information. The other committees can also follow the questions dealt with within the Advisory Committee through material given to them by the Advisory Committee in connection with its meetings.

The views expressed at the discussions within the various committees may be forwarded in various ways. A committee may write a report and ask for the view of the Riksdag. The opinions of the committee may also be forwarded directly to a minister, as he/she is present to inform the committee. The committee may furthermore forward its views to the Advisory Committee on EU Affairs in order for this committee to bring it up during consultations with the Government. The most common procedure is, however, that a member of a committee brings up the matter orally with members of their own party who are also members of the Advisory Committee.

The committees are also interested in influencing the work of the Commission of making new proposals to the Council of Ministers. In order to learn about this in its early stages the committees seek to establish contacts at different departments and agencies.

The Advisory Committee on European Union Affairs

On a short-term time frame the Advisory Committee on European Union Affairs meets every week. The ministers who are about to participate in a Council of Ministers meeting the following week meet with this committee in order to consult with it on the Swedish position on the particular issues. The issues that will be dealt with have by then already been treated by different working groups of the Council as well as by the Coreper.

Before each meeting the responsible ministries supply the members with commented agendas for the various Ministerial Councils. For each agenda item the ministry describes what the Council is expected to do and the suggestion for a Swedish position. The most important issues are summarized and commented in the fact sheets.

At the meeting ministers inform about the coming meeting and a discussion takes place between the ministers who are present and the committee members about what the Swedish position will be. This might lead to a change of the position that the Government had originally intended to take. The discussion on each issue ends with a summary by the chairman in which he concludes that there is a majority for or against the view of the Government.

The work of the Advisory Committee is considerably wider than that related to Council meetings. The Committee is also involved in consultations before meetings of the European Council and it was consulted during the discussions leading to the Treaty of Amsterdam. The area is actually even wider than that of the EU, having been involved in WTO discussions. The Committee also receives background information in advance and can ask for information and consultations on issues that lie further in the future.

There is also an obligation for the Government to report back to the Riksdag and to the EU Committee. This is done orally at the next meeting EU Committee meeting but it must also be done in writing within a five working days to the Riksdag and the EU Committee.

There are two reasons for the procedure of reporting back. One reason is that some issues are so complicated that they need to be discussed several times. The members of the EU Committee therefore need to be informed about the outcome in order to prepare themselves for future discussions. The other reason is related to the right of the Riksdag to scrutinize the Government's handling of EU matters. As Government representatives report back to the Riksdag, the latter may judge whether the representatives have taken the EU Committees views into consideration and whether they have represented Sweden well at the meeting.

The Chamber

The Government also gives information directly to the Chamber. Representatives of the government give answers to questions or interpellations concerning the EU as they arise. Special information meetings are furthermore on occasions held at which the Government reports on current EU matters. The Prime Minister as a rule reports to the Chamber after meetings by EU heads of state or government in the European Council.

The role of the Riksdag to scrutinize the Government leads each year to a certain procedure. The Government first submits a report of its activities in the EU. The next step is that the various committees, including the Advisory Committee on EU Affairs, bring up the report for discussion. This leads to the so-called scrutiny debate on EU affairs, which is held in May each year in the Chamber.

The Committee on the Constitution has an important role in EU matters as in all others, making sure, that the government's actions are in line with legislation and decisions made by the Riksdag.

The means for the Riksdag when scrutinizing the Government are the same in EU matters as in other fields. 35 members may propose a vote of no confidence. If supported by at least 175 of the 349 members the Government (if against the Prime Minister) or the minister in question, must resign.

III.5.3.3. The Role of the Committee on EU Affairs

The committee, patterned on its Danish equivalent, was introduced as Sweden entered the EU in order for the Riksdag to be able to influence the positions of the ministers before decisions are taken in the EU Ministerial Council.

The political parties among the members of the Riksdag appoint the members of the Committee for each electoral period. All political parties are represented in the Committee, which has 17 members (same number as other committees) and 26 deputy members (which is greater than that of the others). The composition reflects that of the political parties of the Riksdag. Since it reflects the party position it might have become a convenient tool for the Government. In order to avoid this the rule has been included that when five members of the Advisory Committee demand it the Government must agree to consult with the Committee on a certain issue.

Since, the Advisory Committee has a consultative function only the government is not formally obliged to follow its recommendations. It is nevertheless expected to do so, since it would otherwise meet criticism, possibly even a vote of no confidence in the Chamber. There a few occasions when the Government has met strong opposition in the Committee and very few when the Government has diverted from the views of the EU Committee.⁸⁰ The extent of its influence might also be seen in the fact that on at least one occasion the Government has contacted the Committee during a EU meeting in order to hear its views.⁸¹

⁸⁰ For two such examples, see Hans Hegeland (2002a), "Den svenska riksdagen och EU" in Karl Magnus Johansson (ed.), *Sverige I EU*, 2nd edition, 2002, p. 103.

⁸¹ This was during the European Council in Cannes in 1995, as a Minister called the representatives of the political parties to get their views on a previously unknown proposal launched at the meeting by another member

It might seem from the above the EU Committee has a strong position. One weakness is, however, the fact that it comes in late in the decision-making process after the working groups and the COREPER have already been involved and the Swedish Government's viewpoints have become known to others. The fact that it is a sign of weakness for a country to change its views might have a deterring effect on members of the Committee who are critical to the position of the Government.⁸²

The political parties play a strong role for the relations between standing committees and the EU committee: the political parties nominate their candidates to the EU committees and all members of the EU committee are also members of other committees.

III.5.3.4. Interaction with the Brussels Institutions

The Swedish EU Committee, like those of other members participate together with representatives of other national parliaments and the European Parliament within the framework of COSAC.

The EU Committee also keeps close contact with Swedish MEP's. The political parties largely conduct this contact. Once a year a special meeting is held between members of the EU Committee and the Swedish MEP's in order to discuss issues of common interest.

The contacts between the Riksdag and the Swedish MEP's are, however, not allowed to be too close. The Riksdag has underlined that the European Parliament and the Riksdag are two different parliaments and that their mandates must therefore not be confused. MEP's may be invited to the open and closed deliberations in the EU Committee as well as to the other committees but the MEP's have not been allowed to participate in discussions in the Chamber.

Representatives of national parliaments may, however, participate in meetings of the European Parliament and cooperation between the different standing committees within the EU have increased during the last few years.⁸³

III.5.3.5. Public Space for Information and Discussion

The public space devoted to information and discussion in matters related to the Riksdag and its influence on the ESDP may find room within a variety of fora. Organizations, initiatives and services related to defence issues, Riksdag issues in general and to EU-related issues, may bring up these kind of issues.

In the area of defence the organization Defence and Society (Centralförbundet Folk och Försvar), has for many years been an important organization, seeking to give information about Swedish security policy and the total defence and to promote debate on these issues.⁸⁴

As regards the Riksdag in general, bills, private members' motions and reports are published in full (in Swedish only) on the Riksdag website (www.riksdagen.se)

Fact sheets and other background information and reports given by the Government to the EU Committee are open for all to read (allmän handling). They are continually published on the web sites of the Riksdag and the Government, (www.regeringen.se).

state. See Hegeland, H., "The Parliament of Sweden: A Successful Adapter in the European Arena" in Maurer, A. and Wessels, W. (eds), *National Parliaments on their Ways to Europe: Losers or Latecomers?*, Baden-Baden 2001, p. 385.

⁸² See Hegeland, 2002a, p. 104.

⁸³ See Hegeland, 2002b, p. 17. As an indication of this activity Hegeland mentions that during the Swedish presidency five meetings took place, in which national parliaments and the European parliament participated with one representative each.

⁸⁴ While seeking to support the total defence of Sweden, CFF has no party affiliation. Its annual national conference is an important meeting-point for different views on Swedish security. See web site <http://www.cff.se/folkochforsvar/english.html>.

Shorthand protocols are made at the EU Committee meetings. They show what the Government representatives have promised to do. They also record when members of the committee demand another policy. The records are as a rule open to the public once the committee has signed them. The exceptions are constituted by information on Sweden's negotiating position or on relations with other states.

Reports that have been submitted to or made by the EU Committee are registered in the diary of the Riksdag and are open for those who wish to see. In exceptional cases a document may contain secret material and will therefore not be available.

The meetings of the EU Committee, like those of the other Committees, are held in secret. This is in order to be able to discuss Swedish negotiating positions. This is also the reason why some of the shorthand protocols are not immediately open to the public. It is, however, seen as a value in itself that to have a public discussion on EU matters and therefore the ambition is to publish as much as possible on the web-site of the Riksdag.

III.5.3.6. The EU Information Centre (EU-upplysningen)

The EU Information Centre at the Riksdag is to provide the public with un-biased information about the EU and Swedish EU membership. The Centre works in close cooperation with the Advisory Committee on EU Affairs and the Library of the Riksdag.

The Information Centre publishes electronic information on the website of the Riksdag. This information includes news, a database of frequently asked questions, EU documents and EU-related decisions. The Centre also publishes printed material such as fact sheets and booklets. It upholds a direct information service on all EU policy areas and it gives special service to public libraries, civic centres, educational institutions and the media through networking.⁸⁵

III.5.3.7. The EU 2004 Committee

Another effort to increase the public participation in matters related to the EU and its future is the establishment of the parliamentary EU 2004 Committee. This is a follow-up to the initiative of 1995, called the EU 96 Committee, which was created in order to increase knowledge among the general public about the EU and to stimulate a wide debate on EU matters. The EU 2004 Committee has the same aim. In doing this it is seen as important to involve the whole country and to engage also younger people in the discussion. It is also important to give room for the dissenting views. A second important aim for the EU 2004 Committee is to establish contact between the Swedish debate and the corresponding debates in other EU states. A third one is to contribute to the making of analyses of the issues that will be treated at the IGC.⁸⁶

III.5.4 Conclusions

There is in Sweden a strong awareness of weaknesses in the present system, both on a European and on a Swedish level. These weaknesses have led to a number of proposals for improvement to increase the role and activity of the Riksdag but also to increase the interest of the general public in EU matters.

The need for increased involvement of the parliaments of the EU is generally in Sweden seen to be related to the democratic deficit that has taken place as the power of making decisions has been transferred from the national parliaments to the Council. This change has led to less transparency since they have gone from a body in which people have full insight to one in which there are limited possibilities to follow the discussions. Since governments may be voted down there are also limited possibilities to hold one's own government responsible for decisions made.

⁸⁵ See eu.upplysningen@riksdagen.se or http://riksdagen.se/english/eu/eu_information.asp.

⁸⁶ See web site <http://www.eu2004.se>.

The Swedish official view is largely a confederalist one. The EU should mainly be seen as an intergovernmental type of cooperation, however, with supranationality in some areas. The national parliaments are therefore the main instruments for legitimacy and are much closer to the citizens of Europe than the European Parliament will be for a foreseeable time.⁸⁷ The Riksdag, in a Joint Committee Report, when claiming that the possibility to influence one's own government is the preferable method, from constitutional, political and strategic points of view, has expressed the same view.⁸⁸

The European Level

One way to improve the present system is to make the discussions within the Council open when the Council acts as legislator. This added transparency would help national parliaments and everyone else to learn about their proceedings and to keep control of their own governments.⁸⁹

The Swedish Riksdag, in its recent Committee Report, endorses contacts between the Riksdag and the European Parliament. These contacts should, however, continue to be built on party cooperation. In addition, COSAC cooperation and cooperation between the different committees should also become stronger.⁹⁰

The joint committee furthermore comments on the proposal for a second chamber of the European Parliament. The Committee doubts the value of this, since, rather than giving the desired effect of making the structure simple, it would make it more complicated. The Committee is also negative towards the idea of indirect elections of MEP's, claiming that the decision against such procedures was taken already in 1976.⁹¹

The issue of subsidiarity has been brought up during the Convention. The principle of subsidiarity is generally seen as important in Sweden. The issue is how to make it work. In accordance with the Swedish confederal view it can be seen as an issue for the government, but the idea of giving this task to the Riksdag has not been rejected. Some problems are of practical nature. The EU Committee does not have the competence to express views on behalf of the Riksdag, unless the rules are changed. Therefore the Riksdag would have to be involved, which would lead to some time pressure.⁹²

The Swedish Level

The Riksdag Commission Report of 2001 has proposed a number of changes, which serve to increase the role of the Riksdag in the treatment of EU questions. The importance that the Riksdag gives to its role is reflected in the suggestion that the information and consultation duty of the government as well as the duty to account for its activities within the EU to the Riksdag are suggested to be part of basic law. The Commission Report also suggests that the committees acquire a more important role. Rather than spending the whole year on scrutinizing the budget, they should work in a determined way to clarify issues of particular importance. This may be done in several ways, such as for example by calling in experts. In this way the Riksdag will acquire more competence and thereby more influence on EU issues.⁹³

⁸⁷ See speech by Deputy Prime Minister and member of the Convention, Lena Hjelm-Wallén at Utrikespolitiska Institutet, Stockholm, 24 October 2002, <http://eucon.europa2004.it>.

⁸⁸ Sammansatta konstitutions- och utrikesutskottets betänkande, (Report by the joint Committees on the Constitution and on Foreign Affairs), EU:s framtidsfrågor (Future issues for the EU) 2001/02:KUU2, 2001, <http://www.riksdagen.se/debatt/0102/utskott/KU/KUU2/KUU2001.ASP>.

⁸⁹ Göran Lennmarker, member of the Swedish Riksdag and of the Convention, Utrikespolitiska Institutet, Stockholm 24 October 2002, <http://eucon.europa2004.it>.

⁹⁰ Betänkande 2001/02: KUU2.

⁹¹ Ibid.

⁹² See Hegeland, 2002b, pp. 31-34.

⁹³ Förslag till riksdagen 2000/01: RS1 (Proposal submitted to the Riksdag), 2001.

Other studies have recently been published proposing new ways for the Riksdag to deal with EU matters. The Speaker of the Riksdag (and until recently Defence Minister) Björn von Sydow, in November of 2002 suggested that EU Committee meetings should be open to the public. It is a minor issue, he claims, since almost everything is anyway published a few weeks later in the protocol. Another innovation suggested by the Speaker is to introduce the possibility to put questions to the Prime Minister in the Riksdag, as now exists in the British Parliament. This would, according to Mr von Sydow, give the possibility to ask questions concerning the EU as well, since EU matters are coordinated at the Prime Minister's Office.

Mr von Sydow's idea of open EU Committee meetings are supported by the chairman of the Committee, Inger Segelström, who believes that such a change could be introduced already next year, and by Gunilla Carlsson, prominent member of the Moderate Party and member of the EU Committee. Both the debate in the EU Committee and the quality of its work would be improved by openness they believe. According to Ms Segelström secrecy might remain necessary for matters related to secret negotiations and for already secret matters from the Ministry for Foreign Affairs but for the majority of issues it is not.

Another problem in this context is the low interest by the other Committees in giving input to the EU Committee. One reason for this is that Sweden does not force other committees to deal with EU matters. The possibility to make this compulsory has been discussed but rejected by the Riksdag Commission with the argument that this might lead to unnecessary work.⁹⁴

The EU Committee has also been criticized for being too slow in publicizing its protocol. Not publishing the protocol until two weeks after each meeting means, according to Professor Daniel Tarschys, that it is hard to keep a debate alive.⁹⁵

As initially mentioned the EU parliaments are usually seen as the losers in terms of insight into the process as matters are dealt with by the European Union. When it comes to foreign and security matters the development has, however, for the Riksdag been the opposite, that is an increased level of engagement. The fact that the Riksdag Act demands that the Government informs the Riksdag on a continual basis on all EU matters means that also the ESDP is included in this information as well as the consultation with the EU Committee. There is therefore a more continual information and debate on Swedish foreign and security policy than was the case before the entry into the EU.

Another factor here is that the EU Committee meets also during periods when the Riksdag does not. This also contributes to the continual character of information and consultation.

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⁹⁴ The importance of these proposals, underlined at the press conference on November 25 2002, was another report according to which Swedish members of the Riksdag did not consider that they had real influence on EU issues. Only 56 per cent of them thought that the EU Committee worked well and even fewer believed that this Committee had good possibilities to influence the Government on EU issues. See *Dagens Nyheter* and *Svenska Dagbladet*, 26 November 2002, *Riksdagens roll i EU*, SOU 2002:81 contains two reports: 1. Hans Hegeland, "Nationella parlament i Europeiska Unionen" and 2. Ann-Cathrine Jungar and Shirin Ahlbäck Öberg, "Parlament i bakvatten? Den svenska och finländska riksdagens inflytande över EU-politiken".

⁹⁵ This view was presented at an event at the Swedish Institute of International Affairs (SIIA) on October 24 2002 in the context of the TEP SA EUCON project. See EUCON homepage: <http://eucon.europa2004.it>.

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Annex 1

Committees (Utskott)

The Riksdag has 16 standing committees, each including 17 members and at least as many deputies. The parties are represented in proportion to their representation in parliament.

The Committees are important: all matters have to be prepared in committees before being taken to the Chamber (beredningstväng). Generally, the meetings are not open to the public, since this would make it harder to achieve compromises between the political parties. The Committee may, however, decide that a meeting is to open to the public and to media. Many open meetings (offentliga utskottsutfrågningar) have taken place since this rule was introduced in 1988. After the Committee has taken a decision the Secretariat in a report (betänkande) presents the argumentation and the Committee's proposed decision to be taken by the Chamber.

The Committee on Defence (Försvarsutskottet) deals with matters concerning military and – in so far as these matters do not fall to any other committee to prepare – civil aspects of total defence. It also deals with matters concerning the coordination of total defence matters. In addition the Committee deals with matters concerning the peacetime emergency, rescue services and the coastguard service.

The Committee on Foreign Affairs (Utrikesutskottet) deals with matters relating to Sweden's relations with other states and agreements with other states and international organizations. It also deals with Sweden's foreign development assistance, foreign trade and international economic cooperation.

The Committee on the Constitution (Konstitutionsutskottet) scrutinizes the work of the Government and its ministers. It also deals with matters concerning legislation in the fields of constitutional and general administrative law and a range of other matters.

The Committee on Finance deals with matters concerning general guidelines of economic policy and adoption of the central government budget and matters concerning the activities of the Central Bank (Riksbank) and many similar matters.

III.6. Polish Parliamentary participation in foreign, security and defence policy: the search for parliamentary scrutiny

(Saskia Matl)

III.6.1. Introduction

III.6.1.1. Poland after 1989

After the end of Communism Poland had to restructure its political system as well as its national interests. The constitution for the Third Republic of Poland was adopted only in 1997⁹⁶ after a long time of political instabilities and conflicts between the legislative power and the executive power in form of the president and the government. The basic question was: Should Poland become a presidential or a parliamentary democracy? The compromise was a rather complicated system with elements of both forms.

Although the process of shaping a new constitution and building institutions that will work democratically has been completed by now, the Polish democracy is still not fully consolidated. A complete consolidation means not only the existence of democratic institutions, but also their functioning in the way described by the Constitution.⁹⁷ One of the biggest problems in this respect in Poland is the not fully consolidated party system. At least until 1997, the Polish party system was characterised by an outstanding instability, a high party fragmentation, permanent fluctuation of personnel between the parties, parties disappearing and being newly founded and, consequently, the inability to form stable government coalitions. Although since 1997 these problems seemed to be mostly settled, there is still one major problem: the lack of a basis for the parties within the society.⁹⁸

As a consequence a radical change of parliamentary composition in the elections 2001 occurred. The centre-right wing of the party system represented by the government parties AWS (Akcja Wyborcza Solidarnosci – Solidarity Electoral Action) and UW (Unia Wolnosci – Freedom Union) did not enter parliament at all. The former Communist party SLD-UP (Sojusz Lewicy Demokratycznej – Alliance of the Left; Unia Pracy – Union of Labour) won the elections and formed a government coalition with the peasants party PSL (Polskie Stronnictwo Ludowe). The most disturbing element of the election result was the entering of several right extremist parties into parliament. These parties – the Samoobrona (Self-Defence), the Law and Justice Party (PiS – Prawo i Sprawiedliwosc) and the League of Polish Families (LPR – Liga Polskich Rodzin) – gained together almost 30% of the votes.⁹⁹

As the security and defence policy of Poland is not any longer a purely Polish matter since the accession to NATO in 1999 and the future accession to the European Union, the described development of the Polish party system is of high importance. These almost 30% extreme and

⁹⁶ The Round Table revised the stalinistic constitution from 1952 and adapted it to the circumstances of the time. In 1992 a „Small Constitution“ was adopted after many conflicts especially about the institutional framework. The main point of conflict was the position of the president in relation to the parliament and the government. Klaus Ziemer/Claudia-Yvette Matthes: Das politische System Polens, in: Wolfgang Ismayr (ed.), Die politischen Systeme Osteuropas, Opladen 2002, pp. 185-237, pp. 187-189.

⁹⁷ For the consolidation of democracies see e.g. Wolfgang Merkel: The Consolidation of Post-Autocratic Democracies: A Multi-level Model, in: *Democratization*, Vol. 5, No. 3 (Autumn 1998), pp. 33-67.

⁹⁸ Aleks Szczerbiak: Party Structure and Organizational Development in Post-Communist Poland, in: *Journal of Communist Studies and Transition Politics*, Vol. 17, No. 2 (June 2001), pp. 94-130, Dieter Segert: Parteien und Parteiensysteme in der Konsolidierung der Demokratien Osteuropas, in: Wolfgang Merkel/Eberhard Sand-schneider (eds): *Systemwechsel 3, Parteien im Transformationsprozeß*, Opladen 1997, pp. 57-97; Saskia Matl: The Contribution of Polish Parties to the Debate about the Future Shape of the European Union, unpublished Master thesis, College of Europe Bruges/Natolin 2002.

⁹⁹ Kai-Olaf Lang: Parlamentswahl in Polen, SWP-Brennpunkt, Berlin 2001, <http://www.swp-berlin.org/produkte/bparchiv/polenvdp1.htm>.

populist parties are mostly nationalistic and against any accession to either the European Union or the NATO. They occupy 135 of 460 seats in the Sejm. Together with the government party PSL that is due to its voters also rather eurosceptic even if it is not totally against an accession to the EU, there is a number of 147 deputies in the Sejm who oppose in one or the other way an opening of Poland towards international organisations like the EU.

In addition these populist parties are limited in their political engagement to certain topics. The Samoobrona with its leader Andrzej Lepper is, like the PSL, rather concentrated on the rural population and tries to get attention with populist protest actions against any form of liberalism. The PiS is a law and order party as the name already indicates and mainly focuses on the tightening of criminal law. The LPR is a national-catholic and anti-European party. It is mainly concentrated on the prevention of Polish accession to the European Union.¹⁰⁰

In spite of this unstable situation, Polish governments were able to pursue a coherent foreign policy due to the widespread consensus between the parties in power. As can be seen in the most recent annual report of the European Commission on Poland¹⁰¹, the democratic criteria for entering the European Union are considered as generally fulfilled. The most important problems can be found in the economic area and in the area of implementing the adapted laws. Poland has to create an effective administration and a political, administrative and economic culture that supports good governance.

III.6.1.2. Polish Foreign, Security and Defence Policy

The main aims of Polish Foreign, Security and Defence Policy since 1989¹⁰² have been full membership in NATO and accession to the European Union. These are the guiding lines all other issues are subordinated to. The underlying reason is that Poland wants to »return to Europe« safely without risking a Russian predominance in the region. An important element of these aims is the creation of an Eastern dimension of the EU under Polish leadership co-operating mainly with the Ukraine and Lithuania and in the future hopefully also Belarus.

As in March 1999 Poland became a member of NATO, accession in 2004 to the EU is now the major goal. Until now the political work and the discussion about the European Union within Poland was largely dominated by the accession negotiations. However, as a future member Poland has to formulate coherent positions on the various policy areas of the Union.¹⁰³ Concerning Foreign, Security and Defence Policy there are already a few elements crystallising.

Poland is very much engaged in establishing good neighbourly relations with Hungary, Slovakia and the Czech Republic as well as Lithuania and Ukraine. With the former three Poland is working on a political level within the Group of Visegrad Countries and on a military level building up a common military unit. The latter two have difficult relations with Poland due to historical reasons and minority problems. Thus, it is even more important for Poland to support these countries and co-operate not only on a political but also on a military level with the creation of bi-national army units in order to stabilise its Eastern borders¹⁰⁴. Especially the

¹⁰⁰ Lang: Parlamentswahl in Polen, SWP-Brennpunkt.

¹⁰¹ http://europa.eu.int/comm/enlargement/report2002/pl_en.pdf.

¹⁰² See the various speeches of the President and the Foreign Minister on <http://www.botschaft-polen.de> and on <http://www.ms.gov.pl>; Fouzieh Melanie Alamir/August Pradetto: Identitätssuche als Movers der Sicherheitspolitik. Die NATO-Osterweiterung im Lichte der Herausbildung neuer Identitäten im postkommunistischen Ostmitteleuropa und in der Allianz, in: Osteuropa 48/2 1998, pp. 134-147; for the military aspects see especially the Polish Security Strategy, <http://www.wp.mil.pl> and the National Defense Strategy of the Republic of Poland, <http://www.wp.mil.pl>.

¹⁰³ Piotr Buras/Marek A. Cichocki/Olaf Osica/Janusz Reiter: "The Most Serious Challenges Facing Poland's European Policy". An analysis prepared for the Polish Senate Committee on Foreign Affairs and European Integration, 28 February 2001, Reports and Analyses 4/01, Center for International Relations Warsaw, p. 3.

¹⁰⁴ The Polish-Lithuanian LITPOLBAT in Orzysz and the Ukrainian-Polish battalion in Przemyśl. Christoph

relations to a Western oriented Ukraine and in the future maybe even to Belarus are supposed to be integrated in an Eastern Dimension of the European Union, an important project of the foreign policy of Poland as a future member. Poland as the future »outpost« of the European Union towards the East and Russia wants to create not only a buffer zone¹⁰⁵ to Russia but also a stable and secure neighbourhood.

Its membership in the NATO is very important for Poland. Concerning security and defence policy it is much more important than the European Union, the CFSP and the establishment of the ESDP. In fact, Poland has a rather critical attitude towards the ESDP and did not show much interest in its establishment.¹⁰⁶ The main reason for that is the – from the Polish point of view¹⁰⁷ – special Polish relation with the United States. Poland wants to keep the US and with it the NATO as the main security and defence partner in Europe. The ESDP, it is afraid, might disturb the relationship to the United States and destroy the Euro-Atlantic tie.

From the military point of view, Poland has to go a long way in order to comply with the requirements and challenges of NATO-membership. The defence policy was formally included in the Constitution only in 1997, although it was newly created and oriented immediately after the changes in 1989. The armed forces had and have to be modernised in their structure and technical equipment, a civilian control of the armed forces had to be created, the administration had and still has to be reformed from ground to top and the Polish defence industry has to be restructured for co-operation with the international defence industry. Until today, these reforms are not concluded – due mainly to financial restraints – as the Polish armed forces do not fulfil the international minimum standards yet.¹⁰⁸

In spite of the problems to even comply to NATO standards and in spite of its reservations towards the ESDP, Poland has agreed at the Pledging Conference for Capacities' Improvement in November 2001 to contribute to the EU Rapid Reaction Force missions and to civilian crisis management.

The main criticism of Poland concerns the possible competition of the ESDP to the NATO with Poland favouring clearly the latter. Unlike three years ago, Poland is not so clearly against the establishment of the ESDP anymore and is prepared to contribute to it, but there are still some fears left: Co-operation between the EU and the US within NATO might become more difficult, the US might withdraw from Europe and as a consequence Russia might get a bigger influence in Europe. The ultimate goal of the ESDP is not quite clear to Polish politicians and it seems that they are not very interested in finding out about it. The dominating issue are the Euro-Atlantic relations thereby forgetting that the ESDP has also a civilian aspect and the aspect of further stabilising and integrating Europe.¹⁰⁹

Humrich/August Pradetto: Poland, in: Security Handbook 2001. Security and Military in Central and Eastern Europe, ed. by Hans J. Griessmann et al., Baden-Baden 2001, pp. 313-343, here p. 327.

¹⁰⁵ Humrich/Pradetto, p. 327.

¹⁰⁶ In contrary to what the European Commission stated in the chapter on CFSP of the Regular Report for Poland 2002, Poland does not "show a keen interest in the development of European Security and Defence Policy"; see also Kai-Olaf Lang: Sicherheits- und integrationspolitische Debatten in Mitteleuropa. Aus polnischen, tschechischen und slowakischen Fachzeitschriften (1. Halbjahr 2002), SWP-Zeitschriftenschau, p. 6; Olaf Osica: Common European Security and Defence Policy (ESDP) as Seen by Poland, Reports and Analyses 5/01, Center for International Relations Warsaw 2001.

¹⁰⁷ The general perception in Poland is that Poland has a special relationship with the United States, however there are differing opinions stating that this is not the fact as Poland cannot really offer much to the US, especially not in the military field: Poland is a good ally of the US but nothing more. Buras/Cichocki/Osica/Reiter, p. 15; Olaf Osica: Poland between America and Europe: Distorted Perspectives, in: Yearbook of Polish Foreign Policy 2001, published on the web site of the Polish Foreign Ministry, <http://www.qdnet.pl/warecka/yearbook/2001/>.

¹⁰⁸ Humrich/Pradetto, pp. 320-321, 338; Mark Yaniszewski: Post-Communist Civil-Military Reform in Poland and Hungary: Progress and Problems, in: Armed Forces and Society, Vol. 28/3 2002, pp. 385-402.

¹⁰⁹ Osica: CESDP as seen by Poland.

III.6.2. The national policy cycle

After 1989 the Polish political system developed step by step towards its present form and gained from one constitution to another more clarity. According to the Polish Constitution dating from the 2nd April 1997 the Polish political system is a mixed parliamentary-presidential system – or as it is stated on the web page of the Sejm a “parliamentary-cabinet system with a slight inclination towards the presidential system”¹¹⁰. Compared to the »Small Constitution« from 1992, the emphasis moved from the President as the guiding »Chef d’Etat« to both the Council of Ministers, i.e. the government, and the bi-cameral parliament¹¹¹. The new constitution was not only adopted by the National Assembly, the joint chambers of parliament, Sejm and Senate, but also had to pass a referendum in order to be ratified.

In the following an outline of the Polish political system will be drawn with an emphasis on the structures concerning foreign, security and defence policy in order to show the position of the national parliament within the institutional architecture. For this purpose a brief overview on the rights and obligations of the president and the government will be given. Furthermore some general remarks on the role of parliament in the legislative procedure and regarding control mechanisms will be presented – important not only but also for the functioning of foreign, security and defence policy.

III.6.2.1. The Executive

As the Constitution states:

„Executive power shall be vested in the President of the Republic of Poland and the Council of Ministers“ (art. 10).

The **President**¹¹² is the „supreme representative of the Republic of Poland and the guarantor of the continuity of State authority“ (art. 126.1). His main tasks are to „ensure observance of the Constitution, *safeguard the sovereignty and security of the state* as well as the *inviolability and integrity of its territory*“ (art. 126.2; *Italics by the author*).

He is the „representative of the State in foreign affairs“ (art. 133), acting in co-operation with the Prime minister and the relevant minister concerning foreign policy, and the „Supreme Commander of the Armed Forces“, although he acts through the Minister of National Defence in peace times (art. 134). In case of an external threat the President has, on request of the Prime minister, to order a general or partial mobilisation and deployment of the Armed Forces. In case of a war he appoints, on request of the Prime Minister, the Commander-in-Chief of the Armed Forces. In case of external threats, armed aggression against Poland or the international obligation of common defence, the President may „declare a state of martial law in a part or upon the whole territory of the State“ (art. 229, 231), however, only on request of the Council of Ministers and with the consent of the Sejm. The same procedure is valid for the declaration of a state of emergency in the case of threats to the constitutional order, the security of the citizens or the public order (art. 230, 231). The Sejm can reject this decision of the President by an absolute majority in the presence of at least half the statutory members.

Although at first sight the President seems to be quite powerful concerning security and defence policy his powers are rather weak. He acts either *through* the relevant minister or *on*

¹¹⁰ <http://www.sejm.gov.pl/english/sejm/sejm.htm>.

¹¹¹ Ziemer/Matthes, p. 190.

¹¹² Constitution of the Republic of Poland 1997, <http://www.sejm.gov.pl/english/konstytucja/kon1.htm>; Andrzej Gwizdz/Janusz Mordwilko: The Status of the Sejm in the Light of the Constitution of the Republic of Poland of 2nd April 1997, in: The Principles of Basic Institutions of the System of Government in Poland, Sejm Publishing Office, translated by Albert Pol, Warsaw 1999, pp. 193-217, p. 211; Ziemer/Matthes, p. 190-195.

request of the Prime minister. With art. 126.3 of the Constitution obliging him to act within the framework of the Constitution and the secondary legislation his position as the supreme representative is weakened. He is not accountable to the parliament as his independence is limited by his constitutional accountability when violating the law as well as through the fact that all his Official Acts have to be countersigned by the government which is in turn responsible to the Sejm (art. 144). It is in the form of the National Assembly that the Parliament, i.e. Sejm and Senate, may bring an indictment against him by a resolution passed with at least two thirds of the statutory number of its members (art. 145).

In the legislative process he has the right of legislative initiative and the possibility to veto legislative acts with the exception of the state budget or to question their conformity to the Constitution before the Constitutional Tribunal. The Sejm can overrule a veto by him with a three fifth majority (art. 122).

Concerning the dissolution of the Sejm his possibilities are very limited: There are two situations when the President *has* to dissolve the parliament: First, in the case when the parliament does not have any confidence in a newly formed government (art. 155), and second, in the case when the Parliament does not manage to adopt the drafted state budget of the government and submit it to the President within a certain period of time (art. 225).

The second part of the Executive, the Council of Ministers,¹¹³ i.e. the government, plays the more important role in Foreign, Security and Defence Policy. The Council is responsible for the foreign policy of Poland (art. 146.1). It is supposed to „ensure the external security of the State“ (art. 146.4 (8)), to „exercise general control in the field of relations with other States and international organizations“ (art. 146.4 (9)), to „conclude international agreements requiring ratification as well as accept and renounce other international agreements“ (art. 146.4 (10)) and to „exercise general control in the field of national defence and annually specify the number of citizens who are required to perform active military service“ (art. 146.4 (11)). In addition the government is responsible for the drafting of the State budget (art. 146.4 (5)), allocating the necessary money to security and defence policy.

The Council of Ministers is collectively responsible for all its activities to the Sejm and the ministers are individually responsible to the Sejm with regard to their competencies (art. 157). The Sejm has the right to invoke a constructive no confidence mechanism against the Prime minister in order to exchange the whole government (art. 158) or to dismiss an individual minister by a vote of no confidence (art. 159). Thus, the Council of Ministers is – as in Western European parliamentary democracies – very much linked with parliament, especially with the majority of the Sejm. This link provides at least the dominating parties in parliament with information channels that can be used for directing the work of parliament also in foreign, security and defence policy.

Within the 13 years after the end of communism in Poland there have been 11 different governments in power.¹¹⁴ This is due to the highly fragmented and fluctuating party system especially before the elections of 1997, when there occurred major difficulties in forming stable and permanent government coalitions.¹¹⁵ After the elections in 1997 this problem of the Polish political system seemed to have changed with a new government coalition of the centre-right party coalition AWS and the liberal party UW in power. Besides the fact that this coalition also fell apart when the UW left the government in the year 2000, the elections in September 2001 changed the whole picture dramatically. The seemingly consolidating party system able to produce rather stable and lasting governments was disrupted again. The govern-

¹¹³ Constitution of the Republic of Poland 1997; Gwizdz/Mordwilko, p. 212-215; Ziemer/Matthes, p.18-20.

¹¹⁴ Ziemer/Matthes, p. 206.

¹¹⁵ Klaus von Beyme: Parteien im Prozeß der demokratischen Konsolidierung, in: Wolfgang Merkel/Eberhard Sandschneider (eds.), Systemwechsel 3, Parteien im Transformationsprozeß, Opladen 1997, pp. 23-56, here pp. 48-49; Matl, pp. 27-28.

ment party AWS as well as the UW were replaced by the left former Communist party coalition SLD-UP and the peasants' party PSL and did not even enter the Sejm any more.¹¹⁶

In this rather unstable situation the President of the Republic of Poland seems to be the only permanent and reliable factor of the political system. Aleksander Kwasniewski, a member of the former Communist party who left the party when becoming president, was elected in 1995 and again in 2000 as the third Polish President since 1989.¹¹⁷ As he has the same party background as the actual government the problem of cohabitation that occurred under President Lech Walesa is not a topic at the moment.

III.6.2.2. The Parliament

According to the Constitution

“Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate” (art. 95).

The Polish Parliament is a bicameral parliament with the Sejm as the first chamber and the Senate as the second chamber. The Sejm has 460 elected members; the Senate consists of 100 elected Senators (art. 96, 97). The two mandates are not to be linked whereas a mandate in Parliament does not exclude the participation in government. The terms of both chambers are connected as the end of the term of the Sejm – be it regular or irregular – means automatically the end of the term of the Senate (art. 98).

The Senate functions in theory as a representation of the Voivodships and is directly elected on the regional level. However, it cannot be compared with, for example, the German *Bundesrat* that is a true second chamber representing the regions in the legislative process. First, the Senators are no members of any regional body and second, the emphasis lies more on their personality than on their representative function.¹¹⁸

The Sejm

The Sejm has according to its statutes a presidency (art. 110), i.e. the Marshal of the Sejm and his Vice-Marshals, standing committees and the possibility to set up an investigative committee (art. 111).¹¹⁹

The Sejm has the right to legislative initiatives in form of the whole body, single committees or individual deputies. The bill has to pass three readings with the possibility for the deputies, the Council of Ministers and the initiator of the bill to make amendments. Any amendment has to be put before the relevant committee; otherwise the Marshal of the Sejm may reject a vote on this amendment. Adopted bills are presented to the Senate that may adopt them, amend them or reject them as a whole. The Sejm can overrule any changes or rejections with an absolute majority. (art. 118-121) Only the Sejm and no other organ may issue statutes that have a special character as granted by the constitution.¹²⁰ Furthermore, the Sejm may adopt the State budget presented by the Council of Ministers by adopting a budgetary statute (art. 219).

Provisions on security and defence matters

According to the Constitution “the Sejm shall declare, in the name of the Republic of Poland, a state of war and the conclusion of peace” (art. 116), but there are two limitations to this

¹¹⁶ Szczerbiak, pp. 110-114; Kai-Olaf Lang: Machtwechsel in Polen. Was bringt die rot-grüne Koalition?, SWP-Aktuell, Berlin 2001, http://www.swp-berlin.org/pdf/swp_aktu/swpaktu_20_01.pdf; Lang 2001; Matl, pp. 19-21, 27-30.

¹¹⁷ Matl, pp. 13, 26.

¹¹⁸ Ziemer/Matthes, p. 204; <http://www.sejm.gov.pl/english/sejm/sejm.htm>.

¹¹⁹ Gwizdz/Mordwilko, p. 201.

¹²⁰ <http://www.sejm.gov.pl/english/sejm/sejm.htm>.

right: First, the territory of Poland has to be under an armed aggression or second, there has to be an obligation to common defence resulting from an international agreement. If the Sejm cannot assemble, this right is transferred to the President.

The deployment of the army outside of Poland as well as the basic principles concerning the presence of foreign troops on the territory of the Republic of Poland and the principles for their movement within that territory are fixed by a ratified international agreement or a statute (art. 117). The transfer of competencies of state organs to international organisations or institutions may also be regulated by international agreements.

There are two possibilities for the ratification of international agreements: Either they have to be ratified only by the President or they need to be confirmed by a statute of consent. The latter is the case if the international agreement concerns

- “1) Peace, alliances, political or military treaties;
- 2) Freedoms, rights or obligations of citizens, as specified in the Constitution;
- 3) The Republic of Poland's membership in an international organization;
- 4) Considerable financial responsibilities imposed on the State;
- 5) Matters regulated by statute or those in respect of which the Constitution requires the form of a statute” (art. 89).

In the former case the Prime minister has to inform the Sejm about the submission of the agreement to the president for ratification (art. 89).

The consent to the ratification of an international agreement can be given either in form of a statute by the Sejm and the Senate or in form of a nation-wide referendum.

In the first case, the adoption of statutes of consent for the ratification of international agreements requires the consent of the Sejm (and the Senate, see below) with a two-third majority in the presence of at least half of the statutory members (art. 90).

In the second case, the Sejm has the right to order a referendum with an absolute majority vote in the presence of at least half of the statutory members (art. 125).

The decision if the first or the second possibility of consent is applied belongs also to the Sejm that has to choose the procedure with an absolute majority vote in the presence of at least half of its members (art. 90).

The possibilities of the Sejm to influence security and defence matters besides the role in the ratification process of international agreements are in common with most of the Western European parliaments. The Sejm can use his competencies within the legislative procedure (see above) in order to influence the decision making in this area. and has also certain control functions.

Art. 95 of the Constitution holds that

“The Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.”

The most effective instrument to exercise this control is the right of the constructive no confidence vote of the Sejm. However, this is not a very specific instrument for control and furthermore rather dangerous as its multiple use leads to an unstable political system. In the early years of the Third Polish Republic, when the political system was not consolidated at all, it was used not because of the misconduct of the Prime minister or his ministers, but because of the conflicts between the many parties in parliament as well as between the legislative and executive institutions.¹²¹

The Deputies may forward interpellations and questions to the Prime minister and the other members of the Council of Ministers who are obliged to answer within 21 days. Besides, the Prime minister and his ministers are obliged to answer questions concerning the current affairs in every session of the Sejm (art. 115).

¹²¹ Ziemer/Matthes, p. 203.

Interpellations are according to the Standing Orders of the Sejm concerned with “issues of substantial importance”¹²². They have to be submitted to the Marshal of the Sejm in written form. The answer to the interpellation is considered as a binding opinion. Questions have the aim to get information on current State affairs. The procedure is the same as for the interpellations. Besides this right of the Deputies to turn to the government for information on certain matters, there is also the duty of the government to keep the Sejm regularly informed about current issues that are raised in sessions of parliament. On the basis of this information, interpellations and questions can be better directed and be held more concrete. This giving of information during the sessions is supposed to be an oral exchange of views, although it has to be announced by the deputies beforehand to the Marshal of the Sejm.¹²³

The number of interpellations and questions rose enormously since 1989, showing that the deputies were getting accommodated with the rules and procedures of a parliamentary democracy. However, in many cases they did not necessarily aim at controlling the government in the executive of its competencies, but served rather to criticise, often in fields outside of governmental competence.¹²⁴

Another possibility of control for the Sejm is the supervision of activities of organs of State through the Supreme Chamber of Control. This Chamber is the “chief organ of state audit” (art. 202) and is “subordinate to the Sejm” (art. 202). Its task is to “audit the activity of the organs of government administration, the National Bank of Poland, state legal persons and other State organizational units regarding the legality, economic prudence, efficacy and diligence” (art. 203). It presents the results of its work as well as an annual report on its activities to the Sejm (art. 204). The State Control Committee of the Sejm is an additional instrument for the co-operation between the Sejm and the Supreme Chamber of Control. The Sejm has a powerful instrument in its hands with the State Control Committee as it cannot only analyse the direction of control but also shape it.¹²⁵

Last but not least the Sejm in the form of its Marshal or at least 50 deputies can apply to the Constitutional Tribunal to review ratified international agreements or any statute according to their conformity with the Constitution.

The committees

In the Standing Orders of the Sejm 28 committees and the possibility to form sub-committees are provided. They are organised either along problem areas or along functional criteria.¹²⁶ 22 of them are organised according to the existing ministries, the other six are responsible for certain competencies of the Sejm like for example the State Control Committee. The committees consist of between 20 and 50 members and are composed according to the unwritten practice of proportionality to the party composition of the Sejm. A chairman of the committee is elected with the right to invite external advisers or experts on a certain topic, to decide whether journalists have access to the committee’s sessions, the right to set the agenda and the right to summon ministers. The committee can order information and explanations on relevant topics of ministers in a written or oral form. The tasks of the committees are to hear the respective minister before his appointment, to control the budget of the respective ministry and to control the executing administration. Thus, the committees have a rather extensive right to control their respective ministry and even to influence the formation of government. Concerning the legislative process the committees have the right to legislative initiative. They prepare the legislative work of the Sejm and answer questions of the Sejm, the Marshal or the presi-

¹²² <http://www.sejm.gov.pl/english/prace/cf6.htm>.

¹²³ <http://www.sejm.gov.pl/english/prace/cf6.htm>.

¹²⁴ Ziemer/Matthes, p. 202.

¹²⁵ <http://www.sejm.gov.pl/english/prace/cf5.htm>.

¹²⁶ Gwizdz/Mordwilko, p. 203.

dency to current topics. The committees cannot, however, reject a bill, but need the support of the Sejm in this matter.¹²⁷

The system of committees and also the attitude of deputies towards their parliament seems to be similar to the German *Bundestag*. The committees are divided in permanent, special and investigatory committees. They are specialised and multifunctional committees organised in their tasks according to the respective ministries.¹²⁸ However, the large number of committees seems to lead to certain inefficiency and a co-ordination problems for the deputies although a majority of deputies regards the work in the committees as the most important part of their task. This leads to the conclusion that the Sejm is like the *Bundestag* rather a working parliament than a debating parliament.¹²⁹

For the matter of security and defence the important committees are the Foreign Affairs Committee, the Committee for National Defence and the Committee of European Integration as well as the Legislative Committee and the Budgetary Committee.

The Committee of European Integration is with 50 members the biggest committee compared to the Foreign Affairs Committee with 31 members and the Committee for National Defence with only 18 members. All three Committees are composed more or less proportionally to the party composition in the Sejm: About half of the members belong to the government coalition, about one third to the right wing parties and the rest to the conservative, but populist PO (Platforma Obywatelska - Civic Platform).

The most important Committee for the Security and Defence Policy should be the Committee for National Defence. It meets regularly to discuss the European and the NATO policy of the government. It mainly asks the government for information on relevant topics and invites to this purpose civil servants as well as ministers to explain their policy. Subject of the debate are for example the implications of and the status of Poland within the ESDP as Poland is a member of NATO already but not yet of the European Union. Another topic is the relationship of Poland with its Eastern neighbour countries, especially the Ukraine. A large amount of work is absorbed by detailed questions on military reform concerning the structure of the military and the technical equipment of the army. In this context a lot of legal initiatives are discussed. The Committee mainly does not oppose the government's policy but tries to contribute to the debate in ensuring Polish interests.¹³⁰

If necessary for co-ordination of the position on the ESDP the Committee for National Defence holds meetings together with the Foreign Affairs Committee and the Committee of European Integration. According to a former member of the Sejm it is mainly the Committee of European Integration that is pushing the government also on Security and Defence issues in asking it every week for information and questioning the ministers on current affairs.¹³¹ The Committee has the mandate to deal with issues related to the process of European integration. It is responsible for controlling the implementation of the National Programme for the Adoption of the Acquis by the government. Moreover it controls the new bills in view of their conformity with EU-law. The Committee participates in the EU-Poland Joint Parliamentary Committee some of the Committee deputies are members in. The Committee is informed by the government on developments in European law and formulates on this basis opinions on

¹²⁷ Ziemer/Matthes, p. 198-200; <http://www.sejm.gov.pl/english/prace/cw3.htm>; Anna van der Meer Krok-Paszkowska: Shaping the Democratic Order: The Institutionalisation of Parliament in Poland, Leuven/Appeldoorn 2000, pp. 166-167, 198-199.

¹²⁸ Krok-Paszkowska, p. 198.

¹²⁹ Ziemer/Matthes, p. 200.

¹³⁰ <http://www.sejm.gov.pl>.

¹³¹ Interview with Dr. Piotr Nowina-Konopka, 25.11.2002, Vice-Rector of the College of Europe and former member of Parliament (UW).

general policy questions as well as on legislative texts. It votes on the annual report of the government on activities concerning law harmonisation and accession strategy.¹³²

The topics the Sejm and the Senate committees on Foreign, Security, Defence and European Union matters were dealing with since the last elections in autumn 2001 are dominated by two subjects: the accession to the European Union and the military implications of NATO membership. The Committees for National Defence are mainly concerned with the securing of the Polish borders and future borders of the European Union, the military co-operation with Lithuania, Ukraine, Czech Republic or Slovakia and the political and military consequences of the membership in NATO.¹³³

The Senate

The Senate¹³⁴ is according to the Constitution, unlike the Sejm, not directly involved in matters of security and defence. The only way to influence this area is to fulfil its regular role within the legislative process. Like the Sejm, the Senate has the right to legislative initiative (art. 118), but only as a whole body. The Senate may amend the State budget adopted by the Sejm (art. 223).

There are only two exceptions to this subordination of the Senate to the Sejm: statutes amending the Constitution and statutes of consent for the ratification of international agreements. In the latter case, which is of our interest, both chambers of parliament have to pass the statute equally with a two-thirds majority (art. 90).

In contrary to the Sejm, the Senate cannot reconsider bills that were rejected by the President. It cannot issue referenda except giving consent to referenda ordered by the President. It cannot reject or even approve statutes by the President during a period of siege. And last but not least, the Senate has no right to control the government nor to hold it politically accountable.¹³⁵

The Sejm cannot only overrule amendments or rejections of the Senate within the legislative process, but it also has the exclusive right to control government. In spite of this subordination of the Senate¹³⁶, in general the relationship of Sejm and Senate is rather a co-operative relationship. The Senate is not so much a “house of resistance” than a “house of reflection and thought”. It is seen as a means to improve the legislation in the process of its setting. In the overwhelming majority of the cases the government and the deputies of the Sejm who introduce bills and make use of their right to legislative initiative. The Senate is not engaged at all in this respect¹³⁷. If, however, the Senate puts forward bills they are mostly concerned with social and educational matters and matters concerning the past of Poland. In this respect, security and defence do not play an important role in the Senate.¹³⁸

The relevant committees of the Senate in respect to security and defence policy are the Committee of Foreign Affairs and European Integration and the Committee of National Defence and Security.¹³⁹

As the Senate is dominated by a two-third majority of senators of the government party SLD-UP this influences also the composition of the Committees. The Committee of National Defence and Security is composed of almost only government party members: eight of the ten

¹³² http://www.cosac.org/eng/previous/versailles_2000/poland-pe.rtf.

¹³³ <http://www.senat.gov.pl/k5/kom/kon/index.htm>.

¹³⁴ <http://www.senat.gov.pl>.

¹³⁵ Gwizdz/Mordwilko, pp. 196-197.

¹³⁶ Ziemer/Matthes, p. 204.

¹³⁷ Ziemer/Matthes, p. 204, 208; Gwizdz/Mordwilko, pp. 195-197.

¹³⁸ <http://www.senat.gov.pl/k5eng/historia/noty/index.htm>.

¹³⁹ <http://www.senat.gov.pl/k5eng/senat/index.htm>.

Senators are members of SLD-UP, one is a member of the PSL and one is independent. A similar picture can be seen in the Committee for Foreign Affairs and European Integration where 13 of the 17 members belong to the SLD-UP, one Senator belongs to the Samoobrona and three to the Bloke Senat 2001.

According to the rules and regulations of the Senate, the Committee on National Defence is primarily occupied with “defence and state security, the arms industry, the activity and functioning of the armed forces and public services related to public security and other issues associated with public security”¹⁴⁰. The Committee for Foreign Affairs and European Integration deals mostly with “the state's foreign policy, inter-parliamentary contacts and international economic relations, European integration and harmonisation of Polish law with that of the European Union”¹⁴¹. The most important work of the committees in these areas consists in preparing the Senate’s opinion on legal initiatives passed to the Senate by the Sejm.¹⁴²

Joint sessions of Senate and Sejm committees are seldom, but if, they are especially held by the Committees for Foreign Affairs and National Defence.¹⁴³

International contacts of the Polish parliament

The Polish parliament is a member of various international parliamentary assemblies such as the Parliamentary Assembly of the Council of Europe, the International Parliamentary Union (IPU), the Parliamentary Assembly of the OSCE, the Parliamentary Assembly of the WEU and - as Poland is a full member of NATO already - also the Parliamentary Assembly of NATO.

Not being a EU member country yet, relations with EU organs are still in the making. However, there are already two Secretary Generals of the Sejm and the Senate mentioned as contact persons on the home page of the European Parliament as well as one liaison officer for each of the chambers. Within the Poland-EU Parliamentary Joint Committee¹⁴⁴ members of the European Parliament and of the Polish Parliament exchange in regular meetings their views on the status of the accession preparation of Poland and on other topics relevant for Poland. They publish declarations and recommendations with their common view on the discussed topics. The Polish members are deputies from the Sejm as well as the Senate from the various political parties.

Furthermore, some of the Polish parties are members of international party organisations and have contacts to other European parties and parliaments. However, these contacts are not very widespread. From the parties currently represented in parliament there is only the PO and the SKL (Stronnictwo Konserwatywno Ludowe – Conservative Peoples’ Party) that are associate members of the EPP, and the governing party SLD-UP that is a member of the PES.

III.6.3. Conclusion

The Polish parliament, especially the Sejm, has according to the constitution not an outstanding role to play but fulfils certain legislative and control functions within the national policy cycle concerning decision preparation, decision taking and decision implementation and control.

In the phase of decision preparation the Sejm and the Senate are involved through their committees giving opinions and questioning the ministers. They keep in contact with the ministries in order to influence them and obtain information. The Sejm is involved in voting on general strategies, like for example the Security Strategy of 1992 adopted by the Committee

¹⁴⁰ <http://www.senat.gov.pl/k5eng/senat/index.htm>.

¹⁴¹ <http://www.senat.gov.pl/k5eng/senat/index.htm>.

¹⁴² <http://www.senat.gov.pl/k5eng/historia/noty/index.htm>.

¹⁴³ <http://www.senat.gov.pl/k5eng/historia/noty/index.htm>.

¹⁴⁴ http://www.europarl.eu.int/delegations/europe/jpc/dm04/default_en.htm.

for National Defence¹⁴⁵, and adopting laws concerning more detailed problems, like the “Polish Defence Industry Restructuring and Polish Armed Forces Technological Modernisation Study” adopted by the Sejm in the form of two laws in 1999.¹⁴⁶

In the second phase of the policy cycle, the decision-taking, several areas can be differentiated. First, the Sejm and the Senate are the main actors in the legislative procedure with the Sejm having a dominant part. The exception is the ratification of international agreements where both chambers are equivalent. The second instrument to influence security and defence policy is the adoption procedure of the State budget. The Sejm has to pass a budgetary statute and the Senate may amend the Budget. Furthermore, the committees review the draft budgets of their respective ministry. The decision on deployment of the Armed Forces, as a third area of influence and participation, can be influenced indirectly as it has to be permitted by an international agreement or a statute that has to be adopted by both the Sejm and the Senate.

In the last phase of implementation and control, the Sejm plays a dominant role compared to the Senate. The Council of Ministers is politically accountable to the Sejm through the constructive no-confidence vote. With the Supreme Chamber of Control subordinated only to the Sejm, an instrument for the control of the implementation of laws and the functioning of the administrative bodies is guaranteed. Instruments of control like interpellations, questioning of experts, civil servants and ministers and obligatory information by the government are allocated both in the Sejm and the Senate.

The constitution provides for a co-operation of the central institutions – parliament, government and president – in foreign, security and defence matters. Parliament and government play the decisive role whereas the president has some seemingly far-reaching powers attributed that he can only execute in co-operation or on request of the government.

In practice there are some problems concerning the proper use of these instruments provided by the Constitution. While the government and the president are mainly shaping the direction of foreign, security and defence policy, parliament appears as a rather passive actor. The main reason for this development is connected with the lack of a consolidated party system. A large number of deputies, especially of the populist parties in the Sejm, is either not really interested in the topic or in general against an integration of Poland in the European security and defence architecture. Another problem is that members of the populist parties often use speeches, interpellations or questions in the plenary of the Sejm or in the committees as a platform for “their” topics or for criticism of subjects the government cannot directly influence. The Senate on the other hand, not so much influenced by such parties, in general does not seem to be very active in the field of security and defence.

It appears that the Polish parliament has constitutional rights but does not use them excessively or uses them in a rather passive way, passing initiatives from the government without actively participating in their shaping. It seems to be a general problem of the Polish political system due to its not yet complete consolidation that a huge number of politicians is more concerned about their own power, changing the landscape of political parties constantly, instead of engaging in political issues. This leads to a large autonomy and a great power of the government and the president that cannot be properly balanced by parliament.

As there is a consensus between the major parties having been in power so far on the direction of Polish foreign, security and defence policy and as the president can provide some sort of stable institution involved in these matters and representing the whole population, until now a rather coherent and continuous policy has been implemented, making Poland a reliable factor in the international arena – an arena where governments are the decisive actors and not national parliaments.

¹⁴⁵ Humrich/Pradetto, p. 328.

¹⁴⁶ Humrich/Pradetto, p. 338.

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III.7. The US-Congress in foreign, security and defence policy: invitation to struggle

III.7.1. Introduction: The ambiguous relationship of Congress and President in foreign affairs

The constitution of the USA is based on four basic principles: the division of competences, the limitation of powers, federalism and the protection of (civil) rights. Generally, these four principles form the structure of government and distribute power horizontally between the various actors at the federal level, but also vertically between the federal and the state level. Concerning foreign policy, the horizontal division of competences is – along with the constitutional limitation of powers – the most decisive element.

Foreign policy in the United States is traditionally a matter of the executive in which the president has wide-ranging competencies.¹⁴⁷ The Constitution rules that the President is the »Commander in Chief« and the nation's chief diplomat. Holding these capacities, he is responsible for the military defence, including the deployment of US military forces and diplomacy as well as the negotiation of treaties. Thus, a president always maintains an extensive discretion in the conduct of US foreign policy, but it is not a total one. Though the US Congress is more or less subordinated to presidential powers in foreign policies, it is also a relevant player. The US Congress consists of two chambers: the House of Representatives and the Senate. The Senate is responsible for the ratification of treaties and the confirmation of individuals nominated by the President to fill key posts in his administration. Congress also is granted significant »powers of purse«. By using its authorities over the federal budget, Congress can, and often does, »check and balance« presidential initiatives. The legislative branch »produces« the law; while the executive branch implements it. But for several reasons this process diffuses considerably:

Political parties in the United States play basically a quite different role in the political system than in Europe. Neither representatives nor voters identify themselves considerably with their party. Consequently, formal party constraints – resembling the often de facto mandatory nature of voting procedures – of parliamentarians in Europe in both chambers are very small. In the Congress, in practice, the »log-rolling« – the informal voice exchange – is an expression of the representatives' pragmatic and non-ideological approach.

However, although the representatives – either in the »House« or in the Senate – often act independently and coalitions vary due to the issue under debate, basic party preferences nevertheless play an important role. The relationship between Congress and President in foreign policy is determined to a certain degree by the majority ratios in the Congress. In case of a »unified government« – congruence of the President's party membership and the majority party in the Congress or more particular in the Senate – the leeway of the US president is considerable. In contrast, in case of a »divided government« – the antagonism of the President's party and the majority party in the parliament – the US president has to take considerably more attention to the Congress in foreign policy.¹⁴⁸

III.7.1.1. The historical framework

The founding fathers of the US constitution offered no clear evidence on the distribution of competences in foreign policy. The provisions are very vague, presenting only general guidelines for political practice. Hence, foreign policy cannot be characterised by an unambiguous

¹⁴⁷ See for a critical view on changing predominance in foreign policy Louis Fisher: *Without Restraint: Presidential Military Initiatives from Korea to Bosnia*, in: Eugene R. Wittkopf/James M. Mc Cormick (eds.) *The Domestic sources of American foreign policy, Insights and evidence*, Third edition, Oxford 1999, pp. 141-155.

¹⁴⁸ If the president has both chambers »under his flag«, he usually controls foreign policy predominantly.

dominance of the executive in international affairs. This can be explained on the one hand by the fact that the new founded United States scarcely dealt with foreign policy and on the other hand that government and parliament tended to co-operate.

Primarily the American-Spanish war in 1898 and the presidency of Theodore Roosevelt (1901-1909) raised foreign political interests of the USA. These ambitions, however, remained only of short duration. The rejection of the Treaty of Versailles by the Senate as well as the international economy crisis in 1930 led to a relapse into isolation and a »withdrawal« of the US from international engagement. Initially the entrance of the United States into World War II and the Japanese attack on Pearl Harbour finally broke the American tradition of international abstention. In the following decades, the cold war rendered a withdrawal of the United States from international affairs quite impossible.

The new challenges of the cold war went along with a strengthening of the executive in foreign policy. In the 1950s and 60s, Congress left foreign policy more or less to the government. Especially fears for the Soviet Union forced a wide consent. Foreign policy was understood as a non-controversial policy area. Especially in times of crisis, Congress demonstrated trust in presidential leadership.

Although Congress again obtained a stronger role in foreign policies since the unsuccessful engagement of the United States in Vietnam, its role is still characterised by concerns of blocking controversies between the parties.

III.7.1.2. General doctrines and guiding principles

An analysis of the voting behaviour in the US-Congress between 1897 and 1984 suggests that the explanation of the scope of parliamentary influence is particularly to be sought in aspects of the international system. The emergence of threats and the necessity for US reaction to them are relevant for activity and contradiction in the Congress. An investigation of several decisions in crisis response as an indicator for the explanation of activity and resistance has revealed the following patterns:

If a new threat arises in the international system, an overall strategy would lead to a certain type of consensus between both presidency and Congress as well as between the majority and minority parties (Democrats and Republicans) in Congress (bipartisanship). Politically controversial debates and contradictions are mostly deferred – until the strategy fails or has lost its impact or a new crisis arises.

Two historical incidents will form as examples for this long-term trend: The »Gulf of Tonkin« resolution – agreed upon by both houses on 7 August 1964 with only two dissenting votes – authorized the president to take all measures necessary for the defence against armed attacks on US-troops and to prevent any future aggression. Thereby, the parliament issued the executive a »blank cheque«. At least indirectly, it approved the utmost interpretation of the constitutional right of presidential power – the key for an imperial presidency.

The blocking of financial means and ends for military actions in Cambodia – decided by the Congress in 1970 – was the prelude of a fundamental conflict between the president and the parliament, with the latter intending to regain rights to participation in international affairs and the former aspiring to defend his executive prerogatives. A new sign of its recovered self-confidence was set by the Congress in 1973 with the »war powers act«. This act determines that the president is bound to inform the parliament on all military actions within 48 hours. The deployment of US troops is to be concluded within 60 days.¹⁴⁹ Otherwise, the Congress has to issue a formal war explanation.

In academic literature, the Congress is frequently characterised as the most powerful parliament of the world. Nevertheless, important functions are missing. Corresponding to the cate-

¹⁴⁹ In case of the necessity of an organised withdrawal, the period increases to 90 days.

gorisation of the USA as a presidential system, the Congress does neither have the right to elect the head of government nor is it able to unseat the president for political reasons – with the exception of the »impeachment« procedure. On the other hand, the president cannot dissolve the Congress.

With regard to foreign and security policy, the constitution provides Congress with a multitude of functions. The parliament exploits these functions, although it has never made full use of its competences in over 200 years of history. Instead, the Congress accurately shares a lot of competences with the president.

In academic literature, a certain abundance of work is noted which can be assigned to four different schools:¹⁵⁰

- 1) The first school of thoughts postulates the dominance of the executive. While the USA gradually assumed the role of a »global leader« and superpower, the necessity of confidentiality and secret-bearing in foreign politics grew. Out of that resulted an advantage through information for the executive, causing a decline of the role of the Congress in international decision-making procedures.
- 2) The second school of thoughts is based on the same premise but it draws other conclusions. This approach considers the Congress as a major actor since it has increased its role in the last 20 years showing more will than before to use the power off the pursue to shape foreign policy.
- 3) According to the third school of thoughts there are different cycles in the relationship between the legislative and the executive. Active and passive stages of parliamentary influence are altering following a pendulum movement. Strong parliamentary activism diminishes after some time and not sooner than the threat of an executive »usurpation« of power comes up, the pendulum swings back again.
- 4) The fourth perspective focuses on particular incidents that influence the relations. Variables affecting congressional action are the determinant factor for parliamentary action. These variables might be international conflicts or wars as well as national concerns.

In addition, other scholars emphasise the impact of new players, since other actors have successfully stepped in the foreign policy arena: A more investigatorial and negative press reported more and in greater depth on executive implementation problems, policy disagreements within the administration and between it and Congress, and issues that generated international conflict. Moreover, technological changes within the media sector – forcing a wider and quicker flow and spread of information – have forced more and more decision-making into the public arena and media spotlight, thereby shortening time frames for decision-making and rendering the achievement of quiet compromises more difficult.¹⁵¹

III.7.2. The national policy cycle: Opportunity structures for control

The decision-making process on foreign issues has not developed durable and unequivocal mechanisms. Instead, the often-quoted principle of »checks and balance« is still valid to prevent any single branch from »usurping« too much power. Thus, a division of responsibility between the executive and legislative – as well as among judicial branches of the federal government – and, consequently as a continuous struggle for predominance and influence can be observed. The constitution deliberately expresses this »invitation for struggle« in order to prevent a lasting accumulation of powers.¹⁵²

¹⁵⁰ See for the discussion on these schools of thought: Marie T. Henahan: Foreign Policy and Congress, An international relations perspective, Michigan 2000, in particular chapter 1: the study of Congressional behaviour over time, pp. 7-41.

¹⁵¹ See Holly Idelson: National Opinion Ambivalent as Winds of War Sir Gulf, in: Congressional Quarterly Special report, January 1991.

¹⁵² See James M. Lindsay: End of an era: Congress and Foreign Policy after the Cold War, in: Eugene R.

It remains left to each single case whether and how a political action will be carried out. As indicated above, no single explanation for the relation of the President and Congress in foreign policies can be seen as »correct«. Or as Edward S. Corwin put it: "What the Constitution does, and all that it does, is to confer on the President certain powers capable of affecting our foreign relations, and certain other powers of the same general kind on the Senate, and still other such powers on Congress; but which of these organs shall have the decisive and final voice in determining the course of the American nation is left for events to resolve."¹⁵³

In every action, the interests of the actors differ. Turning a proposed bill into law is often a lengthy process that involves a great number of actors besides the president – e.g. congressional staff members as well as legislators themselves in both the House of Representatives and the Senate.

In the ratification of international treaties and in the appointment of ambassadors, consuls, ministers, high judges and others, the approval of at least two-thirds of the Senators is needed. Due to this right, the Senate is applied as the more relevant chamber of the Congress in foreign policies. The declaration of a war forms a joint competence of both houses. In addition, the Congress is responsible for the organisation of the national authorities – including the administration for security policy. The most powerful instrument of the Congress is the »power of the purse« - its budgetary competency (s. II.2.). All federally financed activities of the executive must either be agreed on by the Congress or can be shortened or even rejected by it.

III.7.2.1. Initiative powers

The »classical« formal channel of participation in foreign policy works via legislation (»bill« or »joint resolution«). The introduction of bills is reserved to the members of the House of Representatives or Senate, although members themselves do not originate most of them. Today, the vast majority of legislative initiatives are proposed by the executive branch – the White House and federal agencies. Thousands of bills are introduced in each two-year session of Congress, but most never make it through the full process. For example, in 1993 and 1994, during the 103rd Congress, 8.544 bills and joint resolutions were introduced, but only 473 of them were converted into law.

The President is the dominant actor in US foreign policy, but he must take into account the proceedings and majority opinions in the Congress, and he finds himself in a stronger position if he proceeds with the support of the Congress on any given foreign policy initiative.¹⁵⁴ In contrast, it is much more difficult for a President to conduct foreign policy against the opposition of the Congress. Thus, he anticipates the concerns of the Congress as much as possible in the formulation and execution of his policies, thereby minimizing much of the potential resistance.

At a very early point in any major initiative, the President must try to cooperate with the congressional leadership in a »bipartisan« way. He must consult as many people and get a base of support as broad as possible in order not to be isolated. A failure to do that is almost bound to lead to political difficulties quite apart from operational difficulties. Important members of Congress who were not consulted and therefore feel completely out of the loop or might even be surprised by the audacity of the President will be quick to point out they had nothing to do with it as soon as the given initiative, a strategy or an operation fails. Thus, the President might be left with very difficult pieces to pick up – and a potentially uncooperative and some-

Wittkopf/James M. Mc Cormick (eds.), *The Domestic sources of American foreign policy, Insights and evidence*, Third edition, Oxford 1999, p. 173-183.

¹⁵³ Edward S. Corwin: *The President, Office and Powers, 1787-1957*, New York 1957. p. 171.

¹⁵⁴ See Jeffrey S. Peake: *Presidential Agenda Setting in Foreign Policy*, in: *Political Research Quarterly* 1 (2001), pp. 69-88.

times even mean-spirited group of people on whom he is depending for authorisation, appropriations and the rest of it.

III.7.2.2. Budgetary powers

The most important instrument of the Congress is its budget right since the conduct of foreign policy is often connected with large expenditures. Whereas in crisis reaction, the Congress tends to back the President, its support concerning long-term strategies cannot automatically be presupposed. Without budgetary »authorisation« and »appropriation«, thus, the permission and provision of financial means, no foreign policy can be decided on single-handedly by the head of state.¹⁵⁵

The power to cut off funding exists as a mallet that Congress can wield. The President needs to contemplate this power before going into a (military) conflict. He knows Congress has that authority ultimately to dispend financial means and will therefore often try to reach an agreement with the parliament before issuing foreign policy activities and maintain the agreement once actions are under way.

The Senate's »Foreign Relations Committee« and the House's »International Relations Committee« generally have hearings and then mark up legislation dealing with the authorisation of measures of US foreign policy. Ensuingly, the appropriations committees actually designate money to fund the projects that have been authorised. The »power of the purse« that resides with the Congress forms as another »check and balance« to the power of the President to take initiatives, to respond quickly or even to ask for a declaration of war that clearly is vested with him.

One recent example highlights the Congress' power quite clearly: Under the leadership of the Republican Jesse Helms in the mid-90s, the Congress partially dispensed its financial backing in foreign policy affairs. Democrat President Clinton had to give in to compromise after longer quarrels. Basically, it can be concluded: The President cannot do what Congresses does not fund. The budget right equips Congress with the opportunity to support, to share or to reject the foreign policy of the presidency through financial means.

The President has to take care of the general political »atmosphere«. Facing low public concern over foreign affairs and mounting pressures to reduce the federal budget deficit, the President will have difficulties to persuade Congress to allocate sufficient funds for many aspects of foreign and defence policy.

III.7.2.3. Legislative powers

Both bodies, the Senate and the House must approve any bill in identical form. Once that happens, it is sent to the President for signature. The President may sign the bill, turning it into law, allow it to pass without signing it, indicating his disapproval or he may veto it and return it to Congress. In this case, Congress can overturn his veto by a two-thirds vote in both chambers (»overriding a veto«).¹⁵⁶

All bills for raising costs must originate in the House, while consent for the ratification of treaties and confirmation of presidential nominees are solely Senate's responsibility. Each body can originate any other type of legislation.

The respective presiding official assigns a bill to the appropriate committee or committees in each house. The chair of the committee or its relevant subcommittee schedules hearings on bills he or she wants to pursue. Expert witnesses, representatives of government agencies, and spokespersons of various interested organisations give their views on the proposed legislation.

¹⁵⁵ See in this context the contribution of former special assistant to President Clinton Jeremy D. Rosner: *The New Tug-of-War: Congress, the Executive Branch and National Security*, Washington 1995.

¹⁵⁶ If Congress has fewer than ten days left until suspension, the President can prevent a bill by refusing to sign it. This is called a »pocket veto«.

The hearings generally are open to the public, unless they deal with classified information, and often receive extensive newspaper and television coverage. Following the hearings, the full committee meets to »mark up« the bill, which means to finalise it for »floor action«. The committee can approve and report the bill in its original form, report the bill with proposed changes, or table (fail to report) it.

Once the bill is reported, it is put on the legislative calendar of the body that is considering it. In the House, bills go to the Rules Committee for a »rule« on time limits and other conditions of debate before being sent to the floor. The House must first approve the rule before the bill itself is debated. In the Senate, the majority leader decides when a bill is brought to the floor. Senators also may make a motion from the floor to call up a bill.

There is no time limit on debate in the Senate, as there is in the House. In the Senate, this condition leads from time to time to an extended »filibuster«, designed to block a vote on the measure under consideration. A filibuster can be ended only by invoking »cloture« – a vote to end debate requiring the affirmative vote of 60 (of the 100) senators.

Both the House and Senate may consider bills simultaneously, but final bills must be identical in both bodies. If the House and the Senate pass different versions of the same overall legislation, which is generally the case, a special conference committee composed of representatives of both chambers is installed, which subsequently attempts to settle the differences. If an agreement is reached, the compromise is sent back to the floors of the House and Senate for a final vote. If both bodies approve it, the compromise is sent to the President. A (simple) majority vote is sufficient to pass most bills in the House and Senate. Some legislation, however – for example constitutional amendments and the overruling of presidential vetoes – require a two-thirds vote in both houses. If passed, a bill is printed on parchment, signed by the Speaker of the House and the President of the Senate, and sent to the White House for consideration by the President.

III.7.2.4. Military powers

As already mentioned, in context of the Vietnam war, Congress achieved the »war powers act«.¹⁵⁷ This act determines that the president is bound to inform the parliament on all military actions within 48 hours. The deployment of US troops is to be decided within 60 days. Otherwise the Congress has to issue a formal war explanation. The possibility of the Congress to independently decide a foreign deployment has been given with a majority in both chambers. (»Concurrent resolutions«).¹⁵⁸

But no President since the war powers act has recognised the authority of this resolution, arguing that it is an unconstitutional limitation on the President's powers as commander in chief. Efforts to modify the resolution to meet these and other concerns have not been successful. As a result, Presidents have intervened overseas without an explicit authorization from Congress. The Gulf war in 1991 was a rare example of Congress authorising a military operation before it occurred. More typical were Congress' deliberations on sending U.S. troops to Haiti, Bosnia and Kosovo. In all these cases, one or both houses adopted resolutions giving rhetorical support to the U.S. troops and their mission, but Congress did not, in a formal legal sense, authorise the deployment.

¹⁵⁷ See James A. Nathan/James K. Oliver: *Foreign Policy Making and the American Political System*, Third Edition, Baltimore 1994, especially Chapter 8: The War powers and Executive-Legislative Relations, pp. 127-148.

¹⁵⁸ A new aspect in view of the powers has come to the surface in context of the debates on a war against Iraq. Lawyers of the white house announced, the President could give the command to the war against Iraq without prior approval of the Congress. This is explained not only with the position of the US President as the military commander, but more yet out of the authority – given by the US Congress in 1991 to George Bush – to set free Kuwait.

III.7.2.5. »Confirmation« powers

Another critical point in the relationship of president and Congress refers to the Senates' confirmation power on nominations by the President: Nominations of the secretaries of state and all the undersecretaries, assistant secretaries and confirmable positions as well as all the ambassadors assigned from the United States to over 150 countries have to be confirmed by the Senate.

Each of these nominees is heard by the Foreign Relations Committee and must receive a vote to send the nomination to the floor, and then a majority vote by the Senate. One structural obstacle derives here from the two-party system of the US, creating a potential of a President having to deal with a Congress dominated by the adversary party. In recent times this was frequently the case, therefore a cooperative spirit is constantly required.

As a rule, the Senate will show respect to the president in terms of accepting the appointments. However, the President has to be sensitive to comments, to strong convictions in the Foreign Relations Committee and to special Senators in order to gain a majority of votes and to prevent the United States not having representations at the ambassadorial level for long periods of time.

III.7.2.6. Ratification powers

The US Constitution gives the Senate a specific role in foreign policy by calling for two-thirds votes on the ratification of international treaties. Nevertheless, the President or the Secretary of State or other negotiators have to confer treaties. Thus, there is a very important interaction that may lead to consultation of the Senate by the President or the administration during the period of negotiations in order to make ratification more likely by the Senate at the end of the road.

If interaction fails, the entire process may lead to confrontation or destruction, undermining the international credibility of the United States. The most significant example of a Congress not automatically supporting the president on important decisions is the vote on US entry in the »Völkerbund«. In 1919, the Senate voted against it. Thereby, the entire political concept of president Woodrow Wilson of a worldwide engagement, cooperation and partnership with other countries failed.

III.2.7.7. Hearings

To scrutinise government's activities, the Congress is allowed to call all higher civil servants and politicians for hearings – with the exception of the personal staff of the president. Officials from the executive branch are called before a Congressional committee to explain a policy in a particular area. This is a particularly useful device when Congress has no other appropriate means of influencing policy. In the case of non-appearance of such an actor, no explicit catalogue of sanctions can be recurred on, but the political pressure is significant as an informal element of pressure.

The most important hearing in foreign policy has been taken in the Senate Foreign Relations Committee; chaired by Senator J. William Fulbright of Arkansas and televised nationally. By revealing to millions of viewers the contradictions and difficulties of the war in Vietnam, the hearings have led to mobilise public resistance against the war. Following this manner, the Congress in the 70s investigated more precisely the secret service (FBI/CIA) activities and the Iran-Contra scandal in the following decade. In the 90s, the Congress tried to restrict the presidential supremacy in organisational matters by demanding the abolition of government authorities or at least structural changes.

Congress often finds itself in a quite comfortable position in foreign policy affairs. »Conventional (political) wisdom« in the United States allows it to support critical presidential decisions (e.g. concerning the military action in Haiti or Somalia) in the name of consistency and the ability to act while at the same time issuing critical remarks. If the action succeeds, parliamentarians can claim a partial success of their own because they finally backed the decision. If it fails, however, Congress can distance itself from the President by pointing to the scepticism it offered in the first place. If the majority party of the Congress is oppositional to the President's, this effect is, of course, strengthened greatly. Foreign policy thus can become an important factor in internal politics.

III.7.2.8. Informal powers

Besides these formal channels of participation, the informal inter-action between the executive and legislative should not be neglected. It is often regarded as the most useful means of influencing foreign policy. Ranging from private discussions with the Secretary of State, the National Security Adviser, to talks even with the President, the »informal universe« offers political leaders a field of voice and access.

The President knows he needs to seek support from Congress on any major foreign policy objective, especially if it is controversial. The President reaches out to senior members of the House and Senate to explain the policy and seek support. It is in these informal discussions that Congress, through its most exponent individual members, probably acquires the most significant impact.

III.7.3. The Committee structure: the organisation of parliamentary work in foreign policy

III.7.3.1. The committee structure in general

The US Congress can react to the abundance of its far-branched legislature tasks only by means of a system of committees and subcommittees. Although there is a central coordination of area responsibilities, there is scarcely any policy (sub-) field in which the competencies are not distributed between the several committees.

Typically, representatives and senators belong to at least two committees. The majority and minority party leadership in both bodies assign members to committees according to their interests as well as the interests of the state they represent. Furthermore, geographical and political diversities as well as subject expertise are considered when positions are distributed. E.g. most members of the judiciary committees are traditionally lawyers by profession.

Power within the committees is weighted in favour of whichever political party is in »control« of the chamber, since the majority party has the right to select the committee chairs and assigns the majority of the members to each committee. In the House, committee chairs are elected at a party caucus at the beginning of each two-year congressional session. Usually, the most senior majority party members on the committees take them up, but this is not a rule. In the Senate, the entire Senate elects committee chairs according to seniority. A committee chair appoints professional staff to assist the committee, sets the committee schedule, determines what bills will be discussed, what experts will be called to testify, when public hearings will take place and when – and if – prospective legislation will be voted on by the committee. The full committees generally choose subcommittee chairs. The most senior committee member of the minority party is referred to as the ranking minority member.

III.7.3.2. The committee structure with regard to foreign policies

The committee system is a key element for the accomplishment of the Congress' task. The strategy of the Congress might be either to prepare bills or to stamp the public discussions and hence indirectly exert influence on the policy of the government. This dichotomy can be characterised in the words of Lindsay as "inside and outside strategies to influence policy".

Traditionally, the committees with primary responsibility for foreign affairs are the Senate's »Foreign Relations Committee« and the House's »International Relations Committee«. The two bodies oversee the federal foreign policy and authorise the international affairs budget, which provides funding for the State Department and foreign assistance programs. The most important difference between the two committees is that the Senate panel makes recommendations to the full Senate on the ratification of treaties and consent to the appointment of diplomatic officials including the Secretary of State and U.S. ambassadors. The Constitution grants such authority solely to the Senate.

The House's International Relations Committee currently has five subcommittees. Three of them have a regional reference – on Africa, Asia and the Pacific and Western Hemisphere – and two are functional: International Economic Policy and Trade and International Operations and Human Rights. In previous sessions, there also was a subcommittee for Europe and the Middle East, but that responsibility now rests with the full committee.

The Senate's Foreign Relations Committee has seven subcommittees. Five are geographic – African Affairs, East Asian and Pacific Affairs, European Affairs, Near Eastern and South Asian Affairs, and Western Hemisphere and Peace Corps Affairs – while two are functional: International Economic Policy, Export and Trade Promotion; and International Operations.

In recent years the Appropriations Committees of the House and the Senate have become more influential in foreign policy due to the frequent malfunction of Congress to pass authorising legislation for foreign aid. Since 1980, the International Relations and Foreign Relations Committees have only once (in 1985) been able to get an overall foreign aid authorisation bill through Congress and signed into law. According to congressional sources, the reason is the difficult process of creating a consensus on legislation dealing with a broad range of foreign aid programs. Instead, the usual procedure is that on a case-to-case basis separate authorising bills are passed where consensus exists.

As a rule, authorising committees create programs and set overall policy guidelines and spending limits. Appropriations committees then concede money in line with the parameters that the authorising committees have set. But when there is no authorising legislation, the appropriations committees take on a larger role in budget decisions. Generally, there is a large potential for conflict between authorising and appropriation committees since budget affairs are scarcely to be separated from policy-issues.

The leading actors in defence policy of the Congress are the two »Armed services Committees«. They strive to take influence primarily on defence programs. In this context they attempt not only to limit not the leeway of the defence ministry, but also rather not to leave the inspection of defence policy solely to the authorising committees.

Since 1976/77, two »Intelligence Committees« are installed. They can be viewed as a result of the efforts of the Congress to win in the 70s a larger influence on foreign policy. Traditionally, secret service activities represent a field reserved to the executive. The executive possesses practically an information monopoly. In terms of accountability, this is problematic, since the Intelligence Committees cannot – like other committees – rely on published reports or interests groups as an alternative source of information. Due to the high degree of confidentiality in this area, the »real« influence of the Intelligence Committees on the secret services can hardly be measured. However, single cases are known, in which secret service operations have been delayed or changed due to the impact of these Committees.

III.7.3.3. Long time trends with regard to foreign policies

Every action is investigated and decided on in two manners: on the one hand, with regard to its objectives – for example in the foreign or the defence committee; on the other hand, in view of financial aspects in the responsible appropriation-committee. This intersection of competencies frequently leads to long lasting time periods in the Congress. Actions in their entire dimension can be set-aside in this way.

The chair of the foreign or defence committee has an important role; both might act in some regard as powerful veto-players. In 1985, Senator Helms, as chairman of Senate's foreign committee, brought the decision-making process in many important questions almost totally to a standstill: contracts were not ratified, ambassador functions were not approved and budgets not agreed on. Also, Helms (therefore dubbed »Senator No«) later brought President Clinton a number of political defeats by this tactic of »obstruction«.

However, the influence of the foreign relation committees has decreased since the 70s. To the one, the international agenda has changed in a way that the classic areas of the Committee – e.g. international treaties – have lost some significance. To the other, the composition has changed: in the 70s and 80s, the committee was divided in a democratic and a republican branch. This polarisation impeded the decision-making process.

The House's International Relations Committee has also lost its impact although it had never obtained the significance of the Senate's foreign relations committee. In spite of an increased number of hearings in the committee, the legislative influence is slight. In this light, the meaning of both committees is restricted rather on symbolic politics and thereby the impact on public debates.

III.7.4. The United States, the Congress and ESDP

The perception of the ESDP by the United States is quite ambiguous. Although the United States regularly supports a stronger »European pillar« in the transatlantic Alliance – especially in view of burden and cost sharing – there have been serious concerns that the Alliance might be divided politically or that resources are taken away from NATO resources.¹⁵⁹ According to Stanley R. Sloan, the "The US approach could be termed a »yes, but« policy, supporting the European effort but warning of its potential negative consequences."¹⁶⁰ Apart from party preferences, this view is more or less shared by the US Congress. In this context, the importance for ensuring security is emphasised. As long as NATO is the key framework for security, the United States want to ensure that any changes in the transatlantic Alliance protect US interests. In addition, there arise – especially in the Senate and in view of the role of France – worries that ESDP has to be considered as a direct challenge to the leadership of US. According to Sloan, the "fact that the British government is taking a clear lead on ESDP is both reassuring and distressing to Americans. It is reassuring because they know and trust their British friends, whose instincts regarding transatlantic relations they believe are almost always compatible with US interests. It is distressing because of the fear that, in order to score points in Europe, Prime Minister Blair may be willing to sacrifice fundamentals of the US-UK relationship."

However, most important for the United States is the real amount of money the European countries are ready to spend for their ESDP ambitions. Since the US is regularly complaining on very restricted expenditures in defence and even decreasing armament budgets, the United

¹⁵⁹ See Philip H. Gordon: How Bush could help Europe to change its mind, *International Herald Tribune*, 21 June 2001, p. 8.

¹⁶⁰ Stanley R. Sloan: The United States and European Defence, *Challot Papers* 39.

States are less concerned about institutional structures and particularly interested in burden-sharing.¹⁶¹

III.7.5. Conclusion

Unlike in parliamentary systems, where the executive has on the whole more or less unchallenged authority on overseas matters, the US constitutional system offers the Congress a significant role in foreign policy. The work of the committees and sub-committees proves that the Congress has created permanent organisational structures in order to be able to play an active role in all areas of foreign policy. About 15 of 20 standing committees of the House of Representatives and eleven of 20 standing committees of the Senate are concerned with foreign policy – though there are scarcely any separations of domestic and foreign issues; »intermestics« determine the agenda.

The impact of the reforms in foreign policy initiated by the Congress remains, however, ambiguous. The role is not exercised through one particular channel and the degree of Congressional involvement varies from time to time, depending how the matter of policy. Most of the confrontation takes place over carefully chosen symbolic issues but both branches of government encourage the image of conflict and gain from it politically.¹⁶²

All in all, the reforms have led to a fragmentation of Congress' power and impeded thereby the creation of majorities.¹⁶³ The popular statement, the institutional reforms of the 70s have led to a more active legislature, might be appropriate. But it is also a misinterpretation. Despite the increase of Congressional activities, the number of (foreign) legal acts has declined. The expectation of the »war powers act« to result in a basically new balance between executive and legislative has not been fulfilled. Nevertheless, a strengthening of legislative competences has been achieved, but in other (foreign) policy fields and with other means. Powers have been achieved less by institutional reforms than rather through a larger will of some exponent representatives to participate actively in foreign policy. In trade policies, the Congress has succeeded increasingly in setting up measures of protection. Sanctions are a successful tool for expressing displeasure with a foreign policy; Congress will enact legislation restricting trade or other economic relations with a country whose policies it disagrees with. E.g., Congress imposed sanctions on India and Pakistan because of their nuclear tests, and on numerous countries because of their involvement in drug trafficking. In addition, aspects of military aid and weapon exports have achieved an enhanced parliamentary inspection. Also, development aid was coupled successfully at the compliance of human rights.

This development demonstrates that Congress has achieved a new role in internal politics only to a certain extent. On the one hand, it has become more difficult for the US President to decide on international aspects. The presidents have realised that they will be more confident and effective and obtain the acceptance of the people with Congressional support. But at the same time the Congress renounced to receive independent responsibility in foreign policies.

The President as the chief spokesman of the Nation, directs Government officials and machinery in the daily conduct of diplomacy, and has the principal responsibility for taking action to advance U.S. foreign policy interests. Congress in its oversight responsibility can affect the course of policy through enactment of legislation governing foreign relations and through the appropriation or denial of funds. Experience has shown that cooperation between the two branches is necessary for a strong and effective U.S. foreign policy.¹⁶⁴

¹⁶¹ Ibid.

¹⁶² See for this line of argumentation: Barbara Hinckley: *Less than meets the eye: Foreign Policy Making and the Myth of the Assertive Congress*, Chicago, 1994.

¹⁶³ See for the argument Congressional Quarterly Almanac 1999, p. 724.

¹⁶⁴ Richard F. Grimmett: *Foreign Policy Roles of the President and Congress*, CRS Report to Congress, 1 June 1999.

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III.8. The Parliamentary Assembly of the NATO¹⁶⁵

III.8.1. Fundamentals

A parliamentary assembly of the North Atlantic Treaty Organization was set up in 1955 within the framework of the NATO as a conference of Members of Parliament from the then 15 Member States. The current Parliamentary Assembly (PA) of the NATO still forms the parliamentary body of the NATO. The Assembly is, however, in formal terms completely independent of NATO. It works as a democratic forum where parliamentarians from the NATO-member countries and non-member countries (mostly associated countries) meet in order to discuss current security-related issues.

The NATO Parliamentary Assembly was established as the North Atlantic Assembly in 1955. In 1999, it was renamed into »Parliamentary Assembly of the NATO« (NATO Parliamentary Assembly, NATO PA). This renaming was mainly due to the major political changes in the former Soviet Union and Central and Eastern Europe, which forced NATO and the Parliamentary Assembly to broaden its membership and its mandate.¹⁶⁶

III.8.2. Functions

The Parliamentary Assembly of the NATO primarily fosters the dialogue on major security issues. It represents a link between national parliaments and NATO enabling governments to take Alliance concerns seriously into account. Moreover, the Parliamentary Assembly makes efforts to promote consent to strategic problems among Member States – outside the traditional diplomatic channels.¹⁶⁷

The Assembly also acts as a permanent reminder to take decisions – reached within NATO – in accordance with the constitutional process of democratically elected parliaments. In this way it facilitates parliamentary awareness and understanding of key security issues and Alliance policies. The meetings of the Parliamentary Assembly may ensure a discussion of (national) public and parliamentary opinion to concrete questions, thus providing a greater transparency of NATO policies.

Another focal point of the work of the Parliamentary Assembly is the reinforcement of the process of democratisation and the development of parliamentary mechanisms and practices essential for effective democratic control of armed forces in Central and Eastern Europe – especially by integrating parliamentarians from non-member or associated nations into the Assembly's work. In addition, the Assembly ensures the strengthening of the transatlantic relations and thereby direct relations between parliamentarians from Europe and North America.

III.8.3. Representation and Nomination

The Parliamentary Assembly consists of delegations from the 19 Alliance Members including the three »young« member parliaments from the Czech Republic, Poland and Hungary. In addition, 17 associated delegations are part of the Assembly. The Member States are represented by altogether 214 parliamentarians while 73 delegates represent the associated delegations Member States.

Moreover, eight countries, the European Parliament, the Parliamentary Assembly of the WEU and the OSCE as well as NATO itself are represented in the assembly as »observers«. The

¹⁶⁵ The chapters on the Parliamentary Assemblies of the NATO, WEU, OECD and Council of Europe primarily are based on information by the secretary general of the international organisations and information on the respective Web-Sites.

¹⁶⁶ See in this respect especially the chapter: Cooperation with former adversaries, in: David S. Yost: NATO Transformed, The Alliance's new roles in international security, Washington D.C. 1998, pp. 91-187.

¹⁶⁷ See for the information and a general overview: NATO Handbook, Brussels 2001, pp. 375-378.

delegates of the parliamentary assembly of NATO are nominated by their (national) parliaments. The procedure of nomination varies from country to country and is up to national procedures and on the basis of party representation in the national parliaments.

Table III.2: Overview of national representatives in the Parliamentary Assembly of the NATO

MEMBER STATE	
Belgium	7
Canada	12
Czech Republic	7
Denmark	5
France	18
Germany	18
Greece	7
Hungary	7
Iceland	3
Italy	18
Luxembourg	3
The Netherlands	7
Norway	5
Poland	12
Portugal	7
Spain	12
Turkey	12
United Kingdom	18
United States	36
Total	214

If the national parliaments comprise two chambers, the nomination is separated between them. In the German case, the 18 delegates are nominated either by the Bundestag (12) or the Bundesrat (6).

In addition, there are 17 countries with a status of associate delegation. Associate members are able to participate in all Committee and Plenary activities, work on resolutions and recommendations and serve as Special Associate Rapporteurs to present their perspectives in the reports of Parliamentary Assembly. However, they are not entitled to vote, neither on reports nor on resolutions of the assembly. Hence, the associate delegation countries have a right to initiate proposals, but in contrast to the »full« members, they have no right to vote.

To date 15 Parliaments from Central and Eastern Europe have been granted Associate Member status plus the Parliaments from neutral Finland, Austria and Switzerland.¹⁶⁸

Table III.3: Overview of national representatives of associated Member States in the Parliamentary Assembly of the NATO

ASSOCIATE MEMBER STATE	
Albania	3
Austria	5
Bulgaria	5
Croatia	3
Estonia	3

¹⁶⁸ Belarus was suspended after its President abolished the democratically elected Parliament.

Finland	4
Former Yugoslav Republic of Macedonia	3
Georgia	4
Latvia	3
Lithuania	3
Moldova	3
Romania	6
Russian Federation	10
Slovenia	3
Slovakia	4
Switzerland	5
Ukraine	6
Total	73

The funding of NATO PA is provided by the contributions from either the national parliaments or the governments of the member nations. These contributions are based on the criteria used for the NATO civil budget. NATO itself also provides a small subsidy.

III.8.4. Committee Structures

The committees of the Parliamentary Assembly cover a wide range of international problems, such as transatlantic trade, war against the terrorism or the transfer of technology. The committees study and examine all major contemporary issues arising in their respective fields of interest. They meet regularly throughout the year and report to the Plenary Sessions of the assembly. There is a Secretariat with a staff of 30 people, based in Brussels.

The six committees – including nine sub-committees – are related to the following issues: Political; Defence and Security; Economics and Security; Science and Technology; the Civilian Dimension of Security; and the Mediterranean Special Group.

III.8.5. Sessions and output of the Parliamentary Assembly

The plenary sessions of the NATO Assembly are conducted twice a year. In addition, meetings of the committees and sub-committees take place on an irregular basis – as required. Meetings are held in Member States as well as associate member countries on a rotational basis and according to the invitation of national parliaments.

In the respective committees, resolutions and recommendations are produced for the plenary of the Parliamentary Assembly. The plenary takes decisions on the basis of these proposals. Resolutions are directed to the governments of the NATO-members states while the recommendations are directed to the NATO Council.

The meeting of the Parliamentary Assembly is led by a permanent committee consisting of an – annually elected – president, four vice presidents, a Questor, the chairs and vice chairs of the national delegation of the NATO Member States and the chairs of the committees. The daily work is carried out by an international secretariat with some 30 civil servants under direction of a secretary general in Brussels.

III.8.6. Conclusions

An assessment of the Parliamentary Assembly of the NATO remains ambiguous. On the one hand, it has only a limited impact on public debates and also only restricted direct influence on the decisions of national governments in day-to-day politics due to its low session fre-

quency. Even if the Parliamentary Assembly takes reports differing from the official NATO position, the public reaction is limited.¹⁶⁹

On the other hand, the assessment of the Parliamentary Assembly is considerably better in view of the impact on establishing international contacts. The Parliamentary Assembly of NATO offers an important frame either for the initiation of new activities or the control of existing activities. Since the parliamentarians of the Parliamentary Assembly have a notable influence on the (national) budget with regard to financial contributions for NATO or the participation of the governments in NATO activities, the representatives of the Parliamentary Assembly are able to direct the initiatives and the »conduct« of national governments.

In addition, in the frame of the parliamentary work, the representatives have a more or less direct impact on international treaties. Since the actual NATO-membership is considered by many »partner or associate countries« of NATO as a key element of foreign policy and since the (nineteen) current national parliaments are requested to ratify official protocols as well as on the accession of new member countries.

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¹⁶⁹ See for instance the general report of the Parliamentary Assembly on the consequences of the Kosovo conflict and the role of the UCK. *Frankfurter Allgemeine Zeitung*, 15 December 2000.

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III.9. The Parliamentary Assembly of the WEU

III.9.1. Fundamentals

In recent years, the Western European Union (WEU) has been subject to substantial changes. With the transmission of tasks to other bodies (such as the European Union), the WEU has become a comparatively »inactive« organisation. Since the year 2000, the WEU only consists of residual structures. One part of this remaining structure is the Assembly that has been re-named and is called now »Assembly of Western European Union – The interim European security and defence Assembly«.

In accordance with Article IX of the Brussels treaty, the WEU Assembly has primarily been the parliamentary counterpart to the WEU Council.¹⁷⁰ The mandate of the Assembly was “to proceed on any matter arising out of the Brussels Treaty and upon any matter submitted to the Assembly for an opinion by the Council”. Yet, since the WEU Council does no longer come together for meetings, this function does not attract any considerable importance. Thus, presently, the »Interim European Security and Defence Assembly« most of all provides a forum for political discussion and reflection on European Security and Defence Policy. In this context, the Assembly itself stresses that it is still “the only European parliamentary assembly that monitors security and defence issues”.¹⁷¹

III.9.2. Functions

In accordance with its Charter, the WEU assembly summons one annual ordinary session. This session is usually divided in two part-sessions. The Assembly comes together twice a year at the base of the assembly in Paris. In these meetings, the assembly discusses the report of the WEU Council. On the basis of the debate, recommendations and resolutions are directed to the governments and parliaments of the WEU member countries as well as to other countries.

The Assembly primarily discusses basic questions on European security. In recent years the relations to the European Union and to other security organisations have taken on an important place in the debates. At the same time, the Assembly tries to promote the unity of Europe and support the process of its integration as it is lined out in the preamble of the Brussels treaty. From the standpoint of the assembly, the focus here is specifically the strengthening of European identity in the field of defence and security. With regard to the changes in the international system after 1989, the WEU assembly paid special attention to the relations with the Central and Eastern European countries as well as the current »trouble regions« such as the former Yugoslavia.

III.9.3. Representation and Nomination

The WEU Assembly consist of delegates of the national parliaments and is composed of 364 national parliamentarians from 28 countries. This includes 115 representatives (and an equal number of substitutes) from the ten signatory states of the – modified – Brussels Treaty, which have full rights. In addition, there are the 249 parliamentarians of the 18 other WEU countries with limited rights. Among the 18, there are six associate member countries, five observer countries and seven associate partner countries that hold varying participation and voting rights according to their status.

¹⁷⁰ Article IX of the Treaty states that “the Council of Western European Union shall make an annual report on its activities [...] to an Assembly composed of representatives of the Brussels Treaty Powers to the Consultative Assembly of the Council of Europe.”

¹⁷¹ See WWW-site of the WEU. <http://www.weu.int> and <http://www.assembly-weu.org/>.

Table III.4: Overview of national representatives in the Parliamentary Assembly of the WEU

MEMBER COUNTRIES	
France	18
Germany	18
Italy	18
United Kingdom	18
Spain	12
Belgium	7
Greece	7
Netherlands	7
Portugal	7
Luxembourg	3
Total	115

ASSOCIATE MEMBER COUNTRIES	
Poland	12
Turkey	12
Czech Republic	7
Hungary	7
Norway	5
Iceland	3

OBSERVER COUNTRIES	
Austria	6
Sweden	6
Denmark	5
Finland	5
Ireland	4

ASSOCIATE PARTNER COUNTRIES	
Bulgaria	4
Slovenia	4
Slovakia	4
Romania	4
Estonia	2
Latvia	2
Lithuania	2

The nomination of the delegates is up to the member countries. The Federal republic of Germany, for instance, chooses (for the four-year-long electoral period of the Bundestag) 18 parliamentarians to serve as members and a further 18 as substitute members of the Parliamentary Assembly of the Council of Europe. The same 36 parliamentarians are at the same time members and substitute members of the Assembly of Western European Union (WEU). Additionally to the representatives of WEU Members States' parliaments observers from associated countries and partners take part in plenary sessions. No decision has been reached so far about a separate status for these associate members and partners.

III.9.4. Committee Structures

The Assembly convenes twice a year in plenary and meets in its committees during the year. The president chairs the plenary meetings of the Assembly. Each of the nine further full member countries has a vice president.

Next to the standing committee, consisting of members of the Presidential Committee and members of the WEU Assembly,¹⁷² the Assembly comprises six committees that come together regularly. These are the defence committee, the political committee, the committee on technology and aerospace, the committee on budgetary affairs and administration, the committee on rules of procedure order and privileges and finally the committee for parliamentary and public relations. The six committees meet up to ten times annually. The main task of the Committees is to prepare reports, resolutions and recommendations for the plenary. The plenary holds debates and decides on these proposals.

III.9.5. Sessions and output of the Parliamentary Assembly

The Assembly comes together semi-annually in the plenary and meets during the year in its committees (s.a.). The two meetings a year take place in June and December. In addition, extraordinary sessions might be held, either by the initiative of the President or following a request by not less than a quarter of the representatives. Such specific sessions took place for example in October 1999 in Luxembourg and in March 2000 in Lisbon. The respective rapporteurs – on behalf of »their« Committee – usually submit reports, recommendations, resolutions, opinions and orders as the instruments of the Assembly.

III.9.6. The WEU Assembly and ESDP

In general, the WEU Assembly broadly supports the establishment of the ESDP. However, although the WEU Assembly stresses the important role of the European Parliament, it claims that it is not conceivable that the EP could be the sole parliamentary body obtaining scrutiny functions in ESDP.

Since ESDP is an area in which national sovereignty and the decision powers of national parliaments still prevail, the WEU regards it as necessary to create a second parliamentary chamber for the democratic component of the international relations of the EU. In view of the integration of WEU tasks into the EU, WEU Assembly considers itself as the likely »nucleus« of such a second parliamentary chamber. At the same time, the participation of the national parliaments would thereby be guaranteed in the frame of the Union.

III.9.7. Conclusions

The evaluation of the WEU Assembly is highly controversial. On the one hand, there are many voices in favour of closing down the WEU and its parliamentary Assembly due the very limited residual functions, on the other hand several important tasks are mentioned. The most important, but also one of the most difficult tasks of the WEU Assembly is enabling those six countries that are members of NATO but not of the European Union to participate in the European context of defence and military matters, since these countries have the status of associated countries in the WEU and are therefore included in the debate.

Similarly, this structure also makes the involvement of the Central and Eastern European countries possible. The work of the parliamentary Assembly of the WEU is sometimes considered to contribute significantly to a strong European consciousness and to the integration

¹⁷² Chairmen of committees, Representatives of Political Groups, Representatives of associate member countries, Representatives of observer countries, Members of the committee, Alternates, Associates Members, Alternates, Associate partners.

of these countries. But if the WEU parliamentary assembly will be more than a "valuable forum of discussion" remains uncertain.¹⁷³

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¹⁷³ So the former French prime minister Lionel Jospin in: Christian Mueller: *Bekenntnis Jospins zur EU-Verteidigung; Welche Rolle für die WEU?*, in: *Neue Zürcher Zeitung*, 7 December 2000.

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III.10. The Parliamentary Assembly of the Council of Europe

III.10.1. Fundamentals

The Council of Europe with its place in Strasbourg was founded in 1949 and forms as an international political organization with 44 member countries.¹⁷⁴ The main tasks of the Council of Europe include the protection of human rights and the strengthening of pluralistic democracy, the reinforcement of economic and social progress, the achievement of joint solutions for contemporary problems such as xenophobia, the protection of minorities and the protection of the environment. Moreover, the development of a consciousness for a cultural European identity is another key aspect of the work of the Council of Europe. After the changes in Central and Eastern Europe, the gradual integration of the new democracies is another important task of the Council of Europe.

Statutory Bodies of the Council of Europe are the »Committee of Ministers« bringing together the Foreign Ministers of the member countries and the parliamentary assembly with delegations of the national parliaments of the member countries. In addition, there are the Court of Human Rights, Commissioner for Human Rights, the Congress of Local and Regional Authorities and the Secretary General.

The parliamentary assembly of the Council of Europe was the first parliamentary plenum at the European level after World War II. The parliamentary assembly consists of 612 representatives, plus seven special guests and 18 observers.

Whilst in the Committee of Ministers each Member State has one vote, in the Parliamentary Assembly the number of representatives and consequently of votes is determined by the size of the country.

III.10.2. Functions

The Parliamentary Assembly of the Council of Europe fosters the work of the committee of ministers. Thus, it gives political impetus from a parliamentary perspective. An essential part of the work includes taking the incentive for European agreements and conventions in order to improve legal harmonisation in the Member States. Besides, the Parliamentary Assembly directs recommendations on several policy areas – with exception of defence issues – to the committee of ministers as well as to the governments of the member countries. The objectives reaching from geographical aspects such as reports on the situation in Yugoslavia or in Chechnya to issue-related matters, for instance on European health and social policy and up to the cultural co-operation in Europe.

A special impact of the Parliamentary Assembly is the linking of parliamentarians from Central and Eastern Europe with its west European counterparts. Thereby, the Assembly has developed also into a forum for the new democracies. Next to this, the Assembly especially deals with the election monitoring and inspects the compliance of standards set by the Council of Europe. The procedure of monitoring has attained special importance in view of the accession of Russia. However, »old« members have also come under supervision. Hence, a monitoring-procedure was conducted for Turkey.

III.10.3. Representation and Nomination

The members of the Parliamentary Assembly are appointed in a manner left to each member state, as long as they are elected within their national or federal Parliament, or appointed from amongst the members of that parliament. It is only required that the balance of political par-

¹⁷⁴ There are applications from two more countries. In addition, the Council of Europe has granted observer status to five more countries

ties within each national delegation must ensure a balanced representation of the political parties or groups in their national parliaments.

Table III.5: Overview of national representatives in the Parliamentary Assembly of Council of Europe

MEMBER STATE	
Albania	8
Andorra	4
Armenia	8
Austria	12
Azerbaijan	12
Belgium	14
Bosnia Herzegovina	10
Bulgaria	12
Croatia	10
Cyprus	6
Czech Republic	14
Denmark	10
Estonia	6
Finland	10
France	36
Georgia	10
Germany	36
Greece	14
Hungary	14
Iceland	6
Ireland	8
Italy	36
Latvia	6
Liechtenstein	4
Lithuania	8
Luxemburg	6
Malta	6
Moldova	10
Netherlands	14
Norway	10
Poland	24
Portugal	14
Rumania	20
Russia	36
San Marino	4
Slovakia	10
Slovenia	6
Spain	24
Sweden	12
Switzerland	12
Macedonia	6
Turkey	24
Ukraine	24
United Kingdom	36
Total	612

III.10.4. Committee Structures

The Committees of the Council of Europe are composed of representatives or substitutes of the Assembly. All committees – with the exception of the Committee on the Honouring of obligations and commitments by Member States, known as the Monitoring Committee – have

an equal number of alternate members of the same nationality who have the same rights although they may not be elected chairperson of that committee. Other members of the same nationality can replace absent members of the committee.

Nominations to committees are proposed by national delegations and ratified by the Assembly, with the Committee on the Honouring of obligations and commitments by member States of the Council of Europe (Monitoring Committee) being an exception.

At the beginning of each session, i.e. in January of each year, the committees are re-constituted and elect their chairperson and three vice-chairpersons. The chairperson can be re-elected twice, so they might remain in office for a maximum of three sessions only.

Its discussions are held in camera, but the committee is free to admit anybody to its meeting it wishes. Secretaries to national delegations may attend the meetings of committees, except for those of the Monitoring Committee.

The Committee Structure consists of the following committees. All of them have again several sub-committees.

- ⇒ Bureau of the Assembly
- ⇒ Enlarged Joint Committee
- ⇒ Standing Committee
- ⇒ Political Affairs Committee
- ⇒ Enlarged Joint Committee
- ⇒ Committee on Legal Affairs and Human Rights
- ⇒ Committee on Economic Affairs and Development
- ⇒ Social, Health and Family Affairs Committee
- ⇒ Committee on Migration, Refugees and Demography
- ⇒ Committee on Culture, Science and Education
- ⇒ Committee on the Environment, Agriculture and Local and Regional Affairs
- ⇒ Committee on Equal Opportunities for Women and Men
- ⇒ Committee on Rules of Procedure and Immunities
- ⇒ Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe

III.10.5. Sessions and output of the Parliamentary Assembly

The members of the Parliamentary Assembly convene four times a year in Strasbourg in public session. In this frame, they discuss and decide on the recommendations prepared by the ten standing committees.

The sessions of the committees take place either parallel to the plenary meetings or in one of the Member States of the Council of Europe during the year in periods of 6-8 weeks.

With its work, the parliamentarians influence on the one hand the committee of ministers. On the other hand, they also continue the work of national parliaments in seizing initiatives to implement the decisions of the Parliamentary Assembly.

The Council of Europe has adopted around 186 European treaties or conventions, many of which are open to non-Member States on topics ranging from human rights to the fight against organised crime and from the prevention of torture to data security or cultural co-operation. Most of these treaties or conventions are adopted in order to harmonise the legal systems in Europe. However, these conventions need to be ratified by the Member States – as a rule by the parliaments.

A major example of the work of the Council of Europe is the European human rights convention. The focus of this convention of 1953 is the protection of individual rights as well as the obligation of countries to guarantee all these rights to its citizens. The European human right commission as well as the European court for human rights merged in 1998 into a standing court.

III.10.6. The relationship with the European Union

The relationship between the European Union and the Council of Europe is expressed in several provisions of the Treaty establishing the European Community (Article 149, paragraph 3, Article 151, paragraph 3 and Article 303). In particular, Article 303 of the EC Treaty is of importance stipulating “the Community shall establish all appropriate forms of co-operation with the Council of Europe”.

Nevertheless, the European Union and the Council of Europe represent two distinct approaches to the achievement of a greater unity among European states. The Council of Europe, with its pan-European membership, its experience and achievements in the field of human rights, democratic institutions and protection of minorities offers a platform for dialogue and co-operation, while the European Parliament is a body which is primarily involved in the decision-making process.

III.10.7. Conclusions

The bodies of the Parliamentary Assembly of the Council of Europe show considerably high rates of interaction. The plenary comes together for four periods a year; the presidency meets 14 times a year and the permanent committee three until four times a year. The conference frequency of the standing committees and up to 35 sub-committees swayed between 16 per year for larger committees – for example the political committee – and 7 sessions for smaller committees. In addition, larger committees held off – on the average - a hearing per year. Members of the Parliamentary Assembly were also invited as observers to special minister conferences and expert conferences of the Council of Europe as well as to the European Parliament.

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III.11. The Parliamentary Assembly of the OSCE

III.11.1. Fundamentals

In 1973 the »Conference on Security and Cooperation in Europe (CSCE)« was set up as a forum for the dialogue between the »West and the »East« (Warsaw Pact countries). It consisted at that time of 35 European countries as well as Canada and the United States. The Helsinki Final Act elaborated by this conference initiated the CSCE process and the related policy of »détente« in Europe. The signature of the Charter of Paris for a New Europe in November 1990 marked the beginning of the institutionalisation of the CSCE process, with the aim of creating a new order of peace and security in Europe. In view of a further institutional strengthening of the CSCE, it was renamed »Organization for Security and Cooperation in Europe (OSCE)« as of 1 January 1995.

The OSCE is currently a regional organisation according to chapter VIII of the charter of the United Nations. It deals with subjects such as early warning, conflict prevention, crisis management and conflict evaluation. The OSCE pursues a uniform security approach. Therefore, the organisation is involved in a large scope of security-related issues as well as armament inspection, preventive diplomacy, human rights, democratisation as well as economic and environmental matters. Decisions taken by OSCE are binding for the participating countries only politically, but not legally.

The OSCE originally had no parliamentary representation of its own. Previously, the Inter-Parliamentary-Union had organised inter-parliamentary conferences on cooperation and European security.¹⁷⁵ In 1990, along the lines of the charter of Paris for a new Europe, the heads of state and government of the CSCE/OSCE-countries expressed the importance of parliaments in the »Helsinki« process. They aimed at a stronger involvement of the parliaments and called for the creation of an assembly involving members of parliaments from all participating states. In consequence, the OSCE Parliamentary Assembly was established in April 1991 and met for the first time in July 1992 in Budapest. Initially composed of 245 parliamentarians, the Assembly has now taken into account the growth of the OSCE from 35 to 55 participating states by expanding the number of its parliamentarians to 317.¹⁷⁶

III.11.2. Functions

The Assembly's main task is to promote parliamentary involvement in the activities of the OSCE and to facilitate the inter-parliamentary dialogue and co-operation between participating states. In the frame of its annual conference as well as over the course of the year in various other conferences and seminars, the Assembly evaluates the implementation of OSCE objectives, discusses subjects that are on the agenda of the Council of Foreign Ministers and the summits, develops and promotes mechanisms for the prevention and resolution of conflicts and contributes to the development of OSCE's institutional structures and of relations and co-operation between existing OSCE institutions.

¹⁷⁵ In July 1990 the NATO summit in London discussed the setting up of an assembly to be based on the existing parliamentary assembly of the Council of Europe. However, the US Congress raised objections because it had not been consulted about this intention. As a result, the Paris Charter for a new Europe of 1990 just claimed a parliamentary assembly of the OSCE bringing together members of parliament of all participating states.

¹⁷⁶ Belarus has been excluded from the Parliamentary Assembly of the OSCE since 1996 because of doubts surrounding its diplomatic credentials.

III.11.3. Representation and Nomination

Parliaments of all OSCE States are represented in the Parliamentary Assembly. In addition to the European countries, OSCE membership also includes the United States and Canada. The number of delegates sent by each country is constituted in proportion to population.

III.11.4. Structure and Committees

The main bodies of the OSCE Assembly are the Annual Assembly, the Standing Committee, the Bureau, the three General Committees, the President, the Secretary General and the International Secretariat. The secretariat of the Assembly is located in Copenhagen.

The Standing Committee and the Bureau prepare the work of the Assembly between its sessions and ensure the efficient operation of the Assembly.

The three General Committees correspond to the three main sections of the Helsinki Final Act: the General Committee on Political Affairs and Security; the General Committee on Economic Affairs, Science, Technology and Environment; and the General Committee on Democracy, Human Rights and Humanitarian Questions. The International Secretariat provides administrative support for the Assembly in its various activities.

The President of the Parliamentary Assembly acts as the highest representative of the Assembly and presides over the meetings of the Assembly.¹⁷⁷ The President is assisted by the Secretary General, who is appointed by the Standing Committee on the proposal of the Bureau. The President and the Vice-Presidents along with the Treasurer and the President Emeritus form the presidium, which is called the Bureau. He or she, in consultation with the OSCE's Ministerial Council and other institutions, represents the Parliamentary Assembly between its sessions.

The Standing Committee of the Parliamentary Assembly comprises – in addition to the members of the Bureau – the chairs of the national delegations and officials from the General Committees.¹⁷⁸ The main task of the standing committee is to carry out preparatory deliberation of matters to be dealt with at sessions of the Parliamentary Assembly and, if necessary, it can adopt resolutions on urgent political issues. A further task is to choose the main theme(s) for the Annual Session. At the present, there are several »ad-hoc committees« and special representatives who are appointed by the OSCE Parliamentary Assembly to address specific issues:

- ⇒ The Ad Hoc Committee on Transparency and Accountability in the OSCE
- ⇒ The Ad Hoc Committee on Abkhazia
- ⇒ The Ad Hoc Committee on Belarus
- ⇒ The Ad Hoc Committee on Kosovo
- ⇒ The Ad Hoc Committee on Moldova
- ⇒ The Special Representative on Gender Issues
- ⇒ The Special Representative on Mediterranean Affairs

III.11.5. Sessions and output of the Parliamentary Assembly

Plenary sessions of the Parliamentary Assembly are summoned each year in July. The annual summer meeting takes place in one of the different OSCE-member countries, usually following a non-fixed altering order. A key issue is selected for each session by the Standing Committee and is discussed by the General Committees in preparation for the session. Moreover, at each of its Annual Sessions, the Parliamentary Assembly elects the President and nine

¹⁷⁷ The President is elected for one year at a time and can be re-elected once.

¹⁷⁸ The remits of the three General Committees are Political Affairs and Security; Economic Affairs, Science, Technology and Environment; and Democracy, Human Rights and Humanitarian Questions. Ad hoc committees and working groups can be appointed to deliberate topical questions.

Vice-Presidents.¹⁷⁹ The second most-important event in the Parliamentary Assembly's annual calendar is the Winter Meeting, the first of which took place in Vienna in February 2002.

The Standing Committee makes decisions according to the principle of consensus minus one. The Bureau, the General Committees and Assembly's Annual Sessions make decisions by majority vote. Since unanimity is not a condition, the Parliamentary Assembly is in a position that to make recommendations on issues that are controversial in nature, including far-reaching proposals for a reform of OSCE Institutions The Parliamentary Assembly has consistently proposed an alteration of the consensus rule used by the OSCE, with the aim of speeding up the decisions-making process. The Assembly has suggested introducing an »approximate consensus« requiring 90 per cent of both membership and financial contributions to agree in order for a decision to be approved.

To pursue its objectives, the OSCE Parliamentary Assembly employs a variety of means: a Final Declaration and a number of resolutions and recommendations are adopted each year at the Annual Session; the committee work addresses important contemporary international issues; the different programmes, including an extensive Election Monitoring Programme, have been designed to develop and strengthen democracy; delegations are sent on special missions to areas of latent or active crisis.

III.11.6. Conclusions

Without being an institution of the OSCE in a strict sense, the parliamentary assembly functions a link between governments and the elected parliaments of the OSCE countries. Since the Assembly does not take part in the decision-making process of the OSCE, it rather has advising function.

In contrast to the parliamentary dimension of the Council of Europe, evaluation of the Parliamentary Assembly of the OSCE finds a quite weak performance. While the Council of Europe is primarily a parliamentary assembly with a less important role of its »Council«, the OSCE has just the opposite structures. Here, the strategic activity lies with the executive, while the Parliamentary Assembly is more of an »appendix«. In addition, it has to be taken into account that the OSCE comprises yet more members than the Council of Europe. There are also the USA and Canada and it goes far into the Eurasian region with member countries such as Uzbekistan, Kazakhstan and Tajikistan.

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¹⁷⁹ Annual Sessions of the OSCE Parliamentary Assembly have taken place in Budapest (1992), Helsinki (1993), Vienna (1994), Stockholm (1996), Warsaw (1997), Copenhagen (1998), St. Petersburg (1999) and Bucharest in 2000. Paris will host the 2001 Session and Berlin will follow as site for 2002.

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III.12. Assessing the involvement of parliaments and parliamentary assembly

In every political system, parliaments and its members have the responsibility to represent their citizens. It is their role to give voice to the people's concerns and aspirations. The role and competences of parliaments vary broadly in general – particularly in the field of foreign, security and defence issues.¹⁸⁰ While some parliaments pronounced rights in initiating legislation and supervising the work of the respective government, other parliaments act primarily as a platform and forum for communication. In general, however, parliaments play only a marginal role in all major developments in the area of foreign policy.

In order to assess the dissimilar involvement of national parliaments and parliamentary assemblies in foreign, security and defence policy, we use a typology (see graph III.1) differentiating between strong and weak parliaments both at the national and at the »Brussels« level. Based on such a systematic overview several questions arise: Do we witness strong national performers (type 3) shaping clearly defined interests and preferences in their own capital with regard to European policies and the making of political decisions without much access to Brussels? Or are there strong players at the supranational level (type 2) making efficient use of the opportunities for access and influence in the Brussels arena without an equivalent say in the national capitals? Finally, do we observe strong multi-level players (type 1) which are able to strengthen their access and influence on both levels and to instrumentalise their position on each of these levels for strengthening their say on the other? Or are there even shortcomings on both levels (type 4).

Though all four models can be considered to some extent heuristic and ideal archetypes, which describe reality in a fairly schematic way, they might nevertheless help to emphasise some major differences in view of the involvement of national parliaments.¹⁸¹

Table III.6: Models of parliamentary involvement

IMPACT	IMPACT AT THE NATIONAL ARENA		
		strong	weak
AT THE BRUSSEL ARENA	strong	<i>multi-level players</i> (1)	<i>European performers</i> (2)
	weak	<i>national performers</i> (3)	<i>weak adapters</i> (4)

¹⁸⁰ See for such an approach Wilfried Röhrich: *Die politischen Systeme der Welt*, München 1999 and Arend Lijphart: *Democracies, Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, New Haven 1984.

¹⁸¹ See for such an approach Jürgen Mittag/Wolfgang Wessels: *The 'One' and the 'Fifteen'?* The member states between procedural adaptation and structural revolution, in Wessels/Maurer/Mittag: *Fifteen into one? The European Union and its Member States*, Manchester University Press 2002, pp. 431-474.

III.12.1. The fundamentals: the growing attention of national parliaments to foreign and defence policy

When evaluating their respective role in the international system, the seven countries investigated prevail major differences. While the United States currently form as the only military superpower in the international system, France and the United Kingdom “remained as a second rank power (...) seeking to come to terms with the problem of »rising demands and diminishing resources«.”¹⁸² Despite this similarity, France has always preferred a stronger co-operation of the European powers, whereas the United Kingdom stressed the Anglo-American relationship. Germany has assumed a very defensive/self-protective role in Europe for a long time but is showing readiness to take a political position in the world more corresponding to its economic weight. Denmark’s role in the international system is based on three pillars: the NATO and UN membership as well as the Nordic collaboration. Concerning a closer Europe co-operation in foreign and defence issues, Denmark constantly shows reluctance and has even aspired an opt-out in special EU defence issues. Sweden, while positive to the ESDP in terms to activities, is reluctant to other forms of cooperation than those resting on intergovernmental cooperation. Due to its non-alignment Sweden also seeks to keep a safe distance to defence guarantees. In this respect, the position of Sweden is similar to the one of Denmark. The reasons, however, differ. For Sweden, the country’s traditional commitment to neutrality is the driving power. Lastly, Poland has experienced the most dramatic and fundamental changes concerning its role in the international system. Its main interest now lies in keeping the United States and NATO as the main guarantor of peace and security in Europe while at the same time establishing an Eastern dimension of the European Union after Polish accession.

In all seven countries foreign and defence policy is considered – compared to classic »domestic politics« – as a »category of its own« Due to the supremacy of national governments in foreign and defence affairs, and because of governments’ exclusive access to information on the international system, national parliaments are only marginally involved. In some cases they are not more than an »appendix« of the executive branch.

Above and beyond this overall observation, it becomes apparent that the participation of national parliaments in foreign and security differs greatly in intensity and effectiveness; both at the national and – as far as concerned – at the European level. There are countries such as the United States or Denmark where the Parliament has substantial rights in foreign affairs. In contrast, there are states such as France or the United Kingdom where the Parliament is hardly involved. However, in all European countries, a comparatively intense debate has started on the role of national parliaments in foreign and security politics. Since CFSP and ESDP attracted a notable role in the EU framework, the so-called »democratic deficit« (see below Annex IV) is no longer discussed only in view of EC matters but also in regard of foreign and defence issues.¹⁸³ The main argument for such a debate is to be found in the fact, that even controlling the national government has become more difficult since Member States of the European Union or their respective governments act together in conjunction with other governments in the framework of the EU. In the United States we can currently observe a comparable debate but more related to the change in foreign policy taken by the administration of George W. Bush.¹⁸⁴

¹⁸² See above the contribution of Dave Allen.

¹⁸³ In this debates it is very often stressed that effects of the so-called globalization increased the »democratic deficit«. According to this school of thought, more and more decisions are escaping the control of the parliamentarians and even the executive branch of national governments since decisions are made by international organizations such as the World Trade Organization, the World Bank, and the International Monetary Fund.

¹⁸⁴ See especially Marie T. Henahan: Foreign Policy and Congress, An international relations perspective, Michigan 2000.

Within all countries investigated – and especially within the EU Member States – there is an ongoing reaction to the restricted participation of parliaments in foreign and defence issues. The forms and implications of parliaments' attempts to increase their role differ across Member States. However one finding is valid for all Member States: national parliaments have developed in order to cope with the attempts of the respective governments to by-pass parliaments' involvement in foreign and security policy. In particular the relevant parliamentary actors in the EU Member States are aware of the increasing importance of the EU and the need to take strategic decisions on vital issues. Nevertheless, a general survey of the different national systems does not paint a clear picture but divergent and convergent patterns of national procedures and institutional and administrative set-ups.

III.12.2. The foreign and security policy cycle: the imperfect parliamentary participation

In all national systems, »formal« legislative competencies are traditionally in the hands of parliaments. However, the forms and implications of parliamentary involvement in foreign, security and defence policy differ across Member States and along the various stages of the policy cycle.

Table III.7: Role of National Parliaments in the foreign and security »policy cycle«

	FRANCE	GERMANY	SWEDEN	DENMARK	UNITED KINGDOM	POLAND	UNITED STATES
Preparation Stage	-	+/-	+	+	-	+/-	++
Internat. Treaty Making	+/-	+/-	+	++	--	+/-	+
Deployment of Forces	-	++	+	+	--	+/-	+
Budget Procedure	-	+/-	+/-	+	+-	+/-	++
Controlling Stage	-	+	++	+/-	+/-	+/-	+
Powers in CFSP/ESDP	-	+/-	+	+	--	n.a.	n.a.

++ very strong + strong +/- partial rights - weak --very weak

III.12.2.1. Preparation of Decisions

Due to the logics of a presidential system, we find the strongest involvement of parliaments in the preparatory stage of policy making in the United States. Since the President has to take the view of the Congress into account, he must anticipate the concerns of the Congress as much as possible in the formulation and execution of his policies, thereby minimising a considerable amount of the potential resistance. Nevertheless, it has to be taken into account that this statement is depending to some extent on the party constellation. After the mid-term elections in 2002 have led to a republican majority in both houses, President Bush may almost certainly take the view of the Congress less into consideration than before the elections.

In the parliamentary systems of Europe, the range of parliamentary involvement varies considerably. In Denmark it is up to the Foreign Policy Committee to obtain an early insight on future foreign policy decisions. As Finn Laursen stresses, this Committee is an independent body, which acts instead of the Folketing.¹⁸⁵ The importance of this committee can also be

¹⁸⁵ See above contribution of Finn Laursen.

seen in the fact that usually the Prime Minister and the Foreign Minister – sometimes also other ministers, especially the Defence Minister – take part in the meetings. In Sweden, the parliamentary Advisory Council on Foreign Affairs plays a similar role.

In Germany, the Foreign Affairs Committee – consisting very often of elder statesmen and high-ranking politicians – plays also an important role in preparing major decisions that shape security and defence policy. But it is up to each single case in how far politicians of the opposition will be involved. In Poland, the participation in preparation of foreign policy is also very much based upon the Committees. However, contrary to Germany (or the Danish or Swedish case) where one particular committee is intensively engaged, the involvement of parliament in Poland is more scattered over several committees in both the Sejm and the Senate.

In the United Kingdom and France, parliamentary influence in the preparation stage in foreign and security policy appears even less formalised than in other European states. In these two countries, the parliaments in their entire composition or even the respective foreign or defence committees are only involved to a minor degree. In that case, the governments – or more particular the British prime minister and the French president – have established a system, which embraces several circles in the preparation stage. Parliamentarians are to a certain degree involved but they are neither the single nor the key actors since other actors with administrative, political or even economic background very often play a crucial role.

III.12.2.2. Decision-taking: International treaties

A common feature of all national parliaments in foreign and defence issues is the involvement in the ratification of international agreements. Treaties and obligations of major importance require parliamentary consent in Denmark, Sweden and Germany as well as in Poland and the United States. Only in the United Kingdom international treaties might be ratified – due to the royal prerogative sanctions – as a government action without the explicit approval of the Parliament (the only exception are Treaties such as the Single European Act or the Treaty on European Union parts of which have to be passed into UK law. However, note that even here it is only the EC part of the SEA and the TEU, which have to be passed by the Parliament. The Articles dealing with the intergovernmental pillars do not have to be approved by the parliament. Thus the House of Commons has incorporated the changes to the EC Treaty in the TEU into UK law but it has not done the same for the second and third pillars of the TEU). In France, the parliament is involved in the formal vote of ratification of treaties but – as Oliver Rozenberg states: “the Constitution does not impose a parliamentary ratification for military co-operation agreements, defence treaties and security agreements. Thus, most of the international texts regarding defence are not controlled by the assemblies.”¹⁸⁶

The degree to which national parliaments are involved again differs considerably. While the President of the United States seeks for consensus with the Congress at a very early stage, the Parliament in France is not supposed to intervene before the executive level reaches the agreement. The parliament just obtains short reports. In the United Kingdom it is up to the government whether the parliament will be involved. As Dave Allen puts it: “Usually the government does give parliament a chance to debate its actions after they have taken place (...).” In Germany, the federal government (Bundesregierung) plays the essential role in concluding treaties with third parties. Though the Bundestag usually has to approve those treaties, there have been recently cases such as the alterations of the original NATO treaty that were taken without the assent of the parliament.

In contrast, in Denmark the approval of international treaties (*and obligations of major importance*) are taken by a 5/6 majority. Hence, it is very important for the government to involve

¹⁸⁶ See contribution of Olivier Rozenberg above.

at a very early stage not only the government parties but also the opposition. In view of several minority governments in Denmark, broad consultation and the search for consensus becomes even more important. Nearly the same necessity applies to the United States where the Senate needs two-thirds of the votes for the ratification of an international treaty. In Poland, the role of the parliament is also significant, since the ratification of international agreements is done by passing a statute of consent that depends on the approval of both chambers by a two-third majority.

III.12.2.3. Deployment of forces

One of the most important features of national parliaments in foreign and defence policy is their involvement in decisions on the deployment of forces abroad and in military actions. Once more, considerably varying patterns both in view of formal constitutional provisions and of long-term traditions can be observed. While in some countries the assent of national parliaments is unquestionably necessary before starting a military action, in other states only an ex-post decision is required. However, there are also countries without any formal parliamentary rights on the deployment of forces abroad.

The parliament having the strongest competences with regard to the deployment of forces is the German »Bundestag«, followed by the Danish »Folketing« and the US-Congress: In Germany, the »Bundestag« has improved its role since the decision of the Federal Constitutional Court. Germany's highest court decided in July 1994 that German forces could only take part in military operations beyond the country's borders if Parliament approves beforehand – by simple majority. Hence, all of German out-of-area actions have required (and obtained) the approval of the Bundestag.

In Denmark, a decision on military actions for defence under Article 19 – including military actions under the UN or NATO – requires also parliamentary assent. Although this right does formally not include peacekeeping activities under the UN, the Danish government, nevertheless, has sought the assent of the Parliament for such activities. In Sweden, for peace enforcement tasks, the Riksdag must give its approval. As in Denmark, the Government may send peacekeeping forces without asking for the consent of the Riksdag.

The parliaments of the United States and Poland have not as much competences concerning the deployment of military forces as the above-mentioned countries. In Poland, both the Sejm and the Senate can influence the decision on deployment of the armed forces indirectly. The deployment ordered by the President on request of the Prime minister has to be permitted either by a ratified international agreement adopted by parliament through a statute of consent or by a normal statute adopted by the Sejm. The parliament is involved rather on a general basis giving assent to certain situations when a deployment of forces might become necessary on the grounds of, for example, international obligations than giving ex-ante assent to the deployment in a specific and urgent situation.

In the United States, the deployment of US troops – by decision of the President – is to be concluded within 60 days. Otherwise, the Congress has to issue a formal declaration of war. Hence, Congress is involved but – depending on the case – with a considerable time lack. It should also be taken into account, that Congress has the right to independently decide on a deployment with a majority in both chambers. However, no President since the war powers act in 1973 has recognised the authority of this resolution, arguing that it is an unconstitutional limitation on the President's powers as »Commander in Chief«.

The parliaments of France and the United Kingdom have the most restricted competences concerning the deployment of forces abroad: Since in France only a formal declaration of war has to be authorised by the Parliament, the involvement of the parliament in the deployment of forces depends very much on the government. While President Francois Mitterrand asked for a parliamentary vote in January 1991 at the beginning of the Gulf war, Prime Minister Lionel Jospin rejected such a vote during the Kosovo crisis in April 1999.

In the United Kingdom, parliamentary rights in deciding on military actions are very limited, since merely the British government will take decisions about the commitment of British forces to military action, regardless the kind of action. However, the government may chose to hold a debate in Parliament either before it uses force or shortly afterwards – this has happened twice in recent months over Iraq with the government arguing that it now has a mandate but parliamentarians arguing that in the event of using force the government should hold another debate to give parliament the chance to express its view. Politically it may be advisable for a government to hold such a debate which could be turned into a motion of confidence. The point is that it is not formally required and the sanctions that parliament has are effectively political rather than legal. In any case once military hostilities have started the government can probably be sure that parliament will support it.

III.12.2.4. Budgetary Powers

Since the conduct of foreign policy is often linked to large expenditures, the most important instrument of parliaments in scrutinizing foreign and security policy are the budgetary powers.

The prototype for a »gatekeeper« in budget affairs is the US Congress. Without budgetary »authorisation« and »appropriation«, no foreign policy can be decided by the head of state.

In some of the parliamentary systems of Europe, the situation is very similar considering the fact that the parliament approves the annual budget. Whenever Denmark is involved in an international cooperation that commits financial means, the Parliament is concerned through the annual finance bill. In Germany the (constitutional) situation is very much the same. But given that Germany (although theoretically possible) has never had governments resting on a minority in parliament, the control remains with the majority parties (usually in form of a coalition), since the opposition has usually no legal power to prevent the budget. In Sweden, the situation is the similar. The budget is drafted either by a coalition government with a majority in the Riksdag or – as at present – by a minority government cooperating with one or two other parties. The Government submits two budget bills: one for the following three years (in April) and one for the following one (in September). These are dealt with by the Riksdag committees and, finally, determined by decisions in the Chamber. The Riksdag drafts the budget for the coming year and hands it over to the government. But according to Gunilla Herolf the parliament “concludes with a single decision, which determines the expenditure ceilings for the following three years as well as the level of expenditure, the allocation of expenditure between different expenditure areas.”¹⁸⁷ In Poland, according to the constitution both chambers are able to precise the budget through their committees – including defence and foreign issues. While the Sejm has the right to pass a budgetary statute, the Senate may only amend the Budget but the Sejm might overrule these amendments.

In France and the UK, the parliamentary »control« of foreign affairs and defence policies is also undertaken through the annual vote of the budget, notably concerning the expenditure of the government departments and of the armies. However, the “scrutiny of the budget is usually framed by economic and social considerations. Thus, the debate over defence and diplomacy tends to be less visible and to interest a limited number of MPs.”¹⁸⁸

III.12.2.5. Control of decisions and public debate

If legal rights of the »legislature« are limited to a certain degree, parliaments regularly try to get hold of a stronger role by controlling the decisions taken by the government and setting the foreign agenda in order to »shape« public opinion. In the countries included in this study,

¹⁸⁷ See contribution of Gunilla Herolf above.

¹⁸⁸ See contribution of Olivier Rozenberg above.

the number and quality of debates on foreign and defence affairs differ as much as the stage when parliamentary control starts.

Besides some general elements of control such as the declaration/motion of no confidence or the scrutiny of the Government by the Committee on the Constitution (Sweden), the means of control are limited to interpellations and questions to ministers or the head of government. In Germany, France, Sweden, Denmark as well as Poland, there is a restricted number of plenary debates. Since foreign affairs are very often not discussed controversially, these debates do not attract much attention in the media or public. In Sweden the issues of the security doctrine and a possible future NATO membership are, however, subject to lively exchanges in the Riksdag, which are also given media coverage.

In Poland special problems derive from the – not yet to be consolidated – party system. As Saskia Matl explains: “Members of the populist parties often use speeches, interpellations or questions in the plenary of the Sejm or in the committees as a platform for »their« topics or for criticism of subjects the government cannot directly influence. The Senate on the other hand, being not so much influenced by such parties, in general does not seem to be very active in the field of security and defence.”¹⁸⁹

However, such usual instruments as – in the German case – oral and urgent inquiries or questions to the Federal Government also apply for foreign and security policies. Merely in the United States the number of debates is higher and the number of instruments for control is more differentiated. Especially the hearings have a particular impact on foreign and security policy: To scrutinise government’s activities, the Congress is allowed to call all higher civil servants and politicians for hearings – with the exception of the personal staff of the president. In such a case, officials from the executive branch are called before a Congressional committee to explain a policy in a particular area. This is a particularly useful device when Congress has no other appropriate means of influencing policy.

Nevertheless, in all countries taken into consideration – even in the United States – scrutiny of both Foreign and Defence policy is rather an element of ex-post control than of ex-ante control or as David Allen puts it: “Control and scrutiny of both Foreign and Defence policy is most effectively practised after the event when both expenditure and policy experience can be quite harshly examined. It is meant to be the knowledge that it will eventually be held to account by Parliament that effectively »controls« the Government although even here the executive has many defences against a prying legislature.”¹⁹⁰

III.12.2.6. The participation at the European level

The observation of as restricted ex-post control corresponds also with the European level; if it is valid for this level at all since the performance of national parliaments in view of CFSP and ESDP is even weaker. The national parliaments have only limited rights to hold their national government or the respective minister accountable if a European action is concerned. And it is even unclear at this stage if any arrangements will be made for national parliaments to acquire evidence in a formal manner from the High Representative or other European bodies or actors.

Not only in the weak legislatures – concerning foreign and defence issues – of the United Kingdom and France, collective foreign and security policy-making remains in a kind of democratic vacuum beyond the effective reach of Westminster or Paris but also protected from Strasbourg or Brussels. Regarding France however, the two assemblies have obtained the right to scrutinise CFSP projects of norms.

¹⁸⁹ See the contribution of Saskia Matl above.

¹⁹⁰ See contribution of David Allen above.

If there is some kind of interaction with the European level, it depends very much on the structure and influence of the Committees.

III.12.3. The role of the Committees in foreign and defence policy

Except Ireland and Greece (see below table III.3), we find a separation of the committees on defence and foreign affairs in all national systems included in this study. However, the impact of these committees varies considerably both in view of their respective formal and informal rights within the national system and in regard vis-à-vis the other committees involved in the foreign and defence policy cycle.

Table III.8: Role of the Committees in foreign and defence policy

	FRANCE	GERMANY	SWEDEN	DENMARK	UNITED KINGDOM	POLAND	UNITED STATES
Defence	- ⁴ -- ⁵	-	++	+/-	+/-	+/-	+
Foreign	- ³ - ⁵	+	+	++ ¹ + ²	+/-	+	+
European affairs	+/-	+/-	+	++	- ⁶	+	n.a.
other committees involved	-	-	Committee on Finance	(Legal Affairs Committee)	Expenditure Committee Public Accounts Committee-	Legislative Committee Budgetary Committee	Intelligence Committees Appropriation Committees

++ very strong, + strong, +/-partial rights, - weak, --very weak / no committee existent

¹ Foreign Policy Committee (*Udenrigspolitisk Nævn*) (DK).

² Foreign Affairs Committee (*Udenrigspolitisk Udvalg*) (DK).

³ Foreign Affairs Committee (National Assembly) (F).

⁴ Committee for national defence and army forces (National Assembly) (F).

⁵ Commission des affaires étrangères, de la défense et des forces armées (Senate) (F).

⁶ European Scrutiny Committee (House of Commons) (UK).

III.12.3.1. The Foreign Affairs Committees

Foreign affairs committees are usually among the largest committees in the national committee system. They attract a special role through the personalities they incorporate since they recruit very often a considerable number of high officials and prominent politicians or so-called »elder statesmen«. In some cases their rights are laid down in the national constituency whereas in other cases the competences are merely fixed in internal rules of procedure.

As an exception, in Denmark, two committees related to foreign politics are installed: the Foreign Affairs Committee and the Foreign Policy Committee. According to the constitution, the government shall consult the Foreign Affairs Committee body before any decisions of major importance in foreign policy are taken. Though this committee mainly deals with development policy, it has expanded its competences to security and foreign policy in a general perspective since the late 90s. Despite the fact that it meets less often, the Foreign Policy Committee deals with foreign and security policy more intensively than the Foreign Affairs Committee. The government must consult this committee prior to any decision of greater foreign policy significance. Furthermore, this body may even act on behalf of the Folketing. As Laursen has revealed, the Foreign Policy Committee is also thoroughly involved in CFSP and ESDP affairs – even at a preparatory stage and prior to the European Affairs Committee and the Foreign Affairs Committee.¹⁹¹ Thus, the Danish Foreign Policy Committee is more involved than the Swedish Advisory Council.

¹⁹¹ See above contribution of Finn Laursen.

The foreign affairs committee of the German Bundestag also comprises of several »elder statesmen«. Frequently, they give valuable impulses. Though the delegates of this body cannot take decisions (in contrast to Denmark), they maintain a highly confidential dialogue with the government. The second chamber of the German parliament (the Bundesrat) is not included and has not developed comprehensive structures for foreign affairs.

In France, the Foreign Affairs Committee of the Assemblée nationale features some former high-ranking politicians such as ministers and prime ministers as well. But since it consists the relatively large number of about 70 parliamentarians, it is considered to some respect as a mini-parliament. In particular, this body is involved in scrutinising the ratification of international agreements. In CFSP and ESDP matters, it takes oral evidence and seeks bilateral contacts with the foreign affairs committees of other Member States. However, the overall impact is as limited as the Foreign Affairs Committee in the House of Commons in the UK where the committee also looks at policy issues but does not devote much time to CFSP/ESDP. However, the House of Lords Select Committee has devoted a great deal of time to scrutinizing the workings of the CFSP and ESDP.

The (foreign) committee structures of the US Congress are highly sophisticated. In the United States, parliamentary involvement in foreign policy foremost is shared between the Senate's »Foreign Relations Committee« and the House's »International Relations Committee«. According to the constitution, the most significant difference between these two committees is that (merely) the committee of the Senate is allowed to make recommendations to the full Senate on the ratification of treaties and consent to the appointment of diplomatic officials including the Secretary of State and ambassadors. Nevertheless, in both committees, exceedingly differentiated sub-structures have been established. For instance, the Senate's Foreign Relations Committee includes seven sub-committees.

In Poland, it is not the foreign affairs committee, which is the largest, but the Committee of European Integration (50 members). Compared to the impact of the defence committee and the Committee of European Integration, the foreign affairs committee attracts no extraordinary status. However, the committee structures in Poland are not as fixed as in other parliaments. This observation is further underpinned by the fact that in Poland – more often than in other countries – joint meetings of the Committee for National Defence, the Foreign Affairs Committee and the Committee of European Integration are summoned.

III.12.3.2. The Defence Committees

Generally, the role of defence committees is not as comprehensive as the one of the foreign affairs committees; neither in view of the stage of intervention in security affairs nor in view of the scope of issues covered. Additionally, the composition of defence committees is for the most part not as prominent as the foreign affairs committees.

In Denmark, the role of the defence committee is less exponent than the role of the two foreign affairs committees. The same applies for the German case where the defence committee attracts some importance – especially since it belongs to one of four committees explicitly required by the constitution – but not as much as the foreign affairs committee. In both systems, the defence committees are more reactive to political developments than the foreign affairs committee(s). In Sweden, in contrast, there are both the Defence Commissions (called either Försvarsutredningar or Försvarsberedningar), which are able to shape major decisions before they are brought into the Riksdag, and the Defence Committees, which are dealing with defence issues on a continual basis. Denmark has the same system as Sweden with defence commissions, involving opposition parties. However, the force of those defence commissions is not as high as in Sweden.

In France and in the United Kingdom, the defence committees are also less active than the foreign committees. The main task of the defence committee in these two systems is the examination of the (defence) budget. Again, bilateral contacts are envisaged. As Rozenberg puts it: “During the last legislature (1997-2002), the National Assembly defence committee visited twice its counter-part at the Bundestag and received it twice in Paris.”¹⁹²

In the United States, the leading actors in defence policy are the two »Armed services Committees«, which strive to take influence on defence programs. But in addition, they make use of their right of hearings – the same can be stated for the Polish system. Officials from the executive branch can be called before the respective parliamentary committee in order to explain their policy. These hearings are a particularly useful device when the parliament has no other appropriate means of influencing policy.

III.12.3.3. The »EU«-Committees

Since it can bind government through its mandate, the Danish European Affairs Committee (the former Market Committee) is the most powerful parliamentary committee on EC issues in the European Union. In terms of CFSP and ESDP, however, the situation is more complicated. In this respect, the government is not obliged to propose a negotiating mandate, but it often does so. The Swedish Committee on EU Affairs was inspired by its stronger counterpart in Denmark, but does not take part at the early stage of decision making. In practise the Danish and the Swedish »EU-committee« work very much the same way, but the Danish has formally, a stronger negotiation mandate than the Swedish.

In the German constitution, it is anchored that the Committee on European Affairs has the right to participate in the policy process of the EC/EU. This includes all three pillars. Although the information of the Bundestag has been improved by this »EU committee«, the overall impact remains limited since it does not have the capacities to deal with the heavy workload connected with EC/EU legislation.

The same problem is applicable for the United Kingdom. In the UK, the European Scrutiny Committee has the task to assess the importance of each EU document and to report on it – also including CFSP and ESDP. However, as Dave Allen explains: The European Scrutiny Committee in the Commons – as its counterpart in the House of Lords – “spend a great deal of time wading through the mass of proposed EU legislation but the Commons as a whole has shown little real interest in using its committees to exert significant control over the growth and nature of EU legislation”. Nevertheless, the House of Lords Select Committee conducts a very effective and in depth consideration of a wide range of EU policy issues. The Lords Committee can summons witnesses and require them to submit both written and oral evidence.

Whereas in the UK the parliamentarians show their disinterest, in France, the division of work between the EU delegation in both houses and the foreign affairs and the defence committee in the Assemblée nationale is characterised in some respect by a competition between those institutions. Concerning the parliamentary performance this structure leads to a long-winded and less efficient scrutiny process.

II.12.4. The role of the Parliamentary Assemblies of international organisations

A parliamentary dimension of CFSP and ESDP is not only related to the European Parliament and national parliaments but also to the Parliamentary Assemblies of International organisation since they constitute either a forum for exchange of information and take declarations which deal with foreign as well as security or defence issues.

¹⁹² See contribution of Olivier Rozenberg above.

The Parliamentary Assemblies of the WEU, NATO, OSCE and Council of Europe in particular issue of reports and resolutions that contribute to an exchange of information. If reports or resolutions are concluded, they express the joint position of the respective Assembly. However, these reports and resolutions remain very often quite vague and general. The knowledge of concise details is as limited as the non-binding character of the resolutions.

The formal addressees of the resolutions and recommendations of the Parliamentary Assemblies are first and foremost the »Councils« of the respective international organisations. In terms of foreign, security and defence issues, the positions of these Assemblies do not differ considerably from the standpoint taken by a majority of national governments on the same item. Merely in view of questions concerning institutional and organisational arrangements, the resolutions of these Parliamentary Assemblies of international bodies are to some extent more far reaching than the position of national governments.

The impact of the Parliamentary Assemblies is commonly considered as unsatisfactory. The Councils take the results of parliamentary work usually only with the expression of »high attention and good-will« into account without considering it more tangible in the further decision-making process.

Concerning the European (Union) level and the involvement of the European Parliament, direct interaction between the Assemblies on the one hand and the EP on the other is formalised only to a minor degree. Furthermore, the informal contacts are limited. Usually, the EP and the Parliamentary Assemblies of the international organisations »stay« parallel next to one another – with the effect of the marginalisation of the Parliamentary Assemblies.

Effects on the national systems remain very low as well. The impact of the Parliamentary Assemblies on the work of national parliaments is insignificant. Despite the double-mandate of many delegates (national parliament and Parliamentary Assembly), the resolutions of the Assemblies are scarcely taken up. The reports and resolutions of the Parliamentary Assemblies are usually taken to the committees of the national parliaments. But even at this level they are seldom regarded effectively and not substantially taken up.

One reason can be seen in the reputation of the delegates. Very often, the delegates of the Parliamentary Assemblies do not belong to the important or well-known national parliamentarians. Their contacts to the national government and officials of the administration are even weaker. Differentiating this overall statement, the most important impact derives from the Parliamentary Assembly of the NATO. This Assembly does not only consist of a number of at least experienced and well-known experts but provides also resolutions and recommendations that differ to some extent from the official NATO position.

III.13. Conclusions: Lessons from national parliaments

Taking all this into consideration, it can be concluded that national parliaments' role with regard to foreign and defence policy can no longer be considered just as voting credits for the Ministry of Foreign Affairs or authorising the ratification of international agreements. The national parliaments have reacted to the challenges of foreign policy. And they have – more or less – »learned« and tried to cope with the challenges by adapting some of their procedures.

Nevertheless, the relative weakness of national parliamentary institutions in foreign and security politics cannot be overlooked. In view of the different stages of the policy cycle, it can be concluded that the involvement of national parliaments (of the EU Member States) in foreign and defence politics remains weak and for the most part reactive. Though some parliaments have considerable competences in the decision on the deployment of forces (D, S, DK) and are engaged in the preparation of decisions (DK, S) as well as control and scrutiny, their involvement in foreign and defence policy has usually an ex-post character. National Parliaments in general are able to exercise oversight a posteriori – especially via their budgetary competences. But they have neither developed into an »equal « player nor into a forum for diplomatic initiatives and international negotiations.


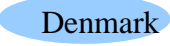
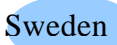
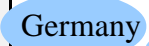



Are there winners or losers among the national parliaments? The gains might be larger for some parliaments than for others, but winners and losers are broadly distributed and the struggle for influence still continues in all countries. The strongest parliament in foreign and defence politics is noticeably the US Congress.

In view of our matrix, we can draw the conclusion that no national parliament (of the EU Member States) has so far obtained the ability to step outside the national arena and to establish its own access to the EU bodies and become part of a European »network governance«. The »strongest« national parliaments at the domestic level are the Danish Folketing and the Swedish Riksdag – followed by the German Bundestag. These parliaments are at the same time the most engaged parliaments in view of EC matters.¹⁹³ The Assemblée nationale and the House of Commons are both examples for weak policy-making legislatures that attain even at the domestic level only a limited role in shaping national foreign and defence policies. However, in France both assemblies have at least the institutional potential to become in the long run »European performers«. The constitutional right to scrutinise CFSP/ESDP projects is confronted both to the national culture regarding international affairs and to the reluctance of the MPs to be part of the European process.

The performance of the only applicant country – Poland – is to some respect not clear. Though the Polish constitution offers several pathways for influence and participation, the entire system is still a »moving target«. Only with the consolidation of the party system it will be possible to draw a more precise picture of the involvement of the national parliamentary level in national and – after accession – also European foreign and defence matters.

Regarding the initial graph, an overview of parliamentary strength and weakness might look as follows:

Table III.9: Assessment of parliamentary involvement

NATIONAL ARENA			
Brussels Arena		strong	weak
	strong	multi-level players	European performers 
	weak	 national performers   	 weak adapters 

¹⁹³ See for such a conclusion and a similar methodological approach Andreas Maurer/Wolfgang Wessels, op. cit., pp. 462.

What lessons can be drawn from the empirical data? Comparing reaction and adaptation processes, the rate of importing apparently successful components of other national systems is surprisingly limited. A screening of best practices is not pursued on a systematic level. The pictures sketched of particular Member States suggest that any simple imitation would be subject to the law of unintended consequences. Each Member State of the EU comes across its own way to obtain more influence in foreign and defence policy.

If there is any blueprint at all, then the struggle of the US Congress for influence has to be investigated more intensively but also more cautiously. However, the expectation that the »war powers act« might result in a basically new balance between executive and legislative has not been fulfilled. Nevertheless, a strengthening of legislative competences has been achieved, but by other means. Powers have been achieved less by institutional reforms than rather through a clearer articulated will of some exponent representatives to participate actively in foreign policy. And the US presidents have realised that they will be more confident and accepted with Congressional support.

If the European countries will develop such a will – and also an analogous competence – they might be considered by governments as (more) relevant actors. If Parliaments broaden their expertise, they might intervene a priori. Following such a track, Parliaments might become even in parliamentary systems a forum from which independent initiatives spring. And that might lead to a parliamentary dimension of foreign and defence policy in the long run.

However, at the present, there is no common standard of EU-wide parliamentary control in the Member States and therefore a European approach would be appropriate for filling democratic legitimacy gaps in security and defence policy. It is vital for the citizens all over the EU that a certain jointly accepted degree of parliamentary participation in security and defence policy will be respected and implemented. If certain standards are not coherently met at the national level, there could be a demand for the EP to step in and guarantee democratic control.

All things considered, it seems that parliamentary oversight remains restricted to the respective level of action. Parliamentary control is and will be shared between the European Parliament and the national parliaments on the basis of their respective rights and duties under the relevant treaties and constitutions – as well in foreign, security and defence politics. Accordingly, it is – in view of the national parliaments – a major task to ensure efficient cooperation and communication means vis-à-vis the counterpart at the European level: the European Parliament. Since several national parliaments reject further rights for the European Parliament in CFSP and ESDP and follow a primarily intergovernmental track, the question of working links between national parliaments and the European Parliament might be the key for a coherent and efficient parliamentary dimension of CFSP and ESDP.

The Parliamentary Assemblies are not helpful in this way, since they do not have a visible impact. To improve the role of the Parliamentary Assemblies, they have to be more ambitious. They have to contribute new impulses; a duplication of government's views and considerations will not help. In particular, the Parliamentary Assemblies must provide something new in the choice of topics, challenges and approaches. And in order to do so, they have to rethink their structures. It is apparent that (national) backbenchers will not gain the public attraction that well-known politicians might obtain.

Table III.10: Participation of National Parliaments in Foreign Policy Affairs

	(MAIN) CHAMBER	STANDING NATIONAL FOREIGN AND DEFENCE COMMITTEES ¹		EU COMMITTEES	SCOPE OF INFORMATION IN NATIONAL PARLIA- MENTS ON CFSP/ESDP	PARTICIPATION OF MEP'S IN THE NATIONAL PARLIAMENTS' EU COMMITTEE MEETINGS
Austria	Nationalrat	Foreign Affairs Committee (25)	Committee of the De- fence of the Country (25)	Main Committee (28) and Standing EU-Subcommittee (14)	Similar to the EC pillar (Nationalrat only)	With right to speak
Belgium	Chambre des Représentants	Foreign Affairs Committee (20)	Committee of National Defence (20)	Federal Advisory Committee for European Affairs (21)	Traditional instruments: hearings, written and oral questions	10 seats (of 30 overall) taken by MEPs. Similar rights and obliga- tions as other members.
Denmark	Folketing	Foreign Affairs Committee (17)	Defence Committee (17)	European Affairs Committee (17)	Analogous to the EC pillar, internal cooperation between EU affairs and Foreign Affairs committees	Possibility for all MEPs to have a double mandate in EP and NP
Finland	Eduskunta	Foreign Affairs Committee (19)	Defence Committee (19)	Grand Committee (28)	Similar to the EC, but executed through the Committee of Foreign Affairs	No regular participation
France	Assemblée Nationale	Foreign Affairs Committee (71)	Committee of National Defence and the Armed Forces (79)	Delegation of the National Assem- bly for the European Union (36 MP)	comprehensive information (since 1995)	With right to speak and consulta- tive voting rights
Germany	Bundestag	Foreign Affairs Committee (38)	Defence Committee (30)	EU Committee (33)	through the Committee of Foreign Affairs (Bundestag – First Chamber only)	14 seats (of 50 overall) taken by MEPs with right to speak
United Kingdom	House of Co m- mons	Foreign Affairs Committee (11)	Defence Committee (11)	Select European Scrutiny Commit- tee (16)	All texts of CFSP statements, decla- rations, common positions and joint actions once they are agreed, CFSP documents submitted by one Com- munity institution to another, other documents at the government's dis- cretion	Possibility for all MEPs to have a double mandate in EP and NP
Greece	Vouli Ton Elli- non	Committee on Defence and Foreign Affairs (50)		European Affairs Committee (31)	At the governments discretion	15 seats (of 31 overall) taken by MEPs. Similar rights and obliga- tions as other members
Ireland	Oireachtas	Foreign Affairs Committee (17)		Joint Committee on European Af- fairs (17) and Subcommittee on European Scrutiny (11)	All documents which are legally binding for Ireland	Possibility for all MEPs to have a double mandate in EP and NP
Italy	Camera dei Deputati	Foreign Affairs Committee (45)	Defence Committee (43)	Special committee for Community policies (42)	At the governments discretion	With right to speak

Luxemburg	Chambre des députés	Committee of Foreign and European Affairs and Defence (13)		Foreign and Community Affairs Committee (11)	No	With right to speak
Netherlands	Tweede Kamer	Foreign Affairs Committee (25)	Defence Committee (25)	General Committee on European Union Affairs (25)	Through the Committee for Foreign Affairs (Tweede Kammer only)	With right to speak
Portugal	Assembleia da Republica	Committee of Foreign and European Affairs (11)	Committee of the Na-tional Defence (11)	European Affairs Committee (27 MP)	At the governments discretion	No regular participation
Spain	Cortes Generales	Foreign Affairs Committee (14)	Defence Committee (14)	Joint Committee for the European Union (29 MP)	At the governments discretion	With right to speak
Sweden	Riksdag	Foreign Affairs Committee (15)	Defence Committees (Försvarsutredningar and Försvarsberedningar) (15)	Committee on EU affairs (17)	Similar to the EC	No regular participation

1) Numbers in brackets state the Members of the Committees.

Source: own compilation based on Maurer/Wessels (2001) and Corbett/Jacobs/Shackelton (2000).

Annex IV: Analysing the parliamentary dimension of CFSP/ESDP

“The European Union needs to be in position to play its full role on the institutional stage (...). To this end, the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crisis.”

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“According to the so-called »standard version« of the »democratic deficit«, the development of the European Union (EU) has led to an erosion of parliamentary control over the executive office-holders.”

TAPIO RAUNIO AND SIMON HIX, 2000

“To the great frustration of many of its members, the EP is not yet in a position to act as an effective international player.”
DONATELLA M. VIOLA, 2000

Detailed Table of Contents of Annex IV:

IV. Analysing the parliamentary dimension of CFSP/ESDP	238
IV.1. Foreign, Security and Defence policy and the European Union	238
IV.2. The Democratic Deficit in general	240
IV.3. The Democratic Deficit in view of CFSP and ESDP	241
IV.3. Public opinion and European defence	243
IV.4. The CFSP/ESDP policy cycle and the parliamentary dimension	246
IV.4.1. The participation of parliaments in preparing legislation	246
IV.4.2. The participation of parliaments in the making of legislation	247
IV.4.3. The participation of parliaments in controlling legislation	247
IV.5. Conclusions: the long but inevitable way to democratic accountability	248

IV. Analysing the parliamentary dimension of CFSP/ESDP

In order to achieve the purpose of presenting viable policy options in the final shape of precise treaty articles, in this fourth annex of the study, the strengths and weaknesses of the provisions for a parliamentary involvement in CFSP and ESDP will be assessed. Based on the analysis of parliamentary participation in foreign, security and defence policy both at the European level (Annex II) and at the national level (Annex III), the study will analyse the amount of democratic monitoring, scrutiny, accountability and control in various stages of the policy cycle of CFSP and ESDP.

IV.1. Foreign, Security and Defence policy and the European Union

The performance of the European Union in foreign, security and defence policy can be evaluated from different perspectives, based on several criteria of assessment.¹ In order to present a systematic approach, this part begins with EU's involvement in the international system or, in other words: what can be understood by foreign, security and defence policy in the context of the European Union?

A broad definition of »foreign policy« incorporates all actions taken (officially) by the European Union in relation to the exterior world. But in more concise terms, as Christopher Hill states, »foreign policy always implies some sense of coherence, if not rationality. (...) Although the combination of the actions of the EU and of the individual Member States constitutes a »European foreign policy system«, this is not to say that it also represents a single European foreign policy.»² Certainly, the Union is still far from exploiting its vast foreign policy potential or as Hill puts it: »There is still a wide degree of divergence between national foreign policies, and much unpredictability, where the notion of a common policy would require sustained and predictable convergence.»³

Nevertheless, the EU's potential of interaction with third parties is enormous. If foreign policy were better streamlined, the EU would be able to influence current world affairs much more coherently. Especially in view of enlargement, the future 25 Member States will embody the worldwide biggest foreign policy »machinery«. Combined with the EU and its other policy areas covered, the Member States will run almost 2000 diplomatic missions including some 130 European Commission delegations.

From this, the following definition of »foreign policy« in the context of CFSP can be drawn: »Foreign policy relates to all external policies of the Union that are not covered in the context of CFSP by the (current) Treaty establishing the European Community or by Title VI of the (current) Treaty on European Union and that do not fall under the definitions of either security or defence policy.»⁴

The term »security« is understood in a broader sense as the absence of threats and dangers.⁵ In the European Union, security matters have traditionally been considered as part of the so-called »Petersberg tasks«. The range of tasks in this framework is extremely widespread. Petersberg tasks were originally defined by the Western European Union as humanitarian and rescue missions, peacekeeping and tasks of combat forces in crisis management, including

¹ See for instance Roy H. Ginsberg: EU-US Relations after Amsterdam: Finishing Europe, in: Éric Philippart/Wienand Pascaline (eds.): *Ever Closer Partnership, Policy-Making in US-EU Relations*, Brussels (2001), pp. 351-362; Joseph Weiler/Wolfgang Wessels: Die EPZ: Eine Herausforderung an die Theorie, in: Alfred Pijpers/Elfriede Regelsberger/Wolfgang Wessels (eds.): *Die Europäische Politische Zusammenarbeit in den achtziger Jahren. Eine gemeinsame Außenpolitik für Westeuropa?*, Bonn 1989, pp. 279-316.

² See Christopher Hill: EU Foreign Policy since 11 September 2001: Renationalising or Regrouping? First Annual EWC Guest Lecture, Europe in the World Centre, University of Liverpool, 24 October 2002.

³ Ibid.

⁴ See for the definition as well the third part of the executive summary of this study by Ramses A. Wessel.

⁵ See Dieter S. Lutz: Sicherheit, in: Dieter Nohlen: *Wörterbuch Staat und Politik*, Bonn 1995, p. 670.

peacemaking. The Petersberg tasks – incorporated in the EU treaties – have contributed to the fact that security policy in the European Union framework is understood primarily as crisis management rather than territorial defence. Following the statements of EU-officials and the heads of government and state of the Member States, it is not planned to cover the »upper end« of the Petersberg tasks – including military operations. Instead, projects in co-operation with local NGOs in the fields of arbitration, confidence building, reintegration, rehabilitation and human rights monitoring have been emphasised as well as clearly shaped targets for police, the rule of law and civilian administration.⁶ Hence, »security policy relates to the non-military external policies of the Union including also EU positions in the OSCE; the policy of disarmament and arms control; nuclear non-proliferation issues; the economic aspects of security, in particular armaments cooperation; control of the transfer of military technology to third countries and control of arms exports.»⁷

»Defence«, in a very restricted definition, indicates »to assure at all times in all circumstances and against all forms of aggression the security and integrity of national territory as well as the life of the population«.⁸ In a wider sense, »defence« is not limited to the use of military means in order to prevent »aggressions against national territory but also implies the commitment, beyond its frontiers, of military forces, to defend universal values«.⁹ In a EU context, the heads of state and government of the EU have declared that they do not intend to construct an autonomous military power or even a European army with a central and supranational military rod. Despite the will of a minority of Member States (especially driven by France) to reinforce the independence of the ESDP vis-à-vis the transatlantic alliance and the United States, the majority of EU Member States does not favour a future replacement of NATO by ESDP.

Based on this assumption, defence can be defined as a »policy which relates to the external policies of the Union involving military operations, including humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking and peace enforcement. Collective defence (the term is used in stead of the term »common defence«) refers to a mutual obligation (currently) laid down in Article V of the modified Brussels Treaty (WEU Treaty).«¹⁰

However, these abstract definitions can only be evaluated in view of the existing capacities. Critics say the European Union efforts to devise European security and defence powers have to be seen more noteworthy in »prestigious« organisational and declaratory terms than in terms of generating real military capabilities. But it remains to be seen if the »headline goal« of a rapid reaction force of 60,000 men will be reached at the end of 2003.

On the other hand, it is repeatedly stated that – though the European Parliament has produced positions regarding vital world issues – the MEPs have attracted merely little political

⁶ In the draft report on the proposal for a Council regulation on Rapid reaction facility of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy of 18 July 2000 (Rapporteur: William Newton Dunn) also several proposals for non-military crisis-management are listed (COM(2000) 119 – C5-0272/2000 – 2000/0081(CNS)): a) financial instruments (ECHO, PHARE, TACIS, etc.) which make it possible to carry out urgent operations and structural or reconstruction operations; b) preventive diplomacy measures (stability pacts), c) Policy Planning and Early Warning Unit, which must enable crises to be identified at an early stage; d) the committee responsible for the civilian aspects of crisis management, e) democratisation measures, which can be carried out jointly with the Council of Europe and OSCE (monitoring of elections, legal assistance, etc.) f) intervention operations, g) operations to assist with mine-clearing, policing, surveillance of conflict zones such as that carried out by the European Community Monitoring Mission, monitoring of sanctions, with the assistance of the WEU where appropriate, h) guaranteed access to natural resources and the elimination of poverty as important elements of conflict prevention.

⁷ See Ramses A. Wessel, op. cit.

⁸ See Ioannides, op. cit, p. 7.

⁹ Ibid.

¹⁰ See Ramses A. Wessel, op. cit.

weight.¹¹ Concerns were also raised that there are no mechanisms in place (or planned) to ensure »cross-pillar coherence«, or a clear division of labor between Solana and Patten. Thus, do we not only have an “expectation-capability-gap”¹² in view of the powers of ESDP, but also a »legitimacy-accountability gap in view of the parliamentary dimension of ESDP? It is often argued that mechanisms to ensure democratic control of ESDP are currently inadequate while others pointed out that crisis management requires a basic level of security that EU institutions do not yet ensure.

IV.2. The Democratic Deficit in general

In the development of the EC/EU, a gradual process can be observed leading to the transfer of national responsibilities and authorities to the European level. Simultaneously, instruments and competences for actions have been transferred from the national level to the »Brussels« level. Subsequently, this results in an enlarged scope of communitarian action – not only in the first pillar but also with regard to security and defence issues. Especially since the (Maastricht) TEU, this development has provoked a discourse on democracy and democratic governance in the Union, raising the question whether or not the EU has a »democratic deficit«. Such a democratic deficit can be identified in a multiplicity of ways, including different understandings of democracy, since democracy in view of the EC/EU attracts a special meaning.¹³

Tapio Raunio and Simon Hix put it as follows: “According to the so-called »standard version« of the »democratic deficit«, the development of the European Union (EU) has led to an erosion of parliamentary control over the executive office-holders. At the national level, so the argument goes, legislatures have lost both constitutionally and politically. Constitutionally, a wide array of policy competencies has shifted to the European level, and the allocation and delegation of executive, legislative and judicial powers at the European level are decided by a collective agreement between the national governments. (...) Politically, in the control of European-level executive powers and in the adoption of legislative acts at the EU level, neither domestic parliaments nor the European Parliament (EP) are sovereign bodies.”¹⁴

Following this revived notion of the »democratic deficit«, competences have constantly been shifted from a national parliamentary level to the Council of Ministers and its entities without including the European Parliament as an equal partner in the European policy cycle at the same time.¹⁵ However, considering democracy as the “institutionalisation of a set of procedures for the control of governance which guarantees the participation of those who are governed in the adoption of collectively binding decisions”,¹⁶ the role of EP is significant.

¹¹ See basically Donatella M. Viola: *European Foreign Policy and the European Parliament in the 1990s, An Investigation into the Role and Voting Behaviour of the European Parliament's Political Groups*, London 2000.

¹² See especially Christopher Hill: 'The Capability Expectation Gap, or Conceptualizing Europe's International Role, in: *Journal of Common Market Studies*, September 1993, pp. 305.

¹³ See generally Juliet Lodge: *The European Parliament*, in: Svein S. Andersen/Kjell Andersen (eds.): *The European Union, How democratic is it?* London 1996, pp. 187-214.

¹⁴ Tapio Raunio and Simon Hix: *Backbenchers Learn to Fight Back: European Integration and Parliamentary Government*, in: *West European Politics*, 4 (2000), pp. 142-168, here p. 142. See also Karlheinz Neunreither: *The democratic deficit of the European Union: Towards closer co-operation between the European Parliament and the national Parliaments*, in: *Government and Opposition*, 3 (1994), pp. 299-314; Juliet Lodge: *The European Parliament*, in: Svein S. Andersen/ Kjell Eliassen (eds.): *The European Union. How democratic is it?*, London 1996, pp. 187-214; Andreas Follesdal/Peter Koslowski (eds.): *Democracy and the European Union*, Berlin 1998.

¹⁵ See for the latter argument Kevin Featherstone: *Jean Monnet and the »Democratic Deficit« in the European Union*, in: *Journal of Common Market Studies* 2 (1994), pp. 149-170.

¹⁶ Markus Jachtenfuchs: *Democracy and Governance in the European Union*, in: Andreas Follesdal/Peter Koslowski (eds.): *Democracy and the European Union*, Berlin 1998, pp. 37-64, here p. 47.

The argument of a democratic deficit is quite often focused on the potential of the European Parliament¹⁷ and its perception – or its limits – as a »full fledged parliament«.¹⁸ The EP is understood as the key institution which will either provide for a new democratic quality of the European Union or which documents the basic impossibility of the EU system to finally evolve into an »ordinary« and »appropriate« democratic system.

The debate on the »legitimacy performance« of the EP is based on different and opposite assumptions: Is there a »one« European people which needs to be represented by the European Parliament or are there just different »European peoples« which have to be represented exclusively or at least mainly by national parliaments? Does the Brussels arena produce a “shared public realm”,¹⁹ or a “community of shared experiences, memories and communications”?²⁰ In other words, are there sufficient opportunities for deliberation created in this arena?

One starting point of analysis is that the formal powers of the EP within the “legal constitution”²¹ have been constantly reinforced over the last decades. In the Convention, a further »upgrading« of the European Parliament is also generally accepted. But the focus of discussion does not lay with parliamentary powers. The debate has changed in some respect after the quasi-constitutional revisions and amendments of the 1990s via the Maastricht and Amsterdam treaty reforms. Whereas in the first decades, the lack of real competences and meaningful functions of the EP was stressed, critics now turn to another kind of fundamentals: is there any basic support for the European Parliament’s legislative and appointing acts which would justify the use of the term »parliament« in its deepest sense – thus expressing the »volonté générale« of »one« people and representing identity?

IV.3. The Democratic Deficit in view of CFSP and ESDP

Concerning CFSP and ESDP, the arguments are similar but more differentiated. In general, parliaments have never had the same degree of control on foreign and defence policy as in the domestic policy fields. They are merely left with a symbolic formal influence. As one or maybe even the decisive variable in the decision making process on international affairs is the number of actors involved, parliaments are among those players left out or involved only to a limited extent. Especially in case of crisis management, the applicable standard rule is: the less time, the fewer actors.²²

In view of the European (Union) level, the general weakness of parliaments is even more visible: Both European defence policy and European armaments cooperation are currently designed to be purely intergovernmental – carried out by national governments in the EU framework. ESDP is related very much to the Council. Key decisions on the ESDP will be

¹⁷ See generally David Beetham/ Christopher Lord: Legitimacy and the European Union, London 1998. Thomas Banchoff and Mitchell P. Smith: Introduction. Conceptualizing legitimacy in a contested polity, in: Thomas Banchoff and Smith, Mitchell P. (eds.): Legitimacy and the European Union, London, 1999, pp. 1-23, here p. 10 and Marcus Höreth: Die Europäische Union im Legitimationstrilemma, Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, Baden-Baden 1999, Christopher Lord: Democracy in the European Union, Sheffield 1998.

¹⁸ Thomas Oppermann: Pro und Contra Unionsvertrag in der rechtswissenschaftlichen Debatte, in: Rudolf Hrbek (ed.): Der Vertrag von Maastricht in der wissenschaftlichen Kontroverse, Baden-Baden 1993, pp. 103-119, here p. 114.

¹⁹ Brigid Laffan: The Politics of Identity and Political Order in Europe, in: Journal of Common Market Studies, 1 (1996), pp. 81-102, here p. 93.

²⁰ Peter Graf Kielmansegg: Integration und Demokratie, in: Markus Jachtenfuchs / Beate Kohler-Koch (eds.), Europäische Integration, Opladen (1996), pp. 47-71, here p. 55.

²¹ Johan P. Olsen: Organising European Institutions of Governance, A Prelude to an Institutional Account of Political Integration, Arena Working Papers WP 2 (2000).

²² See also Roland Bieber: Democratic Control of European Foreign Policy, in: European Journal of International Law, 1/2(1990).

taken in the Council. The bodies established after the European Council of Helsinki (PSC, EUMC, EUMS) also have been shaped by the Council. This indicates that ESDP deprives both the national parliaments and the European Parliament of parliamentary oversight.

If the Council – de facto the Member States' governments – has taken a decision, each government will explain this decision vis-à-vis the respective national parliament as a joint European situation – which through its communitarian character strengthens its “unrevisability”.

The competences that practically have been removed from the national parliaments have not been transferred onto the European Parliament. The EP is not involved in the intergovernmental co-operation at the European level until now. Even if unanimity is to be anticipated – as in the defence policy – a hesitating EU Member State might allow a decision to be taken via the new procedure of the so-called »constructive abstention«. Thus, the respective government can save face even while sharing a decision it officially denounces. Nevertheless, later involvement in the execution of the respective decision is not ruled out. Consequently, it can be concluded that democratic decision-making structures in CFSP/ESDP seem to slip through the prevailing intergovernmental principles.

It can be observed that the European dimension of parliamentary participation in security and defence policy has become weaker since the national parliaments have only a limited link to the European level and the EP has not obtained additional rights. The role of the European Parliament in foreign, security and defence affairs is even more restricted to consultation and ex-post information than the role of the national parliaments. In addition, it has to be taken into consideration that the Parliamentary Assembly of the Western European Union – though still existent – has lost its already limited impact.

For this reason, it is frequently criticised that a vacuum arises in parliamentary control of foreign and security policy because neither the European Parliament (or any other »European« parliamentary body) nor the national parliaments are able to guarantee scrutiny. The modest improvement achieved by the European Parliament in order to strengthen parliamentary control within the EU system has been considered only as an inadequate compensation in view of the national perspective.

This is not only for the reason that the EP's competences are limited in comparison to the national parliaments, but also because the influence of national legislatures – especially when evaluating e.g. France and the United Kingdom – is incomparable as well. This circumstance highlights once more the dualism of both the European Parliament and national parliaments in defining and handling but particularly in controlling security and defence policy.

As a potentially increasing number of decisions will have to be taken in the framework of ESDP, parliamentary legitimacy seems necessary. Legitimacy can be defined and explained as “government of, by, for the people”²³ or a “system of governance (...) in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their representatives”²⁴. In view of the European Union and especially regarding CFSP and ESDP, legitimacy attracts a special role, since this policy field sui generis is not comparable to domestic issues.

However »legitimacy« is the ultimate aim, a mixture of the more precise aspects such as voice, scrutiny, transparency and accountability might be the road to it. Hence, these elements are considered as highly necessary. The EU may be regarded a kind of ‘Zweckverband’²⁵ (functional organisation) that is at first glance both less suitable and less responsible for parliamentary democracy than for the efficient conducting of policies. But such an »output-legitimacy«-approach on the Union depends on its capacity to achieve the citizen's goals and

²³ Fritz W. Scharpf: *Governing in Europe: effective and democratic?* Oxford/New York 1999, p. 6 (referring to Abraham Lincoln's famous Gettysburg address 1863).

²⁴ Philippe C. Schmitter: *How to Democratize the European Union... And Why Bother?* Lanham 2000, p. 3.

²⁵ See Hans Peter Ipsen: *Europäisches Gemeinschaftsrecht*, Tübingen 1972.

solve the citizens problems effectively and efficiently: The higher this capacity, the more legitimate is the system.²⁶

But who or which institution is destined to recognise the citizen's goals? Following the Eurobarometer surveys of the last years, the European Parliament is undoubtedly the institutions attracting the highest confidence at the European level.²⁷ The demands of people will be addressed most effectively and efficiently if they are introduced and arranged by an »intermediate« body. The institution to attain this role is apparently the EP, since it is the only body directly elected. It represents the citizens of the Union, aggregates and publicises their views, fears and opinions and acts on their behalf. Thus, it contributes more or less substantially to enhance the democratic legitimacy of the Union.

In terms of the legitimacy in the field of foreign, security and defence policy the key question is not only: »Who decides if and how to go to war?« but above all: »Who will be held accountable?« And this problem has not been solved yet. Isabelle Ioannides draws the scenario that an operation might be mandated by the UN, commanded by the EU, staffed by the militaries of EU member states, equipped by national assets and "politically controlled by the supply of military information gathered by EU Member States, NATO Member States (mainly the United States) and/or EU candidate states."²⁸ In order to prevent such a cacophony, the European Parliament should step in to compensate for the loss of accountability, thereby preserving the democratic character of decision-making at the European level.

In this context, special attention should be paid to the role of the PSC. The political and security committee can take – along the lines of the provisions of the new Article 25 (TEU – NV) the political inspection and the strategic direction of crisis management operations – including actions of the rapid reaction forces: It "shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission".

The PSC is merely accountable to the Council. The Council can even authorise the political and security committee to take independent and in-time decisions with regard to the preparation and execution of military crisis management: "Within the scope of this Title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operation." Thus, the governments of the Member States might authorise this special body with decisions on war or peace.

In this view, it has to be discussed whether the current decision structures would not fail automatically due to a dilemma between efficiency and legitimacy. If this dilemma will not be conquered, the only answer might be a reduction of the tasks of ESDP.²⁹

IV.3. Public opinion and European defence

In times of the Cold War, the reasons for joint defence efforts were clearly outlined and broadly accepted. At the present – in times of a more inconstant security background – reasons are essentially less concrete and less predictable.³⁰ Accordingly, the decisions to be taken are more complex and harder to explain to the general public. At the same time, people

²⁶ See Frank Schimmelpfennig: *Legitimate Rule in the European Union. The Academic Debate*, Tübingen 1996, p. 19.

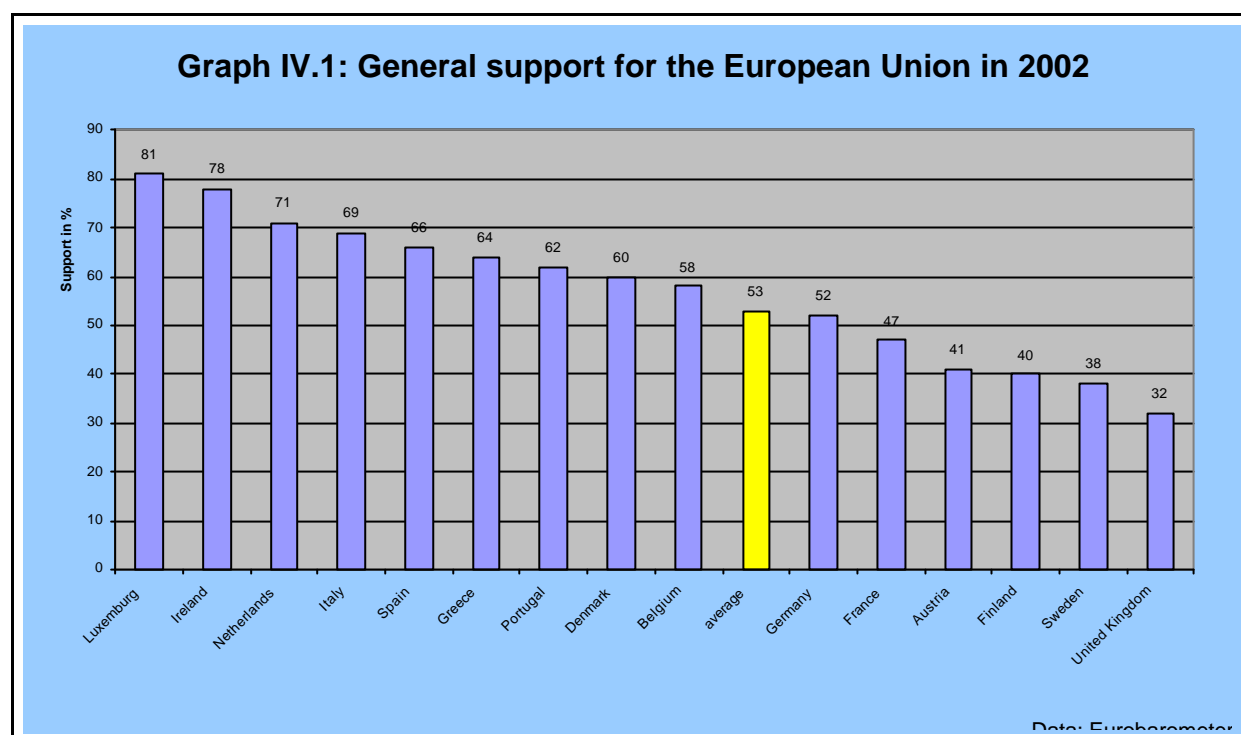
²⁷ See Oskar Niedermayer: *Die öffentliche Meinung zur zukünftigen Gestalt der EU*, Berlin 2002, p. 16.

²⁸ See Ioannides, op. cit., p. 16 f.

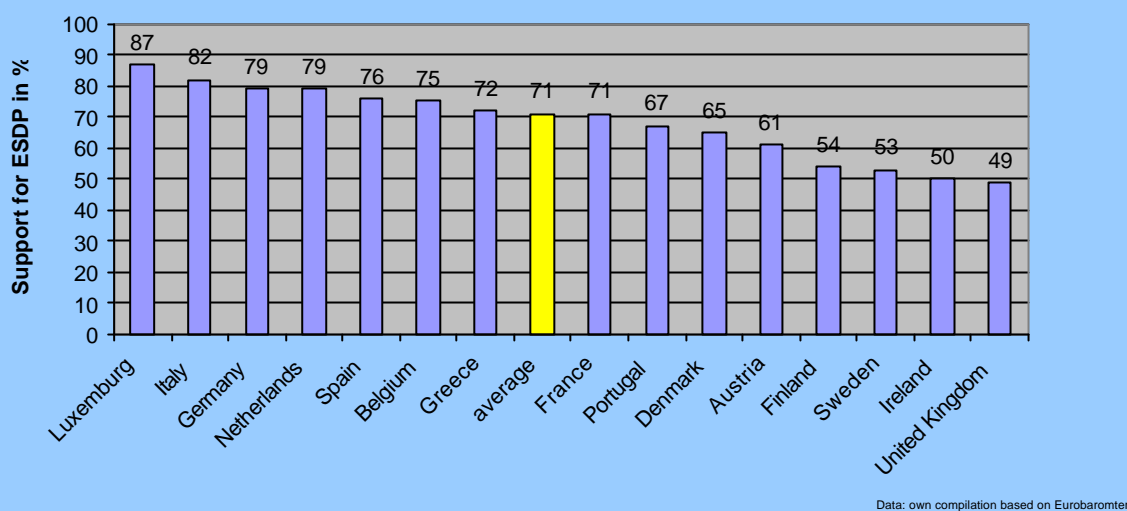
²⁹ See in this respect Matthias Dembinski: *Perspektiven der Europäischen Sicherheits- und Verteidigungspolitik*, 11 (2000), pp. 39ff.

³⁰ See for such lines of argumentation Philippe Manigart: *Public opinion and European defense*, unpublished manuscript for the International Symposium "Public opinion and European defence", Brussels, July 2001.

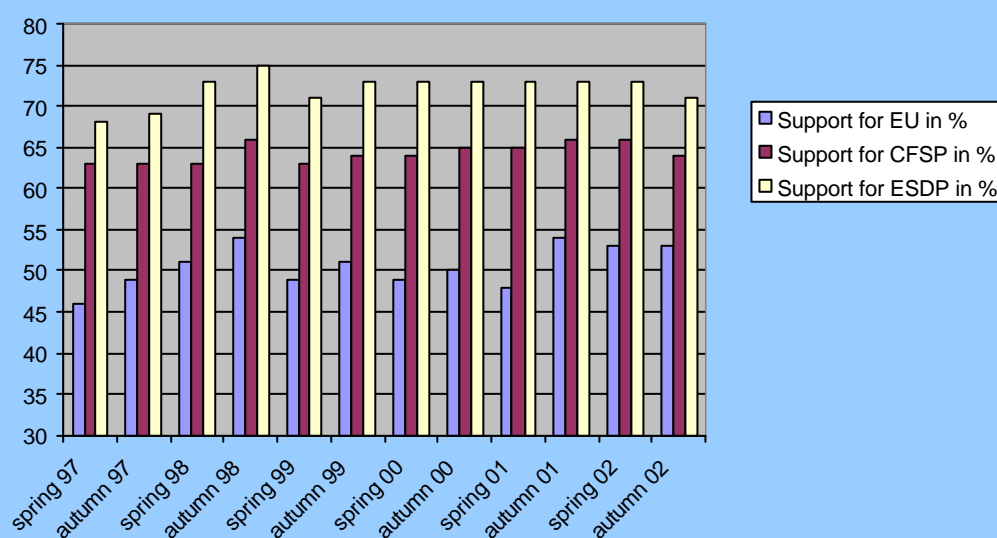
are better ever informed about international developments due to global media networks and new information technologies. Hence, people demand governments more promptly, to react to international crisis challenges.



The foreign and security dimension of the »Maastricht« TEU has been broadly supported by the EU citizens from the beginning. Influenced by the Balkan wars, the support of the citizens for a common foreign and security policy in the frame of the EU has increased continuously between 1990 and 1993. Although in the last few years a slight decline has to be stated, the overall support for the Common Foreign and Security Policy remained strong – also in relation to the general support for the European Union. Today, two thirds of the Europeans are in favour of a common foreign policy of the European Union. In each Member State – except the United Kingdom that is divided on this matter – advocates for CFSP form the absolute majority. The most overwhelming popularity is to be found in Germany, Italy and Luxembourg.

Graph IV.4: Support for ESDP country-by-country in 2002

Regarding the special section of ESDP, the general support in Europe is even more unambiguous. Again, the highest support can be found in Germany, Italy and Luxembourg. Even in the United Kingdom, the share of advocates is clearly higher than that of the opponents. Though all in all, it can be concluded that in these central policy areas, citizens massively support the competences at the European level, it has to be taken into account that the support is to some respect also rather vague and shallow.

Graph IV.3: Support for the European Union and CFSP/ESDP in the long run

Despite the fact that many European citizens are in favour of European defence endeavours, they are far from being favourable to an integrated defence policy. Only 19% of the people support the idea of a single European army replacing national armies – compared to 37% in favour of a permanent European rapid reaction force. Around 12% of the European people are opposed to a European army and vote for »exclusive« national armies.

On the other hand, the creation of the rapid reaction forces is regarded by an average of 73% as a »very good« or a »rather good« thing. Even in the United Kingdom and Ireland there has been a percentage of 60% (UK) and 55% (IRL) in favour. The highest rates of support can be observed in Belgium (82%) and Italy (81%).

Considering the question, at which level the decision will be taken when it comes to defence, the surveys offer interesting data. More than four out of ten Europeans share the opinion that the decision has to be taken at the European level whereas just 24% supported the national (governments) level. Interesting enough, a rate of 17% has been in favour that the decision will be taken by NATO.

The defence of the territory has been expressed also in opinions about the roles of the army. 94% of all Europeans claimed the defence argument, followed by 91% demanding help for the own country in case of a disaster and 84% claiming help for other countries in case of a disaster.³¹

IV.4. The CFSP/ESDP policy cycle and the parliamentary dimension

An important requirement for the legitimacy of CFSP and ESDP is the intensive participation of parliaments (both the EP and the national parliaments) in all phases of the policy cycle. In order to present a comprehensive strategy for access and influence of parliaments, this part of the study presents all phases of the foreign and defence policy cycle and analyses where parliaments come in and where they fail to act. However, it must be stated that a clear distinction of the four »classic« stages of the European policy cycle (preparation, making, implementation, control) is hard to maintain. The probably most effective weapon of the parliaments is the possibility of arousing public opinion in their favour, a factor that might be used at any stage of the cycle. Pursuing an institutionalist approach that looks at the evolution of both the »legal and living constitution«³² of the Treaty – i.e. at patterns how the formal and non-formal provisions of the second pillar of the EU are used, several deficiencies can be observed:

IV.4.1. The participation of parliaments in preparing legislation

In sum, parliamentary participation at the stage of CFSP/ESDP preparation remains low in the European arena. Mostly, this reflects a general provision of foreign policy, which is a area where parliamentary participation is ultimately restricted to a »scrutinising« function since it has its stronger points at the stage of control of the executive's decisions.

Nevertheless, a certain degree of participation can be observed. At the European level, this occurs mostly in the form of information and consultation, both of which are non-binding neither for the Commission nor the Council or the High Representative. Since Article 21 – in the frame of Title V (TEU) – gives only imprecise evidence on participation and offers no leeway for day-to-day politics, the involvement of the European Parliament is based to a large extent on informal arrangements and internal rules.

At the national level, the situation is fairly similar. National parliaments are rarely directly involved in the preparation of legislation concerning foreign, security and defence policy. The

³¹ All empirical data quoted by Philippe Manigart, op. cit.

³² Johan P. Olsen: Organizing European Institutions of Governance, A Prelude to an Institutional Account of Political Integration, ARENA Working Papers WP 2 (2000).

main stream of influence is to be found in informal contacts. Although some parliaments – for instance in Denmark or Sweden – are engaged in the preparation of decisions, the national parliamentary involvement in foreign and defence policy usually has an ex-post character. What can be drawn from this empirical evidence? The ESDP is supported broadly but the arguments appear not at all times rational or logical. Thus, the necessity to provoke a larger debate on CFSP and ESDP should be at top of the agenda.

IV.4.2. The participation of parliaments in the making of legislation

The legal impact of parliaments in foreign, security and defence policy is still marginal. Parliament's decision-making in foreign and defence issues remains in the shadow of weakness vis-à-vis the real actors in this policy field – the governments. The main instrument and the doorway to more influence of the parliaments is the budget – both at the national and at the European level. Particularly, Members of the European Parliament have been engaged in battles with the Council in the context of the budgetary procedures. Here, the Parliament obtained the right to block a proposed legislative act without the Council having the right to override Parliament at the end of the procedure. Nevertheless, due to the absence of a European defence budget, this competence remains limited.

At the national level, the »making« of legislation is primarily related to the ratification of international treaties. The deployment of forces – notably the most visual effect of the making of legislation – varies considerably at the national level both in view of formal constitutional provisions and regarding long-term traditions. While in some countries the assent of national parliaments is unquestionably necessary before starting a military action, in other states only an ex-post decision is required. However, there are also countries without any formal parliamentary rights on the deployment of forces abroad.

IV.4.3. The participation of parliaments in controlling legislation

The control function of the parliaments has been another element analysed in the set of functions. In view of the EU level, it can certainly be said that questioning the Commission, the High Representative – the original instrument of the European Parliament's control opposing the other two institutions – is a major tool in CFSP and ESDP. Although the European Parliament appears more or less satisfied with the flow of information by the Commission and High Representative, control and scrutiny is primarily reactive and practised only after the event when both expenditure and policy experience can be quite harshly examined.

The right to be informed and consulted is for the national parliaments also the most important parliamentary right in foreign, security and defence policy. But the European level is hardly covered. The key question is: To what extent do national parliaments receive draft proposals of legislative acts or other acts, such as white and green papers, recommendations, declarations, documents produced by COREPER, PSC, the Council working groups or other bodies at the European level? The empirical data of this study reveals that the results are very poor. In the countries included in this study, the scope and quality of parliamentary control differs as much as the stage when parliamentary control starts at all. Control varies from simple ex-post-information rules to mandatory procedures. It reaches from »real« participation in budgetary powers or declarations/motions of no confidence to advisory functions such as resolutions, recommendations, opinions and reports.

Given the overall performance at both levels, scrutiny is rather an element of ex-post control than of ex-ante control.

IV.5. Conclusions: the long but inevitable way to democratic accountability

Summarising all these aspects it can be concluded that the European Parliament – if it should contribute to the legitimacy of CFSP/ESDP – should play a more substantial role in the European Union's foreign, security and defence policy-making. Without a substantial oversight of the European Parliament both CFSP and ESDP would lack the parliamentary dimension that has become the backdrop against which national parliaments conduct the scrutiny of »their« governments. Since formal powers of the European Parliament in this field currently are extremely poor, the EP should claim to reinforce its power at all levels – but in particular in terms of enhancing control and accountability. The actors at the European level – be it the European Commission, either the High Representative, the Council or the Political and Security Committee – have to take into consideration that they will eventually be held to account by the European Parliament that effectively »controls« the decisions taken and the initiatives started.

Finally, one needs to remember that only a few decades ago, this body only had mostly consultative powers. Today, the European Parliament is directly elected, and decides on a single footing with the Council in many areas of the Community's decision-making. With European integration ever more progressing, the Member States will find it difficult to avoid revisiting the role of the European Parliament, by giving this body an even greater role in decision-making. That will make the European Parliament at least in a long-term perspective an even more relevant actor in foreign, security and defence policies.

Annex V: Proposals of the Convention for the future structure of CFSP/ESDP with regard to possible parliamentary involvement

The following table is self-generated a synopsis of the debate inside and surrounding the European Convent of 2002. It is focused on CFSP and ESDP-related matters and therefore does not include proposals made concerning other policy areas. This summary lists both the significant contributions within the Convent (by single members as well as Working Groups or other congregations) and contributions from scholars or prominent non-members (such as Chris Patten, Javier Solana or Romano Prodi). The first column contains the general outlines made for the future of CFSP and ESDP. Columns 2 and 3 focus on the role envisioned for the European Parliament by the respective author(s), divided by budget and treaty rights and advanced rights. The fourth column deals with the role of national parliaments and/or interparliamentary bodies in the context of CSFP and ESDP.

	FUTURE ADMINISTRATIVE ARCHITECTURE AND COMPETENCES	EP INVOLVEMENT IN BUDGET AND TREATY AFFAIRS	SPECIAL RIGHTS OF SCRUTINY BY EP	INTERPARLIAMENTARY COORDINATION AND THE ROLE OF NATIONAL PARLIAMENT(ARIAN)S
EP current positions (including resolution (10-04)), AFET Working Paper (20-11)	<ul style="list-style-type: none"> • “EU and its Member States should not limit themselves to peacekeeping missions alone” • “Petersberg mission should be redefined” • demand for “European armaments agency and joint research efforts” • creation of a Council of Defence Ministers financing of running cost of international crisis • “mutual-assistance obligations laid down in the WEU treaty [should be] incorporated into the future European constitution” • enhanced cooperation in defence matters 	<ul style="list-style-type: none"> • management measures within the community budget (e.g. Operation “Amber Fox” in Macedonia), thus means of CONTROL for the EP by exertion of the right of budget control (as in other EU matters) • “running cost of EU joint actions for crisis management should be covered by the Community budget and therefore controlled by the EP” • “expenditure on operations with military or defence implications should be shared between Member States and the Community”, “joint costs [...] should be funded from the Community budget” 	<ul style="list-style-type: none"> • regular reports by the (to-be-installed) Council of Defence Ministers to the EP 	<ul style="list-style-type: none"> • “responsibility for parliamentary monitoring of ESDP is shared between the EP and the national parliaments” • “military expenditure and the deployment of armed forces continue to fall within the exclusive competence of the national parliaments” • call for “closer relations and an intensified exchange of information between the EP and national parliaments”
Heather Grabbe (Centre for European Reform), (13-03)				<ul style="list-style-type: none"> • new committee of national parliamentarians (reform of COSAC) with rights of control over legislation
Caspar Einem (MP Austria), CONV 202/02 (17-07)	<ul style="list-style-type: none"> • dismantlement of pillar structure • “enhanced, appropriate role of the EP” (no further specification) • “double hat” model, High Representative (HR) to be integrated into the Commission as Vice-President (to be appointed by Council and the President of the Commission (PresComm)) 			

	<ul style="list-style-type: none"> • exclusive right for Comm to negotiate with third parties (after authorisation by Council) 			
Javier Solana, High Representative, at the Working Group on Defence, CONV 294/02 (23-09)	<ul style="list-style-type: none"> • need for cooperation in armament sector by Member States as a means to provide for more efficiency and cost-reduction and necessary capabilities for Petersberg tasks • need for candidate countries to harmonize armament and defence policy already before entry into EU 			<ul style="list-style-type: none"> • review of activities
Andrew Duff (MEP UK), CONV 22/02 (08-04), 57/02 (21-05), 234/02 (03-09), CONV 423/02 (22-11)	<ul style="list-style-type: none"> • election of the President of the Commission (PresComm) by EP • appointment of the Vice-President of the commission (responsible for foreign, security and defense policy) after nomination by the Council. • merger of the posts of HR and Commissioner in charge of External Relations (FC) 	<ul style="list-style-type: none"> • “Review and approval of the general annual budget [by the EP as] proposed by the Commission”. • generally considerable increase of EP’s role in legislation 	<ul style="list-style-type: none"> • “Unless this Constitution otherwise provides or in cases of urgency, the Council shall adopt Acts on a proposal of the Commission and after having consulted the European Parliament (Exceptions [...]) would include military decisions. In all cases the Parliament shall be kept duly informed”. 	
Pavol Hamzik, (Slovak Republic government representative in the Convention) CONV 194/02 (17-07)			<ul style="list-style-type: none"> • enhanced role, “especially in the area of non-military crisis management” 	
Lamberto Dini, (MP Italy) CONV 65/02 (28-05), CONV 180/02 (09-07), CONV 301/02 (26-09), CONV 387/02 (07-11)	<ul style="list-style-type: none"> • rejection of a “fourth pillar” of defence • reduction of the “number of voices the EU speaks with” to ensure consistency, coherence and reliability; merger of HR and FC (“effective synthesis”) - new post would also usurp “all the powers of negotiation” in international aid bundling of EU’s external actions into “the broader framework of the Union’s external action”. • implementation of a Committee of Defence Ministers “to address specific matters ranging from military planning to cooperation on armaments, although the [...] Council would always have the last word” • more decisions taken by Quality Majority Vote (QMV), but unanimity on defence matters - nevertheless, need for formalizing and strengthening of “enhanced cooperation”, enabling Eurocorps, EUROFOR, EUROMARFOR (already existing outside the Treaties) “to be brought into the Union” • introduction of a “European arms agency”, starting with the “structures that already exist” (including UK, F, D, I,E) 	<ul style="list-style-type: none"> • necessity “to revise the Treaty provisions concerning the so-called ‘Petersberg tasks’” in order to narrow the scope of and extent of operations. • protocol on defence matters “with adherence of today’s full Members of the WEU” plus an “opting-in mechanism” for other countries necessity to “amend the Treaties with the addition of a commitment to closer concertation on the planning of national armed forces” 		
Italian Senate 07/08-06				<ul style="list-style-type: none"> • Four possible models: <ol style="list-style-type: none"> 1) Convention Model: body of association of national Parl., EP + national governments 2) Permanent Conference of Parliaments 3) reinforced COSAC 4) independent Second Chamber 5) US-style two-chamber EP
Alain Lamassoure (MEP France)	<ul style="list-style-type: none"> • dismantlement of pillar structure 	<ul style="list-style-type: none"> • “legislative power of co- 	<ul style="list-style-type: none"> • “incontestable method of 	<ul style="list-style-type: none"> • at first, a “joint parliamentary assembly encompassing

CONV 46/02 (14-05), CONV 235/02 (03-09)	<ul style="list-style-type: none"> • finally, the various European forces should be merged into “a common European army [and the] President or Prime Minister of the Union will be commander-in-chief of the Union’s armed forces” • national armies shall be kept “as a national guard [ensuring] surveillance of air space and land and sea borders, civil protection, protection of sensitive sites and anti-terrorist operations, training of reservists” 	<ul style="list-style-type: none"> • decision” (power share between EP + Council) • implementation of general budgetary unity in ESDP means of control 	scrutiny”, finally, “the EP would be wholly responsible for democratic control of foreign, security and defence policy; each national parliament would supervise operations falling within its own legal and geographical competence”	the EP and national parliamentarians. Would meet twice a year to help to shape policy and ensure democratic control of the overall process”
António Vitorino/Michel Barnier, (Representatives of the European Commission in the Convent), CONV 229/02 (05-09)	<ul style="list-style-type: none"> • “endorsement of the Commission” including the (to-be) merged post of HP/FC by EP 	<ul style="list-style-type: none"> • exertion of the right of budget control (as in other EU matters) 		
PSE (contribution of PSE Members Klaus Hänsch, Olivier Duhamel, Luis Marinho, Linda McAvan, Anne van Lancker, Pervenche Perès, Maria Berger, Carlos Carnero Gonzalez, Elena Paciotti, Helle Thorning-Schmidt, CONV 189/02 (12-07)	<ul style="list-style-type: none"> • approval of HP by EP, fitting of the ESDP with a substantial, armed and ready-to-action instrument to “fulfil the Petersberg tasks” • development of the conflict prevention capacities 	<ul style="list-style-type: none"> • “co-decision in all legislative areas” • ratification of all important treaties with non-EU partners, • approval of all treaty changes 	<ul style="list-style-type: none"> • strengthening of the rights of control 	<ul style="list-style-type: none"> • no implementation of a Second Chamber, but close cooperation between EP and national parliaments
SDP Germany (21-11-2001)	<ul style="list-style-type: none"> • direct election of the PresComm by EP 	<ul style="list-style-type: none"> • “widening of the means of co-decision” • “total budget sovereignty” 		
Green Party Germany (08-08)	<ul style="list-style-type: none"> • direct election of the PresComm by the EP • dismantlement of the pillar structure 	<ul style="list-style-type: none"> • “full co-decision rights” (especially in the field of legislation) 	<ul style="list-style-type: none"> • enhancement of democratic control over ESDP 	
WEU Assembly, Document A/1778, A/1780 (04-06)		<ul style="list-style-type: none"> • EP as general main legislative body with enhanced responsibility of “scrutinising and monitoring policy” to be manifest in the TEU 	<ul style="list-style-type: none"> • scrutiny but not “control” 	<ul style="list-style-type: none"> • implementation of a Second “interparliamentary” body with special “responsibility for scrutinising and overseeing policies in which competence is complementary or shared such as the ESDP” • take-over of COSAC’s tasks • implementation of “organisational structure necessary to vote texts and set up committees” reduction of dependence on information by the respective national governments • developement of “interparliamentary competence”
Hartmut Hausmann (German Bundestag newspaper “Das Parlament”) (12-09)			<ul style="list-style-type: none"> • need for more parliamentary involvement, but problematic position of the EP because of the “lack of a wide range of experts on foreign and security policy” plus the non-NATO-status of some Member States consultative function 	<ul style="list-style-type: none"> • joint body of national parliaments, national parliamentary experts on foreign and security policy and EP, “supported by a permanent secretariat”
Reinhard Eugen Bösch (MP Austria), CONV 42/02 (24-04), CONV 80/02 (30-05)	<ul style="list-style-type: none"> • maintain the intergouvernemental structure in CSFP/ESDP (because of the danger of “overpowering” the small States) and the rule of unanimity in “core areas” • establishment of a “CFSP Council” consisting of the 	<ul style="list-style-type: none"> • strengthening the rights of control, mainly in budgetary affairs 		<ul style="list-style-type: none"> • final decision on the deployment of common troops by national parliaments

	Foreign and Defence Ministers, keeping the instrument of “constructive abstainment”, but no further watering-down to prevent small States from being overpowered bundling of external actions in favor of the CFSP Council and its Secretary General (who would chair the Council without voting rights but the task to implement conclusions) • disbanding of the foreign affairs commissariat			
Declaration of the Conference of the parliamentary dimensions of the ESDP (Brussels, 06/07-11-2001)	• “The CFSP must be subject to common parliamentary scrutiny involving both the national parliaments and the EP.”			
Friedrich Ebert Stiftung – International Policy Analysis Unit (May 02)	• “The consultation of the EP on CSFP matters needs to be strengthened.” (so far: “involvement at best superficial”) • “as a rule, consultation should take place 1) with the Foreign and Security Committee, 2) between the HR and the Committee, 3) the HR should address the EP in plenary at least once every six months.”		• adoption of a “minimal rule” in the TEU committing the national governments to inform the parliaments “extensively and at the earliest possible moment” about legislative acts	
Hans-Peter Glotz, (Representative of the German government in the Convent), cited from AndreasMaurer: Jour Fixe Verfassungskonvent, http://www.swp-berlin.org/produkte/brennpunkte/jour-eu-konvent3druck.htm , (01-10)	• creation of a “double hat” (merging HP and FC), both actors assuming the representation of EU’s external affairs - common use of each other’s (Commission and Secretariat) administrative structures • separation of position HP and Secretary General, introduction of a “Vice-HP” to support HP in administrative tasks			
Praesidium, CONV 67/02 (29-05), 67/1/02 (31-05), 161/02 (03-07)		• possible “revision of Article 308 TEC to provide for mandatory consultation of national parliaments”		• general guiding question: “Should [national parliaments] have a role in areas of European action in which the EP has no competence?” • enhanced involvement: “more effective political scrutiny of national governments, especially where the latter are participating in Council initiatives not covered by the first pillar [e.g. CSFP/ESDP] • “[direct involvement of] national parliaments collectively in the European decision-making process”
Working Group on National Parliaments, CONV 74/02 (30-05), CONV 290/02 (23-09), CONV 304/02 (30-09)		• no revision of Article 308 “congress” (see 4 th column) “might be entrusted with certain future treaty amendments that would not require ratification by Member States according to current procedures”	• “EU institutions should be obliged to respond to contributions from COSAC” • “direct involvement of national parliaments passing through the scrutiny of governments”, but ensuing need for “national parliaments to build up a level of expertise”	• improvement of informal meetings between national MPs and MEPs, set-up of “best practices” • “reinforcing COSAC” by “convening more meetings and a permanent secretariat” no introduction of new institutional structures, but: possible “congress assembling national and European parliamentarians [...] as a forum, not as an institution” without legislative role, but to “be informed of and being given the opportunity to debate the (future) multi-annual strategic programme and/or the annual programme of the Council”, to be convened: proposals ranging from semi-annually to every 5 years

				<ul style="list-style-type: none"> • ad-hoc interparliamentary conferences on “difficult policy issues” • reform of COSAC - discussion “of subsidiarity on a general level [and] the new early-warning mechanism”, COSAC should “become a standing committee under the congress”
Hubert Haenel, MP France CONV 255/02 (10-09)	<ul style="list-style-type: none"> • election of the president of the commission and review of its work by “European Congress” (->) 		<ul style="list-style-type: none"> • national parliamentarians as the “safeguards” of the principle of subsidiarity (NOT the EP, because it “cannot judge in its own case”) 	<ul style="list-style-type: none"> • “complementary role” of EP and national parliamentarians: EP “can control the Commission, but not the Council” • electoral “European Congress” made up of 1/3 of MEPs and 2/3 of MPs, to be convened annually to review the work of the commission
Matjaz Nahtigal (Slovenian government representative in the Convention) CONV 19/02 (05-04), CONV 39/02 (22-04)	<ul style="list-style-type: none"> • “gradual communitarisation is needed” - first the “civil dimension of the EU foreign policy – including crisis management by non-military means” <ul style="list-style-type: none"> • more decision-making by QMV • merger of HP and FC as further option • “in the transitional period, the right to initiative should be shared by the Member States, the Commission and the HR” <ul style="list-style-type: none"> • ESDP should “continue to be subject to intergovernmental cooperation” 	<ul style="list-style-type: none"> • financing of “implementation of [CSFP] policies should be limited to those applied in the community” 		
Working Group on Defence, CONV 294/02 (26-09) , 343/02 (14-10)	<ul style="list-style-type: none"> • “defining an armaments policy would be premature before a fully fledged CFSP (and specifically ESDP) was operational” - also required “threat definition” <ul style="list-style-type: none"> • “potential role of the Commission” 	<ul style="list-style-type: none"> • possible treaty agreement on armaments policy 		
Filadelfio Basile (MP Italia) CONV 334/02 (10-10)			<ul style="list-style-type: none"> • “amending European legislative procedures as well as improving mere working practices so that all those obstacles to the [...] national parliaments’ scrutiny role may be eliminated or at least considerably reduced” 	<ul style="list-style-type: none"> • involvement of COSAC in the European legislative process, “for instance during Council meetings” creation of a “permanent secretariat charged with organising work” • second step: “conferring upon [COSAC] a wider or even general function of monitoring all European legislative processes [and] the role of monitoring the implementation of the principle of subsidiarity” in order to “ensure a permanent link between the EU and national parliaments” • no second chamber (“useless complication of the [...] institutional framework”), but “appropriate” widening of the competences of the present EP
Anne-Marie Idrac (MP France), CONV 44/02 (03-05)	<ul style="list-style-type: none"> • acknowledgment of the EU as a single legal personality common and consistent representation in international organisations • possibly common diplomatic representations or single Members acquiring responsibility for certain policy areas or fields • development of a far-reaching common strategy 			<ul style="list-style-type: none"> • consultations in the working groups on defence and foreign affairs
Danuta Hübner, (Gov. Rep. Poland in the Convention), CONV				<ul style="list-style-type: none"> • reinforcement of national parliaments due to their being the “focal elements of all scrutiny mechanisms” to

390/02 (07-11)				<p>ensure flow of information (since the extent of the use of control mechanisms vary from parliament to parliament)</p> <ul style="list-style-type: none"> • COSAC “should be made more effective and extend also to sectoral parliamentary committees” • “The annual legislative programmes of the Commission “should be presented to the assembly” • Strengthening national parliaments might lead to synergy effects with the EP: “Greater discussion of EU policies and legislation at the national level can only raise the level of knowledge of EU affairs and interest in them amongst voters. The EP elections may then attract more rather than less interest.”
Pervenche Berès (MP Spain), CONV 397/02 (12-11)	<ul style="list-style-type: none"> • integration of “Byzantine constructions such as Mr CFSP and Chairman of the Eurogroup into a single structure” 			
Joschka Fischer and Dominique de Villepin (Gov. Rep. Germany/France), CONV 422/02 (15/22-11)	<ul style="list-style-type: none"> • constitutional declaration on “solidarity an collective security” • development of ESDP into a “European Security and Defence <u>Union</u>” • flexibility of cooperation in ESDP, option of enhanced cooperation of only some Members – to be decided on by QMV (e.g. in case of multinational troops, NATO / armament and capabilities / human resources, long-term doctrines <ul style="list-style-type: none"> • ensured quick decision-making procedures • unanimity shall remain in case of the initiation and conduct of military operations <ul style="list-style-type: none"> • transfer of WEU capacities into the Union • protocol including the European aims of capabilities 			
Panayotis Ioakimidis (MP Greece), CONV 277/02 (01-10), CONV 389/02 (07-11)	<ul style="list-style-type: none"> • abolition of the pillar structure since “the artificial distinction between Communitarian and intergovernmental aspects of foreign policy does not longer have any real substance” (see fight against terrorism) • “EU must acquire a single legal personality” • creation of a Council of Foreign Policy/External Relations and of a Council of Defence Ministers • merger of HR and FC into Vice-President of the Commission (thereby being simultaneously attached to both Council and Commission) <ul style="list-style-type: none"> • wider use of QMV • greater coordination in diplomatic services <ul style="list-style-type: none"> • mutual assistance clause in ESDP • enhanced cooperation in ESDP (extension of the Treaty into the area of defence) <ul style="list-style-type: none"> • creation of a Voluntary Humanitarian Force 			
Working Group VII – “External Action” – Preliminary draft final report (WD 21) and Comments,	<ul style="list-style-type: none"> • “importance of establishing structures within the EP, the Council and the Commission that facilitated an encouraged a co-ordinated approach in the preparation, consideration 			

WD 22-54 (05-11)	<p>and implementation of EU external action”</p> <ul style="list-style-type: none"> • Vice-President of the Commission could act as “focal point in the Commission” for external affairs • split of the General Affairs and External Relations Council (agreed on in Seville) into 2 separate councils • strengthening of the HR: “formal recognition of the right of proposal by the HR / chairing of the external action council / changing his title, possibly into “Minister of Foreign Affairs” of the EU / granting the HR adequate means to implement his/her tasks [including bolstering PSC and PPEWU] / split the function of HR from those of SG of the Council” / “more say” in how the CFSP budget is used • options for enhanced collaboration of HP and FC: enhancing synergy / merging both posts / “double-hat” system, maintaining both positions which would be held by one person • strengthening of the instrument of “common strategy” <p>Introduction of a new instrument: “proposal” by HR/EC. ”These proposals could concern the EU’s relations with a particular country or region, or have a more thematic approach”</p> <ul style="list-style-type: none"> • extended use of QMV (at least in CFSP) and “constructive abstention” 			
Jo Leinen, MEP Germany (08-11)	<ul style="list-style-type: none"> • Vice-President of the Commission to be responsible for CFSP and ESDP / acts in co-ordination with the Council (CFSP) or by order of the Council (ESDP) 	<ul style="list-style-type: none"> • EP and European Senate (ES) decide on the budget of the EU • EP is responsible for all legislation • EP elects the PresComm <ul style="list-style-type: none"> • EP and ES ratify all international treaties • common European army for measures ensuring peace and tasks of defence financed by the budget of the EU 	<ul style="list-style-type: none"> • EP and a ES must approve any operation of ESDP troops • EP controls the Commission 	<ul style="list-style-type: none"> • second chamber: “European Senate”, representing the Member States (comprising of the foreign ministers or other cabinet Members of the respective States) presidency of the ES changes after a rotating order
Proposals by the Commission President Romano Prodi, (05-12), cited from: Süddeutsche Zeitung	<ul style="list-style-type: none"> • “shared responsibility” for CFSP/ESDP matters between Member States/Community • new function and position of “EU Secretary” (placed as a link between Council and Commission), to be appointed by Council and Commission President <ul style="list-style-type: none"> • abolition of veto rights in Council • EP shall elect the PresComm, Council to approve afterwards (conversion of current procedure) 			
The Berlin Draft– proposal by Günther Gloser and Michael Roth, MPs Germany (SPD), (18-11), http://www.constitutional-convention.net/archives/000698.html	<ul style="list-style-type: none"> • EP elects the PresComm and has a right of vote of no confidence <ul style="list-style-type: none"> • EP is consulted as a rule by Council • CFSP/ESDP comprise of all tasks concerning the security of the EU, including the build-up of a ESDUnion with 	<ul style="list-style-type: none"> • in legislative matters, the EP shall co-decide with the Council (on equal footing) after proposal by Commission • EP legislates the budget as a 		

	<p>“balanced civil and military capabilities”</p> <ul style="list-style-type: none"> • enhanced integration in armament policy and armies • bundling of capabilities and division of work with the aim of “integrated inter-operable” armed forces, a common armament policy and the possibility of enhanced cooperation 	law together with the Council		
Seminar on Defence for the Members of the Convention, Brussels (07-11), CONV 417/02	<ul style="list-style-type: none"> • “Convergence criteria should be established to reduce the discrepancy between defence expenditure among [Member States] • greater co-ordination in the armaments sector • “transfer of sovereignty [concerning command systems is necessary] to set in place integrated military commands need for a solidarity or even collective defence clause clarification of Petersberg tasks • “Close links should be developed between the CFSP objectives and the military and civilian tools at the Union’s disposal.” <ul style="list-style-type: none"> • maintain “constructive abstention” while • widening enhanced cooperation and “voluntary coalitions” • “start of an integrated defence [...with] logistics, command and control” <ul style="list-style-type: none"> • dissolution of WEU • creation of a Council of Defence Ministers • merger of HR and FC into “Foreign Secretary [who] would be answerable to the Council and should have a deputy answerable for defence” • “the mechanisms of the European defence policy must be founded on the idea of flexibility so that the Union [respects] the sovereignty of “abstentionist” States as much as that of the more “interventionist” States” <ul style="list-style-type: none"> • right of initiative for the HR 			
Chris Patten, Commissioner in charge of External Relations, at the joint Meeting of the Working Groups on External Action and Defence (14-11), CONV 412/02	<ul style="list-style-type: none"> • strong role of PSC • separate chapter on defence in the Treaties • end of unanimity in CFSP • greater use of QMV 	<ul style="list-style-type: none"> • need for the provision of adequate and timely resources (could be done by the Community budget) 		<ul style="list-style-type: none"> • need for appropriate accountability, building on the existing informal meetings of representatives of the Foreign Affairs Committees of the national parliaments and EP
Working Group VIII (Defence), revised draft report, Working Document 22 REV 1 (06-12); Barnier Paper, http://euobserver.com/index.phtml?sid=13&aid=8586	<ul style="list-style-type: none"> • future “Treaty should [...] provide for a closer type of cooperation on defence policy matters” • expand Petersberg tasks “involving use of military sources” such as: post-conflict stabilisation / conflict prevention / military advice and assistance / joint disarmament operations • make use of Art 25 (Nice) “which provides for the Council’s power of decision to be delegated to the PSC” <ul style="list-style-type: none"> • right of initiative for HR: “[...]it is essential in conducting a crisis management operation that responsibility [...] be assigned to a single person whose brief would be to ensure the coherence of the operation” 	<ul style="list-style-type: none"> • “swift access to financing operations” (set-up of a “modest fund based on Member States’ contributions” to finance preparatory stages of operations – joint sharing of costs of the operation – “military operations cannot be financed from the Community budget”) 	<ul style="list-style-type: none"> • status quo is sufficient, but possibility of introducing that EP “may put resolutions to the Council, which the Council will have to take into account during its meetings” 	<ul style="list-style-type: none"> • status quo is sufficient, but “regular meetings of national parliament defence committees should be organised with the aim of ensuring better exchanges of information and more effective political scrutiny”

	<p>Special Representatives shall be in charge of the “vital command structure on the ground”</p> <ul style="list-style-type: none"> • establishment of a joint military college • move from unanimity to assent (with constructive abstention) <p>• solidarity / or collective defence clause – “Euro-defence zone” (against “threats from non-State entities, “terrorist threat”)</p> <p>• enivision a “pool of specialised civil-protection military units”</p> <p>• “Member States who [wish] to do so could share [...] the obligations laid down in Art. 5 [...], thus bringing an end the WEU</p> <p>• set-up of a “European Armaments and Strategic Research Agency” on an intergovernmental basis creation of a Council of Defence Ministers</p>			
<p>“Personal” proposal by Henning Christophersen, Danish Gov. Rep., cited from: Frankfurter Allgemeine Zeitung (10-12)</p>	<ul style="list-style-type: none"> • PresComm to be elected by a joint parliamentary body consisting of MEPs and MPs (following the German model of the “Bundesversammlung” that elects the German President) 		<ul style="list-style-type: none"> • vote of no confidence by the EP after annual report of the working programme of the Commission 	<ul style="list-style-type: none"> • initiation of a “joint [electoral] body” solely for the election of the PresComm

Abbreviations

AFET	Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (EP)
AV	Amsterdam Version
AWS	Solidarity Electoral Action (Akcja Wyborcza Solidarnosci)
BERD	European Bank for Reconstruction and Development (Banque européenne pour la reconstruction et le développement)
CEEC	Central and Eastern Europe countries
CESDP	Common European Security and Defence Policy
CFSP	Common Foreign and Security Policy
CIA	Central Intelligence Agency
CIVCOM	Committee for Civilian Aspects of Crisis Management
CME	Crisis Management Exercise
COREPER	Committee of Permanent Representatives
COSAC	Conférence des Organes spécialisées en Affaires communautaires
CSCE	Conference on Security and Cooperation in Europe
DEFRA	Ministry of Agriculture, Fisheries and Food
DEVE	Committee on Development and Cooperation
DG	Directorate General
DTI	Department of Trade and Industry
ECB	European Central Bank
ECJ	European Court of Justice
EMU	European Monetary Union
EP	European Parliament
EPC	European Political Cooperation
ESDP	European Security and Defence Policy
EUMC	European Union Military Committee
EUMS	European Union Military Staff
FBI	Federal Bureau of Investigation
FCO	Foreign & Commonwealth Office
FT	Financial Times
GAC	General Affairs Council
GAERC	General Affairs and External Relations Council
GG	Grundgesetz (German Basic Law)
HR	High Representative
ICBM	Intercontinental Ballistic Missiles
IGC	Intergovernmental Conference
IMF	International Monetary Fund
IPU	International Parliamentary Union
LPR	League of Polish Families (Liga Polskich Rodzin)
MAFF	Ministry of Agriculture, Fisheries and Food
MEP	Member European Parliament
MNP	Member of National Parliaments
MP	Member of Parliament
MV	Maastricht Version
NATO	North Atlantic Treaty Organization
NV	Nice Version
OCCAR	Organisation Conjointe de Cooperation en matuiere d'Armament
OSCE	Organization for Security and Cooperation in Europe

PA	Parliamentary Assembly
PiS	Law and Justice Party (Prawo i Sprawiedliwosc)
PM	Prime Minister
PPE	European Peoples' Party
PSC	Political and Security Committee
PSC	Political and Security Committee
PSL	Polskie Stronnictwo Ludowie
QMV	Qualified Majority Voting
SDR	Strategic Defence Review
SFOR	Stabilisation Force in Bosnia and Herze govina
SGCI	Secrétariat général du comité interministériel
SLD-UP	Alliance of the Left - Union of Labour (Unia Pracy –Sojusz Lewicy Demokratycznej)
SPE	Party of European Socialist
TEC	Treaty on the European Community
TEU	Treaty on the European Union
UKREP	UK permanent representation
UN	United Nations
UNEF	United Nations Emergency Force
UW	Freedom Union (Unia Wolnosci)
WEAG	Western Armaments Group
WEAO	Western European Armaments Organisation
WEU	Western European Union
WTO	World Trade Organisation

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