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Interparliamentary scrutiny of the CFSP: avenues for the future

Annex 1 : The democratic challenges facing the CFSP: some views of experts

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The democratic challenges have been clearly identified by EUISS Director Álvaro de Vasconcelos and by the high-level group of experts contributing under the Institute's auspices to the book *What ambitions for European Defence in 2020?*.[1] In the conclusions, among the 10 priorities defined by Álvaro de Vasconcelos in his 'CSDP Roadmap to 2020', is priority no.7 calling for the creation of a 'European Parliamentary Council for Security and Defence':

'Democratic control of ESDP is becoming an issue, as European public opinion is demanding greater accountability and transparency with regard to the full spectrum of EU decisions. This requires the engagement of national parliaments and of the European Parliament. More extensive parliamentary debate on ESDP will lead to increased public scrutiny and awareness of ESDP missions, thus enhancing their legitimacy, both at the European and national levels.

The 'Europeanisation' of the national parliamentary defence committees is thus a condition for the success of ESDP. This should be achieved by a greater interaction between the European Parliament subcommittee on security and defence and equivalent committees from the EU's national parliaments. A European Parliamentary Council for Security and Defence should speedily replace the existing WEU Assembly[2].'[3]

Jolyon Howorth for his part points out that 'the EU is already demonstrating, empirically, that it can conduct international relations differently. But if those normative objectives are actually to be achieved, the EU

1. Álvaro de Vasconcelos (ed.), *What ambitions for European Defence in 2020?* (Paris: EUISS, 2010). Available at: http://www.iss.europa.eu/publications/detail/article/what-ambitions-for-european-defence-in-2020/.

2. Following the collective denunciation by the States Party to the modified Brussels Treaty, WEU and its Assembly ceased to exist on 30 June 2011. Numerous national parliaments in their official statements have deplored this as a loss that has caused a gap in the interparliamentary scrutiny of the CFSP and CSDP that must be filled as soon as possible on the basis of the provisions contained in Protocol No.1 to the Lisbon Treaty on the role of national parliaments.

3. Álvaro de Vasconcelos, op. cit. in note 1, pp. 159-60.

must possess the entire range of policy instruments, including a significant measure of hard power. For whatever reason – and the reasons vary considerably – the EU is now welcomed as a power combining civilian and military capabilities by, among others, the US, China, India, Brazil, the UN, ASEAN and the African Union. Legitimacy stems in large measure from credit earned in the eyes of third parties. The value-added of the EU, in the eyes of other international actors, is its unique ability to combine, in new and unprecedented ways, military and civilian resources in the delivery of global public goods.

With the ratification of the Lisbon Treaty, this external international legitimacy will also be enhanced internally by the increasing role of the European Parliament in sanctioning CFSP and ESDP. The European Parliament (under Art. 21 (a)) will henceforth play a more visible and active role in promoting and achieving a better and more effective European foreign and security policy, thus conferring upon these policy areas enhanced popular legitimacy. Greater interaction between, on the one hand, the European Parliament and its foreign and security committees and, on the other hand, equivalent committee members from the EU's national parliaments will magnify this effect.'[4]

For Stefano Silvestri, the CSDP 'should be considered as the operational arm of the Common Foreign and Security Policy (CFSP) of the EU. Neither can be effective without the other. This implies, however, that the CFSP should also be shaped in a way that takes account of the evolution of CSDP, and not just the contrary. There is a strict linkage between any CSDP mission and foreign policy. For instance, the EULEX mission in Kosovo cannot succeed if a clear strategy for dealing with the situation on the ground has not been thought out in the framework of CFSP. What would be the consequences of a failure of this mission for Kosovo and for the other regional actors? Is there a price to be paid by them, in case of failure? Is the EU prepared to increase as much as needed the leverage necessary to make the mission succeed? This is normally called credibility, and is an essential feature of any defence policy'.[5]

4. Jolyon Howorth, 'Implementing a "grand strategy"', in ibid, p. 40.
5. Stefano Silvestri, 'The gradual path to a European defence identity', in ibid, p. 86.

But, according to Claude-France Arnould, 'the Union should also be capable of informing its citizens, their elected representatives and its partners about what it does. Relations with members of parliament in the area of defence and security are necessarily at two levels, concerning, as they do, both the European Parliament and national parliaments (which have the power to adopt national defence budgets, and in the case of many Member States, decide on troop engagement). The Union must also act to prevent loss of the investment in CSDP made by the Parliamentary Assembly of the WEU, once the situation of the latter has been clarified.

Relations with the people and their representatives will undoubtedly be one of the main responsibilities of the High Representative, as well as of the President of the European Council. They will need the support of adequate communications structures. However, Brussels will not be able to publicise what the Union is doing in the area of security and defence unless Member States relay the same message. If in the next few years we fail to rid ourselves of the seemingly irresistible temptation to present successes as national triumphs and difficulties as failures in Brussels, the enthusiasm among citizens for European construction, whether in defence and security or any other field, will continue to waver'.[6]

Nuno Severiano Teixeira stresses that 'it is indispensable not only to ensure that the general public, political parties and civil society as a whole support CSDP goals, but also to improve democratic control of the military instruments at the disposal of the EU. This is one of the functions of the Parliamentary Assembly of the Western European Union (WEU). After the approval of the Treaty of Lisbon and notwithstanding the competences of the European Parliament, this will also be a reinforced responsibility of national parliaments. The European public needs to be made aware of the importance of security and defence issues, not just at the international level but also for the process of European integration itself'.[7]

Giovanna Bono[8] published an interesting comparative study of parliamentary scrutiny of EU-led external military operations in a number of

6. Claude-France Arnould, 'A noble ambition', in ibid, p. 95.

7. Nuno Severiano Teixeira, 'European defence: a future challenge', in ibid, p. 147.

8. 'National Parliaments and EU external military operations: is there any parliamentary control?', *European Security,* no. 2, summer 2005.

EU Member States. In order to remedy the deficits identified in the exercise of such scrutiny[9] she proposes a number of options, including that of reinforcing the national level (by strengthening the individual powers of each national parliament *vis-à-vis* its government), giving extra powers to the European Parliament (e.g. that of approving the mandate for any crisis-management operation conducted under the CSDP and of scrutinising any expenditure incurred by common action in the EU framework) and putting in place a transnational solution at European level (involving both the EP and the national parliaments in interparliamentary cooperation). Giovanno Bono was referring in the third option to the various proposals put forward since 2001. Indeed, for almost a decade now there has been discussion about the institutional status of such a cooperation structure (new interparliamentary body or *ad hoc* conferences) and its competences (at the minimum twice-yearly exchanges of information, at the maximum, scrutiny over the CFSP and CSDP at all stages of the EU decision-making process, with, in particular, formal powers of scrutiny regarding the launch and termination of operations by the EU Council).

Giovanna Bono concludes that reinforcing the national level of parliamentary scrutiny, while being necessary and important, cannot make up for the lack of 'collective' oversight over the activities of the EU Council and the CSDP structures: the national parliaments would still lack the possibility of coming together to discuss and monitor the development of the CSDP. Although the European Parliament plays a crucial role as regards the civilian aspects of crisis management and its powers are continually being strengthened, the Member States were not willing to give it additional competences as regards military operations. Hence for the moment there is no possibility of the EP being called upon to approve the mandate for EU-led military operations and there will be no European army for the foreseeable future (at least not for the next five to ten years, according to Ms. Bono, but even that strikes us as being optimistic!). A transnational solution at European level for strengthening parliamentary scrutiny over the CFSP/CSDP is offered by Protocol No.1 to the Lisbon Treaty. But to take advantage of those provisions it is necessary to organise an intensive exchange of information among the members of the

9. As regards the challenges facing parliamentary scrutiny in the EU framework, see also Hans Born, Suzana Anghel, Alex Dowling and Teodora Fuior, 'Parliamentary oversight of ESDP missions', *DCAF Policy Paper* no.28, Geneva, Centre for Democratic Control of Armed Forces, 2008. Available at: www.dcaf.ch.

foreign affairs, European affairs and defence committees of the national parliaments and the EP.

Roman Schmidt Radefeldt[10] notes, '(...) after the entry into force of the Lisbon Treaty (...) defence policy appears as one of the last bastions of national sovereignty in an increasingly integrated EU; it is hardly surprising therefore that this area of intergovernmental policy should rely for its democratic legitimacy primarily on the national parliaments'. He nonetheless contrasts the heterogeneous nature of the parliamentary scrutiny exercised by national parliaments with the 'structural superiority' of the European Parliament, which he puts down above all to its institutional closeness to the EU's CSDP structures (High Representative, EEAS, Chairman of the EU Military Committee, etc.). He refers to the German Federal Constitutional Court's rulings since the Maastricht Treaty and to its call for a dual-track and complementary system of parliamentary scrutiny. In order to give more coherence to interparliamentary cooperation in the area of the CSDP, he suggests bringing different conceptions of military law into direct comparison, with a view to the gradual emergence of an *acquis communautaire* (an unfortunate choice of words!) in the field of democratic scrutiny of military operations; however, he accepts that the deployment of national troops cannot be decided at supranational level. These, he says, are the constitutional limits to military integration as defined, in particular, by the Federal Constitutional Court.

In a recent article,[11] André Dumoulin notes that the issue of a new interparliamentary mechanism has not so far been straightforward to resolve. At the Conference of Speakers of the EU Parliaments held at the Belgian Parliament on 4 and 5 April 2011, the discussion on CFSP and CSDP was difficult. He points out that at best the agreement reached would be to hold a twice-yearly European interparliamentary conference (national parliaments, EP and observers) with no permanent structures. It would take place in the capital of the country holding the presidency, or else at the European Parliament, the idea being to bring together the people in charge of national defence budgets and parliamentarians with specialist knowledge

10. See Roman Schmidt Radefeldt, 'The parliamentary dimension of the European Security and Defence Policy (ESDP) – plurality of democratic legitimation in a multi-tier European democratic system', German Federal College for Security Studies (BAKS – *Bundesakademie für Sicherheitspolitik*), 2010.

11. André Dumoulin, 'La fin de l'UEO et l'avenir de l'interparlementarisme', *Défense nationale*, June 2011, p. 165.

of the CSDP. They would not have any powers of control or sanction in the strict sense of the term, but would have the power to scrutinise the CFSP/CSDP and to make recommendations. Such a structure would play an essential role in providing the information that is so essential for winning the support of public opinion for crisis-management operations.[12]

Alyson JK Bailes and Graham Messervy-Whiting[13] aptly sum up the issues at stake in the ongoing debate about the parliamentary scrutiny of European security and defence policy: it is up to parliamentarians to decide what is to be done, but under no circumstances will a new institution be financed. All the discussions focus on the same questions: 'how to provide practical support for interparliamentary meetings at minimum cost, with no fixed seat and no dedicated staff; how frequent the meetings should be and whether and how the venue should operate; how many MPs to invite from each nation and how many MEPs should join them; whether representatives should be invited from additional (i.e. non-EU) states and on what basis. (...) Other obvious questions are how widely the potential agenda of such meetings should range, what outputs are expected and to whom/where any recommendations arising should be addressed. A more political issue is how closely the new process should be tied to the European Parliament itself, and some elements in the EP remain very sensitive to any notion of a new "rival" being created elsewhere', while most national parliaments are afraid of 'an outcome that might give the EP 'new advantages in the defence field'. The authors nonetheless insist on the fact that 'the CSDP is more than just an aggregate of national decisions[14] taken by national logic. The simple fact that so many EU nations today find themselves contributing to operations that lack all historical logic or direct security relevance for themselves is witness to the fact that something new has been created since 1999, and that it shares at least some properties and values of the broader European integration process. Expecting all national parliaments to grasp fully what is happening is as unrealistic as expecting all national politicians to be able and willing to explain it to them. In short, there are gaps in the oversight of collective

12. André Dumoulin and Philippe Manigart (dir.), *Opinions publiques et politique européenne de sécurité et de défense commune. Acteurs, positions, évolutions* (Brussels, Bruylant, 2010).

13. Alyson JK Bailes et Graham Messervy-Whiting, 'Death of an Institution – The end for Western European Union, a future for European defence?', *Egmont Paper* 46, Royal Institute for International Relations, Brussels, May 2011, pp 57-8 and 76-7.

14. On crisis-management doctrine, capabilities, planning and actual missions.

action that can only be filled by collective scrutiny; and if they are not allowed to be filled, both the notions of democratic control and balance, and the chances for European populations to offer active buy-in and support will end up the poorer'.

Wim van Eekelen[15] frequently stresses the important part to be played by parliamentarians in supporting the development of the CSDP. He takes the view that the role of parliamentarians in the future interparliamentary structure for the scrutiny of the CFSP/CSDP should not be confined to the right to information. The added value of that structure will reside in the parliamentarians' expertise and capacity for consensus-building: hence the importance of involving all European states, including non-EU members. In Mr. van Eekelen's opinion, simple discussions on the model of COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union) would not be sufficient to provide strategic answers to the current security challenges.

As regards the European institutions, Elvire Fabry[16] underlines the 'democratic ambitions' of Europe's founding fathers who chose to 'circumvent politics using economics'. At the time of signing the ECSC Treaty in 1951, the creation, alongside the highly technocratic High Authority and the Council of Ministers, of a Common Assembly composed of representatives of the national parliaments was far from being just a symbolic gesture. The signatory states had a clear objective: to provide a democratic basis for the Community project. Jean Monnet, the driving force behind it, made this clear in 1950: 'We are not forming coalitions of states, we are uniting men'. Elvire Fabry asks the real question: 'Can there be a European democracy without a European people?' Indeed, there is no European people. The 27 peoples of the European Union do not form a single nation. This is why the German Federal Constitutional Court concluded that the EU derives its legitimacy solely from the democratic institutions at national level. Since the European Parliament's electorate does not vote as a nation, the EP cannot be considered as a democratic institution in the sense of representing the *demos* and deriving its authority and the legitimacy of its decisions from it.

15. Wim Van Eekelen, 'Debating European Security (1948-1998)', Centre for European Policy Studies (CEPS), SDU Publishers, The Hague, 1998.

16. Elvire Fabry, 'Qui a peur de la citoyenneté européenne ?', *Politique d'aujourd'hu*i, Presses universitaires de France, May 2005.

There is fear on some sides of a weakening of national sovereignty in favour of this 'unidentified political object' constituted by the EU, which explains, in particular, the reservations expressed with regard to the possible creation of a 'European Political Area'. As indicated by France's Constitutional Court in its decision of 29 and 30 December 1976 on the election of the European Parliament by direct universal suffrage, 'the EP does not constitute a sovereign assembly endowed with general powers that could compete with the exercise of national sovereignty: it is not part of France's constitutional order'. Moreover, the European Parliament is elected by all the citizens of the EU Member States; much less account is taken of the principle of equality of individuals than that of the equality of states, in line with a liberal, as opposed to democratic, rationale.

Furthermore, Elvire Fabry underlines that the EP does not have a right of investiture or power of censure with respect to the Council that is in any way comparable with that which it has *vis-à-vis* the Commission. The Council is subjected to parliamentary oversight only to the extent that each of its members, as a minister in the national government, is subjected to the scrutiny of the country's national parliament. Since the national parliaments' power of censure is exercised only for internal political reasons, the ministers representing the governments in the EU Council are to all intents and purposes free of any form of evaluation or censure with regard to the Community policies that they put in place.

Moreover, Elvire Fabry points out that if the 'Europe of executives' (the Europe of governments represented in the Council) continues to prevail over 'parliamentary Europe' (the Europe of peoples), it is also true that for a long time now most European democracies have been characterised by a weakening of parliamentary representation to the benefit of the executives.

'*The Contribution of 16 European Think Tanks to the Polish, Danish and Cypriot Trio Presidency of the European Union*',[17] recently published, also offers interesting expert views on the democratic challenges facing the CFSP.

17. Elvire Fabry (ed.), *The contribution of 16 European Think Tanks to the Polish, Danish and Cypriot Trio Presidency of the European Union*, Notre Europe, June 2011. Available at: http://www.notre-europe.eu/uploads/tx_publication/TGAE2011-web_02.pdf.

Félix Arteaga[18] recommends to 'introduce transparency, evaluation and supervision mechanisms for the missions (accountability)'. He underlines that 'governments avoid being accountable to the European Parliament by arguing that they are accountable to their own national parliaments, and they avoid being accountable to the latter by arguing that the decisions are made in Brussels. As a result, missions are as likely to be as out of step with societies at the EU level as they already are at the national level. (...) Entry into force of the Lisbon Treaty and the launch of the European External Action Service represent an opportunity to introduce reporting and assessment mechanisms that would render CSDP missions more democratically legitimate and accountable than at present'. He also argues that 'although it hardly seems logical to ask the Trio Presidency to promote transparency and supervision of the intergovernmental system, it must do exactly that. Establishing a European open evaluation system would help European citizens better identify with CSDP missions and would nurture the European strategic culture. (...) the implementation of such a mechanism would help advance towards monitoring procedures based on the best national practices and strengthen democratic supervision by national parliaments, which would be able to verify the information they receive from their governments against the information received from Brussels'. He concludes that 'the presidencies must foster cooperation between the European Parliament and national parliaments, in order to consolidate accountability and accessibility principles, regulate open or classified information systems, harmonise evaluation procedures and methodologies, and promote strategic communication between European leaders with regard to CSDP missions.'

Jörgen Hettne and Fredrik Langdal[19] point out that 'the assessment of subsidiarity has, until the entry into force of the Lisbon Treaty, been handled exclusively by EU institutions. A political *ex ante* control has been made by the Commission, the European Parliament and the Council and a legal *ex post* review has been possible before the European Court of Justice (ECJ). The Lisbon Treaty alters this situation and national parliaments have now been assigned the task of monitoring draft EU legislation

18. Félix Arteaga, 'The Need for an Open System to Evaluate European Union CSDP Missions', in Elvire Fabry, op. cit. in note 17, pp. 316-21.

19. Jörgen Hettne and Fredrik Langdal, 'Institutional Innovations: Does Subsidiarity Ask the Right Question?", in ibid, pp. 350-55.

to see if it complies with the principle of subsidiarity. This means that for the first time national parliaments have a (although limited) Treaty-based opportunity to exercise influence over the legislative process in the Union. Subsidiarity has thus shifted from being primarily a judicial *ex post* control to essentially be a political *ex ante* control'. Filippa Chatzistavrou[20] proposes 'encouraging the European role of national parliaments in order not only to participate in the mechanism for monitoring respect for the principal of subsidiarity by EU institutions, but also generally to shift their attention to the scrutiny of the content of European policies, raising or not a subsidiarity issue'. Ian Cooper[21] concludes that national parliaments' new powers under the Treaty of Lisbon allowed them to collectively perform parliamentary functions of legislation, representation, and deliberation at the EU-level.

Conclusion

Addressing national parliamentarians on 9 May 2011, Pierre Vimont, Executive Secretary-General of the European External Action Service (EEAS), said it was the duty of the European Union to contribute to a more secure world by tackling the root causes of conflicts and by taking a comprehensive approach, combining development and humanitarian aid and crisis-management tools. Today the EU has conducted a considerable number of crisis-management missions and operations. The aim of the EEAS was to deal with security and defence issues in a broader framework, which he said was its 'added value and *raison d'être*'.

Speaking before COFACC (Conference of Foreign Affairs Committees Chairpersons) on 6 May 2011, Mr. Vimont also pointed out that the EEAS has its own line in the EU budget, which accounts for less than 7% of the budget of external affairs, corresponding to 0.3% of the total EU budget. He explained that this does not mean extra costs to the taxpayers because its budget is established by the regrouping of funds, without involving new resources.

He noted that the European Union was faced with an ever-increasing demand for security and stability and that building the CSDP was a long-

20. Filippa Chatzistavrou, 'EU Policy and Constitutional Sovereignty: a Road Map', in ibid, p. 361.

21. Ian Cooper, 'A "Virtual Third Chamber" for the European Union?', ARENA Working Paper no. 7, June 2011, Centre for European Studies, University of Oslo. Available at: www.arena.uio.no.

term and gradual process that requires a common political will. The idea, he said, was to establish a 'common', as opposed to a 'uniform' policy.

As regards capabilities, the instruments existed. It was now a matter of promoting and ensuring coherence among all the EU's instruments and greater interaction with other partners. For that the EU needed effective capabilities and a common political will to act. The CSDP should also remain open to cooperation with third states and international organisations, in particular the United Nations. The aim was to give new impetus to European security and defence policy, in the interests of peace, which was the very essence of the European project.

With regard to the future structure for the interparliamentary scrutiny of the CFSP/CSDP, Mr. Vimont signalled the willingness of the High Representative and her services to 'fully cooperate' with that structure as soon as it had been set up in accordance with Protocol No. 1 to the Lisbon Treaty.

Abbreviations

ASEAN	Association of Southeast Asian Nations
COFACC	Conference of Foreign Affairs Committees Chairpersons
COSAC	Conference of Parliamentary Committees for the Union Affairs of Parliaments of the European Union
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
EEAS	European External Action Service
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WEU	Western European Union