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European Security and Defence Policy: Developments Since 2003

Since the Nice European Council in December 2000 significant progress has been made in furthering the defence capabilities of the EU. Institutional planning structures have been established and a number of measures introduced to promote the development of military and civilian crisis management assets, including the creation of the European Defence Agency. More recently the European Commission has also introduced measures to facilitate harmonisation of the defence market in Europe.

This paper examines these developments and looks at the prospect for taking European Security and Defence Policy (ESDP) proposals forward outside the framework of the EU Constitution.

ESDP developments prior to 2003 are examined in a series of Library Research Papers: RP00/20, *European Defence: From Pörtlach to Helsinki*; RP00/84, *Common European Security and Defence Policy: A Progress Report* and RP01/50, *European Security and Defence Policy: Nice and Beyond*.

Claire Taylor

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Summary of main points

Since the Nice European Council in December 2000, EU Member States have continued to push for progress in European Security and Defence Policy (ESDP) matters.

Shortly after the terrorist attacks in the US on 11 September 2001 the EU began work on developing a new foreign policy strategy that would provide strategic context for its action in Common Foreign and Security Policy (CFSP) and ESDP areas. The final text of the European Security Strategy (ESS) was adopted in December 2003. It identified five key threats to the future security and stability of the EU: terrorism, the proliferation of weapons of mass destruction, regional conflict, state failure and organised crime. The strategy acknowledged that in order to address these threats EU Member States would be required to coherently and effectively utilise the full spectrum of diplomatic, political and military means at their disposal. It is this practical implementation of the ESS that has been regarded as one of the biggest challenges for the EU in CFSP/ ESDP matters. The EU's response to Iran over its nuclear programme and the success of the EU-led operation in Bosnia-Herzegovina, have been identified as the two priorities for the ESS in the near term.

A number of initiatives aimed at improving the military and civilian crisis management capabilities of EU Member States have also been both progressed and established in the last few years. EU Member States have agreed, on an intergovernmental basis, the establishment of an EU military planning cell, a re-examination of the priorities of the Helsinki Headline Goal, the establishment of a Civilian Headline Goal, the creation of EU 'Battlegroups' for rapidly deployable operations, the formation of an EU Gendarmerie Force and the creation of the European Defence Agency (EDA), including the development of an EDA Defence Procurement Code of Conduct.

Work on the EU Constitution has also provided an opportunity for the 'Europeanist' states in particular, to attempt to introduce additions to the Treaty basis and remit of CFSP and ESDP. Although the future of the EU Constitution is currently uncertain following the referendum 'no' votes in France and the Netherlands in mid-2005, CFSP and ESDP have been identified as possible areas for progress outside the constitutional framework. This is because of the intergovernmental basis upon which matters outside of the EC competences are governed. Specifically, the creation of an EU Foreign Minister, an EU External Action Service, an extension of QMV in CFSP matters and an expansion of the Petersberg tasks, have been identified as possible areas for development.

More recently the European Commission has also introduced proposals to promote harmonisation in European defence procurement and in policies governing the licensing of intra-Community arms exports.

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I Background – A Brief Summary of Prior Developments

The Treaty on European Union (TEU), commonly referred to as the Maastricht Treaty, was signed in February 1992 and formally established for the first time a Common Foreign and Security Policy (CFSP) for the European Union (EU). Created as the second pillar of the EU, and therefore outside of the framework of European Community (EC) competence, the CFSP provisions sought to provide a coherent approach to foreign policy making, on an intergovernmental basis, across the EU Member States. As part of those provisions, article J.4 TEU also set down a commitment toward the “eventual framing of a common defence policy, which might in time lead to a common defence”.¹

A declaration annexed to the TEU entitled *Declaration on Western European Union* (WEU) set out the role of the WEU as the main organisation through which this European defence identity would be developed. Utilising this organisation was considered to be the most effective way of achieving progress in European defence whilst at the same time appeasing the more pro-Atlanticist EU Member States, such as the UK, the Netherlands and Portugal, by linking the activities of the WEU firmly to the development of the European pillar of NATO. As such, the WEU became an intermediary between the EU and NATO.²

Despite the inclusion of CFSP and its related defence elements in the TEU, little progress was made toward achieving a coherent European foreign and defence policy during the first half of the 1990s. While the US was keen to see its European allies take on a greater share of the defence burden in the post-Cold War era, many EU Member States were, in contrast, eager to reap the ‘peace dividend’ following the end of the Cold War and consequently made significant cuts to their respective defence budgets and their armed forces. By 1992, defence expenditure in the ‘EU12’³ had already decreased to an average of 2.3% of GDP, from 2.8% of GDP in 1988.⁴

In addition, the intergovernmental decision making nature of CFSP was considered to have hampered progress because of a divergence of national interests, and in particular among the three main EU players: the UK, France and Germany. While the UK maintained a largely pro-Atlanticist stance, viewing the development of a European foreign and defence capability as an essential means of strengthening the NATO alliance, France and Germany were pro-Europeanist and strongly advocated the establishment of an independent EU military capability, largely in anticipation of a US military reduction in Europe. The EU’s neutral countries expressed some concern at the development of a fully-fledged European defence capability.

¹ Article J.4, Title V: Provisions on a Common Foreign and Security Policy, Treaty on European Union, February 1992. A copy of the Maastricht text is available online at:

<http://www.eurotreaties.com/maastrichteu.pdf>

² A copy of this declaration is available online at: <http://www.eurotreaties.com/maastrichtfinalact.pdf>

³ In 1992 there were 12 EU Member States. Expansion to the ‘EU15’ occurred in 1995. A history of EU enlargement is available online at: http://ec.europa.eu/comm/enlargement/faq/index.htm#bck_1

⁴ International Institute for Strategic Studies, *The Military Balance*, various editions.

The differences in opinion between the EU Member States in dealing with the emerging Yugoslav crisis in the early 1990s were held up as one example where diverging national interests had effectively undermined the credibility of CFSP/ ESDP and hindered EU action on the international stage. Desmond Dinan in his book *Ever Closer Union: an Introduction to European Integration* commented:

Developments in Yugoslavia had exposed deep foreign policy differences among member states and shown the limits of EU international action [...] Nor would the EU have performed better had the CFSP been in place earlier. The problem lay not simply in a lack of mechanism or structure but rather in profound historical differences compounded by a radical contextual change caused by the end of the Cold War. The Yugoslav crisis was a salutary lesson in the limits of European integration, specifically in the difficulty of sharing sovereignty in the sensitive areas of security and defense.⁵

Throughout the remainder of the 1990s sporadic attempts to develop Europe's military capabilities were made, including a proposal by NATO in 1996 to allow EU Member States access to NATO assets for crisis management operations (the Berlin-Plus Agreement).⁶ Further revisions were also made to the TEU at Amsterdam in 1997, including the creation of the EU High Representative for CFSP (Article J8, Title V) and the establishment of closer institutional arrangements with the WEU as a precursor to possible, and full integration of that organisation into the EU (Article J7).⁷

It wasn't until the informal EU summit at Pörschach in October 1998, however, that a shift in attitudes toward the development of a European defence policy was witnessed. Although no formal decisions were taken at that meeting it paved the way for two major defence initiatives at the Franco-British summit in St Malo in December 1998: the signing of a Letter of Intent on *Co-operation in Crisis Management and Operations* and a Joint Declaration on European Defence.⁸

The core of the agreement between the UK and France was that the main security responsibility for Europe should remain with NATO while the European allies would strengthen institutional and practical arrangements for acting together militarily in activities such as peacekeeping where the Alliance as a whole (i.e. including the US) chose not to be engaged. This approach formed the basis of the CFSP discussions at the Cologne European Council in June 1999 and later that year at Helsinki. Significantly, decisions taken at both of those summits saw the absorption of the majority of the

⁵ Desmond Dinan, *Ever Closer Union: an Introduction to European Integration*, 3rd Edition, Basingstoke, 2005

⁶ Although the 'Berlin Plus' Agreement was first proposed in 1996, negotiations on its practical implementation were not fully concluded until the European Summit at Copenhagen in December 2002. More information on 'Berlin Plus' is available in Library Research Paper RP 03/05, *NATO: The Prague Summit and Beyond*, 16 January 2003. A copy of this paper is available online at: <http://www.parliament.uk/commons/lib/research/rp2003/rp03-005.pdf>

⁷ The text of the Amsterdam Treaty is available online at: <http://www.eurotreaties.com/amsterdamtreaty.pdf>

⁸ The text of both of these declarations is available in Library Research Paper RP00/20, *European Defence: From Pörschach to Helsinki*, 21 February 2000. A copy of this paper is available online at: <http://www.parliament.uk/commons/lib/research/rp2000/rp00-020.pdf>

WEU's functions into the EU, including political control of the Petersberg tasks,⁹ the development of a new interim decision making structure within the EU relating to defence matters, and proposals to establish, by 2003, a 60,000 strong EU rapid reaction force capable of mounting an autonomous operation within the remit of the Petersberg tasks, where NATO as a whole chose not to be engaged. As part of that initiative the Helsinki Headline Goal was established through which EU Member States would seek to improve their defence assets and capabilities and address any identified shortfalls.

On returning from the Helsinki Summit, the Prime Minister described the initiatives taken on defence as "truly historic decisions for the European Union."¹⁰ In a statement to the House, Mr Blair denied that the moves would result in a European army or would undermine NATO:

There have been suggestions that this agreement to increase the options open to us in future crises has adverse implications for NATO, or that the European Union is creating a European army. That is the opposite of the case. The European Council made it clear that the EU will launch and conduct military operations only where NATO as a whole is not engaged. The process will involve full consultation and transparency with NATO. The six non-EU allies will be involved and consulted before decisions are taken, and will be able to take a full part in resulting operations. The EU will avoid unnecessary duplication with NATO. Final decisions on whether to involve troops will remain firmly with national Governments. These arrangements, as the Helsinki Council made clear explicitly, do not imply a European army.¹¹

Efforts to develop, and improve upon these initiatives, were later taken at the Nice European Council in December 2000. The *Presidency Report on European Security and Defence Policy*, which was agreed at that meeting,¹² charted the EU's progress in key strategic areas including the EU's relationship with NATO, the establishment of permanent political and military structures within the EU for ESDP purposes and the development of the Helsinki Headline Goal.

All of these developments are outlined, in detail, in a series of Library Research Papers: [RP00/20, *European Defence: From Pörschach to Helsinki*](#); [RP00/84, *Common European Security and Defence Policy: A Progress Report*](#) and [RP01/50, *European Security and Defence Policy: Nice and Beyond*](#).

⁹ The Petersberg tasks were agreed at a WEU ministerial meeting in June 1992. They define the remit of military operations that the EU could expect to engage in, including humanitarian and rescue tasks, peacekeeping and crisis management.

¹⁰ HC Deb 13 December 1999, c21

¹¹ *ibid.*

¹² A copy of this report is available online at: <http://register.consilium.eu.int/pdf/en/00/st14/14056-r2en0.pdf>

II ESDP Developments Since 2003

Since the Nice European Council in December 2000 the EU Member States have continued to push for progress in ESDP matters. Shortly after 11 September 2001 the EU began work on developing a new foreign policy strategy that would provide strategic context for its action in CFSP and ESDP areas. A number of initiatives aimed at improving military and civilian crisis management capabilities have also been established. Work on the EU Constitution has also provided an opportunity for the 'Europeanist' states in particular to attempt to introduce additions to the Treaty basis and remit of CFSP and ESDP.

A. Strategic Context for ESDP– The European Security Strategy

In June 2003 an initial draft of the European Security Strategy (ESS) was presented to the European Council in Thessaloniki.¹³

Entitled *A Secure Europe in a Better World* the strategy set down the EU's foreign policy priorities with regard to the threats and challenges of the post-11 September security environment. It was also regarded by many as a timely attempt to project a unified stance on foreign policy following the divisive nature of the EU debate over Iraq and narrow the divisions between the EU and US on strategic foreign policy priorities.

The first draft of the strategy identified a number of global challenges including poverty and disease, economic interdependence and energy dependence. However, it outlined three issues it considered to be the main threats to Europe in the future:

- Terrorism;
- Proliferation of Weapons of Mass Destruction (WMD);
- Failed States and Organised Crime.

In response the strategy paper proposed three strategic objectives for addressing these challenges:

- Extending the zone of security around Europe through the promotion of stability and good governance in Europe's immediate neighbourhood.
- Strengthening the international order through international organisations such as the UN and WTO, and regional organisations such as the OSCE. The EU's relationship with NATO was given prominence.
- Countering any potential threat through a mixture of political, economic and military means.

¹³ Council of the European Union, *A Secure Europe in a Better World*, 10881/03, Cossec3, 25 June 2003

In all three areas the paper firmly endorsed a strategy of pre-emptive engagement. It stated:

A world which is seen as offering justice and opportunity for everyone will be more secure. Pre-emptive engagement can avoid more serious problems in the future.¹⁴

It went on to state:

We need to develop a strategic culture that fosters early, rapid, and when necessary, robust intervention. We should think particularly of operations involving both military and civilian capabilities.¹⁵

While the ESS itself was largely welcomed for promoting a new assertiveness and clarity in EU foreign policy, the inclusion of pre-emptive engagement as a means to achieving its aims prompted some criticism. Many analysts argued that the use of the term “pre-emptive engagement” promoted the idea of pre-emptive strikes and was reflective of the doctrine laid down in the US National Security Strategy (NSS) which had been published in September 2002.

The 2002 US NSS stated:

The United States long maintained the option of pre-emptive actions to counter a sufficient threat to our national security. The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.¹⁶

However, others argued that the doctrine of multilateralism outlined in the ESS with its focus on instruments of “soft power”, such as trade and diplomacy, set it markedly apart from the US National Security Strategy.

An article in *Strategic Comments* in November 2003 suggested:

While the Europeans may agree with the US on the nature of today’s principal security threats, the policy conclusions highlighted in the Security Strategy are distinctly ‘European’.¹⁷

¹⁴ Council of the European Union, *A Secure Europe in a Better World*, 10881/03, Cossec3, 25 June 2003, p10

¹⁵ *ibid*, p11

¹⁶ *US National Security Strategy*, September 2002, p.15. A copy of this document is available online at: <http://www.whitehouse.gov/nsc>.

¹⁷ “The European Security Strategy: Towards a Muscular Foreign Policy?”, *Strategic Comments*, November 2003

It also went on to state:

The use of the term 'pre-emptive' caused a political storm in Europe, since it seemed to mirror the US military doctrine of pre-emptive strikes. Yet the European version of pre-emption would be limited to non-military tools.

Politically, the most difficult issue in the Security Strategy has been the question of when the EU should (or should not) contemplate using force. The Solana draft notes that 'with the new threats the first line of defence will often be abroad'. It adds that the EU should 'develop a strategic culture that fosters early, rapid, and when necessary, robust intervention'. But the paper is rather vague when it comes to the matter of which legal and political conditions should be met before the EU deploys soldiers for military interventions.¹⁸

1. Revised Text – December 2003

After a six month consultation period, the EU High Representative for CFSP, Javier Solana, presented the revised final text of the ESS to the European Council in December 2003.¹⁹

In adopting the ESS the European Council commented:

The European Security Strategy reaffirms our common determination to face our responsibility for guaranteeing a secure Europe in a better world. It will enable the European Union to better deal with the threats and global challenges and realise the opportunities facing us. An active, capable and more coherent European Union would make an impact on a global scale. In doing so, it would contribute to an effective multilateral system leading to a fairer, safer and more united world.²⁰

Building upon the strategic threats outlined in the June 2003 draft, the revised ESS recognised that "large scale aggression against any Member State is now improbable"²¹ and identified five key threats to European interests:

- **Terrorism** – Regarded as "a growing strategic threat to the whole of Europe". More specifically Europe was identified as both a target and a base for international terrorism.
- **Proliferation of Weapons of Mass Destruction** – The possibility of a WMD arms race, especially in the Middle East and the potential for terrorists to acquire and use WMD were regarded as two largest threats in this area. The spread of missile technology was also considered to be a potential cause of further instability.

¹⁸ "The European Security Strategy: Towards a Muscular Foreign Policy?", *Strategic Comments*, November 2003

¹⁹ A copy of this revised text is available online at:
http://www.consilium.europa.eu/uedocs/cms_data/docs/2004/4/29/European%20Security%20Strategy.pdf

²⁰ *Presidency Conclusions of the Brussels European Council*, SN 400/1/03 REV 01, 12-13 December 2003

²¹ *A Secure Europe in a Better World*, 12 December 2003, p3

- **Regional Conflicts** – Conflict, both on Europe’s immediate borders and further afield, has an impact on regional stability. The Arab/Israeli conflict and the Mediterranean region were highlighted as strategic priorities.
- **State Failure** – Bad governance, corruption, weak institutions, the lack of accountability and civil war erode States from within and potentially lead to the collapse of State institutions. The collapse of the State can also be associated with the rise of terrorism and organised crime which add to regional instability.
- **Organised Crime** – Europe was acknowledged as a prime target for organised crime, particularly for cross-border trafficking in drugs, illegal immigrants and weapons.

In addressing these challenges the ESS recognised that:

With the new threats, the first line of defence will often be abroad. The new threats are dynamic. The risks of proliferation grow over time; left alone, terrorist networks will become ever more dangerous. State failure and organised crime spread if they are neglected [...] This implies that we should be ready to act before a crisis occurs. Conflict prevention and threat prevention cannot start too early.

In contrast to the massive visible threat in the Cold War, none of the new threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of instruments [...] The European Union is particularly well equipped to respond to such multi-faceted situations.²²

The three strategic objectives outlined in the June 2003 draft continued to be advocated in the new version of the ESS, although added emphasis was given to multilateralism and the EU’s relationships with the US, Russia, NATO and other key partners. The development of both military and civilian capabilities was also highlighted as a necessity for credibly underpinning these objectives.

However, as a direct response to earlier criticisms over the use of the term “pre-emptive engagement”, the single most significant change in the December 2003 text was the abolition of “pre-emptive engagement” as a concept and the inclusion of “preventive engagement”. The revised December 2003 text stated:

We need to be able to act before countries around us deteriorate, when signs of proliferation are detected, and before humanitarian emergencies arise. Preventive engagement can avoid more serious problems in the future. A European Union which takes greater responsibility and which is more active will be one which carries greater political weight.²³

²² *A Secure Europe in a Better World*, 12 December 2003, p.7

²³ *ibid*, p.11

Despite the continued reference in the ESS to “early, rapid and, when necessary, robust intervention” this subtle shift in doctrine from “pre-emptive” to “preventive” engagement prompted yet more criticism that what had previously been a forceful and robust presentation of EU foreign policy had now been watered down to the point of ineffectiveness. It also prompted many analysts to question the EU’s willingness to sanction the use of force.

Borut Grgic writing in the *International Herald Tribune* in January 2004 commented:

European efforts to put forth a common security and foreign policy has become an exercise in balancing interests of individual EU member states rather than a comprehensive debate on security challenges and needs [...] As a community, it does not have the capacity or the will to deploy and sustain troops outside Europe for prolonged periods of time. At the same time, its political leverage – for all it’s worth – is a poor substitute for hard power.²⁴

An article in the *Financial Times* suggested:

After months of debate, the final document that has emerged is, say critics, flawed. What might have been a set of robust principles has, they complain, been diluted into what may prove to be yet another well-meaning but ineffectual EU declaration. The text now says almost nothing about the use of force, the issue that bitterly divided the Europeans over Iraq and, earlier, intervention in Kosovo. It also fails to consider how the doctrine can become the basis of strategy if the EU’s institutions are not strong enough to back it up.²⁵

Steven Everts at the Centre for European Reform argued:

It is good news that the EU now explicitly recognises that it should use its policies on trade, aid and migration in a politically targeted and conditional way. This realisation is long overdue but very welcome. Europeans like to think of themselves as being good at “soft power”. But because of a lack of focus, coherence and self discipline, the EU has underperformed for years in foreign policy.²⁶

However he also acknowledged that:

The strategy has gone backward in one important respect. The notion of “pre-emptive” engagement has been substituted in the final version by the less threatening term “preventive” engagement. When asked, EU officials said many European languages lack a direct translation for pre-emption. But the political connotations of the term, and its prominent place in US thinking, must have been a greater problem. The EU must grapple with the contentious issue of the conditions for the use of force, which cannot be eliminated by a semantic fudge.²⁷

²⁴ Borut Grgic, “Why the Gulf looks to America”, *International Herald Tribune*, 30 January 2004

²⁵ “Words of war: Europe’s first security doctrine backs away from a commitment to US-style pre-emption”, *The Financial Times*, 5 December 2003

²⁶ “Two cheers for the EU’s new security strategy”, *Centre for European Reform*, December 2003

²⁷ *ibid.*

In an FCO Explanatory Memorandum on the ESS the then Minister for Europe, Denis MacShane, outlined the Government's view on the amended text. He stated:

[the revised strategy] is still strongly in line with UK views on the need to take early and tough action against international terrorism, the proliferation of WMD and other key security threats and also places a welcome emphasis on the importance of the EU's relationship with the US, with NATO and other strategic partners. The Strategy remains focused, short and accessible with a strong message on the need for the EU to have a more coherent, pro-active and capable policy response in tackling the global security threats, drawing together all of the existing policy tools at the EU's disposal.²⁸

He went on to state:

The development of the Security Strategy is an important step forward in fulfilling the Government's aim of a more proactive and capable Common Foreign and Security Policy. The Government expects the Security Strategy to provide the basis for a more coherent policy approach on the EU's external actions. We hope that the EU will be able to develop more robust positions to tackle global security threats such as terrorism and WMD.²⁹

2. Implementation

Although the strategy provides some clarity on the EU's foreign policy objectives, practical implementation of the ESS has been regarded as one of the biggest challenges for the EU in CFSP/ ESDP matters, and in particular with regard to consensus over the use of military force. The division of opinion among EU Member States over the conflict in Iraq has been highlighted as one recent example where national interests have undermined the ability to present a cohesive 'European' response to an international situation.

a. A Broader Scale

Success or a determination of the credibility of the ESS over the full spectrum of its identified priorities is considered to be a long term process of evaluation. Over the last few years, however, the EU has made considerable progress in implementing initiatives aimed at addressing two of its strategic priorities: terrorism and the proliferation of WMD.

Terrorism

Since the Madrid train bombings in March 2004 the EU has taken considerable steps toward the development of a coherent EU-wide plan to help defend Europe against terrorism and build upon the proposals first set down in the ESS. On 25 March 2004 the EU issued a *Declaration on Combating Terrorism* and appointed its first EU Counter-Terrorism Co-ordinator to oversee the development of an EU-wide strategic approach. In

²⁸ Foreign and Commonwealth Office Explanatory Memorandum, European Security Strategy: "A secure Europe in a better world", 27 November 2003

²⁹ *ibid*

June 2004 the European Council adopted the subsequent *Plan of Action on Combating Terrorism*.³⁰ The plan covered all aspects of the terrorist threat including financing, the investigation and prosecution of suspected terrorists and border and security controls.

On the basis of that plan a document entitled the *Conceptual Framework on the European Security and Defence Policy (ESDP) Dimension of the Fight Against Terrorism* was also published which outlined where ESDP activities could credibly contribute to the counter-terrorism effort. The document identified four areas: prevention, protection, response/consequence management and support to third countries in the fight against terrorism. In achieving these objectives the development of the EU's military and civilian crisis management capabilities was recognised as a priority, alongside greater co-operation with NATO in the field of counter terrorism. Counter Nuclear, Biological and Chemical (NBC) capabilities were highlighted as of particular significance.³¹

Since the adoption of the 2004 *Plan of Action on Combating Terrorism* various implementation reports from the EU Counter-Terrorism Co-ordinator, charting the progress of EU counter-terrorism initiatives, have been presented to the Council of Ministers and the European Council.³²

A report on *The Implementation of the Action Plan to Combat Terrorism*, which was presented to the Council of Ministers in November 2005, set out the main areas of progress over the last 18 months. It stated:

Over the past 18 months good progress has been made with implementation of this Action Plan, and practical results have been obtained. Examples include the level of security at airports, which has been considerably enhanced through the implementation of Community rules. In the fight against terrorism and other forms of major crime frequent and effective use is being made of the European Arrest Warrant. Information exchange and cross-border cooperation between national authorities charged with internal security have increased, with Europol, Eurojust, the Situation Centre and (outside the EU framework) the Counter-Terrorist Group playing an important role. Acting on the best practices identified in the EU peer review several Member States have strengthened their domestic arrangements in the fight against terrorism.

In the past six months further progress has been made. Important legal instruments such as the third Money Laundering Directive and the Directive on Enhancing Port Security have been adopted, and discussions on other instruments are at an advanced stage. The Commission issued several new proposals, including on information exchange and protection of personal data. The Peer Evaluation exercise has been completed. A strategy against radicalisation and recruitment into terrorism has been presented to the Council. FRONTEX, the European Borders Agency, became operational. EUROPOL and EUROJUST have stepped up their support to national law enforcement authorities. The Council and the Commission have continued to benefit from

³⁰ Available online at: <http://www.statewatch.org/news/2004/jun/eu-com-plan-terr-final.pdf>

³¹ Full text of this document is available online at:
<http://www.consilium.europa.eu/uedocs/cmsUpload/ESDPdimension.pdf>

³² A copy of all of these documents is available online at:
<http://www.consilium.europa.eu/showPage.asp?id=631&lang=en&mode=g>

SITCEN's analyses of the terrorist threat. Proposals for EU crisis co-ordination arrangements, which are directly relevant to the fight against terrorism, have been prepared. On the external side, efforts have intensified to deliver technical assistance to priority countries, close co-operation has been maintained with the UN and dialogue with key partners has continued. Building on four special sessions in Coreper and a similar session at the informal meeting of JHA Ministers in Newcastle, a proposal for an EU Counter-Terrorism Strategy has been presented to the Council.³³

In November 2005 that *European Union Counter Terrorism Strategy* was adopted by the European Council. Building on the work initially conducted after the Madrid bombings in 2004, the strategy document sought to highlight future priorities in the EU's counter-terrorism effort, based upon the following four key principles: to prevent, to protect, to pursue and to respond. Specifically the report stated:

The four pillars of the EU's Counter-Terrorism Strategy - prevent, protect, pursue, and respond - constitute a comprehensive and proportionate response to the international terrorist threat. The Strategy requires work at national, European and international levels to reduce the threat from terrorism and our vulnerability to attack. The Strategy sets out our objectives to prevent new recruits to terrorism; better protect potential targets; pursue and investigate members of existing networks and improve our capability to respond to and manage the consequences of terrorist attacks. This Strategy takes into the next phase the agenda of work set out at the March 2004 European Council in the wake of the Madrid bombings.

Across the four pillars of the Union's Strategy a horizontal feature is the Union's role in the world. As set out in the European Security Strategy, through its external action the European Union takes on a responsibility for contributing to global security and building a safer world. Acting through and in conjunction with the United Nations and other international or regional organisations, the EU will work to build the international consensus and promote international standards for countering terrorism. The EU will promote efforts in the UN to develop a global strategy for combating terrorism. Continuing to make counter-terrorism a high priority in dialogue with key partner countries, including the USA, will also be a core part of the European approach.

Given that the current international terrorist threat affects and has roots in many parts of the world beyond the EU, co-operation with and the provision of assistance to priority third countries - including in North Africa, the Middle East and South East Asia - will be vital. Finally, working to resolve conflicts and promote good governance and democracy will be essential elements of the Strategy, as part of the dialogue and alliance between cultures, faiths and civilisations, in order to address the motivational and structural factors underpinning radicalisation.³⁴

³³ A copy of this report is available online at: <http://register.consilium.europa.eu/pdf/en/05/st14/st14734-re01.en05.pdf>

³⁴ A copy of the *European Union Counter Terrorism Strategy* is available online at: <http://register.consilium.europa.eu/pdf/en/05/st14/st14469-re04.en05.pdf>

Taking into consideration this new strategy and the conclusions and recommendations of the various implementation reports during 2005, the *EU Action Plan on Combating terrorism* was subsequently updated in February 2006.³⁵

Giving evidence to the Foreign Affairs Select Committee on 11 January 2006 the Director of the Centre for European Reform, Charles Grant, commented, in response to questions on the plethora of counter-terrorism initiatives at the EU level, that:

The problem for the EU as an actor in counter-terrorism is simply that it is such a big organisation with so many different committees and departments that getting them all to talk to each other is a real challenge. That is why the appointment of Gijs de Vries as the Anti-Terrorism Co-ordinator is good news, but he has no power; his job is to coordinate the different bits of the Council of Ministers. That does not count the European Commission, which is also involved in some important aspects. There is a lot more that could be done in terms of streamlining those committees and departments that are involved. It is a boring bureaucratic point, but despite all that there has been some real success. The most important intelligence co-operation of course is always bilateral and not at EU level. It will never be at EU level and it should not be, because the British and the French always say more to each other than they would say to 27 other countries. EU/US co-operation, both between individual Member States and the US, and between the EU as an institution and the US, has been very good. John Ashcroft had a very good relationship with his European counterparts, and the EU and the US have reached important agreements on extradition and other kinds of judicial co-operation in counter-terrorism. Just recently we saw the British presidency reach and EU agreement on data retention, which is a useful step forward, with all 25 countries agreeing to new rules on that. There is a lot that is being done, but probably a lot more could be done. The most important thing is to try and get the different bits of the EU machine to work together in sync, which has not really been the case until now.³⁶

Proliferation of WMD

In December 2003 the European Council adopted the *European Strategy against Proliferation of Weapons of Mass Destruction*. Building upon commitments made at the Thessaloniki summit earlier that year, the strategy sets out the following principles that will define EU action in this area:

- Effective multilateralism will be the cornerstone of the EU's approach, with emphasis given to retaining the credibility of the multilateral treaty regime. The strategy states:

The EU will place particular emphasis on a policy of reinforcing compliance with the multilateral treaty regime. Such a policy must be geared towards enhancing the detectability of significant violations and strengthening enforcement of the prohibitions and norms established by

³⁵ A copy of this updated report is available online at:

<http://register.consilium.europa.eu/pdf/en/06/st05/st05771-re01.en06.pdf>

³⁶ Foreign Affairs Select Committee, *Developments in the European Union: Minutes of Evidence*, HC 768-ii, Session 2005-06

the multilateral treaty regime, including by providing for criminalisation of violations committed under the jurisdiction or control of a State. The role of the UN Security Council, as the final arbiter on the consequence of non-compliance – as foreseen in multilateral regimes – needs to be effectively strengthened [...]

The EU is committed to strengthening export control policies and practices within its borders and beyond, in co-ordination with partners. The EU will work towards improving the existing export control mechanisms. It will advocate adherence to effective export control criteria by countries outside the existing regimes and arrangements.³⁷

- Work will be undertaken to address the problems of regional instability and insecurity and the situations of conflict which are a root cause of proliferation. Promoting security and stability in the Mediterranean was highlighted as a particular priority.
- A common approach with partners will be essential for effectively implementing the WMD non-proliferation regime. The US, Japan, Russia and Canada are key partners, along with international organisations such as the UN and NATO.

The strategy also recognised that in fulfilling its objectives the EU would need to utilise the full range of instruments of both soft and hard power, including when necessary, coercive measures. The WMD strategy states:

The elements of the EU's Strategy against proliferation of weapons of mass destruction need to be integrated across the board. We have a wide range of instruments available: multilateral treaties and verification mechanisms; national and internationally-coordinated export controls; cooperative threat reduction programmes; political and economic levers (including trade and development policies); interdiction of illegal procurement activities and, as a last resort, coercive measures in accordance with the UN Charter. While all are necessary, none is sufficient in itself.

We need to strengthen them across the board, and deploy those that are most effective in each case. The European Union has special strengths and experience to bring to this collective effort. It is important that the EU's objectives, as set out in this strategy, be factored in its policy approach in each area, so as to maximise its effectiveness.³⁸

Since the strategy was first established significant work has been undertaken by the EU in implementing its objectives. Among those initiatives has been the adoption of a European Council Declaration on Criminal Sanctions; a number of Joint Actions and Common Positions in support of activities for various multilateral arms control treaties; adoption of the *EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and*

³⁷ Council of the European Union, *EU Strategy against Proliferation of Weapons of Mass Destruction*, (15708/03), 10 December 2003. A copy of this document is available online at:

<http://www.consilium.europa.eu/uedocs/cmsUpload/st15708.en03.pdf>

³⁸ *ibid.*

their Ammunition and the adoption of various bilateral agreements pertaining to the proliferation of small arms and light weapons and non-proliferation and disarmament.³⁹

In addition, the Council of Ministers has undertaken a thorough assessment of the progress in implementing the EU WMD non-proliferation strategy every six months. At the GAERC in December 2005, EU Foreign Ministers agreed an updated list of priorities for future implementation of the strategy based upon the terrorist attacks in Madrid in March 2004 and London in July 2005; the outcome of the Non-Proliferation Treaty (NPT) review conference in 2005; future threat assessment and progress in co-operation with key partners. Among those new priorities are:

- Political and diplomatic activity in support of the UN Security Council and various multilateral arms control treaties.
- Ratification of amendments to the Convention of Physical Protection of Nuclear Materials.
- Strengthen compliance with the Biological Toxins and Weapons Convention.
- Identify criminal sanctions for the proliferation of sensitive goods and technologies.
- Strengthen the control of WMD-related equipment and materials in transit.
- Implement effective export controls at the EU level, and particularly for those goods identified as 'dual-use'.
- Mainstream non-proliferation policies into the EU's wider relations with third countries.
- Develop an approach to other actors in this field, including India, Pakistan, the Middle East and the ASEAN Regional Forum.
- Contribute to the disarmament and dismantlement of WMD.
- Facilitate the conversion of WMD expertise into other civilian sectors.⁴⁰

b. *Iran and Bosnia-Herzegovina*

In the near term, two issues have initially been highlighted as crucial tests of the credibility of the ESS: the EU's stance towards Iran over its nuclear activities (and with particular reference to the WMD non-proliferation strategy), and the success of the EU-led operation in Bosnia-Herzegovina, which it assumed responsibility for from NATO in December 2004. In a previous speech to the National Forum on Europe at Dublin Castle on 8 January 2004, Javier Solana acknowledged:

Bosnia will be the first case where the EU simultaneously deploys economic, trade, humanitarian, military and civilian instruments on the ground in pursuit of a single objective – the stabilisation and transformation of a post conflict society into one which some day can be ready for EU membership [...] Bosnia will be a concrete test of our ability to ensure that our trade, development, political and security instruments can follow the same agenda. [...]

³⁹ All of these documents can be accessed online at:

http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=718&lang=en&mode=g

⁴⁰ Council of the European Union, 5279/06, 12 January 2006. A copy of this updated list of priorities is available online at: <http://register.consilium.europa.eu/pdf/en/06/st05/st05279.en06.pdf>

Preventive engagement has enabled us to avert the threat of further conflict in the Balkans. Prompt action by Europe has helped to encourage the Iranian authorities to accept additional safeguards and to voluntarily suspend uranium enrichment and processing activities. Later this week I will visit Iran for discussion on how we can work together to address these issues as well as the very serious humanitarian problems which Iran now faces.⁴¹

Negotiations with Iran over its nuclear programme have largely been conducted, from an EU perspective, by the EU3: the UK, France and Germany. As of 1 June 2006 diplomatic efforts to resolve the stand-off between Iran and the international community were continuing, although the matter had been referred to the UN Security Council where discussions were ongoing about incentives that might be provided to Iran to encourage it to comply, and about sanctions that might be imposed if it refuses.

Following its meeting on 15 May 2006 the GAERC set out its position on the Iran issue:

The Council deeply regrets the failure of the Iranian authorities to take the steps deemed essential by the IAEA Board and the UN Security Council as well as their threats to maintain this failure into the future. It calls on the Iranian authorities to cooperate fully with the IAEA, suspend all enrichment-related and reprocessing activities, including research and development, and to suspend the construction of a reactor moderated by heavy water in order to create conditions in which negotiations might resume. The EU fully supports the Security Council making this mandatory.

The Council reaffirms the right of Iran to the use of nuclear energy for peaceful purposes in conformity with its obligations under the NPT. Building on the proposals of August 2005 as confirmed by the Council in its February 2006 conclusions, the EU would be prepared to support Iran's development of a safe, sustainable and proliferation-proof civilian nuclear programme, if international concerns were fully addressed and confidence in Iran's intentions established. The EU hopes that Iran will not fail to take up such an offer [...]

The Council remains committed to finding a diplomatic solution. The EU would like to be able to develop relations with Iran based on confidence and cooperation. The alternative is that Iran chooses further isolation. The Council therefore calls on the Iranian authorities to urgently take the necessary decisions required for the development of such relations with the European Union and the international community. The Council also expects Iran to contribute to regional stability.⁴²

In the longer term both the credibility of the ESS and the WMD proliferation strategy is likely to be determined by the coherence of the response of EU Member States to efforts to impose sanctions and/or agree the possible use of military force. Following a meeting of the EU Foreign Ministers and Javier Solana in April 2006 an article in *The Guardian* reported:

⁴¹ Address by Javier Solana, EU High Representative for the Common Foreign and Security Policy, Dublin Castle, 8 January 2004. A copy of this speech is available online at:

<http://ue.eu.int/pressdata/EN/discours/78600.pdf>

⁴² General Affairs and External Relations Council, Press Release 9001/06. This is available online at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/89618.pdf

The European Union's foreign policy chief, Javier Solana, yesterday recommended limited sanctions against Iran, including visa bans on key figures, if Tehran continues to defy the United Nations over its disputed nuclear programme.

Other proposed sanctions include a block on the transfer of civilian nuclear technology, an arms embargo and suspension of negotiations with Iran on a free trade pact. The EU would also fund propaganda broadcasts against Iran [...]

The German foreign minister, Frank-Walter Steinmeier, said the EU would only adopt restrictions of its own against Iran if there was deadlock in the Security Council, where both Russia and China are resisting sanctions.⁴³

However, the article went on to state:

Mr Solana made it clear the EU would not participate in military action against Iran. "Any military action is definitely out of the question for us" he told reporters.⁴⁴

Further discussion of Iran's nuclear programme and ongoing diplomatic efforts in the UN to resolve the crisis is set out in Library Standard Note SN/IA/2688, *Iran's Nuclear Programme*.⁴⁵

The success, to date, of the EU-led operation in Bosnia-Herzegovina (Operation *Althea*) is examined in section II E below.

c. Future Priorities

Taking the ESS forward, the UK *Presidency Report on ESDP* in December 2005 identified the following priorities for CFSP/ ESDP:

- The development of civilian crisis management capabilities and planning and funding structures so as to make ESDP more capable.
- Preparations for a possible ESDP role in Kosovo.
- The continued development of military capabilities, with particular reference to the EU Battlegroups initiative and the work of the European Defence Agency.
- The continued development of the EU's relationship with key partners in this area, and third countries in particular.⁴⁶

However, a number of analysts have argued that, in the longer term, the aspirations of the ESS will be hard to recognise without progress in two key areas: enlargement and the effective assimilation of new Members, and more particularly in implementing the EU Constitution.⁴⁷

⁴³ "Europe proposes limited sanctions to halt Tehran's nuclear ambitions", *The Guardian*, 11 April 2006

⁴⁴ *ibid.*

⁴⁵ This is only available on the Library intranet.

⁴⁶ Council of the European Union, *Presidency Report on ESDP*, 15891/05, 19 December 2005

⁴⁷ The EU Constitution has not yet been ratified by all Member States and, therefore, has not come into force.

In a 2005 SIPRI Policy Paper Alyson Bailes argued:

It seems clear that the aspirations for the ESS for greater (especially inter-pillar and Brussels-member state) coherence will never be realised fully until and unless such provisions of the Constitution as the fusion of EU external services and the new style European Council President and 'foreign minister' come into force. Similarly, if the dynamics of enlargement should lead to the fragmentation of the EU polity into inner and outer tiers or into several regional constituencies – as some observers have feared – it is hard to see how the unity and solidarity required to realise the stated goals of the ESS could be maintained.⁴⁸

In contrast Charles Grant and Mark Leonard of the Centre for European Reform have suggested that EU foreign policy can be strengthened within the remit of the existing treaties. On the issue of the ESS specifically, they argue that:

There is no EU forum in which governments and institutions can easily discuss foreign policy strategy. The European Security Strategy, agreed in 2003, provides a useful framework for thinking about contemporary security challenges. But the EU has not forged coherent policies or approaches to specific issues [...] Too often the EU's foreign policy is about managing crises, rather than preventing them or combining its many assets in the pursuit of precise objectives.⁴⁹

To that end they suggest that:

The EU needs to build on the work of the European security Strategy by developing more specific strategies on how to deal with Russia and China; on policies for the EU's neighbourhood; and on how to promote democracy in the Middle East.⁵⁰

Other analysts have suggested that the EU, and ESDP in particular, needs to have a clearer idea of its priorities. Questions have been raised as to whether the EU should focus on 'out of area' tasks such as security sector reform and 'out of area' locations such as the Middle East and Africa, or whether it should increasingly focus on defence of the European homeland. Extensive progress in the areas of terrorism and proliferation of WMD, as outlined above, has been put forward as evidence of the EU's tendency towards the latter.⁵¹

The prospects for implementation of CFSP/ ESDP initiatives set down in the European Constitution, albeit outside of the Constitutional framework, are examined in section IV.

⁴⁸ Alyson Bailes, "The European Security Strategy: An Evolutionary History", *SIPRI Policy Paper No.10*, February 2005

⁴⁹ "How to strengthen EU foreign policy", CER Policy Brief, 30 May 2006

⁵⁰ *ibid*

⁵¹ These ideas were examined at an EU Institute for Security Studies seminar in February 2006. Key findings from that seminar are available online at: <http://www.iss-eu.org/activ/content/rep06-02.pdf>

B. Capabilities

The majority of progress in ESDP development in the last three years has focused upon enhancing the military and civilian crisis management capabilities of the EU Member States. While progress has been significant, concerns over the potential duplication of effort between the EU and NATO have been voiced, in particular over the creation of military planning structures within the EU.

To that end, the development of EU military capabilities has been conducted in close co-operation with initiatives that have been running in parallel within NATO. These have included the Defence Capabilities Initiative (DCI) which was launched at the Washington Summit in 1999; the 2002 Prague Capabilities Commitment (PCC) which was established as a successor to DCI; and the NATO Response Force which was also formally established at the Prague summit.⁵² After protracted negotiation and compromise, the creation of an EU Military Planning Cell has also been undertaken in close co-operation with the Alliance.

This section examines the progress in EU military and civilian crisis management capability development since 2003, including the establishment of an EU military planning cell; a re-examination of the priorities of the Helsinki Headline Goal; the creation of EU 'Battlegroups' for rapidly deployable operations and the formation of an EU Gendarmerie Force by a small number of EU Member States. The creation of the European Defence Agency is examined in section II C.

1. EU Civil-Military Planning Cell

The creation of an independent EU civil-military planning cell, based at Tervuren and outside of the NATO framework, was first suggested at a mini-summit in April 2003 between France, Germany, Belgium and Luxembourg as part of their proposals for greater enhanced co-operation in European defence within the overall discussion of the European Constitution. Unlike some of their proposals, however, the plan for an independent military planning capability was not explicitly included in the text of the draft European constitution.⁵³

The timing of the summit proved controversial as tensions over the conflict in Iraq remained high. Consequently the proposals met with considerable opposition. Fears over the duplication of resources and capabilities and the potential for undermining NATO pitched supporters of an independent military capability for the EU against more pro-Atlanticist EU Member and Acceding States who continued to advocate the primacy of NATO as the provider of European security.

⁵² All of these initiatives are examined in Library Research Paper RP03/05, *NATO: The Prague Summit and Beyond*, 16 January 2003. This paper is available online at:

<http://www.parliament.uk/commons/lib/research/rp2003/rp03-005.pdf>

⁵³ Proposals on structured co-operation and a mutual defence clause were included into the draft constitutional text. Library Research Paper RP03/58 examines these proposals.

In August 2003 the UK circulated a paper entitled *Food for Thought* to all EU Member and Acceding States. Along with proposals on structured co-operation and mutual defence, the paper presented an alternative to the “Tervuren proposal” and one that would place any EU planning capability firmly within the NATO framework. The paper stated:

ESDP's key assets are: NATO's machinery, to which the EU has automatic access; national HQs, capable of multinationalisation; and the EUMS strategic capacity. To develop this collective EUMS capacity, the UK proposes the creation of a dedicated EU planning cell at SHAPE, primarily to contribute to planning in the pre-decisional phase; working to DGEUMS, but operating transparently within SHAPE in its wider European role, including as reflected in DSACEUR's responsibilities.⁵⁴

Annex 1 of the paper went on to state:

The location of this EU cell at SHAPE would not affect the EU's autonomy of decision making. It would enable the EUMS to improve its links with NATO planners, to make full use of the access to the Alliance's facilities provided by Berlin plus, covering not just assured access to operational planning, but additional specialities such as force planning and exercises.⁵⁵

The paper's support for EU planning within NATO was interpreted by many as a firm indication of UK opposition to the Tervuren plans, a position supported by several EU Member States including Spain, Italy and Poland. However, it was also regarded by others as an acceptance by the UK of the need to be involved in this debate in order to shape any potential outcome and as such, was the first step towards a compromise.

Although the creation of an EU planning capability was not mentioned in the draft constitution, progress on reaching a compromise on this issue was regarded as essential if obtaining consensus on the other ESDP elements within the draft constitutional text was to be achieved at the time.

Compromise negotiations were therefore conducted on an intergovernmental level with a view to reaching an agreement ahead of the Intergovernmental Conference (IGC) Ministerial Conclave in Naples on 28-29 November 2003. On 26 November 2003 government representatives of France, Germany and the UK met to try and reach an agreement on the more controversial aspects of ESDP, including military planning. The agreement reached at that meeting was taken forward and adopted at Naples.

a. *Naples Agreement*

On the issue of military planning the Naples Agreement provided for the establishment of a small operational planning cell of 30-40 personnel within the existing EU Military Staff in Brussels, rather than as an independent entity. The unit would operate in parallel with a European cell based within SHAPE, NATO's operational planning HQ.

⁵⁴ Foreign and Commonwealth Office, *European Security and Defence Policy: Food for Thought*, 29 August 2003

⁵⁵ *ibid*

However the agreement also advocated an operational planning hierarchy, with the EU cell in Brussels only involved in planning for operations that NATO does not want to be involved in or are not conducted under the auspices of the 'Berlin plus' agreement.⁵⁶ Any autonomous EU operation would then be conducted under the operational control of a national headquarters, in a similar way to the EU-led operation in the Democratic Republic of Congo in 2003 (Operation *Artemis*), unless EU Member States gave their unanimous consent for the EU operational planning cell to play a role.

These proposals were outlined in greater detail in a paper by the Italian Presidency entitled *European Defence: NATO/EU Consultation, Planning and Operations* which was adopted at the European Council in December 2003.

The paper stated:

NATO is the forum for discussion and the natural choice for an operation involving the European and American allies. In accordance with the EU/NATO permanent arrangements adopted in Nice, in a crisis contacts and meetings will be intensified so that the EU and NATO can discuss their assessment of the crisis and clarify their intentions regarding possible engagements [...]

Where NATO as a whole is not engaged, the EU, in undertaking an operation, will choose whether or not to have recourse to NATO assets and capabilities, taking into account in particular the Alliance's role, capacities and involvement in the region in question. That process will be conducted through the "Berlin plus" arrangements.

In order to improve the preparation of EU operations having recourse to NATO assets and capabilities under Berlin plus arrangements, we propose that a small EU cell should be established at SHAPE and to invite NATO to establish liaison arrangements at the EUMS [...]

We also propose to enhance the capacity of the EUMS to conduct early warning, situation assessment and strategic planning through the establishment within the EUMS of a cell with civil/military components [...]

Regarding the conduct of autonomous EU military operations, the main option for this will be national HQs, which can be multi-nationalised for the purpose of conducting an EU-led operation. In certain circumstances, the Council may decide, upon the advice of the Military Committee, to draw on the collective capacity of the EUMS, in particular where a joint civil/military response is required and where no national HQ is identified. Once such a decision was taken, the civilian/military cell in the EUMS would have responsibility for generating the capacity to plan and run the operation. This would not be a standing HQ.⁵⁷

⁵⁶ The 'Berlin plus' agreement allows for EU access to NATO military assets and capabilities when conducting an operation that NATO as a whole is not engaged in.

⁵⁷ Presidency Note SN 307/03 *European Defence*, 11 December 2003

The UK government's response to the proposals was set out in a Foreign and Commonwealth Office Explanatory Memorandum in January 2004. It stated:

The UK welcomes the fact that the paper underlines that NATO is the forum for discussion for Europe and North America on security issues and the natural choice for crisis management operations involving those Allies.

The UK also welcomes the description of the sequence in which NATO Allies and EU Partners consider military options in response to a crisis [...]

The paper makes clear that national HQs are the main option for autonomous EU operations. The UK supports this [...]

However the paper outlines how the Council could decide, on the basis of EU military advice, to draw upon the collective capacity of the EUMS, which could generate an operations centre. This new capacity would not be a standing HQ as the paper makes clear. The UK view is that any such operations would most likely be limited and small-scale, involving the civilian-military interface where the EU can add most value.⁵⁸

Concerns were raised over this compromise, with many analysts speculating that a small planning cell would eventually evolve into a larger independent planning capability for the EU. Unease over the duplication of NATO structures and capabilities was reiterated.

The then Leader of the Opposition, Michael Howard, commented in a speech to the Konrad Adenauer Stiftung in February 2004:

I have grave reservations about Europe's plans to undertake a new defence initiative which involves duplicating the planning and command structures of NATO. I strongly support greater co-operation between European countries on defence. But it should take place within the framework of NATO. NATO should remain the cornerstone of our defence. And Europe should not seek to create a defence structure as an alternative to NATO or as a counterweight to the United States.⁵⁹

The then Liberal Democrat Spokesman on Defence, Paul Keetch commented during a Commons debate on 23 October 2003 that:

Hon. Members on both sides of the House are in agreement that the primacy of NATO must not be threatened. They also agree on the hierarchy to which the Secretary of State recently referred, which was again set out by the Foreign Secretary last week, of NATO first followed by Berlin-plus should NATO decline to be involved, followed by EU operations without NATO support, as in the Democratic Republic of the Congo, followed by wholly autonomous operations. Provided that that remains the Government's position, it is entirely sensible and we will continue to support it [...]

⁵⁸ Foreign and Commonwealth Office, *Explanatory memorandum: European Presidency paper on "European defence: NATO/EU consultations, planning and operations"*, 20 January 2004

⁵⁹ Speech by Michael Howard, Leader of the Opposition to the Konrad Adenauer Stiftung, 12 February 2004

The Government appear to accept that no new structures, which could compete with NATO for joint operations, are needed. Indeed, the Berlin-plus arrangements make any such structures redundant. The EU has been assured access to NATO planning assets. Who could require more? Provided that the Berlin-plus arrangements, which have been agreed by all concerned, including NATO members, are followed, there should be no problem or conflict of interest between the two formations.⁶⁰

An article in *The Economist* in December 2003 argued:

Britain has established that an EU-controlled military operation would be a last resort. If NATO chooses not to be formally involved in a military venture, EU countries may run an operation using NATO facilities, as they are doing in Macedonia. Or an EU operation may be run out of a national headquarters, probably in Britain, Germany or France (which provides the headquarters for the EU's current Congo operation). Only if all these options are rejected might an EU military operation be run from its own headquarters - and even then, say the British, it would need the approval of all 25 EU countries.

These are arcane distinctions. They matter because they symbolise different directions for the future of European defence. Those who want the EU to become a serious military power believe that a large oak will grow from the acorn being planted in Brussels. The British insist that they have killed the idea that the EU might supplant NATO as the primary European defence organisation. The Americans, although openly suspicious of French intentions, are being diplomatic - for now. Donald Rumsfeld, the American defence secretary, disappointed journalists by refusing to condemn the initiative on a visit to Brussels on December 1st.⁶¹

An article in *Strategic Comments* also supported this view:

These developments constitute something of a strategic gamble for the UK, France and Germany. London has succeeded in killing off the Tervuren project and in minimising the immediate significance of the autonomous EU cell, in addition to ensuring that it be open to NATO liaison officers [...] However, London was unable to prevent the creation of the EU facility. As French commentators have been quick to note, its very existence constitutes a major breakthrough for EU autonomy. 'The worm is in the fruit', one source was quoted as saying, 'and it will grow' [...] the British will continue to apply the brakes while the French will be working the accelerator. The challenge for Germany will be to attempt to keep a tight grip on the steering wheel.⁶²

While the initial reaction of the US Defense Secretary had been regarded as conciliatory, opposition to the plans from the then US Secretary of State, Colin Powell, and the then US National Security Adviser, Condoleezza Rice, were widely reported. An article in the *Daily Telegraph* outlined the various US views:

⁶⁰ HC Deb 23 October 2003, c52-55

⁶¹ "Defensive war: Arguments on defence further complicate negotiations on EU constitution", *The Economist*, 6 December 2003

⁶² "EU operational planning: the politics of defence", *Strategic Comments*, December 2003

Colin Powell, the US Secretary of State, revived the simmering defence row with Europe yesterday, warning that Washington would resist moves by Britain, France and Germany to create an autonomous military planning cell outside NATO. Mr Powell said the Bush administration backed plans for closer European defence integration but only if they remained “fully compatible” with the North Atlantic Alliance. The United States cannot accept independent EU structures that duplicate existing NATO capabilities, he said at NATO headquarters in Brussels. American diplomats left no doubt yesterday that the soft-spoken Mr Powell was registering a thundering disapproval of the proposals for an EU operational planning cell in Brussels. The Bush administration fears it would lead to a rival military structure, ultimately destroying NATO.⁶³

Charles Grant, writing in the *Financial Times*, argued:

The deal struck between Britain, France and Germany on the future of European defence is good news for those who believe that the EU should focus more on military capabilities than institutions. Now that the three have agreed to set up an EU military planning cell – an item which will make very little difference in the real world, despite the highly-charged negotiations surrounding it – the EU can move ahead with what matters. And that is not only boosting Europe’s military capabilities, but also preparing to take over NATO’s peacekeeping mission in Bosnia [...] The best way for the Europeans to convince the US of the merits of EU defence would be for them to enhance their military capabilities. Now that the arcane arguments about planning staffs are out of the way, they can do that.⁶⁴

To date, the majority of the work of the EU planning cell has been in support of the EU’s civilian crisis management operations conducted under the auspices of ESDP. More recently the planning cell has also been involved in planning for the EU civil-military support operation in the Democratic Republic of Congo. These operations are examined in section II E below.

From September 2006 the planning cell is expected to have the capacity to rapidly set up a dedicated operations centre to plan and run autonomous EU operations.⁶⁵

2. Headline Goal 2010

a. Background

The Helsinki Headline Goal (HHG), established at the European Council in December 1999, set down the development of the EU’s military capabilities as a priority for ESDP. Among its major recommendations was the creation, by 2003, of a European Rapid Reaction Force (ERRF) of 60,000 troops capable of deployment within 60 days and up to a period of one year. The ERRF was intended to be deployed across the range of Petersberg tasks.

⁶³ “Powell goes on attack over EU defence”, *The Daily Telegraph*, 5 December 2003

⁶⁴ “Europe can sell its defence plan to Washington”, *The Financial Times*, 2 December 2003

⁶⁵ “ESDP: Structures and NATO Cooperation”, *Foreign Policy*, January 2006

In order to support the Helsinki proposals, EU Member States agreed to draw up a 'capabilities catalogue' aimed at identifying required capabilities across the envisaged spectrum of military operations. This initiative culminated in the EU Capabilities Commitment Conference (CCC) in November 2000. The CCC allowed EU Member States to voluntarily pledge military assets for use in any future deployment by the ERF⁶⁶ and identify areas of capability shortfall.⁶⁷

In November 2001 progress in implementing the objectives of the CCC was discussed at the EU Capabilities Improvement Conference (CIC). One of the main conclusions of the CIC was that a European Capabilities Action Plan (ECAP) should be established to draw Member States together in 19 dedicated working groups to address specific capability shortfalls, including C4ISTAR⁶⁸ and strategic airlift. On the back of progress made under ECAP a new Helsinki Headline Goal Catalogue for 2002 was approved by the General Affairs Council in November 2002.

Since then progress in the development of military capabilities under ECAP has been periodically reviewed by the GAERC with the submission of a progress report and Capability Improvement Chart⁶⁹ every six months.

At the EU Capability Conference in May 2003 the EU Defence Ministers declared operational capability across the full range of Petersberg tasks, although it was acknowledged that this capability remained constrained by recognised shortfalls.

b. Approving Headline Goal 2010

On 17 May 2004 the GAERC approved a document entitled *Headline Goal 2010* (HG2010), which was subsequently endorsed by the European Council in June 2004. The document sought to re-examine the objectives of the Helsinki Headline Goal and with reference to the conclusions of the ESS which was published in December 2003. It also sought to evaluate the progress made to date in the enhancement of EU capabilities through the ECAP process.⁷⁰

In essence, the document was considered to be a re-evaluation of the Petersberg tasks and the ability of the EU to meet them, concurrently and at different levels of engagement, within a 2010 timeframe. It focused specifically on the developing the qualitative aspects of capabilities, including interoperability, deployability and sustainability. To that end, the EU Battlegroups concept (examined below) was identified

⁶⁶ It should be noted that these assets do not constitute a standing EU force but merely indicate the number and type of forces that Member States would make available to any EU operation. The UK's contribution to the HHG is a maximum of 12,500 personnel, 72 combat aircraft and 18 warships plus support ships.

⁶⁷ More information on the Helsinki Headline Goal and the CCC is available in Library Research Paper RP01/50, *European security and defence policy: Nice and beyond*.

⁶⁸ Command, control, communication, computers, intelligence, surveillance, target acquisition and reconnaissance.

⁶⁹ The latest CIC is available online at:
http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/misc/84902.pdf

⁷⁰ For future reference this is available online at:
<http://www.consilium.europa.eu/uedocs/cmsUpload/2010%20Headline%20Goal.pdf>

as the foundation through which these priorities and objectives could be realised. The HG2010 document stated:

The ability for the EU to deploy force packages at high readiness as a response to a crisis either as a stand-alone force or as part of a larger operation enabling follow-on phases, is a key element of the 2010 Headline Goal. These minimum force packages must be military effective, credible and coherent and should be broadly based on the Battlegroups concept.⁷¹

In addition, HG2010 identified strategic lift (air, land and sea), the availability of an aircraft carrier and its associated air wing, and compatibility and network linkage of all terrestrial and space-based communications equipment and assets as key capabilities to have attained or secured within the requisite timeframe.

A final 'requirements catalogue' for Headline Goal 2010, against which EU Member States outlined their capability contributions, was approved under the recent UK Presidency. HG2010 will now form the basis of the EU's work in meeting the remaining capability shortfalls, which will now be taken forward by the European Defence Agency (see section II C).

The EU Capability Improvement Chart (CIC) for 2006 outlines the latest capability commitments, shortfalls and recommendations for addressing them.⁷²

3. Civilian Headline Goal 2008

Recognising that conflict prevention, security sector reform, disarmament, border control and other civilian crisis management activities are essential to the credibility and overall objectives of CFSP/ ESDP, the European Council adopted a plan in 2000 to develop civilian capabilities in tandem with the military capability priorities that were set down in the Helsinki Headline Goal.⁷³ Four capability priority areas were identified in that plan: police, strengthening the rule of law, strengthening civilian administration and civil protection.

In 2002 the original capability targets that had been set for civilian crisis management were met, and in some cases exceeded, on the basis of contributions from EU Member States. This position was considered to be somewhat of a milestone, and highlighted for a number of observers the differences between the approaches adopted by EU Member States in relation to force generation for civilian-related activities as opposed to activities with a military dimension. Indeed, to date, the majority of ESDP operations that have been, or are being conducted are in the field of civilian crisis management. These operations are examined in section II E.

⁷¹ European Council, *Headline Goal 2010*, 17 June 2004

⁷² This is available online at:

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/89603.pdf

⁷³ Further information is available in Library Research Paper [RP01/50, *European Security and Defence Policy: Nice and Beyond*, 2 May 2001](#)

The demand for civilian instruments and capabilities for ESDP purposes has consistently increased since initial targets were met in 2002 and the ESS in 2003 highlighted the need to address future security challenges in a co-ordinated manner across the full spectrum of EU capabilities and resources.

To that end EU Member States have committed themselves to identifying further areas for strengthening civilian crisis management, both in terms of coherence and available assets. In June 2004 the European Council adopted the *Action Plan for Civilian Aspects of ESDP* in order to take this work forward. Among other things, the Action Plan called for a comprehensive review of civilian crisis management capabilities and the creation of a 'Civilian Headline Goal' (CHG) with a timeframe of 2008, which would operate along similar lines to the Helsinki Headline Goal. This is the first time that military force generation processes have been used in order to identify what civilian capabilities the EU needs to develop in order to be effective.

The plan stated:

Such a headline Goal will take a global view of the full spectrum of civilian crisis management instruments and their interaction. It will build on the European Security Strategy, the Action Plan, incorporate lessons learned [...] and take into account the result of the Capabilities Conference [in November 2004].⁷⁴

The main conclusions of the Civilian Capabilities Commitment conference in November 2004 focused upon those areas of civilian crisis management where significant shortfalls were identified. Specifically, EU Foreign Ministers identified mission and planning support; the financing of civilian operations; deployability at short notice and procurement of required capabilities to be key priorities for the future.

The CHG was subsequently endorsed by the European Council in December 2004.⁷⁵ Building upon the four priorities identified in 2000, the CHG set down a number of additional objectives for civilian crisis management activities, namely: undertaking monitoring missions;⁷⁶ providing support to appointed EU Special Representatives and contributing to security sector reform and disarmament initiatives. In addressing these objectives the CHG acknowledged that:

- The EU would be required to deploy an integrated package of civilian crisis management capabilities with the size, composition and tasks varying according to specific needs.

⁷⁴ This document is available online at:
<http://www.consilium.europa.eu/uedocs/cmsUpload/Action%20Plan%20for%20Civilian%20Aspects%20of%20ESDP.pdf>

⁷⁵ A copy of this document is available at:
[http://www.intermin.fi/intermin/hankkeet/skh/home.nsf/files/Civilian%20Headline%20Goal%202008/\\$file/Civilian%20Headline%20Goal%202008.pdf](http://www.intermin.fi/intermin/hankkeet/skh/home.nsf/files/Civilian%20Headline%20Goal%202008/$file/Civilian%20Headline%20Goal%202008.pdf)

⁷⁶ It has been noted that 'monitoring missions' will vary considerably in their composition on a case-by-case basis. Potential monitoring tasks could include: observation of a general political situation in relation to a particular agreement; contributions to a confidence building initiative; low-level de-escalation assistance; border monitoring; human rights monitoring or monitoring of disarmament and reintegration efforts.

- The EU would require the ability to conduct concurrent civilian missions at different levels of engagement which may need to be sustained over a long period of time. Sustainability and the high quality of personnel would therefore need to be at the centre of Member States' efforts.
- Civilian crisis management operations could be deployed autonomously, jointly or in close co-operation with military operations. When necessary civilian crisis management operations must be able to draw on key enabling capabilities from the military sphere. Close co-ordination within the civil-military planning cell was, therefore, highlighted as essential.
- The ability to rapidly deploy civilian assets simultaneously with military ones at the outset of an operation would be essential. A deployability target of 30 days was set down for specific civilian ESDP capabilities.
- ESDP civilian crisis management activities would need to be closely integrated with similar initiatives within the Community competence.

As with the HHG and HG2010, national contributions to the CHG are determined against a list of required capabilities (the requirements catalogue), thereby allowing for shortfalls in capability to be identified. Priorities for addressing these shortfalls could then be determined. A commitment to establishing the requirements catalogue by the end of 2005 was agreed, along with an obligation to regularly review the status of the catalogue and the availability of national contributions to effectively meet it.

On that basis, a Civilian Capabilities Improvement Conference (CCIC) was held in November 2005 to assess the progress achieved thus far and identify work priorities for 2006. The CCIC concluded:

The civilian capabilities the EU needs to fulfil its ambitions in line with the European Security Strategy have been clearly defined in a detailed capability requirement. Member States have indicated contributions toward the capability requirement, including in new capability areas such as specialists in the field of border policing, organised crime, sexual and violent crime, human trafficking and human rights.

As the primary means of making civilian ESDP more capable, in line with the European Security Strategy, Ministers attach great importance to meeting the Civilian Headline Goal 2008. Ministers noted that initial response from member States indicate likely shortfalls against the capability requirement in a number of areas. Initial indications are that these will include, for example, forensic specialists, judges and administrative staff with financial expertise.⁷⁷

Based on the conclusions of the conference the following priorities have been set out, which will be reviewed in November 2006:

- Address high priority shortfalls in capability and ensure that efforts to address them are co-ordinated among Member States.
- Confirm the availability and readiness of national contributions already identified.

⁷⁷ Council of the European Union, *Civilian Capabilities Improvement Conference: Ministerial Declaration*, 21 November 2005 (14713/05)

- Share best practice among Member States on national mechanisms for force generation (both personnel and assets).
- Issue a Mission Support Concept covering equipment procurement, logistics and disposal.
- Draw a co-ordinated training concept for civilian ESDP personnel.
- Invite non-EU states, notably Acceding States, candidate countries, non-EU European NATO members and other third states who have concluded a framework agreement with the EU to contribute to the Headline Goal.
- Civilian Response Teams (CRT), along the lines of the EU Battlegroups concept, should be established in consultation with other international organisations (notably the UN). The terms of reference for the CRT and a pool of 100 experts should be in place by the end of 2006.

In addition, the conference agreed that:

In order to ensure that Civilian Headline Goal capability can be met and maintained, a comprehensive vision addressing subsequent years up to 2008 and beyond, will be presented and agreed by the end of 2006.⁷⁸

4. EU Battlegroups

The Franco-British summit in November 2003 examined, among other things, the progress that had been made in developing ESDP since the St Malo declaration in 1998 and highlighted areas where further progress could be achieved. The relationship between the EU and the UN in the field of crisis management was one such area.

To that end, the Summit Declaration stated:

We propose a new initiative, in which the EU would focus on the development of its rapid reaction capabilities to enhance its ability to support the UN in short-term crisis management situations [...]

The EU should be capable and willing to deploy in an autonomous operation within 15 days to respond to a crisis. The aim should be coherent and credible battle-group sized forces, each around 1500 troops, offered by a single nation or through a multinational or framework nation force package, with appropriate transport and sustainability. These forces should have the capacity to operate under a Chapter VII mandate. They would be deployed in response to a UN request to stabilise a situation or otherwise meet a short-term need until peacekeepers from the United Nations, or regional organisation acting under a UN mandate, could arrive or be reinforced. This idea will need to be developed across the EU and hand in hand with the UN and relevant regional partners. This initiative would contribute to the implementation of the joint declaration on EU/UN co-operation in crisis management.⁷⁹

⁷⁸ Council of the European Union, *Civilian Capabilities Improvement Conference: Ministerial Declaration*, 21 November 2005 (14713/05)

⁷⁹ Franco-British Summit, *Declaration on Strengthening European Co-operation in Security and Defence*, 24 November 2003. This is available online at:

At the Munich Security Conference on 7 February 2004 the then Secretary of State for Defence, Geoff Hoon, reiterated the UK's commitment to this initiative, while German officials were reported to have confirmed that Germany would also take part in the Franco-British plans.⁸⁰

In sharp contrast to the level of attention the initiative received in November 2003 when it was first announced, the proposal received widespread coverage in the international media following the Munich conference and consequently fuelled concerns that France, Germany and the UK were pushing ahead with an agenda for a two-tier EU in ESDP matters.

An article in *The Independent* commented:

The move, disclosed yesterday to senior EU diplomats, underlines the growing partnership between the three countries [...] the initiative underlines the importance attached by the EU's two biggest defence powers to boosting joint military capabilities as a means of increasing Europe's foreign policy clout. But it also illustrates the importance of the alliance between London, Paris and Berlin, one that has prompted fears among smaller EU countries that they are destined to be dominated by a new triumvirate.⁸¹

An article in the *Financial Times* also reported:

Diplomats on Monday insisted the Anglo-French plan would not compete with NATO, but could contribute to the Alliance's Response Force. The battle groups will consist of 1,500 troops, be capable of being deployed within 15 days and operate under a UN mandate. The missions will last up to 30 days and will be "appropriate for, but not limited to, use in failed or failing states (of which most are in Africa)".

The initiative is open to other EU states. But countries wishing to join "must show a high degree of interoperability" which means training and operating together.

London and Paris also insist the "overriding" criterion for joining "is ultimately military effectiveness". The UK and France want the plan accepted by all member states by June 30 and troops available by 2007.⁸²

Following criticisms of the proposals the Minister for the Armed Forces, Adam Ingram, set out the Government's position in a Written Answer on 23 February 2004. He stated:

There are no plans to set up a joint Franco-British rapid deployment force. However, as part of the Helsinki Headline Goal, member states agreed to develop rapid response elements available and deployable at very high readiness. The British, French and German governments are proposing that EU member states create Battle Group-sized forces, deployable within 15 days, by

http://www.fco.gov.uk/Files/kfile/UKFrance_DefenceDeclaration.0.pdf

⁸⁰ *Agence France Presse*, 10 February 2004

⁸¹ "Rapid reaction units proposed to give clout to European Union foreign policy", *The Independent*, 11 February 2004

⁸² "UK and France join forces on combat units", *The Financial Times*, 9 February 2004

2007. Member States would be able to offer such formations individually – as is likely to be the case for the United Kingdom – or on a multinational basis.⁸³

One of the main tenets of HG2010, as outlined above, is the ability of the EU to generate and deploy forces rapidly. The EU Battlegroups concept is regarded as central to this aim and has, therefore, been integrated into the policies set down in the HG2010 document. Under these proposals the intention is to undertake, in response to a crisis or an urgent request from the UN, two simultaneous operations, with each battlegroup capable of deployment within 10-15 days, sustainable in theatre for up to three months and capable of dealing with situations across the full military spectrum of operations.⁸⁴ Each battlegroup would comprise approximately 1,500 personnel. At the informal meeting of EU Defence Ministers in September 2004 a commitment to achieve an Initial Operational Capability (IOC) in early 2005, with a view to achieving Full Operational Capability (FOC) by 2007, was also adopted.

However, the EU Battlegroups are not intended to replace either the ERRF of 60,000 personnel that was first outlined as part of the Helsinki Headline Goal in 1999 or provide competition to the NATO Response Force. According to the FCO:

[The] Battlegroups will not replace the 50-60,000-strong rapid reaction capability outlined in 1999 for the Helsinki Headline Goal. They are smaller, rapidly deployable, self-sustainable forces tailored for the types of crisis management tasks demanded by the world today. The initiative does not compete with the NATO Response Force but is designed to be complementary and mutually reinforcing, with each providing a positive impetus for military capability improvement.⁸⁵

Africa is expected to be among the regional priorities of the battlegroups, a suggestion that was endorsed by the Prime Minister, Tony Blair, during a speech in Addis Ababa on 7 October 2004.⁸⁶

At the GAERC in November 2004 EU Member States gave formal approval to the formation of 13 Battlegroups, comprising the following Member State contributions (Battlegroups providing IOC are highlighted in bold):

- **France**
- **Italy**
- Spain
- **UK**
- **France, Germany, Belgium, Luxembourg and potentially Spain**
- France and Belgium
- Germany, the Netherlands and Finland
- Germany, Austria and Czech Republic
- Italy, Hungary and Slovenia

⁸³ HC Deb 23 February 2004, c10W

⁸⁴ As identified in Article 17 (2) TEU and the European Security Strategy.

⁸⁵ [FCO Capabilities Summary](#)

⁸⁶ A copy of this speech is available online at: <http://www.pm.gov.uk/output/page6464.asp>

- **Italy, Spain, Greece and Portugal**
- Poland, Germany, Slovakia, Latvia and Lithuania
- Sweden, Finland and Norway as a third party participant (Ireland has also been earmarked as a potential participant in this battlegroup)⁸⁷
- UK and the Netherlands

Niche capabilities in support of the EU Battlegroups will also be provided as follows:

- Cyprus (medical group)
- Lithuania (water purification unit)
- Greece (the Athens Sealift Co-ordination Centre)
- France (structure of a multinational and deployable Force Headquarters)

Full operational capability, involving all Battlegroups, is scheduled from 2007 with two Battlegroups on standby in any given six month period.

The UK Battlegroup that was on standby during the first half of 2005 is next scheduled to be on standby in the first half of 2010. The UK/Netherlands Battlegroup which is based on the UK/Dutch Amphibious Force is earmarked to be on standby in the latter half of 2008.⁸⁸

In a Written Answer on 28 October 2004 Mr Hoon outlined the expected command arrangements for the deployment of an EU Battlegroup involving British forces. He stated:

Policy decisions on the EU Battlegroups initiative will be taken by unanimity of all the member states.

Decisions to deploy national forces are for national governments to take. Any decision to commit United Kingdom forces to an EU Battlegroup operational deployment would be taken by the Government on a case-by-case basis.

Battlegroups will be offered either by single nations or by small multinational groupings. The military command of any operational deployment of an EU Battlegroup will be determined on a case-by-case basis and will reflect which of the Battlegroups is being deployed. We would expect Battlegroups involving UK forces to be commanded from the Permanent Joint Headquarters at Northwood.

As with all EU operations, the political control of an EU Battlegroup mission would rest with the 25 member states, acting by unanimity through the Political and Security Committee and Council.⁸⁹

⁸⁷ <http://www.forumoneurope.ie/index.asp?locID=113&docID=987>

⁸⁸ Letter to Air Marshal Lord Garden from the Ministry of Defence, 6 June 2005. Deposited in the House of Commons Library (ref: MGP 05/1027).

⁸⁹ HC Deb 28 October 2004, c1367-8W

On a general level the Battlegroups concept has received widespread support among both Member States and other commentators. An article in *The Guardian* in October 2004 commented:

The European defence debate in recent years has often been a case of two steps forward, one step back – the entire process plagued by lack of funding, low defence budgets, critical gaps in military equipment and capacity, as well as political infighting.

The battle group idea enjoys more of a consensus, although the big technology gaps of home grown European airlift and secure communications remain problems.

The battle group idea may also have better prospects because it is more modest, in many ways a scaling back of European military ambitions, according to experts [...]

The plan is that units would react quickly, guns blazing if need be, to a crisis and then pull out to make way for more traditional UN or regional peacekeeping organisations in trouble spots.⁹⁰

The article also reported Steven Everts as commenting: “Everybody is signed up for this. That’s not the problem in the EU. The problem is getting them to deliver”.⁹¹

Indeed, the armed forces of most EU Member States are widely regarded to be either under-funded, overstretched, or both. Most EU countries are members of NATO and have troops and assets deployed in Afghanistan, Iraq and elsewhere, while only 9 out of 25 countries allocate 2% or more of GDP to their defence budgets.⁹² Consequently, delivering on commitments under the Battlegroup concept is widely considered to be a challenge for the future.

Consensus in decision making has also been highlighted as potentially problematic for the success of this initiative. Although the EU’s commitment to support the African Union in Darfur has not involved the deployment of a Battlegroup, the internal disagreements as to whether the operation should have been EU or NATO-led has been regarded as indicative of future challenges given the existence of the NATO Response Force for precisely the same type of operations. Similarly the EU’s commitment to support the UN force (MONUC) in the Democratic Republic of Congo (DRC) ahead of the July 2006 elections has not involved the deployment of an EU Battlegroup, despite the perceived suitability of the operation (this is examined in section II E).⁹³

Since November 2004 a further six battlegroups have been established, involving a total of 26 nations.

⁹⁰ “Battle groups aim for speed in a crisis”, *The Guardian*, 8 October 2004

⁹¹ *ibid*

⁹² <http://www.iss-eu.org/esdp/11-bsdef.pdf>

⁹³ The prospects for the EU battlegroups concept are also discussed in an October 2005 report from the Center for Strategic and International Studies entitled *European Defense Integration*. A copy of this report is available online at:

http://www.forum-europe.com/publication/CSIS-ReportonEuropeanDefenseIntegration_1.pdf

5. EU Gendarmerie Force

At the informal meeting of EU Defence Ministers on 17 September 2004 a Declaration of Intent was signed by France, Spain, Italy, Portugal and the Netherlands to establish a European military police force capable of deploying to crisis situations worldwide within 30 days.

The force is expected to comprise a core of approximately 900 personnel, with a further 2,100 reinforcements on standby, and will be capable of conducting tasks across the spectrum of police missions, including in support of the fight against organised crime. It is anticipated, however, that the force will be particularly suited to post-conflict situations where local police forces are not deployable in sufficient numbers, or for maintaining public order. The EU police mission in the former Yugoslav Republic of Macedonia (codenamed PROXIMA)⁹⁴ and the EU police mission in Bosnia and Herzegovina⁹⁵ are two such examples.

However, the European Gendarmerie Force (EGF) will not be a standing force. It will be drawn together from the National Gendarmerie of France, the Spanish Civil Guard, the Portuguese Republican National Guard, the Dutch Marechaussée and the Italian Carabinieri, in response to specific requests. As a rapidly deployable multinational unit, the EGF will be available, not only to the EU, but also the UN, the OSCE and NATO. The Headquarters of the EGF will be based in Vicenza, Italy.⁹⁶ The EGF became operational at the end of 2005.⁹⁷

The EGF has been welcomed as an important part of developing the EU's civilian crisis management capabilities (examined above). Announcing the Declaration of Intent the Dutch Minister of Defence, Henk Kamp, commented:

I am certain that this force will become an important capability, bridging the gap between military forces and civil police forces.⁹⁸

The EU High Representative for CFSP, Javier Solana, stated at the Noordwijk meeting that:

[the EGF] promises to be a useful tool that the EU, as well as other relevant organisations, will be able to draw on, in a field – covering activities such as security and public order missions, monitoring and advice, training as well as

⁹⁴ More information on Proxima is available online at:

http://ue.eu.int/cms3_fo/showPage.asp?id=584&lang=en&mode=g

⁹⁵ More information on the EU Police Mission in Bosnia and Herzegovina is available online at:

http://ue.eu.int/cms3_fo/showPage.asp?id=585&lang=en&mode=g

⁹⁶ "Signature of Declaration of Intent for a European Gendarmerie Force", EU Presidency Press Release, 17 September 2004.

⁹⁷ <http://www.europa-web.de/europa/03euinf/10counc/egfdecl.htm>

⁹⁸ "Signature of Declaration of Intent for a European Gendarmerie Force", EU Presidency Press Release, 17 September 2004.

criminal investigations – which experience has shown is a crucial part of crisis management.⁹⁹

Although supportive of the plans the then German Defence Minister, Peter Struck, confirmed that Germany would not take part in the initiative. Without a militarised police, the UK will also not take part, although it too has welcomed the scheme.

In answer to a Parliamentary Question on 2 February 2006 the FCO commented:

The European Gendarmerie Force is a multinational force from five countries (France, Spain, Italy, Portugal, and the Netherlands). It is a force which is available to a number of organisations, including the EU, NATO, the UN or ad hoc coalitions. It is not an EU body. Its duties will be decided by the participating nations [...]

We do not know of any estimated annual cost of the European Gendarmerie Force. Costs would be a matter for the participating nations.¹⁰⁰

C. The European Defence Agency

1. Background

Article 17 TEU states that “the progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments”.¹⁰¹

The proposal for a European Armaments/Defence Agency has been discussed for a number of years, with the establishment of OCCAR (the Organisation Conjointe de Coopération en Matière d'Armement) in 1996 by the UK, France, Germany and Italy regarded by many as a possible precursor to a fully fledged armaments agency.¹⁰² The signing of the Six Nation Framework Agreement in July 1998 was also regarded as a further step towards greater armaments co-operation.

At the Thessaloniki European Council in June 2003 the decision was taken to task the EU Council of Ministers with creating an intergovernmental agency in the field of defence capabilities and armaments, referred to as the European Defence Agency (EDA). The European Council concluded:

The European Council, following the 2003 Spring European Council, tasks the appropriate bodies of the Council to undertake the necessary actions towards creating, in the course of 2004, an intergovernmental agency in the field of defence capabilities development, research, acquisition and armaments. This

⁹⁹ Summary of remarks made by Javier Solana, EU High Representative for the Common Foreign and Security Policy, SO340/04, 17 September 2004

¹⁰⁰ HC Deb 2 February 2006, c669W

¹⁰¹ Consolidated version of the Treaty on European Union, OJ C 325, 24 December 2002, Article 17

¹⁰² More information on OCCAR is available online at:

<http://www.occar-ea.org/C1256B0E0052F1AC/vwContentFrame/N254SMVV967SLEREN>

agency, which shall be subject to the Council's authority and open to participation by all Member States, will aim at developing defence capabilities in the field of crisis management, promoting and enhancing European armaments cooperation, strengthening the European defence industrial and technological base and creating a competitive European defence equipment market, as well as promoting, in liaison with the Community's research activities where appropriate, research aimed at leadership in strategic technologies for future defence and security capabilities, thereby strengthening Europe's industrial potential in this domain.¹⁰³

The framework for establishing this agency was also laid down as part of the European Constitution under Article III-311.¹⁰⁴

Although the future of the European Constitution is currently uncertain,¹⁰⁵ work on the EDA has continued with decisions on its creation and implementation of its objectives taken forward by the Council of Ministers. The GAERC adopted a decision to put in place measures to establish the EDA at its meeting on 17 November 2003.¹⁰⁶ At that meeting the Council also adopted a report setting out the proposed role and organisational structure of the Agency and outlining a timeframe for its implementation.¹⁰⁷ One of the main conclusions of the report was the need to create an Agency Establishment Team (AET) to take forward the implementation process.

The AET was set up in January 2004 to carry out further preparatory work and to support the Council and its bodies in their work on the Agency. Council Decision 2003/834/EC outlined the mandate of the group, which would be working under the authority of the EU High Representative for CFSP. The mandate of the AET was to formulate the Agency's legal basis; its budgetary arrangements, its links to the European Commission and the EU Military Committee, the extent of its authority in defence procurement and its relationship with existing armaments groups, notably OCCAR. On 28 January 2004 the MOD's former Director General of International Security Policy, Nick Witney, was appointed as the Head of the AET.

At the GAERC meeting on 14 June 2004 political agreement was reached on the draft Joint Action setting up the EDA. The missions and tasks of the EDA were unchanged from the previous draft text although changes were made with regard to the governance of the Agency, including a clearer distinction between the responsibilities of the Council of Ministers and the EDA's Steering Board, and the mode of decision making in specific areas. The final text of the Joint Action formally establishing the EDA was adopted on 12 July 2004 (ref: 2004/551/CFSP).

¹⁰³ European Council Conclusions, June 2003

¹⁰⁴ Library Research Paper RP04/75 *A Treaty establishing a constitution for Europe*, 8 October 2004 examines this provision in more detail.

¹⁰⁵ Section IV outlines the potential impact on CFSP/ ESDP of the current discussions over the future of the Constitution.

¹⁰⁶ Council Decision 2003/834/EC

¹⁰⁷ A copy of this report is available online at:

http://europa.eu.int/comm/external_relations/cfsp/intro/gac171103report.pdf

On 30 July 2004 Mr Solana, announced the appointment of Nick Witney as the first Chief Executive of the EDA. Dr Hilmar Linnenkamp was appointed as Deputy Chief Executive. The first meeting of the EDA Steering Board was held on 17 September 2004.

The mandate of the AET expired on 31 December 2004, after which the EDA achieved operational status.

2. Role and Structure

The mission of the EDA is to:

Support the Council and the Member States in their effort to improve the EU's defence capabilities in the field of crisis management and to sustain the ESDP as it stands now and develops in the future.

The Agency's mission shall be without prejudice to the competences of Member States in defence matters.¹⁰⁸

As such, the main roles of the Agency are:

- **To develop defence capabilities in the field of crisis management.** In particular the EDA will work towards identifying the EU's future defence capability requirements, both in quantitative and qualitative terms; will coordinate the implementation of the ECAP and assess, against agreed criteria, the commitments of Member States to the ECAP process; will promote the harmonisation of military requirements and propose collaborative activities in the operational domain; and will appraise the financial priorities of Member States in capabilities development and acquisition. In this regard the EDA is expected to take forward the conclusions of Headline Goal 2010 (as outlined above). To date, the EDA has identified four flagship programmes in which they consider a 'common approach' between all 24 Member States¹⁰⁹ could be achieved in the near term. Those programmes are focused on Command, Control and Communication (C3); the European defence equipment market (this has also been addressed by the European Commission and is examined in section III A); unmanned aerial vehicles; and armoured fighting vehicles. The EDA work programme for 2006 has identified air-to-air refuelling, improvised explosive devices, maritime surveillance, network enabled capability, strategic lift, space and dismounted combat as additional new areas of interest.¹¹⁰
- **To promote and enhance European armaments co-operation.** In particular, the EDA will promote compatible procurement methods and propose multilateral projects to meet ESDP capability requirements; will work towards coordinating existing programmes implemented by Member States and will assume, at the

¹⁰⁸ Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency, Article 2

¹⁰⁹ Denmark is not a member of the EDA.

¹¹⁰ *European Defence Agency Work Programme 2006* (Library ref: MGP 06/853)

request of Member States, responsibility for managing specific programmes through OCCAR.

- **To strengthen the European defence industrial and technological base and create a competitive European defence equipment market.** This will be achieved through the development of relevant policies and strategies, in consultation with the European Commission and industry as appropriate, and by pursuing EU-wide development and harmonisation of relevant rules and regulations such as those agreed under the Six Nation Framework Agreement.¹¹¹ The Commission's proposals on harmonising defence procurement rules (see section III A) are expected to be a key element in achieving this aim.
- **To enhance the effectiveness of European defence research and technology (R&T).** The EDA will promote, in liaison with the EU's wider research activities where appropriate, research aimed at fulfilling future defence capability requirements; will work more closely with the Western European Armaments Group (WEAG) and the Western European Armaments Organisation (WEAO); will coordinate joint research activities; will manage defence R&T contracts and will work in liaison with the Commission to maximise synergies between defence and civil or security-related research programmes.

Twenty four Member States have decided to participate in the work of the EDA. Denmark, which has an opt-out from the Treaties on defence related matters, will not participate. In terms of organisational structure the Agency will be subject to the authority and political supervision of the Council of Ministers.

The EU High Representative for CFSP will be the Head of the Agency with responsibility for the overall organisation and functioning of the EDA. The Head will report to the Council.

A Steering Board comprised of the EU Defence Ministers of participating Member States, or their representatives, and a representative of the Commission (although without voting rights), will be the decision making body of the Agency, acting within the framework of guidelines as set down by the Council. The Head of the Agency will chair the Steering Board. Meetings of the Steering Board will also be attended by the Chief Executive of the Agency, the Chairman of the EU Military Committee and the National Armaments Director of the EU Presidency. On occasion the Board may invite, on matters of common interest, the NATO Secretary General and the Heads/Chairs of other organisations whose work is relevant to that of the Agency. The Board may also meet in specific compositions such as National Armaments Directors, National Defence Planners or Policy Directors.

The Chief Executive for the Agency (currently Nick Witney) will be appointed by the Steering Board on a proposal from the Head of the Agency and will implement the decisions of the Steering Board. He/she will report to the Head of the Agency. The Chief

¹¹¹ The Six Nation Framework Agreement is also referred to as the Letter of Intent. This is covered in more detail in Library Research Paper RP03/78 *UK Defence Procurement Policy*, 20 October 2003

Executive will be supported by a group of agency staff drawn from existing EU personnel and augmented on a temporary basis by personnel from Member States, according to specific tasks and projects (seconded National Experts).

More specifically:

- **Decision Making in the EDA** – The Council of Ministers, acting by unanimity, will issue guidelines on an annual basis in relation to the work of the Agency and in particular with regard to its work programme. Every three years the Council shall unanimously approve a financial framework for the Agency and approve the financial rules of the Agency.

Decisions by the Steering Board will be taken by QMV. Only representatives of the participating Member States will be eligible to vote. However, under Article 9 (3) of the Joint Action a Member State may oppose the adoption of a decision by QMV if it feels that the decision is detrimental to its national interests. In this instance a vote will not be taken and the matter may be referred through the Head of the Agency to the Council with a view to their issuing guidance. This will be reached on the basis of unanimity. Alternatively the Steering Board, acting by QMV, may refer matters to the Council for a decision by unanimity.

The Agency may also make recommendations to the Council and to the Commission.

- **Reporting** – In May each year the Head of the Agency will submit a report to the Council on the Agency's activities during the previous and the current year. In November each year a report will be submitted on the Agency's activities during that year and on the draft elements of the Agency's work programme and budgets for the following year.
- **Budgetary Arrangements** – As outlined above financial provisions applicable to the Agency's general budget will be unanimously adopted by the Council. The Head of the Agency will provide the Steering Board, by 30 June each year, with an estimate of the draft general budget for the following year within the framework of the limits set down by the Council of Ministers. By 30 September each year the Head of the Agency will present the draft general budget to the Steering Board, which must adopt it by 31 December.

Contributions to the EDA budget by Member States will be based upon the Gross National Income (GNI) scale, whereby contributions will be proportional to the share of each Member State's GNI in the total GNI aggregate of the participating Member States. Under the GNI key the UK's contribution to the provisional budget for 2005 was expected to be approximately £2.5 million. In subsequent years the UK's contribution is expected to decrease to approximately £1.5 million per annum as non-recurring set-up costs fall away.¹¹²

¹¹² MOD Explanatory Memorandum on Establishing a European Defence Agency, 24 May 2004

The general financial provisions of the agency will not be applicable to ad hoc projects and programmes as defined by Articles 20 and 21 of the Joint Action. Under Article 20 one or more participating Member States, or the Chief Executive, may submit to the Steering Board proposals for an ad hoc programme that is within the Agency's remit. Participation by all Member States in the EDA will be presumed and the Steering Board will decide on the mandate and duration of the project. Budget contributions on this basis will be decided by the Steering Board. Under Article 21 one or more Member States may inform the Steering Board of their intention to establish a project within the Agency's remit. The contributing Member States will decide on the necessary measures for establishing and implementing the programme, including the basis upon which participation might be expanded and the budgetary arrangements. Other Member States will have the opportunity to express their interest in joining, although participation will be established on a case-by-case basis by the initiators of the project. The contributing Member States shall keep the Steering Board informed of developments within the programme.

Contributions from the general budget of the EU may be made to any ad hoc programme. In these instances the Commission shall participate in any decision making on the project.

- **Legal Status** – The EDA has a legal personality enabling it to perform its necessary functions and attain its objectives. This includes the capacity to conclude contracts with private or public entities and organisations.¹¹³ The Chief Executive will be the legal representative of the Agency.
- **Third Parties** – Relations with third parties (countries or organisations) may be entered into in order for the Agency to fulfil its mission. Such arrangements will be concluded by the Steering Board upon approval by the Council, acting by unanimity. Close working relations with OCCAR, the Six Nation Framework Agreement, WEAG/WEAO and NATO are regarded as priorities.
- **Review** – The Head of the Agency is obliged, under Article 26, to present no later than July 2007, or upon the entry into force of the Treaty establishing a Constitution for Europe, whichever is the earlier, a report to the Steering Board on the implementation of this Joint Action and with a view to its possible review by the Council.

3. EDA Defence Procurement Code of Conduct

As part of the objective of creating a competitive European defence equipment market, the Steering Board of the EDA agreed in November 2005 to establish a voluntary code of conduct relating to defence procurement. The aim of the code is to increase competition in the tendering of defence procurement contracts across the EU by establishing a voluntary, non-binding intergovernmental regime for contracts in excess of €1 million

¹¹³ 2004/551/CFSP, Article 6

(approx. £700,000) which take place outside of the EU Internal Market rules under Article 296 of the EC Treaty.¹¹⁴

The decision to establish a code of conduct was taken by the EDA Steering Board in response to the European Commission's proposals to harmonise defence procurement contracts (examined in section III A). The EDA code will be complementary to the Interpretative Communication on defence procurement that is to be set down by the European Commission during the course of 2006.

The EDA code has five basic principles:

- **It is voluntary and non-binding** – the regime will operate on the basis of sovereign Member States voluntarily choosing to align their policies and practices, on a reciprocal basis, in this area. Participating members can cancel their participation in the regime at any time and no sanctions are applied for non-observance of the code's guidelines. In all cases, the final authority for contract award remains with the Member State in question.
- **There will be mutual accountability, with the EDA monitoring how the code is respected or ignored** – where exceptions are invoked an explanation must be provided to the other participating Member States, and the opportunity, if necessary, to debate the circumstances in the EDA Steering Board.
- **It will provide mutual assurance of security of supply** – participating Member States intending to place a contract with suppliers elsewhere are entitled to expect that the latter remain dependable and competitive sources of supply. All participating states will support efforts to simplify intra-Community transfers and transit of defence goods and technologies.
- **It will provide fair and equal treatment of suppliers** – this will require transparency and equality of information. Arrangements will be made for all relevant new defence procurement opportunities offered by participating Member States to be notified on one single portal. In the conduct of the competition itself, the code seeks to ensure that all companies are evaluated on the basis of transparent and objective standards. Specifications and statements of requirements will include international standards of technical specification rather than national ones where possible, and the award criteria will be made clear from the outset, with the fundamental criterion being the most economically advantageous solution for that particular requirement. In addition, all unsuccessful bidders will be provided with feedback if requested.
- **It will establish best practice** – it is acknowledged that the regime will not prosper unless all participating Member States find benefit in subscribing to it. As such, the EDA will seek to ensure that fair competition and the benefits of the

¹¹⁴ Under Article 296 the procurement of equipment, supplies, works and services intended for military purposes and crucial to national security are exempt from EU public procurement rules, and therefore Member States are not required to competitively tender contracts in this area.

regime are provided down the supply chain. A Code of Best Practice in the Supply Chain will therefore be established.

However, certain categories of contract will remain exempt from this code, notably: procurement of research and technology, collaborative procurements, and procurements of nuclear weapons and nuclear propulsion systems, chemical, bacteriological and radiological goods and services, and cryptographic equipment.¹¹⁵

It is also acknowledged that Member States which have subscribed to this code may be required, on occasion, to proceed with specific procurements on a non-competitive basis in cases of urgent operational requirement; for follow-on work or supplementary goods and services and for extraordinary or compelling reasons of national security. However, in these instances Member States will be required to justify their actions to the EDA, in its capacity as monitor of the code.

22 EU Member States will participate in the Code of Conduct which will be implemented from 1 July 2006.¹¹⁶ Spain and Hungary have exercised the option not to join the regime initially, although both countries have indicated that they may do so at a later date. Denmark, as outlined above, is not part of the EDA and therefore will also not be participating. The Code will remain under review by the EDA Steering Board.

The introduction of a voluntary code of conduct has been largely met with approval, particularly from those defence companies which have consistently argued against the protectionist nature of some European countries. However, the success of the code in the longer term is still regarded as questionable as it is voluntary, not legally binding and it is unable to levy sanctions against participating Member States for non-observance of its rules. Success is largely expected to be determined by peer pressure and what has been called the “embarrassment factor”, as any invocation of article 296 will require justification to the EDA Steering Board.

An article in *Defense News* quoted the EADS Director for EU Defense Policy and NATO, Andreas Hammer, as commenting:

The agency must prove that it can exert as much peer pressure as possible on the member states to comply with the code’s rules ... it will have to execute a very strong monitoring role.¹¹⁷

Yet, as John Grayson of the British law firm Eversheds has argued, the embarrassment factor “won’t work if cabals of member states don’t go along with it. If they all agree to be embarrassed, then no one is”.¹¹⁸ A number of commentators have also questioned whether the exclusion of the US from this code will only succeed in promoting

¹¹⁵ *The Code of Conduct on Defence Procurement of the EU Member States Participating in the European Defence Agency*, November 2005 (MGP 05/2784)

¹¹⁶ They are Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden and the UK.

¹¹⁷ “EU tears down protectionist walls”, *Defense News*, 21 November 2005

¹¹⁸ *ibid.*

protectionism at an EU level, rather than just a national one, as is perceived at present. Derek Marshall of the Society of British Aerospace Companies (SBAC) commented:

It is vital that market opening measures and industrial policies in the EU are applied together in an intelligent way. It is not practicable or sensible to close the European market to US and other non-EU countries. Policy makers should find ways to encourage non-EU companies to invest in Europe's defence and security capability, and to stimulate R&T and innovation that increases the intellectual property available in Europe, regardless of the ownership of the companies involved. In the longer term, better ways have to be found to share technology across national borders, including through transatlantic co-operation.¹¹⁹

In its March 2006 report on *Current Developments in European Defence Policy*, the Lords EU Committee supported the establishment of a code of conduct for defence procurement, although it highlighted that:

The Government must do all it can not only to encourage Member States to subscribe to the Code of Conduct on Defence procurement, but also to abide by its provisions. Having played an instrumental role in the development of the Code, it is imperative that the Government lead by example and demonstrate full compliance with its provisions.¹²⁰

In contrast the Conservative party have argued that harmonisation in defence procurement is the first step toward the creation of a European Army.¹²¹

D. CFSP/ ESDP Financing

Under Article 28 (3) of the EC Treaty the common costs of CFSP and ESDP activities are met from the general EU budget and divided among EU Member States on a GNP-related basis.¹²² Expenditure arising from ESDP military operations is met by individual Member States, as determined by the Council of Ministers. This is generally on a "costs lie where they fall" basis. Any Member State is entitled to abstain from a decision in this area under Article 23 (1) of the EC Treaty, and as such is not obliged to contribute to the financing of that decision.

Article 28 (3) states:

3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

¹¹⁹ "SBAC supports new market opening role for the European Defence Agency", *SBAC News Release*, 9 December 2005

¹²⁰ House of Lords European Union Committee, *Current Developments in European Defence Policy*, HL 125, session 2005-06

¹²¹ "Tory fears over deal on defence spending", *The Daily Telegraph*, 23 May 2006

¹²² In 2006 the UK's share of common costs is 17.2%

In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

In March 2004 a permanent financing mechanism (ATHENA) for the common costs of EU operations having military or defence implications was established by the Council of Ministers. ATHENA essentially eradicated the need for a Council decision adopting a separate financing mechanism every time a military operation was undertaken.¹²³ It should be noted that ATHENA deals with the common costs of ESDP operations, including some operational costs as defined in the Annexes of the Council Decision. The majority of operational costs of an ESDP mission continue, however, to “lie where they fall”.

The ATHENA mechanism is reviewed each year. In December 2004 the European Council agreed to establish, within that agreement, measures to allow for voluntary payments to be made in order to meet the costs of a rapid response operation. The ESDP Presidency Report of December 2004 stated:

XII. Review ATHENA

42. The first review of ATHENA, the mechanism to administer the financing of the common costs of European Union operations having military or defence implications, was finalised. Based on the Lessons Learned of ESDP military operations, Member States agreed on several changes to the ATHENA Council Decision. In response to the Council tasking to continue reflecting on the most appropriate ways and means to finance rapid reaction, Member States agreed to establish a special title within the Athena budget for voluntary payments in anticipation of a rapid response operation.¹²⁴

E. ESDP Operations

The number of military and civilian crisis management operations that have been conducted under the auspices of the ESDP has markedly increased in the last few years. To date, the majority of those operations have been in the sphere of civilian crisis management, an area which many analysts have considered to be less politically demanding in terms of force generation (both personnel and capabilities) and with regard to the expected operational tasks to be undertaken. Thus far the EU has undertaken, or is undertaking the following civilian crisis management operations:¹²⁵

¹²³ Council Decision 2004/197/CFSP

¹²⁴ <http://ue.eu.int/uedocs/cmsUpload/ESDP%20Presidency%20Report%2017.12.04.pdf>

¹²⁵ Further information on all of these operations is available online at:
http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=268&lang=en&mode=g

Completed:

- EU Police Mission in the Former Yugoslav Republic of Macedonia (Proxima) (December 2003 – December 2005)
- EU Rule of Law Mission in Georgia (Eujust Themis) (July 2004 – July 2005)

Ongoing:

- EU Police Mission in Bosnia-Herzegovina (EUPM) (January 2003 –)
- EU Police Advisory Team in the Former Yugoslav Republic of Macedonia (EUPAT) (December 2005 –)
- EU Police Mission in the Palestinian Territories (EUPOL COPPS) (January 2006 –)
- EU Border Assistance Mission at Rafah Crossing Point in the Palestinian Territories (EU BAM Rafah) (November 2005 –)
- EU Integrated Rule of Law Mission for Iraq (Eujust Lex) (July 2005 –)
- EU Police Mission in Kinshasa (DRC) (EUPOL Kinshasa) (April 2005 –)
- EU Security Sector Reform Mission in the Democratic Republic of Congo (EUSEC DR Congo) (June 2005 –)
- EU Monitoring Mission in Aceh (AMM) (September 2005 –)
- EU Border Assistance Mission to Moldova and Ukraine (December 2005 –)

However, the EU has also conducted three high-level peacekeeping operations in the last few years, notably Operation *Artemis* in the Democratic Republic of Congo¹²⁶ and Operation *Concordia* in the Former Yugoslav Republic of Macedonia in 2003,¹²⁷ and Operation *Althea* in Bosnia and Herzegovina which has been ongoing since December 2004. More recently the EU has also established a civil-military operation in Darfur and a military operation in the Democratic Republic of Congo.¹²⁸

In its December 2005 *Presidency Report on ESDP*, the European Council commented:

Under the UK Presidency ESDP operational activity has continued to expand, particularly in the civilian field. The EU is now undertaking a wide range of civilian and military missions, on three continents, with tasks ranging from peacekeeping and monitoring implementation of a peace process to advice and assistance in military, police and border monitoring and rule of law sectors. Further missions are under active preparation.¹²⁹

Despite the greater number of crisis management operations undertaken by the EU, it has been the EU-led military operations which have received the most attention, as they

¹²⁶ More information on this operation is available in Library Standard Note SN/IA/2193, *Interim Emergency Multinational Forces in the Democratic Republic of Congo*, 25 June 2003. Information is also available online at: http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=605&lang=en&mode=g

¹²⁷ More information on this operation is available online at: http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=594&lang=en&mode=g

¹²⁸ More information on this latter operation is available online at: http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1091&lang=en

¹²⁹ Council of the European Union, *Presidency Report on ESDP*, 15678/05

have been regarded as the basis on which a true assessment of the credibility and political will behind ESDP can be determined. This has been particularly true of Operation *Althea* in Bosnia-Herzegovina.

1. Operation *Althea* (Bosnia-Herzegovina)

a. Background

The possibility of the EU taking over command of stabilisation operations in Bosnia and Herzegovina was first suggested at the European Heads of State Summit in Copenhagen in December 2002, following the conclusion of negotiations on the 'Berlin-plus' agreement. Initial reactions to the proposal were mixed. The UK and France strongly advocated the move while the US, in particular, expressed concern over the EU's ability to successfully take over the Bosnia operation.

An article in *The Independent* in 2003 reported:

NATO'S military commander has cast doubt over plans to launch the European Union's biggest military mission - a peace-keeping operation in Bosnia - in a sign of new transatlantic tensions.

General James Jones, a United States Marine and Nato's supreme allied commander in Europe, said the proposed date of 2004 might be "too early" for the EU to step in. He also questioned whether a European military mission in Bosnia would be needed [...]

While the US initially seemed anxious to scale down its force in the Balkans, it has been having second thoughts. Washington sees the region as increasingly important for counter-terrorism operations, and has been less enthusiastic about the EU's military ambitions since the transatlantic rift over Iraq.¹³⁰

Following extensive negotiations NATO Foreign Ministers announced in December 2003 that an assessment of the options for the future size and structure of the Stabilisation Force in Bosnia-Herzegovina (SFOR), including the possible termination of the operation by the end of 2004 and the transition to a new EU-led mission within the framework of 'Berlin-plus', would be undertaken. The European Council in Brussels on 12-13 December 2003 endorsed this framework of consultation.¹³¹

The decision to formally conclude NATO's SFOR operation, with a view to the EU launching its own UN-mandated mission by the end of 2004, was taken at the NATO Istanbul Summit in June 2004.

The Istanbul Communiqué stated:

As the security situation in Bosnia and Herzegovina has evolved positively, we have decided to conclude the Alliance's successful SFOR operation by the end of

¹³⁰ "EU troops not ready to take on Bosnian role, says NATO chief", *The Independent*, 5 August 2003

¹³¹ Brussels European Council, Presidency Conclusions, 12-13 December 2003, paragraph 89

this year. We welcome the readiness of the European Union to deploy a new and distinct UN-mandated robust Chapter VII mission in the country, based on the Berlin+ arrangements agreed between our two organisations, and look forward to continued close cooperation.¹³²

The Communiqué also acknowledged the intention of the Alliance to retain a residual military presence in the country in support of defence reforms, preparation for future Partnership for Peace (PfP) membership, and ongoing operations to apprehend persons indicted for war crimes. It stated:

NATO's long-term political commitment to Bosnia and Herzegovina remains unchanged and the establishment of a NATO headquarters will constitute NATO's residual military presence in the country. NATO HQ Sarajevo, which has the principal task of providing advice on defence reform, will also undertake certain operational supporting tasks, such as counter-terrorism whilst ensuring force protection; supporting the ICTY¹³³, within means and capabilities, with regard to the detention of persons indicted for war crimes; and intelligence sharing with the EU. The Dayton/Paris Accords remain in force as the basis for peace and stability in Bosnia and Herzegovina.¹³⁴

Following on from the decision to conclude SFOR, the UN Security Council adopted Resolution 1551 on 9 July 2004 authorising the continuation of the SFOR mandate¹³⁵ for a period of six months. The Resolution also outlined the intention of the Security Council to consider the terms of further authorisation beyond December 2004 as and when necessary.

In November 2004 the UN Security Council adopted Resolution 1575 authorising the deployment of an EU-led stabilisation force, as a successor to SFOR, for an initial period of 12 months. Resolution 1575 (2004) stated:

The Security Council,

Acting under Chapter VII of the Charter of the United Nations [...]

9. Welcomes the EU's intention to launch an EU military operation to Bosnia and Herzegovina from December 2004;

10. Authorizes the Member States acting through or in cooperation with the EU to establish for an initial planned period of 12 months a multinational stabilization force (EUFOR) as a legal successor to SFOR under unified command and control, which will fulfil its missions in relation to the implementation of Annex 1-A and Annex 2 of the Peace Agreement in cooperation with the NATO HQ presence in accordance with the arrangements agreed between NATO and the EU as communicated to the Security Council in their letters of 19 November 2004, which recognize that the EUFOR will have the main peace stabilization role under the military aspects of the Peace Agreement;

¹³² NATO Heads of State and Government, *Istanbul Summit Communiqué*, 28 June 2004.

¹³³ International Criminal Tribunal for the Former Yugoslavia

¹³⁴ NATO Heads of State and Government, *Istanbul Summit Communiqué*, 28 June 2004

¹³⁵ The original mandate of SFOR was set out in UN Security Council Resolution 1088 (1996).

11. Welcomes the decision of NATO to conclude the SFOR operation in Bosnia and Herzegovina by the end of 2004 and to maintain a presence in Bosnia and Herzegovina through the establishment of a NATO Headquarters in order to continue to assist in implementing the Peace Agreement in conjunction with EUFOR and authorizes the Member States acting through or in cooperation with NATO to establish a NATO Headquarters as a legal successor to SFOR under unified command and control, which will fulfil its missions in relation to the implementation of Annex 1-A and Annex 2 of the Peace Agreement in cooperation with EUFOR in accordance with the arrangements agreed between NATO and the EU as communicated to the Security Council in their letters of 19 November 2004, which recognize that the EUFOR will have the main peace stabilization role under the military aspects of the Peace Agreement;

12. Recognizes that the Peace Agreement and the provisions of its previous relevant resolutions shall apply to and in respect of both EUFOR and the NATO presence as they have applied to and in respect of SFOR and that therefore references in the Peace Agreement, in particular in Annex 1-A and its appendices, and relevant resolutions to IFOR and/or SFOR, NATO and the NAC shall henceforth be read as applying, as appropriate, to the NATO presence, EUFOR, the European Union and the Political and Security Committee and Council of the European Union respectively;

13. Expresses its intention to consider the terms of further authorization as necessary in the light of developments in the implementation of the Peace Agreement and the situation in Bosnia and Herzegovina.¹³⁶

b. EU Joint Action

At a meeting of the GAERC on 12 July 2004 the EU's Foreign Ministers adopted a Joint Action¹³⁷ formally launching an EU military operation in Bosnia and Herzegovina (codenamed *Althea*). In summary, the Joint Action made the following provisions:¹³⁸

- The operation would be conducted under the 'Berlin-plus' Agreement, allowing recourse by the EU to NATO assets and capabilities;
- The EU's Political and Security Committee would exercise political control over the strategic direction of the operation, under the responsibility of the Council of Ministers. Decision making with respect to the objectives and termination of the operation would remain, however, vested in the Council and assisted by the EU's High Representative for CFSP.
- NATO's Deputy Supreme Allied Commander for Europe (DSACEUR) would be the EU Operation Commander and the EU operational headquarters would be located at SHAPE.

¹³⁶ United Nations Security Council Resolution 1575, 22 November 2004

¹³⁷ Joint Action 11226/1/04

¹³⁸ EU General Affairs and External Relations Council Conclusions, 11105/04, 12 July 2004. A copy of these conclusions are available online at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/gena/81416.pdf

- Under 'Berlin-plus' non-EU NATO allies have the right to participate in the mission if they so wish. Under the Joint Action third parties may also be invited to participate in the operation.
- The common costs of the EU operation in Bosnia and Herzegovina in 2005 were estimated at €71.7 million (approximately £47.9 million). The UK's share of the common costs is set according to the agreed EU ESDP financing mechanism, divided between Member States on a GNP-related basis. In 2004 the UK's share of common costs was approximately 15%. For comparative purposes, the UK's contribution to the NATO-led SFOR operation was approximately £60 million per year.¹³⁹

The Joint Action also made provision for the EU's Special Representative (EUSR) in Bosnia and Herzegovina to promote overall EU political co-ordination in the country. The EU Police Mission in Bosnia and Herzegovina, which was established on 1 January 2003, is continuing alongside the EU-led military operation.

An FCO *Explanatory Memorandum*, dated 28 June 2004, set out the British Government's view on an EU-led military operation in Bosnia and Herzegovina. It stated:

The Government strongly supports the EU's intention to send a military mission to Bosnia under the Berlin Plus arrangements [...] it will be the biggest ESDP mission to date. This is reflected in our decision to offer to take first lead of this mission. It is critical that the international community maintains its commitment to Bosnia, to build on the progress made thus far and help Bosnia further down the road to Euro-Atlantic integration.¹⁴⁰

An article in the *Financial Times* in July 2004 commented:

The EU hopes that through the mission [...] it will be able to bring military as well as civil resources to bear on a country that remains poor and unstable but which the EU believes should eventually join the union.

The new EU force should bolster the authority of Lord Ashdown, who serves as the high representative of both the EU and the international community generally.¹⁴¹

In a speech to the Manfred-Wörner-Circle on 12 July 2004 the NATO Secretary General also highlighted the fresh impetus an EU-led operation under 'Berlin-plus' would give to the EU-NATO relationship as a whole. He stated:

We decided at our Istanbul Summit to terminate NATO's SFOR operation in Bosnia and Herzegovina, and welcomed the intention of the EU to establish a new mission in that country. That step will give further substance to the strategic partnership between our organisations. And it should promote greater

¹³⁹ Foreign and Commonwealth Office, *Explanatory Memorandum on the Council Joint Action on the European Union Military Mission to Bosnia-Herzegovina*, 28 June 2004

¹⁴⁰ *ibid.*

¹⁴¹ "EU agrees force to replace NATO-led troops in Bosnia", *Financial Times*, 13 July 2004

transparency and closer cooperation between NATO and the EU in other functional and geographical areas where our interests converge, and where we can complement each other.¹⁴²

The decision to conclude NATO's mission in Bosnia and Herzegovina was also largely welcomed by the US. Giving evidence to the Senate Foreign Relations Committee on 14 July 2004, the Deputy Assistant Secretary of State, Kathleen Stephens, stated:

Progress in Bosnia has set the stage for the successful conclusion of SFOR's mission in Bosnia, consistent with our efforts to "hasten the day" and our "in together, out together" commitment to our NATO allies [...]

Bosnia and Herzegovina is approaching a watershed moment in its post-conflict transition. At Istanbul, NATO Heads of State and Government agreed to conclude the SFOR mission at year's end. This decision is recognition of NATO's success in ending a war, and Bosnia's progress on the path to recovery.¹⁴³

However, a number of analysts have suggested that, although welcome, the decision to conclude SFOR had been made with some reticence. The International Institute for Strategic Studies suggested that "even though the US military, severely overstretched, was eager to palm-off one of its many commitments, the Istanbul agreement on actually doing so was more than a minor achievement".¹⁴⁴

The Concept of Operations for Operation *Althea* was approved by the EU's Foreign Ministers on 13 September 2004 and at a meeting of the GAERC on 11 October 2004 the Council agreed that Transfer of Authority from NATO to the EU would take place on 2 December 2004.

A review of the mission was conducted in May 2005 and concluded that the EU should maintain its force, size, duties and mandate for the foreseeable future. In November 2005 UN Security Council Resolution 1639 was also passed which extended the mandate of the EUFOR mission for a further 12 months.

In its *Presidency Report on ESDP* in December 2005 the European Council provided an update on the progress of Operation *Althea*. It stated:

The EU force deployed in Bosnia and Herzegovina in the framework of the UN-authorized ALTHEA military operation has continued to guarantee a safe and secure environment in the country and enjoys the confidence of the local population and authorities [...]

The Council reviewed operation ALTHEA on completion of its successful first year, on the basis of the SG/HR's report. This report confirms that a continuing EU military presence remains essential for the maintenance of a safe and secure environment in Bosnia and Herzegovina; that force levels should remain broadly

¹⁴² Speech by the NATO Secretary General to the Manfred-Wörner-Circle, 12 July 2004

¹⁴³ Testimony of Deputy Assistant Secretary of State, Kathleen Stephens to the US Senate Foreign Relations Committee, 14 July 2004

¹⁴⁴ "NATO's Istanbul Summit", *Strategic Comments*, June 2004

unchanged for the coming year; and that decisions on the future size and structure of the force should be based on an assessment of conditions on the ground. Sustained progress within the Stabilisation and Association process, and an assessment of the impact of elections in 2006, will allow Ministers then to consider options for the future presence of the force in BiH.¹⁴⁵

Twenty two EU Member States, along with 11 third party countries, participate in Operation *Althea*, which, as of November 2005, comprised approximately 6,270 troops.¹⁴⁶

2. EU Support to AMIS II (Darfur)

The international response to the crisis in Darfur is examined in detail in Library research Paper RP 06/08, *Sudan: the Elusive Quest for Peace*.¹⁴⁷

Since January 2004 the EU and its Member States have been providing a wide range of support to the African Union's (AU) efforts to stabilise the situation in Darfur. That support has included financial, personnel and political support to the Abuja peace talks process and the Ceasefire Commission, and planning, technical and equipment support to the African Union Mission in Sudan (AMIS), which was established in April of that year to observe and verify the ceasefire agreement that had been signed.

In April 2005, the AU submitted a request to NATO and the EU for military assistance in expanding AMIS. Rather than launch a separate EU or NATO operation along the lines of Operation *Artemis* in the DRC in 2003, the aim was to ensure that ownership of the peace-keeping mission remained in African hands, although the expansion of the operation was to be made effective by the contribution of key supporting capabilities such as strategic airlift and training.

On 18 July 2005 the EU presented a consolidated package of additional measures (both civilian and military) to support the expansion of AMIS (AMIS II).¹⁴⁸ That package consisted of the following:

- Military – the provision of equipment and assets; planning and technical assistance to the AMIS II command structure; additional military observers; training of AU troops and observers and strategic and tactical transport. However, no EU troops have been deployed on the ground.
- Civilian – support to the police (CIVPOL) component of AMIS II including support to the chain of command; the training of CIVPOL personnel and the development

¹⁴⁵ Council of the European Union, *Presidency Report on ESDP*, 15678/05

¹⁴⁶ Third countries include Albania, Argentina, Bulgaria, Canada, Chile, Morocco, New Zealand, Norway, Romania, Switzerland and Turkey. Information on troop contributions is available online at: <http://www.euforbih.org/organisation/organisation.htm>

¹⁴⁷ A copy of this paper is available online at: <http://www.parliament.uk/commons/lib/research/rp2006/rp06-008.pdf>

¹⁴⁸ Council Joint Action 2005/557/CFSP, 20 July 2005

of a police unit within the AU secretariat. An EU Special Representative was also appointed in August 2005 to support the AU.

In addition to this assistance the EU has also provided an additional €70 million to support the AMIS operation.¹⁴⁹ NATO has provided strategic airlift and training assistance to the AMIS II operation.¹⁵⁰

A series of Lords Parliamentary Questions in February 2006 outlined the UK contribution to the EU support operation in Darfur:

Lord Astor of Hever: What equipment is being provided by the United Kingdom in support of, and for the use of, the African Union Mission and the proposed United Nations Mission to the Sudan.

Lord Triesman: The UK has committed £19 million of funding this financial year to the African Union Mission in Sudan (AMIS). This brings our total contribution to AMIS, since its inception, to almost £32 million. We are using the majority of our contribution to provide equipment. We have purchased more than 900 vehicles, and are funding the airlift of troops into Darfur. We have contributed rapid deployment kits for the troops as well as ration kits. We are also providing military and civilian policing advice, expertise and training.

The existing United Nations Mission in the Sudan (UNMIS), which operates outside Darfur, is supplied by the UN and therefore does not need bilateral grants of equipment. The proposed UN successor mission to AMIS will be in a similar position.

Lord Astor of Hever asked Her Majesty's Government: How many (a) military, and (b) police service personnel are being provided by the United Kingdom in advisory support to the African Union Mission and the proposed United Nations Mission to the Sudan; and [HL4075]

What is the estimated annual cost of military and police service advisory support provided by the United Kingdom in advisory support to the African Union Mission and the proposed United Nations Mission to the Sudan; and [HL4077]

What estimate they have formed of the overall financial cost of military and police service advisory support being provided by the United Kingdom in advisory support to the African Union Mission and the proposed United Nations Mission to the Sudan in comparison with the value of similar contributions made by other donors. [HL4078]

Lord Triesman: The UK provides one officer through the EU as an adviser to the Joint Logistics Organisation in the African Union Mission (AMIS) in El Fashir, Darfur, at an annual estimated cost of £150,000. The UK also provides a military observer at an estimated annual cost of £70,000. We have contributed six police experts to the EU's civilian policing mission to AMIS, at an annual cost of approximately £280,000. The UK also contributes indirectly to common costs of

¹⁴⁹ More detailed information on the nature of the consolidated package is available online at: http://www.consilium.europa.eu/uedocs/cmsUpload/AMIS_II_October.pdf

¹⁵⁰ information on the NATO contribution is available at: <http://www.nato.int/issues/darfur/index.html>

the EU's policing mission through its contribution to the EU's common foreign and security policy budget. We estimate the UK's share of these annual costs at £400,000. Canada, US and EU member states have also provided a number of military and police advisers, whose numbers have fluctuated, and for whom we do not have cost details.

The UK has played a leading role in establishing AMIS. Since its inception we have provided £32 million of financial assistance. We are also a key supporter of AMIS through our efforts to engage other donors. We welcome the AU (African Union) Peace and Security Council's decision in principle to hand over the mission to the UN, and urge the AU and UN to agree the final decision as soon as possible. The UK will continue to support AMIS during its deployment.¹⁵¹

3. EU Military Support to MONUC (Democratic Republic of Congo)

In 2003 the EU deployed an interim force to the Democratic Republic of Congo (DRC) ahead of a more robust UN operation in the country (MONUC). That deployment is examined in Library Standard Note SN/IA/2193, *Interim Emergency Multinational Force in the Democratic Republic of Congo*.

Following a request from the UN, in April 2006 the EU Council of Ministers approved a Joint Action authorising an EU military operation to the DRC in support of the MONUC mission during the forthcoming elections which are currently scheduled for 30 July 2006.¹⁵²

The EU-led operation (codenamed EUFOR RD Congo) will be deployed in accordance with the mandate set out in UN Security Council Resolution 1671 of April 2006. On that basis, EUFOR RD Congo will conduct the following tasks:

- Support MONUC in order to stabilise a situation where MONUC faces difficulty in fulfilling its mandate within its existing capabilities.
- Contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment.
- Contribute to airport protection in Kinshasa.
- Ensure the security and freedom of movement of the personnel as well as the protection of the installations of EUFOR RD Congo.
- Execute operations of limited character in order to extract individuals in danger.¹⁵³

The EU force will comprise approximately 400-500 military personnel deployed to Kinshasa, in addition to the deployment of a battalion-sized "over the horizon" force of 1,100 personnel deployed in Gabon and able to deploy rapidly to the DRC if necessary. The Operational Headquarters for this mission will be based in Potsdam, Germany, the Force commander will be French, while the Political and Security Committee within the EU will provide overall strategic direction to the operation.

¹⁵¹ HL Deb 27 February 2006, c33-34WA

¹⁵² Council Joint Action 2006/319/CFSP

¹⁵³ Council of the European Union, press release, 27 April 2006

On 1 June 2006 the German Bundestag approved the deployment of up to 780 troops as part of the EU-led force in DRC.¹⁵⁴ France is also understood to be contributing 850 personnel to this operation, while a further 400 troops are expected to be deployed from 16 other EU countries.¹⁵⁵ The British Government has indicated that the UK's commitment to this operation will be minimal due to commitments elsewhere. It is anticipated that one UK officer will be deployed to the operational HQ in Potsdam.¹⁵⁶

At present the mandate of the EU operation will expire four months after the date of the first round of elections. The expected cost of the EU operation has been estimated at €16.7 million, while the UK's contribution is expected to be €2.93 million.¹⁵⁷

The EU military operation will remain separate from the EU Police Mission in Kinshasa (EU POL Kinshasa) and the EU security sector reform mission in the DRC (EUSEC DR Congo), although it is considered an integral part of the EU's overall commitment to the transition process in the DRC.

Commenting on the planning process for the EU operation in DRC Tim Williams, Head of the European Security Programme at RUSI, criticised the time taken to reach decisions on deployment and argued that it does not bode well for the EU Battlegroups concept. As outlined in section II B4 the underlying principle of the Battlegroups concept is to provide the EU with a flexible, small-scale crisis management capability, and one which would primarily be used in response to requests from the UN and in relation to Africa. He argued:

The EU Council has now agreed to launch a second mission to DRC. But the decision followed three months of political indecision and the military preparations have not been characterized by the sort of 'rapid response' that lies at the heart of the EU's Battlegroup initiative, intended to reach Full Operational Capability next year [...]

Although Initial Operational capability should have already been achieved, the force that will be deployed to the Congo is not a Battlegroup. Instead, because Germany currently appears at the top of the Battlegroup roster, Chancellor Merkel volunteered Germany to lead the Congo mission, though the force will be generated via 'traditional' EU procedures. Its make-up will not reflect any of the ready-to-go force packages, despite the fact that the nature and size of the planned mission would appear to lend themselves to a Battlegroup operations. While Battlegroups have been specifically designed for (very) rapid response, the Congo deployment has already been characterized by indecision and dithering.¹⁵⁸

¹⁵⁴ "Germany set for DR Congo mission", *BBC News Online*, 1 June 2006

¹⁵⁵ "EU troop presence at DR Congo vote vital for peace", *Agence France Presse*, 19 May 2006

¹⁵⁶ European Scrutiny Committee, *Twenty Fifth Report of Session 2005-06*, HC34- xxv, 26 April 2006

¹⁵⁷ *ibid.*

¹⁵⁸ "EU goes back to Congo", *RUSI Newsbrief*, April 2006

He went on to suggest:

So why is Germany, along with other EU countries, dragging its feet when an EU mission six months before Battlegroups reach Full Operational Capability would appear to be the perfect advert for the new EU capability? Clearly, governments are aware that a great deal more needs to be done to ensure battlegroups can live up to their billing and some might feel that this mission has come too soon for the EU. In addition, the DRC is hardly a risk free-testing ground in which to parade the EU's emerging crisis management force packages.¹⁵⁹

¹⁵⁹ "EU goes back to Congo", *RUSI Newsbrief*, April 2006

III Related Issues – European Commission Proposals on Defence Harmonisation

Over the last eighteen months the European Commission has introduced two key measures relating to the European defence market which it hopes will pave the way toward the long sought after goal of harmonisation and greater competition in a sector that has traditionally been perceived as largely protectionist.

A. Interpretative Communication on Defence Procurement

1. Article 296 EC Treaty

Under Article 296 of the EC Treaty the procurement of equipment, supplies, works and services intended for military purposes and crucial to national security are exempt from EU public procurement rules, and therefore Member States are not required to competitively tender contracts in this area. Article 296 states:

1. The provisions of this Treaty shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.¹⁶⁰

Under the provisions set down in clause 1 (b), civilian goods or those not intended for military purposes, even if purchased by the defence ministry of a Member State, are not covered by the exemption this Article provides. This position was clarified in March 2004 in Article 10 of Directive 2004/18/EC on the award of public contracts.¹⁶¹ European Court of Justice (ECJ) case law also supports this view and states that Article 296 does not permit automatic exemption for all defence procurement.¹⁶²

However Member States have, to date, largely adopted a broad interpretation of the provisions of Article 296 and applied the exemption to the majority of procurement contracts issued by their respective defence ministries, regardless of their nature. As

¹⁶⁰ Treaty on European Union, Article 296 (2002/C 325/01)

¹⁶¹ Official Journal L134, 30 April 2004

¹⁶² European Court of Justice, Johnston Judgement, Case 222/84

such, defence procurement is largely conducted according to national regulations and guidelines on tendering and the award of contracts, all of which differ extensively. Factors such as offset obligations,¹⁶³ security of supply and workshare influence the defence procurement process within each Member State to a varying degree. Some EU Member States are inherently protectionist in their approach to defence procurement; while others such as the UK have pursued open markets and competitiveness as a means to securing best value for money.¹⁶⁴

2. Commission Green Paper

On 23 September 2004 the European Commission Internal Market Commissioner published a consultative *Green Paper on Defence Procurement*.¹⁶⁵ The aim of the paper was to improve efficiency and competition in the EU defence market by establishing guidance on how EC Treaty exceptions and requirements under Article 296 should be interpreted. Progress in this area is regarded as crucial for the success of the EDA's harmonisation objectives.

The paper identified two possible options for action by the European Commission: introducing a non-legislative instrument clarifying the existing legal framework; or introducing a new legal instrument aimed at establishing specific rules in defence procurement to supplement the current regulatory framework.

However, support for these stand-alone legislative options was minimal. The introduction of an interpretative communication was regarded by many as potentially useful, although insufficient in the longer term as it would be a non-legislative measure and would do nothing to promote either transparency or competition in the defence market. A new Directive, on the other hand, was viewed by many as a viable option but its impact was considered to be limited, as Member States would have to unanimously decide on when article 296 applies and issues such as security of supply would remain subjective and the prerogative of Member States.

As the European Union Institute for Security Studies pointed out, "the notion of essential security interests remains vague, and it would still be difficult to draw the borderline between contracts covered by Article 296 and those which are not. A defence directive would not do away with this problem of definitions".¹⁶⁶

Therefore, a third approach was put forward. Under this proposal an interpretative communication, prepared in conjunction with Member States, would be set down to clarify the existing legal framework; while in tandem a voluntary EDA code of conduct

¹⁶³ Offset is also referred to as Industrial Participation.

¹⁶⁴ These issues are examined in greater detail in Library Research Paper RP03/78 *UK Defence Procurement Policy*, 20 October 2003. An examination of the French and US defence markets is also provided in Library Standard Note SN/IA/3759, *The Defence Industrial Strategy*, 23 September 2005

¹⁶⁵ A copy of this consultation document is available online at:
http://ec.europa.eu/internal_market/publicprocurement/dpp_en.htm

¹⁶⁶ Submission from the EU Institute for Security Studies to the European Commission Green Paper on Defence Procurement, 15 February 2005

would set down guidelines and broad categories for the procurement of goods under Article 296.

3. Recommendations

In December 2005 the European Commission published its recommendations in response to the results of the consultation. In a Communication to the Council and the European Parliament the Commission highlighted its intention to introduce the following:¹⁶⁷

1. An Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement. This Communication will recall the principles governing the use of the exemption in line with European Court of Justice (ECJ) case law, and will clarify the criteria on which Member States will have to decide when the conditions for applying the article 296 exemption apply and when they do not.

The Commission Communication states:

While providing additional legal certainty and guidance for member States, an Interpretative Communications will not alter the current legal framework. It will simply clarify the existing one, with the objective of making its implementation more uniform.¹⁶⁸

2. In addition to the Interpretative Communication, the European Commission also considers that a Directive coordinating national procedures for the procurement of defence goods and services, where Article 296 does not apply, would be appropriate. Therefore, impact assessments will be undertaken throughout 2006 with a view to the presentation of a possible proposal for legislation at the end of the year.

Both Commission proposals will be complementary to the EDA Code of Conduct on Article 296 procurement contracts (this is examined in section II C).

B. Proposal on Intra-Community Arms exports

As part of European Commission initiatives to open up the European defence market to greater competition, the Directorate General for Enterprise and Industry published a consultation at the beginning of April 2006 on *Intra-Community Transfer of Defence Products*. The aim of the consultation is to facilitate the movement of defence products and services within the EC by laying the groundwork for a future EC initiative that will overcome the varying national administrative procedures for arms export licensing and

¹⁶⁷ The full text of this Communication is available online at:

http://europa.eu.int/comm/internal_market/publicprocurement/docs/defence/com05-626_en.pdf

¹⁶⁸ http://ec.europa.eu/internal_market/publicprocurement/docs/defence/com05-626_en.pdf

establish simplified export procedures based on common criteria for products and services exported between EU Member States.

As this proposal is focused solely upon intra-Community transfers of defence products, and is not intended to replace national export licensing policies to non-EU countries, it falls within the competence of the European Commission. In its consultation paper the Commission sets out the following legal framework as justification for its proposals:

According to the case-law of the Court of Justice of the European Communities, Community law applies to defence-related products, as it does to all other products. In particular, the principle of free movement of goods and services and commercial policy (Articles 28, 49 133 TEC) are applicable. By their very nature, export authorisations are one of the measures which create quantitative restrictions or measures having equivalent effect [...] which Community law aims to eliminate with regard to intra-Community trade.

Nonetheless, Articles 30 or 296 allow Member States to justify restrictive measures by demonstrating on a case-by-case basis that they are needed and proportional to protect national security. However, it is not possible to infer from these articles that there is inherent in the Treaty a general proviso covering all measures taken by Member States for reasons of national security. Thus articles 30 or 296 have no effect on the Community's legislative power to lay down measures concerning the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market (Article 95 (1)).¹⁶⁹

With a view to the aims of the consultation, the paper sets out three options for improving arms export licensing procedures:

- Continued intergovernmental co-operation – The Six Nation Framework Agreement signed in July 1998 and the Farnborough Framework Agreement of July 2000, for example, included undertakings to apply simplified export procedures to transfers carried out as part of multinational procurement programmes. Intergovernmental co-operation could continue on this basis. However the paper acknowledges that the Framework would have to be extended and the 19 other Member States would be required to participate if the benefits of the system were to be extended to the EU as a whole. One of the main advantages of this approach would be the utilisation of an instrument that already exists.
- Reinforcing ESDP – this could be achieved by a Common Position of the Council of Ministers. Agreed on the basis of unanimity the Common Position could set out simplified procedures for export licensing for those products being transferred within the EU, while at the same time setting out where exceptions could apply. However, the consultation paper highlights the inability of the Council to approve similar proposals in the past and suggests that support for this initiative has not increased.

¹⁶⁹ European Commission, *Consultation Paper on the Intra-Community Circulation of Products for the defence of Member States*, 21 March 2006, para. 1.2

- Establishing a Community Instrument for defence markets – the Instrument would replace the authorisation of each intra-Community transfer with a procedure based on common EU criteria. The paper acknowledges that such an instrument would also be required to lay down measures which were sufficient for ensuring the national security of Member States, including the possibility of Member States exempting themselves from the principles of this Instrument in certain circumstances. The products covered by this Instrument could be included on a list drawn up on the basis of existing lists, such as the Common list of military goods covered by the EU Code of Conduct.

The consultation paper also acknowledges that any Community-level system would be required to provide guarantees that defence products exported to another EU Member State under this system would not then be re-exported to a country outside the Community. The paper suggests that establishing a list of third countries to which exports could be authorised on the basis of the EU Code of Conduct could be one option for addressing this concern.

As this initiative is relatively new there has, to date, been little comment on the Commission's specific proposals. However, the consultation is available online at: http://europa.eu.int/comm/enterprise/regulation/inst_sp/defense_en.htm#cons.

The closing date for consultation submissions is 30 June 2006.

IV Prospects for ESDP Progress Outside the EU Constitution

Although the overall fate of the EU Constitution is now uncertain following the ‘no’ votes in the French and Dutch referenda in mid-2005, because of the intergovernmental framework that governs it CFSP/ ESDP has been widely regarded as an area of policy that may still progress regardless of the overall fate of the Constitution.¹⁷⁰

However, comparable to the implementation of CFSP during the early-mid 1990s, progress is likely to be determined by two key factors: the continued convergence of national interests in this area, particularly between the UK and France; and the political will of EU leaders in the face of other competing domestic priorities.

In a May 2006 article the Head of the European Security Programme at RUSI, Tim Williams, commented:

In general terms the UK holds the key to EU defence. Britain and France are the only countries in the European Union that can deploy hard military power, and if the EU is to have an effective defence arm, both countries must be fully signed up to the initiative. On the capabilities front specifically – and the *raison d'être* of the European Defence Agency is the improvement of the military capabilities available to European governments – British involvement will ensure that the EU focus remains on capability development and bringing added value to existing NATO capacities. Without the UK, it is quite conceivable that many European countries will turn their attention to a process of institution building that will do nothing to develop Europe’s expeditionary military capability. Improved capabilities among European partners are clearly in British interests; *ergo* the UK must remain engaged.¹⁷¹

Indeed, the precedent for taking forward CFSP/ESDP proposals outside the constitutional framework has already been well established with the creation of the EDA and the long-term initiatives aimed at improving Europe’s military capabilities, including the creation of an EU Military Planning Cell, and the EU ‘Battlegroups’ (as discussed in section II C). In its report on the EDA the Lords EU Select Committee commented:

Negotiations on the Constitutional Treaty and the establishment of the EDA proceeded in parallel. This does not affect the legal base of the EDA. There is no requirement for a treaty change to establish an EU agency, where the EU has competence to act. The present Joint Action is therefore the legal base for the EDA, regardless of whether the Constitutional Treaty comes into force.¹⁷²

¹⁷⁰ Initial CFSP/ ESDP proposals in the Constitution text are set out in Library Research Papers [RP04/66, *The Treaty Establishing a Constitution for Europe: Part I*](#), 6 September 2004 and [RP04/75, *The Treaty Establishing a Constitution for Europe: Part III*](#), 8 October 2004. Wider prospects for the EU Constitution are examined in Library Research Paper [RP05/45, *The Future of the European Constitution*](#), 13 June 2005

¹⁷¹ “Changing faces, changing places: realignment and reassessment in the European defence market”, *RUSI Newsbrief*, May 2006

¹⁷² House of Lords European Union Committee, *European Defence Agency*, HL Paper 76, Session 2004-05, para 14

Support for strengthening the EU's foreign policy by taking forward CFSP/ ESDP outside the constitutional framework has also been considerable, with many analysts arguing for the need to retain a strong EU foreign policy.

Speaking at a Centre for European Reform seminar on 31 May 2005, the author and historian Timothy Garton Ash argued: "the one thing we absolutely must salvage now is our enhanced capacity in foreign policy".¹⁷³ This is a view that the NATO Secretary General, Jaap de Hoop Scheffer, agrees with. An article in the *International Herald Tribune* in June 2005 reported his comment that:

The need for a strong Europe has not changed since the no votes in France and the Netherlands [...] it is very important that in the areas of defense and security, Europe will further integrate.¹⁷⁴

Yet, he went on to caution against developing the EU as a competitor to NATO:

We need European integration that develops in parallel with NATO [...] as a counterweight it will simply not work.

However it is the political will of Europe's leaders to push CFSP/ESDP forward, within the context of the current European debate, which is considered to be fundamental to achieving progress. Only a convergence of national interests will see controversial proposals such as the EU Foreign Minister taken forward.

Karl von Wogau, a German member of the European Parliament and head of the EP subcommittee on defence, stated:

I'm not discouraged for ESDP because it has its own fixed agenda, and that will move ahead even if the constitution is not in place. I see a positive will to move ahead in this area. Security and defence are the centrepieces of the EU's foreign policy ambitions, and they will go forward.¹⁷⁵

However, an article in *Defense News* reported:

"There will certainly be a slowing down in the creation of a European defense identity" a senior defense analyst said, adding the burden will fall on France and Britain, the two leading defense partners in Europe. But it will be uphill work because of the lack of a supporting legal framework and, more importantly, public opinion in two founding members has turned inward against the European project.

The case for strengthening European defense will be harder to make in the domestic debate over resources and priorities.¹⁷⁶

¹⁷³ Centre for European Reform, "Europe's referendum challenge: what happens next?", 31 May 2005

¹⁷⁴ "NATO chief relays US support for EU", *The International Herald Tribune*, 7 June 2005

¹⁷⁵ "Nations react to EU Constitution vote", *Defense News*, 6 June 2005

¹⁷⁶ "Nations react to EU Constitution vote", *Defense News*, 6 June 2005

Other analysts, such as Francois Heisbourg of the *Fondation pour la Recherche Strategique*, have argued that rejection of the Constitution is likely to have little immediate effect upon defence matters but a fundamental one on Europe's foreign policy objectives, with "politicians focusing on internal EU affairs [and] neglecting the Darfur crisis and other issues".¹⁷⁷ Charles Grant also concurred with this view, suggesting that "sadly the EU will now spend the next few years arguing about institutions, diverting time and energy from real problems in the real world".¹⁷⁸

A. EU Foreign Minister

Articles I-28 and III-294-296 of the Constitution allow for the creation of an EU Foreign Minister who would conduct the EU's foreign and security policy through the implementation of decisions adopted by the European Council and the Council of Ministers. The Minister would also preside over the General Affairs Council and sit in the Commission as a Vice President. The Minister would be appointed by the European Council by QMV, with the agreement of the Commission President.

For an EU Foreign Minister to be established outside the Constitution any aspect of his/her role and remit that impacts on the current EC Treaty, institutions or mechanisms would have to be either abandoned or amended. For example, under this approach the EU Foreign Minister would be unable to sit in the Commission as a Vice President and use the resources of the Commission; while the role of the Minister could not be one that subsumes the current positions of the EU External Relations Commissioner and the High Representative for CFSP, as currently envisaged under the Constitution.

It is also likely that any appointment of an EU Foreign Minister outside the constitutional framework would have to be made by unanimity in the Council rather than by QMV, as the Constitution proposes.

Options

Without the ability to subsume the role of the External Relations Commissioner, many have argued that the creation of an EU Foreign Minister becomes unnecessary as his/her remit would be almost identical to the functions currently provided by the High Representative under Articles 18 (3) and 26 of the TEU.

Those articles state:

(3) The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy [...]

The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the

¹⁷⁷ "Nations react to EU Constitution vote", *Defense News*, 6 June 2005

¹⁷⁸ "Did the French do us a favour? No, the continent's usefulness is in its unity", *The Los Angeles Times*, 5 June 2005

scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.¹⁷⁹

One possible option would be, on the basis of unanimity in the Council, to expand and strengthen, in detail, the remit and decision making powers of the High Representative as set out in the aforementioned TEU articles, and thereby create the post of Foreign Minister in all but name.

Alan Dashwood, Chair of the Centre for European Legal Studies at Cambridge University, has suggested “giving the High Representative a speaking but non-voting observer role”¹⁸⁰ as a possible way forward, whilst Timothy Gatten Ash has argued that:

We can happily throw over the title of Foreign Minister. Solana can go on being High Representative. But he needs to have an active and authoritative presence in decision making.¹⁸¹

In contrast Charles Grant has suggested that “any attempt to create that post [EU foreign minister] on the legal basis of the current treaties would probably be too controversial for some Member States’.¹⁸²

An article in *The Economist* also commented:

Technocrats in Brussels are already talking of cherry-picking parts of the constitution that could be pushed through without changing the treaties – a strategy that might avert new referendums [...] the one big change that lawyers think might be achievable without referendums is creating an EU foreign minister, which could be done by intergovernmental agreement. But that could be politically tricky. After the French and Dutch votes, anything smacking of an elite-driven attempt to circumvent the popular will would look awful.

Cherry-picking the constitution is not in any case a response to the crisis of legitimacy revealed by these votes.¹⁸³

However, an article in *European Voice* quoted an unnamed EU diplomat as unequivocally stating that “the function of EU foreign minister could not be created without treaty change”.¹⁸⁴

¹⁷⁹ *Consolidated version of the Treaty on European Union*, Articles 18 (3) and 26.

¹⁸⁰ “Europe’s referendum challenge: what happens next?”, *Centre for European Reform*, 31 May 2005

¹⁸¹ *ibid.*

¹⁸² “Europe beyond the referendums”, *CER Bulletin*, June/July 2005

¹⁸³ “Dead, but not yet buried”, *The Economist*, 6 June 2005

¹⁸⁴ “Diplomat corps joins treaty in ‘cold storage’”, *European Voice*, 9-15 June 2005

Indeed, in his Statement to the House on 6 June 2005 the then Foreign Secretary, Jack Straw, ruled out the possibility of the EU Foreign Minister being agreed outside the Constitution:

Kate Hoey (Vauxhall) (Lab): I am sure the Foreign Secretary would agree that among the things that are synonymous with the European Union are back-door and back-room deals. Will he assure me that one matter that he would certainly submit to a referendum is the creation of a Foreign Minister and a European President?

Mr. Straw: Those points are central to the European constitutional treaty, and of course I see no prospect of their being brought into force, save through the vehicle of a constitutional treaty.¹⁸⁵

In March 2006 the Polish president, Lech Kaczynski, also reiterated this position following calls by France for proposals to strengthen the role of the EU High Representative to move forward. An article from *EU Observer* commented:

Polish President Lech Kaczynski has said it is too early for the creation of an EU foreign minister post [...] adding that the time is not ripe for the creation of a European diplomatic service either.

The Polish stance comes amid French calls for quicker implementation of single elements of the EU constitution to strengthen the EU's voice in the world [...]

Diplomats told EU Observer that Paris' push for more foreign policy integration is also facing resistance in other capitals [...] Spain has spoken out against a piecemeal implementation of ideas from the EU constitution, arguing that it could lead opponents of the charter to say that the adoption of the whole text is unnecessary [...]

Small states like the Netherlands are also wary of a strengthened role for Mr Solana as he is seen as following the agenda of big member states France, Germany and the UK.¹⁸⁶

B. Solidarity Clause

The establishment of a solidarity clause in the event of a terrorist attack was discussed in the immediate aftermath of 11 September 2001. It was also discussed at the Anglo-French summit at Le Touquet in February 2003 and following the Madrid train bombings in March 2004. The inclusion of a solidarity clause in the Constitution was therefore welcomed.

Article I-43 of the Constitution would commit EU Member States to "Act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural

¹⁸⁵ HC Deb 6 June 2005, c1001

¹⁸⁶ "Poland against EU foreign minister post", *EU Observer*, 8 March 2006

or man-made disaster”.¹⁸⁷ The arrangements for implementing this provision were outlined in Article III-329. Under this clause assistance would be provided only at the request of the political authorities of a Member State; while decisions on the arrangements for implementing the provisions of the solidarity clause and the co-ordination of any such assistance would be undertaken within the Council of Ministers. Regular assessment of the threats facing the EU would also be taken by the European Council.

The intergovernmental nature of these arrangements would make it relatively easy to implement them outside the Constitutional framework should the Member States choose to do so. Indeed, since the Madrid train bombings in March 2004 the EU has already taken considerable steps, under the auspices of CFSP and the Justice and Home Affairs (JHA) pillars, toward the development of a coherent EU-wide plan to help defend Europe against terrorism and build upon proposals first set down in the ESS. These measures are examined in section II A.

C. Extension of QMV in CFSP Matters

Article III-300 (2) of the Constitution allows for the expansion of decision making by Qualified Majority Voting (QMV) in CFSP matters, in addition to those areas already set out in Article 23 TEU. Specifically, the article would allow the European Council to adopt a decision on the basis of unanimity, providing for the Council of Ministers to act by QMV in cases designated by them. Any Member State would still retain the right under this clause to oppose the adoption of a decision by QMV for reasons of national security. In such cases the Council of Ministers may request that the matter be referred to the European Council for a decision by unanimity. Decisions by unanimity would still apply to ESDP however.

Outside the constitutional framework the ability of the European Council to unanimously adopt decisions expanding the use of QMV in CFSP matters still exists, due to the intergovernmental nature of CFSP decision making. Therefore, this concept could theoretically be taken forward by the European Council, so long as the areas into which QMV was expanded did not contravene any of the provisions already set down by the TEU. One of the consequences of this approach would be the reinforcement of the pillar structure of the EU.

D. Expansion of the Petersberg Tasks

The Petersberg Tasks were agreed at a ministerial meeting on the Western European Union (WEU) in June 1992. Those tasks defined the remit of military operations that EU Member States could expect to engage in, including humanitarian and rescue tasks, peacekeeping and crisis management. At the negotiation of the Amsterdam Treaty in 1997 those tasks were incorporated into the Treaty text. Article 17 (2) TEU now states:

¹⁸⁷ Treaty establishing a Constitution for Europe, Article III-309, Cm 6429, December 2004

Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

One objective of the EU Constitution was to expand the remit of EU military operations beyond those considered in the original Petersberg tasks. Article III-309 stated:

The tasks referred to in Article I-41 (1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.¹⁸⁸

Decisions relating to the tasks defined under this Article, including their objective, scope and conditions for implementation, would be taken by unanimity in the Council of Ministers.

For some commentators, the unofficial expansion of the Petersberg tasks has already been put into effect with the increase in number and scope of operations conducted in the last few years (examined in section II E), and with the extension of CFSP/ ESDP activities into other areas such as the fight against terrorism and the proliferation of WMD (examined in section II A). In addition, the Headline Goal 2010 and Civilian Headline Goal 2008 (examined in section II C) which were adopted in June and December 2004 respectively, also set out the capability priorities for underpinning any expansion of the Petersberg tasks to include, for example, security sector reform and monitoring missions.

¹⁸⁸ Treaty establishing a Constitution for Europe, Article III-309, Cm 6429, December 2004

Appendix One – Glossary of Terms

AET – Agency Establishment Team

AMIS – African Union Mission in Sudan

CCC – Capabilities Commitment Conference

CCIC – Civilian Capabilities Improvement Chart

CFSP – Common Foreign and Security Policy

CHG – Civilian Headline Goal

CIC – Capabilities Improvement Chart

DCI – Defence Capabilities Initiative

EC – European Community

ECAP – European Capabilities Action Plan

EDA – European Defence Agency

EGF – European Gendarmerie Force

ESDP – European Security and Defence Policy

ERRF – European Union Rapid Reaction Force

ESS – European Security Strategy

EU – European Union

EUSR – European Union Special Representative

FOC – Full Operational Capability

GAERC – General Affairs and External Relations Council

HG2010 – Helsinki Headline 2010

HHG – Helsinki Headline Goal

IOC – Initial Operational Capability

NATO – North Atlantic Treaty Organisation

OSCE – Organisation for Security and Co-operation in Europe

PCC – Prague Capabilities Commitment

SHAPE – Supreme Headquarters of the Allied Powers in Europe

TEU – Treaty on European Union