



THE JEAN MONNET PROGRAM

Professor J.H.H. Weiler
European Union Jean Monnet Chair

Jean Monnet Working Paper 02/07

Dietmar Nickel and Gerrard Quille

In the Shadow of the Constitution: Common Foreign and Security Policy/European Security and Defence Policy Adapting to a Changing External Environment

NYU School of Law • New York, NY 10012
The Jean Monnet Working Paper Series can be found at:
www.JeanMonnetProgram.org

All rights reserved.
No part of this paper may be reproduced in any form
without permission of the author.

ISSN 1087-2221
© Dietmar Nickel and Gerrard Quille 2007
New York University School of Law
New York, NY 10012
USA

Publications in the Series should be cited as:
AUTHOR, TITLE, JEAN MONNET WORKING PAPER NO./YEAR [URL]

Abstract

The European Security and Defence Policy (ESDP) is understood as an important new "instrument" in the EU's Common Foreign and Security Policy (CFSP) "toolbox", designed to respond to the contemporary security environment as well as to overcome the inaction and hesitancy of the past. The new dynamic created by ESDP is raising the profile and effectiveness of the EU internationally although it remains embedded in an unreformed institutional framework that struggles to capture the imagination of a broader public opinion. This paper discusses important issues, particularly from a parliamentary perspective, that should be discussed more widely if ESDP is to provide real added value in the pursuit of CFSP and be sustainable in the face of future external crises and internal political debate. This paper puts forward arguments on addressing the so-called double-democratic deficit where there is a need for improved transparency, debate and democratic scrutiny of ESDP, which will otherwise remain in the *shadow of the constitution*.

Table of Contents

1. Introduction.....	3
2. Framing CFSP/ESDP.....	7
2.1 From the European Defence Community to the Amsterdam Treaty	7
2.2 From Cologne to Iraq.....	9
2.3 The European Security Strategy	11
2.4 The early ESDP Operations.....	13
2.4.1 Past and present ESDP Operations	13
2.4.2 Operation Concordia.....	15
2.4.3 Operation Artemis.....	15
2.4.4 EUFOR Althea.....	16
2.4.5 DRC – Civil-Military Coordination.....	17
2.5 Limits of ESDP?	19
3. The Convention on the Future of Europe and the Constitutional Treaty.....	21
3.1 Key Foreign Policy innovations.....	21
3.2 Key defence innovations.....	22
3.3 Implications for the European Parliament	24
3.4 The rejection of the Treaty - the end of CFSP?	26
4. Academic critiques of CFSP/ESDP	28
5. Conclusions and Analysis.....	31

In the shadow of the Constitution: Common Foreign and Security Policy/European Security and Defence Policy adapting to a changing external environment

Dr Dietmar Nickel & Dr Gerrard Quille *

1. Introduction

Europe at a cross-road is a familiar but useful term to describe the current impasse that the Union finds itself in following the rejection of the Constitutional Treaty. The current vein of political and public opinion could take the EU down very different pathways. These debates highlight a growing recognition that the EU is evolving rapidly as a foreign policy player on the world stage. The EU's original or embryonic brand of foreign policy has been neatly coined by observers as "civilian diplomacy" i.e. speak softly and carry a big wallet,¹ but this approach is being rapidly augmented by a less well-known and more muscular "European Security and Defence Policy (ESDP)". The development of ESDP followed a realisation during the 1990s that "speaking softly and carrying a big wallet" was not sufficient to respond to the conflicts in the EU's neighbourhood following the break up of Yugoslavia. The EU, therefore, expanded its "toolbox" of responses to crises, in particular through ESDP, enabling it to "speak louder" as well as carry a big wallet.²

* Dr Dietmar Nickel is the Director-General of the European Parliament's Directorate-General for External Policies of the Union. Dr Gerrard Quille is a specialist on Security and Defence in the Policy Department of the same Directorate-General. The authors write in a personal capacity and the views expressed do not necessarily represent the official position of the European Parliament. Contact details for further correspondence or comments on this paper: gerrard.quille@europarl.europa.eu The paper was presented in an earlier version to the EUSA Tenth Biennial International Conference, Montreal, 17-19 May 2007.

¹ The term is attributed to J.H.H. Weiler, during a presentation on "Cyprus: Toward a European Solution" at the *La Pietra* (Florence) Workshop October 18-19, 2006

² For a thought provoking analysis from a European perspective on the need for, and consequences of, Europe and the EU developing or, indeed, failing to develop its "toolbox" with additional military capabilities see: Cooper, R. "The Breaking of Nations: order and chaos in the twenty-first century", Atlantic Books, London, 2003. pp.159 et seq.

There is very little in the current Treaties to explain the rapid development of this muscular element of the EU's foreign policy between 1999 and 2007. Nor do the Treaties help us to explain the sudden growth of military personnel pacing the corridors of the Council (and setting up office in Avenue de Cortenbergh). In order to understand these major developments (described below) it is more useful to examine European security trends of the 1990s and follow the sign-posts of European Council conclusions since the introduction of ESDP at the Cologne [and Helsinki] European Council in 1999.

The speed in the development of ESDP and its undoubted impact on driving forward a new more visible EU Foreign Policy raises important questions for both the concerned institutions and the citizens of Europe. We often hear that opinion polls show support for the further development of EU in external relations, but interpretations of opinion polls are notoriously selective. For example, a recent Eurobarometer opinion poll shows positive responses to the impact of enlargement on contributing to peace and security amongst EU Member States.³ It also shows a positive view amongst the respondents to the question about whether more decision-making should take place at the EU level on promoting peace and democracy in the world.⁴ Eurobarometer states that amongst the policy areas where citizens feel the EU could improve even more "...are areas where the European Union's performance is judged positively. They concern cooperation in research and innovation, equal treatment between men and women, *the promotion of democracy and peace in the world.*"⁵ This paper is not a textual analysis of opinion polls, but an interesting question comes forward: do such opinions show support for the original EU approach to the Union's Common Foreign and Security Policy (CFSP) ie speaking softly and

³ Eurobarometer 251/Wave 65.1 - TNS Opinion & Social, "The Future of Europe", Fieldwork February - March 2006, Publication May 2006, European Commission, p. 31. Found at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_251_en.pdf The question posed was "QA12. Which of the following do you think is the most positive result of European unification?" 60% responded "peace among the Member States of the EU".

⁴ Ibid. p. 40. The questions posed was "QA8. For each of the following areas, please tell me if you believe that more decision-making should take place at a European level or on the contrary that less decision-making should take place at a European level." 77% responded positively on more decision making at the EU level on the promotion of peace and democracy.

⁵ Ibid. p. 42.

carrying a big wallet, or are they also endorsing the developments since 1999 of the more muscular ESDP?⁶

ESDP is widely understood as an important new "instrument" in the EU's foreign policy "toolbox" to respond to the demands of the contemporary security environment as well as to avoid the inaction and hesitancy of the past. However, this paper puts forward a number of issues that should be discussed more widely if the development of ESDP is to provide real added value for the pursuit of CFSP and be sustainable in the face of future external crises and internal political debate. In this respect this paper also puts forward arguments on the need to address the so-called double-democratic deficit where there is a need for improved transparency, debate and democratic scrutiny of ESDP, which will otherwise remain in the *shadow of the constitution*.

Advances in the Constitutional Treaty in the area of the CFSP include the creation of a Foreign Minister and the prospect of greater coherence in external relations. The Treaty's rejection by French and Dutch citizens in referenda has paradoxically not slowed the rise of the EU in external relations as witnessed by negotiations with Iran and the 10 ongoing ESDP crisis management operations around the world.⁷ The EU's international profile on security matters has continued to grow, in particular since the introduction of ESDP in 1999, and has led to calls for institutional reforms. However, partly in respect of French and Dutch constituencies, such reforms have so-far stopped short of declaring a new Foreign Minister or a European External Action Service (EEAS). The current debate, therefore, focuses upon how to make the new external relations "instruments" under the two pillars (Community pillar I and CFSP pillar II) work more coherently with each other and with the Member States (in particular their military instruments). This emphasis upon "coherence of external resources" (EU and national) places a greater demand upon the Member States and the European institutions to coordinate more closely. This trend also leads to a greater role for the European Parliament that is more demanding than has been seen to-date in this policy area. Nor have such consequences been

⁶ On the surface, this popularity of CSFP could be used as the explanation for the intention to bring forward provisions on CFSP and ESDP from the former part 3 of the Constitutional Treaty to Title V of the amended EU Treaty. The more profound reason for this intended movement may reside in the wish to make absolutely sure that the Court of Justice has no control or oversight on CSFP.

⁷ There are currently 10 ongoing ESDP operations and 7 complete. Five of the 17 are or have been at least in parts military operations. For a full list see the table on page 8.

widely discussed in academic and policy-making circles. This paper will explore the implications of these policy trends for the future external role of the Union and in particular the implications for the European Parliament.

Key arguments and paradoxes are introduced that are inherent in moving forward on CFSP/ESDP within the existing treaties and in the absence of an agreement on the innovations (such as a Foreign Minister) introduced by the Constitutional Treaty. The paper demonstrates how proposals in the Constitutional Treaty have focussed in particular on political and institutional improvements in CFSP rather than in the area of defence. This partly explains why it has been easier for the Member States to move ahead on ESDP using the current Treaties. Nevertheless, this twin-speed "bottom-up" or "technical" development of ESDP without the "constitutional upgrading" of CFSP (through the proposed Foreign Minister and EEAS) risks continuing incoherence and inconsistency of CFSP and further confusion in the public sphere on critical questions of leadership, representation and responsibility for the EU's external actions.

Such trends also raise questions for the European Parliament to address. For instance group chair Graham Watson speaking in the plenary debate of the European Parliament on the decision by EU Member States to contribute forces to the UN force (UNIFIL II) to end the Israeli-Lebanese conflict in the summer of 2006, stated:

"...The Union does not have the European constitution that it needs and which would have equipped it far better to deal with this situation. We are deploying European forces but this is not an EU force...In terms of democratic decision-making we are running on a wing and a prayer. ...Mr Solana said that this was the most important decision taken by the EU for many years....[But when Mr Solana was asked about the details of the operation we were told that it was] ... 'a matter strictly between the United Nations and the troop contributors'. We were told, therefore, that this was not a European matter. The danger is this: the European public at large believe that Europe has responded to the crisis. If things go wrong and we have large numbers of

*young men coming back home in body bags, people will want to know who in Europe is responsible. Somebody will have to take the political responsibility."*⁸

Finally, the paper concludes by highlighting the key issues, and offering some innovative ideas, that are being debated within the European Parliament, on the continued development of CFSP in the absence of an agreement on the Constitutional Treaty and the potential and real problems this causes for meeting the expectations of public and parliamentary scrutiny.

2. Framing CFSP/ESDP

2.1 From the European Defence Community to the Amsterdam Treaty

It was not until the 1992 Maastricht Treaty that *defence* made its way back into the EU after the rejection by the French Assemblée Nationale of the European Defence Community in 1954. For some, this gave the EU a strong civilian power identity although this view perhaps oversimplified the full political landscape in Europe where the development of the European Economic Community and then the European Union occurred alongside the development of a military alliance in NATO.⁹ Whether one supports the civilian power thesis or not, few would disagree that the origins of the Union are rooted in a “peace project” to ensure that the wars of the twentieth century amongst Europe’s member states would never again destroy the lives of generations of European citizens.¹⁰ With increased political cooperation (leading to the Single European Act), the end of the Cold War and unification of Germany, and the agreement on the Maastricht Treaty in 1992 the “peace project” became a central part of Europe’s foreign policy and was codified in Title V of the Treaty on European Union with the following objectives:

⁸ MEP Watson, Graham, Speaking on behalf of the Liberal Group (ALDE) in the plenary debate on the Situation in the Middle East, Wednesday, 6 September 2006 - European Parliament, Strasbourg. Full speech can be found at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20060906+ITEM-012+DOC+XML+V0//EN&language=EN&query=INTERV&detail=3-149>

⁹ Early references to the civilian power role include, Duchêne, F. “Europe’s role in world peace” in Mayne, R. (ed) “Europe Tomorrow: Sixteen Europeans Look Ahead”, London, Fontana, 1972. For a contemporary overview see Sjursen, H. “What kind of power?”, Journal of European Public Policy, Vol.13, No. 2, March 2006 pp. 169-181.

¹⁰ THE ROLE OF THE EU IN CONFLICT PREVENTION, Background Note, Parliamentary Meeting on the Future of Europe: from reflection to action, 4-5 December 2006, Brussels. Can be found at: <http://www.futureofeuropa.eu/future/webdav/site/event2/shared/import/Home/BackgroundNote3/PrventionEN.pdf>

- "to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its Member States in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms."¹¹

The text of the current Treaties provides a wide basis for the continued development of CFSP and ESDP. The 1992 Maastricht Treaty established the CFSP with its broad objectives that in principle included “the eventual framing of a common defence policy, which might in time lead to a common defence.” Although the Union would request the WEU “which is an integral part of the development of the Union” to implement any defence decisions. (Art J.4.2 TEU)

However, the Union’s foreign policy was still in its infancy and these broad objectives were soon to be exposed by the tragedy of the Balkan Wars. During this time divisions between Member States impeded common action and diplomatic and economic pressure alone proved insufficient. Despite criticisms levelled at the EU the 1997 Amsterdam Treaty introduced important innovations, not least the position of High Representative (HR). Defence ambitions were expressed in modified language in the commitment to “the progressive framing of a common defence policy...which might lead to a common defence, should the European Council so decide.” (Article 17 para 1 TEU) This opened the door (by providing a legal basis through constitutionally ambiguous language) to what would become ESDP, i.e. a progressive step short of a common defence policy, from the 1999 Cologne European Council. Proposals for the submersion of the WEU into the EU were laid out (and eventually implemented in 2000) including the so-called “Petersberg tasks” which were introduced into the Treaty (Article 17.2 TEU).¹²

¹¹ TEU (Maastricht) Title V Article J.1 para 2 which became Article 11 para 1 of Title V of the TEU (Amsterdam) and subsequently Title V article 11 para 1 of the TEU (Nice).

¹² The Petersberg Tasks were first developed by the WEU at its June 1992 Ministerial and “include humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacemaking”.

The introduction of the HR at Amsterdam, seemed to signify an incremental change with the position restricted to supporting the Presidency and implementing decisions of the Council of Ministers. However, once more events in the EU's neighbourhood, specifically the 1998-1999 Kosovo crisis, were highlighting European weaknesses to respond as well as their inability to influence the military intervention of the United States, which persuaded the Member States that they needed to be more ambitious. This resulted in the appointment of a high-profile HR, Javier Solana, a former Spanish Foreign Minister and NATO Secretary General. This development was accompanied by the December 1998 bilateral Franco-British Summit at St Malo which called for the EU to develop "the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises."¹³ This breakthrough represented a new departure in the UK attitude to the development of defence within the framework of the EU and, during the June 1999 Cologne European Council it also marked the arrival of ESDP as a new driver in the development of the CFSP.¹⁴

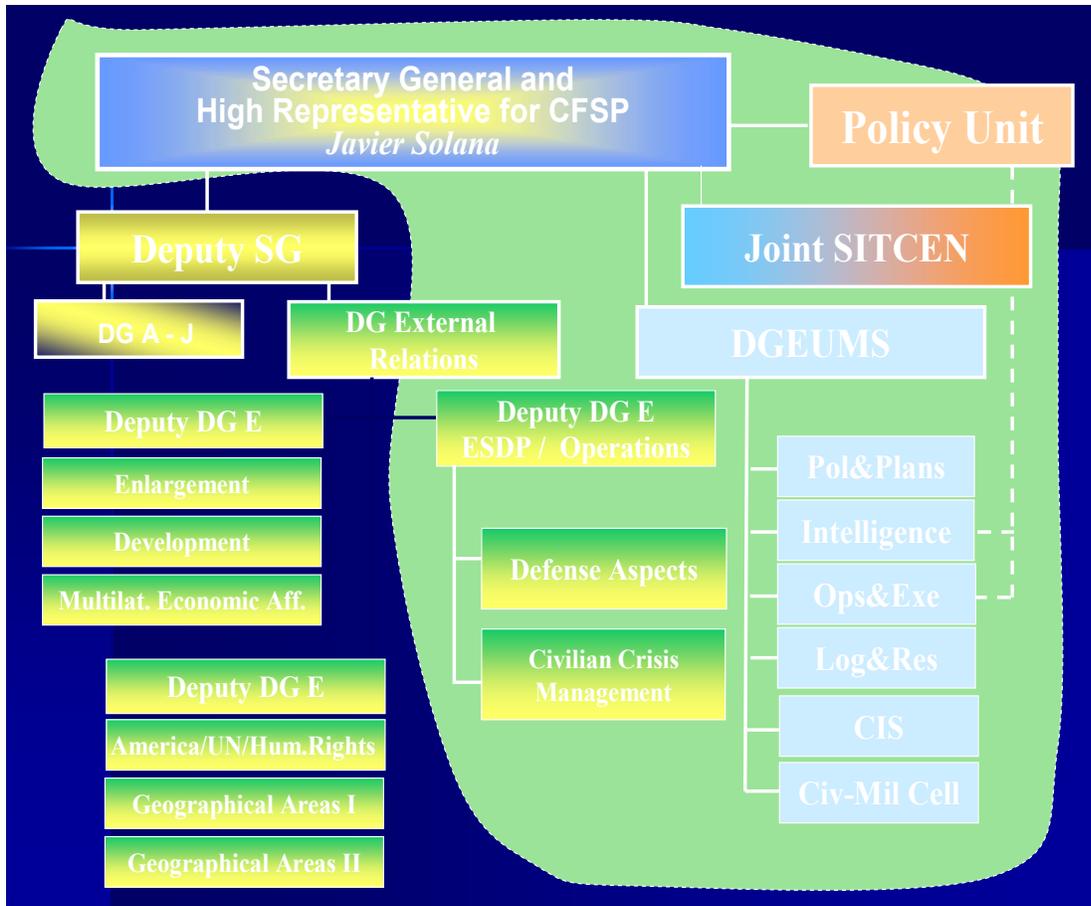
2.2 From Cologne to Iraq

Between 1999 and 2003 ESDP developed at a hot pace concentrating initially on structures for decision making and upon defence capability development. The HR would now be supported in his activities by a Policy Unit and a Joint Situation Centre, whereas decision-making would be based around the Member States, at the level of ambassadorial representatives, in a new Political and Security Committee (made permanent by the 2001 Nice Treaty) mandated to provide overall political and strategic guidance for Council decisions. The Political and Security Committee (PSC) can seek advice from an EU Military Committee (EUMC) composed of national Chiefs of Defence staff (or their representatives) which in turn can draw support from an EU Military Staff (EUMS) comprising around 200 personnel seconded from national armed forces. The PSC, although it does not take decisions *per se*, has now become a recognised "linchpin" in security and defence policy-making which has caused some tensions along the way with COREPER.¹⁵

¹³ Franco-British summit-Joint declaration on European defence, 4 December 1998, Saint-Malo, France

¹⁴ For an overview on the origins and evolution of defence matters in the framework of the EU see: Missiroli, A. and Quille, G. "European Security in Flux", in Cameron, F. (ed) "The Future of Europe: integration and enlargement", Routledge (London and New York) 2004, pp. 114-135

¹⁵ Duke, S. "The Linchpin COPS: assessing the workings and institutional relations of the Political and Security Committee", Working Paper 2005/W/05, European Institute of Public Administration (EIPA).



Organigramme Council General Secretariat ESDP structures in support of the Political and Security Committee, EU Military Committee and Committee for Civilian Aspects of Crisis Management. Source European Security and Defence College.

The initial focus upon the creation of decision-making structures was also combined with a focus upon the development of defence capabilities as described at the 1999 Helsinki European Council and its famous Helsinki Headline Goal commitment to “be able, by 2003, to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000–60,000 persons capable of the full range of Petersberg tasks.”¹⁶

When it became clear that the Member States could not achieve this target due to capability shortfalls, a process was established that would become a mainstay of ESDP discussions on cataloguing European capabilities (Headline Goal Catalogue), analysing commitments to the

16 Helsinki European Council, Presidency Conclusions, 10 and 11 December 1999 at http://europa.eu.int/council/off/conclu/dec99/dec99_en.htm#security

Headline Goal (Headline Commitments Catalogue) and measuring progress to achieve capability shortfalls (Headline Progress Catalogue). The analysis carried out by the EU Military Staff on these catalogues reinforced the conclusion, arrived at previously in NATO, that despite having some 2 million men and women under arms and spending annually approximately €2 billion on defence,¹⁷ European member states had key capability shortfalls especially in the enabling areas of “force projection” (i.e. strategic and tactical air and sea lift, sustainability and logistics, and command and control). A further step was therefore established that would, following the process to elaborate the Constitutional Treaty, lead to the creation of a European Defence Agency to help the process of post-Cold War defence “transformation” in Europe and to address such key capability shortfalls.¹⁸ However, before a European Defence Agency could be established, ESDP gained a new boost from a surprising source: the Iraq war.

2.3 The European Security Strategy

Less than 4 years after the 1999 Cologne European Council, CFSP/ESDP and the European Union more broadly was facing a serious crisis generated by the war in Iraq and the appearance of deepening divisions in intra-EU as well as Transatlantic relations. In order to help overcome serious divisions within the EU, Javier Solana was tasked at the informal foreign ministers (known as a “Gymnich”) meeting in spring 2003 with developing a common European Security Strategy (ESS). The process to develop an ESS was, at the time, considered to be as important as the final outcome and represented perhaps the most ambitious effort by Solana’s team in the Policy Unit of the Council General Secretariat to consult and to develop a consensus on the first European security strategy document. Interestingly such a process had taken place before in NATO and the WEU but never within the EU. Furthermore it unfolded in a climate of suspicion and unrest amongst political leaders and their populations. The process to develop an ESS therefore included elaborate consultations with Member States and with a wider, predominantly think-tank and research, community through specific seminars (in Rome, Paris, Stockholm and

¹⁷ Comparisons have also been made with the US to highlight European inefficiencies of having 27 separate defence budgets and procurement plans, as well as almost 27 armies, navies and air forces. Such figures (before dramatic US increases following 9/11) indicate that the EU was spending approximately 50-60% as much as the US on defence but only achieving as little as 10% of the capabilities. See for instance Howarth, J. "European integration and defence: the ultimate challenge?", November 2000, Chaillot Paper 43, Paris. See also Yost, D.S. "The NATO Capabilities Gap and the European Union", *Survival*, Vol. 42 No. 4, pp 97-128, 2000.

¹⁸ For a detailed assessment of the development of ESDP defence capability and transformation process see Quille, G. “The impact of EU capability targets and operational demands on defence concepts and planning” in Bailes, A.J.K. et al "The Nordic countries and ESDP", SIPRI/Oxford University Press, 2006.

Brussels). The parliamentary dimension was not particularly visible but separate meetings were taking place with the European Parliament and in particular through the Convention Working Group on defence and external relations which would ultimately lead to the adoption of the Constitutional Treaty.¹⁹

The ESS was adopted by consensus at the European Council in December 2003.²⁰ It was immediately celebrated as a distinctly “European” document emphasising “effective multilateralism” and the “rule of law” in particular based upon the UN system. This stood in stark contrast to the 2003 US National Security Strategy and its association with “unilateralism” that was seen as the bed-rock of the US strategy for war with Iraq and the cause of so much division within Europe. The ESS also set out clear ambitions for the Union to raise its game as a global economic power and assume responsibilities in responding to “key threats and challenges”. The latter were described as international terrorism, non-proliferation, regional security, organised crime and failed states as well as an ambition to be more active, coherent and capable. The initial ESDP focus upon developing defence capabilities stimulated a reappraisal on the need to do more on civilian capabilities and the broader EU instruments in the area of development, humanitarian aid and the promotion of economic stability. *Coherence*, a key concern for many years was also highlighted as a central theme of the new European Security Strategy which would require more policy coordination because:

*"The challenge now is to bring together the different instruments and capabilities: European assistance programmes and the European Development Fund, military and civilian capabilities from Member States and other instruments. All of these can have an impact on our security and on that of third countries. Security is the first condition for development."*²¹

¹⁹ See Biscop, S. "The European Security Strategy - A Global Agenda for Positive Power", Royal Institute for International Relations, Belgium, Ashgate, 2005 and Bailes, A. J. K. "EU and US strategic concepts: a mirror for partnership and difference", International Spectator, Vol. 39, No.1 , Jan-March 2004. Quille, G. "The European Security Strategy: a framework for EU security interests?", Journal of International Peacekeeping, Vol. 11, No. 3, Autumn 2004, pp 1-16.

²⁰ European Council, Presidency Conclusions, 12 and 13 December 2003 at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/78364.pdf
Solana, J. "A secure Europe in a better world: European Security Strategy", Brussels, 12 December 2003 at <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>

²¹ Ibid.

In short the strategy was well received and reminded Europeans that, despite the radical disruption caused by the Iraq War, they had a common understanding and approach to key security issues and a common institutional framework within which to pursue them. Therefore, attention then turned to making ESDP operational.

2.4 The early ESDP Operations

Reality on the ground provided the first indication of the type of concrete operations the EU might conduct under ESDP. Whilst the majority of ESDP operations have been civilian, the largest and most demanding to-date have been military operations. These have also served the basis for some of the most developed lessons learned (at the UN and national level) which in turn have led to new conceptual developments. Below all 17 operations will be introduced in the form of an annotated table. The paper will then look in more detail at some of the earliest operations as well as examples of the civilian and military interplay of capabilities.

2.4.1 Past and present ESDP Operations (Source: www.europa.eu)

Ongoing Operations	Date and Description
Western Balkans	
EU Police Mission in Bosnia-Herzegovina (EUPM)	The European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) started on 1 January 2003. It followed on from the UN's International Police Task Force.
EU Military Operation in Bosnia & Herzegovina (EUFOR Althea)	The Council decided on 12 July 2004 to conduct a military operation in Bosnia and Herzegovina (BiH).
EU Planning team (EUPT) in Kosovo	The Council decided on 10 April 2006 to establish an EU planning team regarding a possible future EU crisis management operation in the field of police and rule of law.
Middle East	
EU Police Mission in the Palestinian Territories (EUPOL COPPS)	On 14 November 2005, the Council established an EU Police Mission in the Palestinian Territories. The operational phase started on 1 January 2006 and will have an initial duration of 3 years.
EU Border Assistance Mission at Rafah Crossing Point in the Palestinian Territories (EU BAM Rafah)	On 15 November 2005, Israel and the Palestinian Authority concluded an "Agreement on Movement and Access", including agreed principles for Rafah crossing (Gaza). On 21 November 2005, the Council agreed that the EU should undertake the Third Party role proposed in

	the Agreement.
EU Integrated Rule of Law Mission for Iraq (Eujust Lex)	Following an invitation from the Iraqi Transitional Government, the EU Council has decided on 21 February 2005 to launch an integrated rule-of-law mission for Iraq.
Africa	
EU Police Mission in Kinshasa (EUPOL Kinshasa)	On 9 December 2004, the Council adopted a Joint Action to launch a police mission in Kinshasa (DRC).
EU security sector reform mission in the Democratic Republic of the Congo (EUSEC DR Congo)	On 8 June 2005, following an official request by the DRC government, the Council decided to establish an EU advisory and assistance mission for security sector reform in the Democratic Republic of Congo (DRC).
EU Support to AMIS II (Darfur)	In response to the request of the African Union (AU), the Council established on 18 July 2005 an EU civilian-military supporting action to AMIS II.
Asia	
Afghanistan (EUPOL Afghanistan)	On 30 May 2007, the Council adopted a joint action on an EU Police Mission in Afghanistan.
Completed operations	
Western Balkans	
EU Police Advisory Team in the Former Yugoslav Republic of Macedonia (EUPAT)	The Council launched an EU police advisory team in the former Yugoslav Republic of Macedonia. Length of mission from 15 December 2005 to 14 June 2006.
EU Military Operation in former Yugoslav Republic of Macedonia (Concordia)	The Council launched a military operation in the former Yugoslav Republic of Macedonia on 31 March 2003. Mission ended on 15 December 2003.
EU Police Mission in the former Yugoslav Republic of Macedonia (Proxima)	On 15 December 2003, the Council established an EU Police Mission in the former Yugoslav Republic of Macedonia. Mission ended 14 December 2005.
South Caucasus	
EU Rule of Law Mission in Georgia (Eujust Themis)	The Council launched on 16 July 2004 an EU Rule of Law Mission to Georgia. Mission ended 14 July 2005.
Asia	
Aceh Monitoring Mission (AMM), Indonesia	The Council, together with contributing countries from ASEAN, as well as with Norway and Switzerland, deployed a mission to monitor the implementation of the peace agreement in Aceh. Mission ended 15 December 2006.
Africa	
EU Military Operation in DRC (Artemis)	On 5 June 2003 the Council adopted a Joint Action for the operation that contributed to achieving a safe and secure environment in Bunia, Ituri. Mission ended 1st September 2003.
EUFOR RD Congo, DRC	The Council launched a military operation in support of the United Nations Organisation Mission in the DRC (MONUC) during the election process. Mission ended 30 November 2006.

2.4.2 Operation Concordia

On 31 March 2003 the Council launched its first EU Military Operation in the Former Yugoslav Republic of Macedonia (EUFOR Concordia). European Union forces took over from NATO's Operation Allied Harmony with the aim of contributing further to a stable, secure environment in FYROM and ensuring the implementation of the August 2001 Ohrid Framework Agreement, which settled the conflict between Macedonian Slavs and Albanians. The EU force patrolled the ethnic Albanian-populated regions of FYROM that border Albania, Serbia and Kosovo.

The operation, requested by FYROM and endorsed by UN Security Council Resolution 1371,²² was conducted by personnel from 13 EU member states (all MS other than Denmark and Ireland) and 14 non-member states.²³ The total forces were a modest 400 lightly armed military personnel, and the budget for the first six months of the operation was €6.2 million. The EU drew on NATO assets and capabilities under the Berlin Plus arrangements, thus providing the first test case for the strategic EU–NATO partnership for crisis management embodied in the agreement of December 2002.²⁴

2.4.3 Operation Artemis

The EU's second military operation, Operation Artemis, highlighted a second operational concept available to the Union, that of the 'framework nation'. The aim of Operation Artemis was to prevent a large-scale humanitarian and civil crisis in Ituri, a region in the north-east of the DRC. The Council responded to an appeal by the UN Secretary-General and launched a military operation on 12 June 2003, under a mandate set out in UN Security Council Resolution 1484.²⁵ Operation Artemis sought to contribute to the stabilization of security conditions and the improvement of the humanitarian situation in Bunia, the capital of Ituri, with a force of about 1800 soldiers, mostly French, under the Operational Command of Major General Neveux.

²² UN Security Council Resolution 1371, 26 Sep. 2001, URL <<http://www.un.org/Docs/sc/>>.

²³ Denmark does not take part in EU actions which have defence implications due to its opt-out under Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union. Ireland's participation was blocked by a legal intervention questioning whether a new UN Security Council mandate was necessary for the EU operation.

²⁴ NATO, 'EU–NATO declaration on ESDP', Press release (2002)142, 16 Dec. 2002, URL <<http://www.nato.int/docu/pr/>>.

²⁵ UN Security Council Resolution 1484, 30 May 2003, URL <<http://www.un.org/Docs/sc/>>.

Artemis was the EU's first military operation outside Europe as well as the first not to rely on NATO assistance.

Operation Artemis showed that the 'framework nation' concept, initially elaborated within the Western European Union, can be useful for achieving some semblance of 'rapidity' in an EU multinational operation. Certain member states have the necessary structures to lead rapid response operations, and in a Union of 27 members it will not always be possible to include every member in every operation, as was attempted with EUFOR Concordia.²⁶ It was also a clear indication of the EU's approach to effective multilateralism, made explicit later that year in the European Security Strategy, as it was set up at the request of the UN Secretary-General and was intended to support MONUC whilst the UN Mission was strengthened and re-deployed. Finally, by operating with a chapter VII mandate under the UN Charter, it showed the way for a more robust UN force in the DRC.

2.4.4 EUFOR Althea

A third EU military operation, EUFOR Althea, took over from NATO's Stabilization Force in Bosnia and Herzegovina (SFOR) on 2 December 2004. This operation also drew upon the "Berlin Plus" arrangements agreed with NATO. It is the largest ESDP operation of its kind so far, with initially approximately 7000 troops. The model is also interesting because the operation is being closely associated with the "Comprehensive Policy for Bosnia and Herzegovina" and is being tabled by the EU as an innovative approach to improving civil-military coordination in the field (specifically, with the EU Police Mission in Bosnia and Herzegovina, which as - the first ESDP operation - has been running a police operation since January 2003).²⁷

These early experiences as well as those from the wider international community (UN and Member States) are bringing to the fore new concepts for intervening in complex civil conflicts/crises (from humanitarian relief to stabilisation and peacebuilding missions). In particular such concepts and lessons learned emphasise "comprehensive planning" and civil-military planning and coordination which responds to both a need to improve EU inter-

²⁶ Quille & Missiroli. op cit.

²⁷ European Council, Presidency Conclusions, 17 and 18 June 2004 at <http://ue.eu.int/uedocs/cmsUpload/81742.pdf>. For a critical analysis see Keane, R. 'EUFOR Mission for Bosnia by the end of 2004', *ESR*, No 23 2004.

institutional coherence and improving effectiveness of external action in the field. For the EU this has highlighted a need to bring ESDP (pillar II) and Member State capabilities together with the Community's (pillar I) short-term humanitarian aid and post-conflict reconstruction assistance as well as with its longer-term stabilisation and development aid. A recent example of the potential for the EU to draw upon its "toolbox" of capabilities (including ESDP (civilian and military), Member State and Community instruments) was highlighted by its role in supporting transition in the DRC.

2.4.5 DRC – Civil-Military Coordination

On 27 April 2006 the Council adopted a Joint Action which established a legal basis for an EU ESDP Military Operation, known as EUFOR R.D. Congo to run from August to November the same year. The operation was widely anticipated after the UN (Under Secretary General for Peacekeeping Operations) invited the European Union on 27 December 2005 to consider providing support to strengthen the United Nations Peace keeping Operation in the DRC (MONUC) during that country's first election for 40 years. The mission was an autonomous ESDP operation with Germany acting as Framework Nation and providing the Operational Headquarters at Potsdam.²⁸

The EU had been deploying its "toolbox" for some time in support of peace processes in the Great Lakes region. This included political (not least represented by the appointment of an EU Special Representative for the Great Lakes), economic and development support and the already mentioned operation Artemis. More immediately the EU invested substantially in the election process by providing over half of the funding. This includes an additional €60 million in November 2005 towards the support programme for electoral reform on top of the €89 million allocated in 2004. This was the largest ever Community contribution to an electoral process. The election was further supported by an EU Election Observation Mission headed by MEP General

²⁸ The financial Framework identified in the Joint Action is €16.7 million for "common costs" to be managed by the ATHENA Mechanism. This is in addition to costs borne directly by Member (and contributing 3rd) States a practice known as "costs lie where they fall". The Athena mechanism was agreed on 3 February 2004 by a Council Decision (2004/197/CFSP) "establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications." Although Athena has a basis in the Treaty, TEU Article 28(3) is not a budget line but rather a "mechanism" for calculating Member States direct contributions to agreed (on an *ad hoc* basis) common costs for an ESDP operation. Hence it is not part of the General Budget of the European Community and as such it falls outside European financial scrutiny procedures.

Morillon and reinforced by a European Parliament short term observation mission, highlighting the EP's role in the EU toolbox.²⁹

Further support to transition and specifically to the electoral process has been provided for by the launch of an ESDP Police Mission known as EUPOL Kinshasa.³⁰ It was the first ESDP EU civilian (police) mission in Africa. In December 2004, the Council decided that EUPOL Kinshasa should pursue a three-fold approach to assist with the rehabilitation and refurbishment of a training centre and the provision of basic equipment; to assist with the training of the Integrated Police Unit (IPU); and to follow-up, monitor, and oversee the implementation of the IPU's mandate after the initial training phase. Furthermore, on 8 June 2005 (for an initial 12 month period, subsequently extended) the Council also launched a Security Sector Reform Mission in the DRC known as EUSEC DRC. The main objective of EUSEC DRC is to provide advice and assistance on Security Sector Reform (SSR) and in particular to contribute to a successful integration of a united Congolese army.³¹

Whilst Europe's interests stem from its colonial past, it has evolved into one based on significant political dialogue, trade flows as well as aid. The EU is the biggest donor in Africa accounting for 60% of all Official Development Assistance (ODA).

The recently adopted EU Africa Strategy reminds us of the EU instruments and policy frameworks that have been developed for engaging with Africa, namely the recently revised Cotonou Agreement (dating from the original 1963 Yaoundé agreement and then the Lomé I Agreement signed in 1975 and further developed up to Lomé V for sub-Saharan Africa, the Caribbean and Pacific countries), the Trade Development and Cooperation Agreement (with South-Africa), the Euro-Mediterranean partnership and the European Neighbourhood Policy (for

²⁹ Election Coordination Group-Annual Report 2006, European Parliament (DV\657\657665EN), 2006, pp. 8 & 9.

³⁰ Council Joint Action 2004/847/CFSP of 9 December 2004 on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL Kinshasa). Martinelli, M. "Helping transition: the EU Police Mission in the Democratic Republic of Congo (EUPOL Kinshasa) in the framework of EU policies in the Great Lakes." *European Foreign Affairs Review*, 11(3), Autumn 2006, pp. 379-400.

³¹ Ibid. See also: Martinelli, M. "Les initiatives européennes de réforme du secteur de sécurité en République démocratique du Congo." In : Bernard, A. (ed) "*Europe Puissance Tranquille ? Rôle et identité sur la scène mondiale.*" Grip, Bruxelles, 2006, pp. 148-157 ; Martinelli, M. "Implementing the ESDP in Africa: the Case of the Democratic Republic of Congo" in Merlingen, M. and Ostrauskaite, R. (eds) "*The European Security and Defence Policy: Operationalisation, Impact and Context*", Routledge (forthcoming), 2007.

North African countries).³² The EU Africa Strategy also complements key EU security reference documents, namely the European Security Strategy, that highlight a desire by the Union to balance security and development interests whereby peace and security are the first prerequisites to sustainable development and achieving the Millennium Development Goals (MDGs).

European interests in Africa are by no means altruistic; they reflect long standing economic, developmental and security interests in the region.³³ All these economic, developmental and political actions serve to underpin the EU's longer-term role in supporting the DRC to transition and helping to build a stable regional actor. The EU has, therefore, wider interests than the colonial legacies of predominantly France, UK and Belgium (and more distant relationships of Germany with DRC's neighbours in Rwanda and Burundi) that represent immediate security, economic and political interests of Europe today. Collectively, these factors provide important additional information for understanding the EU's current support to the DRC.

2.5 Limits of ESDP?

The reality of operational demands has somewhat marginalised previous rhetorical questions, such as what the ESDP was for and where it might be used. While they illustrate the EU's strategic ambitions, both in its neighbourhood and sub-Saharan Africa and elsewhere, there is no ground for complacency about a multiplication of these actions because the capability-building process underpinning the operations remains a much longer-term effort. Ongoing conflicts in such places as Darfur, Sudan, and the reactions of different European states to recent operational demands in Afghanistan and Iraq have provided reminders of the political and material limits to collective European action. Nevertheless with preparations ongoing to take over from the UN in Kosovo in what promises to be the largest, and potentially most demanding, ESDP civilian

³² COM (2005) 489 final, page 2.

³³ Such interests include, not least as a trading partner rich in mineral resources (including copper, cobalt, zinc, manganese, uranium, diamonds, coal, gold, silver and, particularly important, coltan) and there are also major deposits of offshore petroleum near the mouth of the Congo River; to see a positive return on large sums of development assistance (such as €750 million between 2003-2007); to see a positive return on international financial assistance, for example in June 2002, the IMF approved a three-year US\$ 750 billions PRGF (Poverty Reduction and Growth Facility) and the Paris Club of donors pledged a further US\$ 5.7bn for the period 2005-2007; to avoid large scale humanitarian crisis which might result in the need to deploy substantial numbers of troops, as well as increased sums of humanitarian and development assistance; to avoid large scale population movement which in turn will increase regional instability and lead to increased immigration to Europe.

police mission of its kind, there is every reason to believe that the current trend, which has led to 17 complete or ongoing ESDP operations in less than 5 years, will continue.

Since the development of ESDP within the EU from the 1999 Cologne European Council, the Member States have developed the decision-making and institutional support structures to enable them to use the EU as a “framework” for pursuing their national and combined defence and security ambitions.³⁴ The member states have been careful to maintain their inter-governmental control over the development of ESDP by limiting the financial resources (embedded in article 28 TEU) available through the CFSP budget and by providing military resources on the basis of national contributions-only (i.e. no EU military budget for defence operations and no European army). Together with these inter-governmental tendencies, lessons learned have inspired institutional arrangements to support the concepts of coordination and planning such as a new EU Civil Military Planning Cell, established between 2005 and 2006, and an EU level Operations Centre from June 2007. Finally new operational capabilities have been developed, notably the so-called Battlegroups with two on stand-by for deployment from January 2007, a development which even led one commentator to state "The European Union has quietly acquired what might be described as a standing army".³⁵

Improving the coherence of EU external action is a welcome objective but its pursuit also creates a new level of complexity in EU planning between civil and military actors and across Community and inter-governmental pillars. The European Security Strategy's emphasis upon coherence across the spectrum of ESDP and Community capabilities was also being addressed within the Convention on the Future of Europe. Moreover, the Convention was also addressing more fundamentally the institutional arrangements needed to underpin the growing international presence of the EU on the world stage.³⁶

³⁴ Cameron, F. & Quille, G. "ESDP: the state of play", EPC Working Paper No. 11, September 2004

³⁵ Reynolds, P. "New force behind EU foreign policy", BBC Web-site at: <http://news.bbc.co.uk/2/hi/europe/6441417.stm>. On the Battlegroups see: Quille, G. "The EU Battlegroups", Policy Department, Directorate General External Policies, European Parliament, 12 September 2006. Lindstrom, G. "EU Battlegroups", EU-Institute for Security Studies, Paris, April 2007.

³⁶ Grevi, G. et al "The EU Foreign Minister: Beyond Double-hatting", International Spectator, Vol XL, No. 1, March 2005

3. The Convention on the Future of Europe and the Constitutional Treaty

3.1 Key Foreign Policy innovations

The developments in the Constitutional Treaty, following the Convention on the Future of Europe, in the area of Foreign Affairs refer to the creation of the new post of Foreign Minister and a joined up European External Action Service (which would overcome the existing pillar structure). The final report of the Convention's Working Group, chaired by Jean Luc Dehaene, on "External Action" reflected a "*large trend*" in favour of setting up a double-hatted "*External Representative*". The job description submitted by the Working Group was translated into the new draft Constitutional Treaty with very little adjustment. It is important to appreciate that the Convention formula does not amount to a merger of two positions into one, instead it attributes to one and the same person the exercise of two functions, (i.e. a *personal union*).³⁷

The Constitutional Treaty sets out a *job description* for the Foreign Minister. Article I-28 states:

- that the FM is to be appointed by the European Council, acting by a qualified majority, with the agreement of the President of the Commission (Article I-28.1);
- in such a role he/she will (Article I-28.3) preside over the Foreign Affairs Council;
- he/she will also be one of the Vice-Presidents of the Commission and as such be "bound by Commission procedures to the extent that this is consistent" with this article.

Whilst the Convention on the Future of Europe provided a new focus for European and Transatlantic discussions on the future of the EU and NATO, this soon settled into an older pattern of dispute and compromise between the US, UK and France, with input from Italy as the then holder of the EU Council Presidency. The final agreement on contentious defence issues - such as that of an autonomous EU capability for operational planning - was reached by the UK and France and made public at their bi-lateral summit meeting on 24 November 2003, which stated: 'The UK and France will continue our co-operation in the field of capability development. The ultimate test of the success of the EU's crisis management capacity is that it is able to prepare for, launch and conduct effective and coherent operations'.³⁸ While no specific

³⁷ See CONV 459/02 and Grevi et al, op cit.

³⁸ Franco-British Summit, London, 24 November 2003 at http://www.fco.gov.uk/Files/kfile/UKFrance_DefenceDeclaration.0.pdf

reference was made to ‘an autonomous planning cell’ an accent was placed on the planning, capabilities and conduct of operations. This opened the way for a ‘defence deal’ at the 2003 Inter-governmental Conference (IGC).

3.2 Key defence innovations

The articles in the Constitutional Treaty reconfirmed the Amsterdam commitment on the progressive framing of a common defence policy which could lead to a common defence when the European Council so decides, but it added the caveat "acting unanimously". The most important change, however, is the acceptance of a new form of “permanent structured cooperation” (articles I-41 para 6 and III-312) within the Union that would allow those Member States whose military capabilities fulfil higher criteria, and which have made more binding commitments to one another in this area, to carry out missions on behalf of the EU.

Article 1 of Protocol 23 of the Constitutional Treaty (CT) states that permanent structured cooperation shall be open to any Member State:

- That undertakes to proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the European Defence Agency (EDA).
- That has the capacity to supply, by 2007 at the latest, targeted combat units for the missions planned... with support elements including transport and logistics.

Article 2 states that to achieve these objectives Member States participating in permanent structured cooperation shall:

- Cooperate to achieve approved objectives concerning the level of expenditure on defence equipment, and regularly review these objectives in the light of the security environment and of the Union’s international responsibilities.
- Bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics.

- Take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures.
- Work together to make good the shortfalls perceived in the framework of the “Capability Development Mechanism”.
- Take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the Agency.

Article 3 refers to the EDA and states that it shall contribute to the regular assessment of Member States’ contributions in relation to capabilities (article III-312 para 3 and 4). There are also complicated proposals for the use of qualified majority voting (QMV) in taking decisions under permanent structured cooperation but experience suggests that Member States would be very reluctant to break from the traditional principle of unanimity in defence matters. Another change is the mutual solidarity clause, which acknowledges the commitments of NATO Members States that “if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all means in their power...” (article I-41 para 7). Although this is more a political gesture than an attempt to create an EU defence alliance, it does serve to underline the basic solidarity between Member States.

The proposals for a Foreign Minister and a European External Action Service (EEAS) are under review as the Member States discuss their next steps after the French and Dutch referenda. As an important political symbol, as well as widely regarded innovations to help improve the coherence and effectiveness of European external action, the appointment of an EU Foreign Minister with an EEAS has not been implemented. This stands in stark contrast to the defence aspects of the Constitutional Treaty. All the defence proposals have been further developed and operationalised including the EDA (in the form of a Council Joint Action) and the solidarity clause (in a Council declaration).³⁹ Whilst permanent structured cooperation has not been implemented *de jure* it is

³⁹ Council Joint Action 2004/551/CFSP on the establishment of the European Defence Agency, OJ L245/17, 17 July 2004, at

widely regarded as being implemented *de facto* in the form of the Battlegroups and operationalised in the form of Joint Actions such as for ARTEMIS and EUFOR DRC (prototype Battlegroup-like missions). These proposals on the defence aspects of the ESDP are being implemented as *practical incremental steps* whereas the highly political upgrading of the Union with a Foreign Minister is being kept under review for the time being. Whilst this may signify a certain respect for French and Dutch voters, it also ensures the ESDP motor continues to drive the Union forward with a greater number of ESDP missions and CFSP commitments.

The Constitutional Treaty has been criticised by those that think its prescriptions are too detailed for a constitutional text. These characteristics can also be found in Protocol 23 with unusually detailed policy descriptions (even for a protocol) and moreover including many details which will be superseded (because they have been adopted through Joint Actions) before a revised Treaty is back on the table. Protocol 23 is also interesting because we can see several elements of its content being implemented by Joint Action and Council declarations because the Constitutional Treaty itself is blocked.

3.3 Implications for the European Parliament

Whilst distinct challenges still remain to overcome the democratic deficit in CFSP and in particular the military aspects of ESDP, the Constitutional Treaty provides a legal foothold for the European Parliament in engaging more meaningfully with the decision-making process. The Parliament will play a formal role in endorsing (and censoring) the candidature of the Vice-President of the Commission, i.e. the Foreign Minister (articles I-27 para 4 and I-26 para 8). The European Parliament is also consulted on important decisions in relation to the establishment of the EEAS (article III-296 para 3) and any new procedures for pre-financing CFSP actions (article III-313 para 3). This is in addition to the strengthened consultation role it has negotiated within the framework of the new Financial Perspectives 2007-2013 (and the associated Inter-institutional Agreement between the European Parliament, the Council and the Commission on

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_245/l_24520040717en00170028.pdf. European Council, Presidency Conclusions, 25 and 26 March 2004 adopted a Declaration on Terrorism which included the incorporation of "the spirit of the Solidarity Clause contained in Article 42 of the draft Constitution for Europe". The declaration came into force on 1 May 2004 and can be found at: <http://www.consilium.europa.eu/uedocs/cmsUpload/79635.pdf>

budgetary discipline and sound financial management).⁴⁰ The Parliament's report on the Constitution (2004) welcomed what *"will be a significant enhancement of the Union's visibility and capacity as a global actor with the Foreign Minister and single External Actions Service."*⁴¹

The position of FM not only provides an opportunity for greater formal Parliamentary scrutiny as a Vice-President of the Commission, but the breaking-down of the pillars represented by the proposal for a united EEAS will also strengthen the current trend toward more "joined up" use of external instruments (namely under the CFSP budget, Stability Instrument, Development Cooperation Instrument, European Neighbourhood and Partnership Instrument, the Pre-Accession Instrument, and the Instrument for the Promotion of Democracy and Human Rights) over which the EP has important budgetary scrutiny as well as powers of co-decision.⁴²

Although there is still a long way to go in improving parliamentary scrutiny at the EU level, the developments introduced in the Constitutional Treaty in the form of the FM and EEAS will also lead to a *de facto* significant increase in the European Parliament's powers of scrutiny and budgetary decision-making. In the absence of the Constitutional Treaty, the EP maintains a scrutiny role over CFSP and it incrementally improves its powers (such as through in the above mentioned Inter-Institutional Agreement), but unlike the case for the FM it has weak political authority over the current High Representative for CFSP. This may seem a small detail but just look at the recent controversy over the role of the EU member states in the so-called extraordinary rendition by the CIA of suspects in the war on terrorism and the damaging political fallout from the lack of cooperation from some Member States and in particular from the lack of cooperation from the High Representative to the European Parliament. This has left both a negative image of the EU and its High Representative. Here there are lessons for any future

⁴⁰ Official Journal of the European Union C 139/1, 14 June 2006

⁴¹ European Parliament resolution on the Treaty establishing a Constitution for Europe of 12 January 2005, para. 3, OJ C247 E, 6 October 2005, pp.88-93.

⁴² There is also a Nuclear Safety and Security Instrument and a financing Instrument for Cooperation with Industrialised countries and territories and other high-income countries and territories (ICI), which along with the Pre-Accession Instrument were adopted after consultation of the European Parliament.

Foreign Minister, who would need to be more cooperative and responsive to the European Parliament or risk bringing down the whole college of the Commission.⁴³

3.4 The rejection of the Treaty - the end of CFSP?

The world has not stopped with the rejection of the Constitutional Treaty in French and Dutch referenda, nor has it paused for reflection to join intra-European debates on the cost of non-Europe in foreign affairs following this rejection. Whilst the EU's member states, institutions and citizens have embraced a debate on the future of the treaty, they have not become introverted "navel gazers" but have remained active on the world stage in responding to and taking part in some of the most serious and complex foreign policy issues of the day. This has ranged from playing a central role in the resolution of last summer's war between Israel and Lebanon, to its role in the future status of Kosovo, to the stable transition of the DRC, to an increased ESDP role alongside its humanitarian aid role in Afghanistan, to supporting solutions in Sudan and Somalia as well as responding to serious natural disasters.

Europe has been able to play a leading role because its member states remain important international players and are increasingly prepared to instrumentalise the EU and its institutions, on the basis of the current legal framework, to pursue their national and collective security interests. But is that enough? Should we be satisfied, despite widespread academic and governmental criticisms (see section 4 below) on the lack of coherence in CFSP, and conclude that we do not need further institutional reform through the treaties?⁴⁴ Or further still should we accept the broad framework of the existing treaties to push forward on ESDP without reflecting upon the political imperative to engage and move forward with the full support of Europe's citizens? Lastly but certainly not least, how can we move forward in this sensitive policy area which is widely recognised to suffer from a "double-democratic deficit" at both the national and EU levels, and more specifically from weak parliamentary scrutiny (and legitimacy)?⁴⁵ This

⁴³ European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, 14 February 2007 at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0032+0+DOC+XML+V0//EN&language=EN>, para 27.

⁴⁴ Although related to developments on defence market reform, this argument has been put forward recently by: Tybus, M. "With or without the EU Constitutional Treaty: towards a Common Security and Defence Policy", *European Law Review*, April 2006, pp. 145-166

⁴⁵ A recent interesting reference to what has "even been identified in the European Union as the 'democratic deficit'" as a central *flaw* in contemporary diplomacy including in multilateral diplomacy is put forward by Ross Carne in his

concept of a "double-democratic" deficit refers to the situation whereby the European Parliament is well placed to scrutinise and follow ESDP issues but has weak formal decision-making powers, but where some national parliaments have better defined formal powers in relation to their national armed forces but are less well placed to follow EU-level developments and decision making in ESDP. These are all issues that any responsible citizen, Parliamentarian, Minister and institution should reflect upon and which are being debated widely in Europe and in particular in the European Parliament.

We can see above that ESDP is developing at a considerable pace without the Constitution. This is creating demands on the EU and European Parliament as a budgetary authority such as in the need to fund in particular the civilian aspects of these missions but also the associated trappings of a greater external profile such as in the form of a growing number of Special Representatives. Furthermore, the greater perceived role of the EU as a global actor, driven largely by the dynamism of ESDP, is also putting pressure on the need for more "joined up" or "coordinated" use of policy instruments. The majority of these other policy instruments in the external relations area fall under the community (pillar 1) where the EP now exerts greater authority as a co-decision actor. The net conclusion is that, even in the absence of the Constitutional Treaty, as CFSP/ESDP grows the EP is drawn further into the policy making framework.

The EP's decision making powers are founded upon its budgetary role but let us not forget even under the current Treaties the European Parliament is a political actor responsible for the development of the Union and has a specific mandate to scrutinise CFSP. The EP has a responsibility to both its citizens and towards the development of CFSP/ESDP. As such it is an important player at the cross-roads where citizens and institutions meet in the area of CFSP/ESDP. However, is the European Parliament sufficiently well informed to scrutinise CFSP and provide democratic legitimacy to decisions in this area? If not, is there a risk to the very credibility of the European Parliament should an ESDP operation result in deaths or escalate into

book "Independent diplomat: dispatches from an unaccountable elite", Hurst & Company, London, 2007 p. 10. Born & Hanggi (eds) "The 'Double-democratic deficit: parliamentary accountability and the use of force under international auspices", Ashgate, 2004. Wessels, W. "The Parliamentary Dimension of CFSP/ESDP: Options for the European Convention", Final report, No. IV/2002/01/01, Study submitted to the European Parliament. *See also Wagner, W.* "Parliamentary Control of Military Missions: Accounting for Pluralism", Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper, No. 12, at http://www.dcaf.ch/docs/op12_parliamentarycontrolplural.pdf

a more serious conflict requiring the further mobilisation of European citizens? The speed of development of CFSP/ESDP and the question of parliamentary scrutiny are fundamental issues facing the European Union as it progresses under the current Treaties or in whatever form the Constitutional Treaty is revitalised.

In response to this growing EU role and action in the area of security policy the European Parliament has established in 2004 a new sub-Committee on Security and Defence (SEDE) within its Foreign affairs Committee (AFET). With the continued rapid growth of ESDP since 2004, the European Parliament has initiated a discussion on the upgrading of SEDE into a full committee. This discussion, and indeed any future decision, signals the European Parliament's awareness of the growing profile and importance of ESDP. The European Parliament is clearly indicating its intention to pursue this important policy area and to exercise its treaty based responsibilities.⁴⁶

4. Academic critiques of CFSP/ESDP

A brief look at key policy journals and expert security studies literature highlights a vibrant debate on the theoretical aspects of the EU's external relations as well as on the significance of the development of new military crisis management procedures and decision making as represented by ESDP. With the deployment of ESDP operations, empirical data is now also emerging and being used to enrich theoretical discussions. However, looking at the state-of-the-art of research on EU security and defence matters it is obviously still very early in generating empirical analysis to test our analytical and theoretical frameworks. This is not a criticism levelled against researchers but a consequence of the fact that the first ESDP operations have been launched less than five years ago.

⁴⁶ On the upgrading of SEDE see European Parliament website article on "Improving the public perception and efficiency of the work of the European Parliament - mandate for a working group on reform of the Parliament, 15 February 2007 at http://www.europarl.europa.eu/news/expert/infopress_page/008-3202-050-02-08-901-20070215IPR03201-19-02-2007-2007-false/default_en.htm

Furthermore, the decision-making framework is still in flux as institutional innovations come alongside deeper reflections on the future of Europe. It is natural therefore that the existing well developed theoretical research is only slowly being complimented with empirical data and that this empirical data is first concentrating on ESDP policy and (inter-)institutional developments rather than field-oriented investigations of operations. In this respect there is, except for some very important academic contributions (including dedicated research networks under the European Commissions fifth (e.g. ESDP Democracy), sixth (e.g. FORNET, EU CONSENT, and CHALLENGE Liberty and Security) and seventh research framework programmes), somewhat of an imbalance between those holding expertise on EU theory and integration and those with expertise on EU-oriented security and defence.⁴⁷ One further expectation from this paper is perhaps to inspire EU experts to take a greater interest in EU security and defence in order to ensure the future of Europe benefits from the best intellectual minds and rigorous analysis in what is perhaps the most important EU policy area of the early twenty-first century.

The academic literature provides us with many perspectives on the development of ESDP including the view that we can continue as usual within the framework of the existing treaties and "cherry-pick" the innovations in the Constitutional Treaty in the area of security and defence (armaments policy, crisis management and collective defence). This argument has been put forward forcefully in a recent article "With or without the EU Constitutional Treaty: towards a Common Security and Defence Policy" in the *European Law Review*.⁴⁸ This view represents a bottom-up or technical understanding of the development of ESDP to-date and the limited nature of the proposals on defence in the Constitutional Treaty which we have seen can continue to be implemented along the trajectory set out in Cologne and Helsinki in 1999. It is worth reminding ourselves that the Constitutional Treaty creates a legal basis for things we already have (as have been implemented since 1999) and in ESDP it does not extend beyond what was introduced at Maastricht, Amsterdam and Nice.

⁴⁷ Furthermore see footnotes 48 below. More on these research programmes at the respective sites: <http://www.ulb.ac.be/iee/esdpdemocracy/>; <http://www.fornet.info/>; <http://www.eu-consent.net/>; and <http://www.libertysecurity.org/>

⁴⁸ Tybus, M. op. cit.

In addition, we now have growing political concerns to address such as expressed by MEP Watson, at the beginning of this paper, as well as previous criticisms that have long accompanied ESDP and are regaining credence regarding the very premise and purpose of EU external action particularly on security and defence matters. We have referred to the democratic deficit above, but other concerns are also being highlighted such as those that question the ad hoc and piecemeal approach which highlights questions of institutional weaknesses and coherence. Another concern has been expressed in relation to the institutionalisation of security and defence without clear leadership and direction which in itself may lead to fragmentation and incoherence and thus undermine the important efforts in recent years to develop a strategic European culture on security and defence. The importance of a strategic culture on security and defence was identified by Solana himself in the ESS as the "...need to develop a strategic culture that fosters early, rapid and when necessary, robust intervention".⁴⁹

These concerns seem more urgent in the context of the confusion amongst citizens on the exact role and nature of the EU such as expressed through the rejection of the Constitutional Treaty, and in a broader lack of understanding of the complexities of EU decision making amongst a wider public.

⁴⁹ A simple select look at the literature, including that already referenced throughout this article and the publications of EU-Institute for Security Studies and ISIS Europe, includes: Smith, M. "Comment: Crossroads or cul-de-sac? Reassessing European foreign policy", *Journal of European Public Policy*, Vol. 13, No. 2, March 2006, pp. 322–327. Manners, I. "Normative power Europe reconsidered: beyond the crossroads", *Journal of European Public Policy*, Vol. 13, No. 2, March 2006, pp. 182–199. Wolfgang, W. "The democratic control of military power Europe", *Journal of European Public Policy*, Vol. 13, No. 2, March 2006, pp. 200–216. Sjursen, H. "What kind of power?", *Journal of European Public Policy*, Vol. 13, No. 2, March 2006, pp. 169–181. Keane, R. "European Security and Defence Policy: from Cologne to Sarajevo", *Global Society*, Vol. 19, Issue 1, January 2005, pp 89–103. Rémacle, E. "La stratégie européenne de sécurité. Plus occidentale qu'européenne", in: Delcourt, Duez and Rémacle (eds.). "La guerre d'Iraq. Prélude d'un nouvel ordre international?" Bruxelles. Cornish, P. & Edwards, G. "Beyond the EU/NATO dichotomy: the beginnings of a European strategic culture", *International Affairs* Vol. 77 No. 3, 2001, pp. 587–603. Kirchner, Emil J. "The Challenge of European Union Security Governance". *Journal of Common Market Studies*, Vol. 44, No. 5, December 2006, pp. 947–968. Edwards, G. "Is there a European Security Culture in the Enlarged European Union?", *International Spectator*, Vol. 3, 2006 pp. 7–23. Smith, K. 'The End of Civilian Power EU: A Welcome Demise or Cause for Concern?', *International Spectator*, Vol. 23, No. 2, pp. 11–28. Posen, Barry R. "ESDP and the Structure of World Power" *The International Spectator* No. 1, Rome, 2004. Wallace, W. "Is There A European Approach To War?" EFPW Working Paper 2005/2, London School of Economics, 2005. Whitman, Richard G. "NATO, the EU and ESDP: an emerging division of labour?" *Contemporary Security Policy* Vol. 25, No. 3, 2004. Bailes, Alyson J. K., "The European Security Strategy: An Evolutionary History", SIPRI Policy Papers No. 10, Stockholm, 2005. Diez, T. "Constructing the self and changing others: reconsidering 'Normative Power Europe'", *Millennium*, Vol 33, No. 3, 2004 pp. 613–36. Freedman, L. "Can the EU develop an effective military doctrine?", in Charles Grant, (ed.), *A European Way of War*, Centre for European Reform, pp. 13–26. Manners, I. "Normative Power Europe: a contradiction in terms?", *Journal of Common Market Studies*, Vol. 40, No. 2, 2002 pp. 235–258.

5. Conclusions and Analysis

The EP itself is still extending its authority over external relations but the complexity, lack of transparency and *ad hoc* nature of ESDP raises many challenges. These include the need for the EP to understand the main aspects and basic choices, as well as to formulate recommendations and communicate to the public exactly what is happening on the basis of skeletal Treaty provisions. These existing Treaty provisions enable the "progressive framing of a common defence policy" which is developing at a rapid pace through Council Joint Actions, declarations and annexes to Council Presidency conclusions. If something goes wrong as warned by Watson, the EP will be asked to explain its role in scrutinising and allowing the budget for such (civilian) operations? What does this mean for the institution?

Some aspects of the problem can be addressed within the existing Treaty arrangements and are being discussed in particular in the context of the framework of discussions on the implementation of the new external relations instruments and the associated Inter-Institutional Agreement(s). In response to the growing role of the EU, in particular through ESDP operations, which are creating a demand for an ever-increasing CFSP budget, the EP is demanding greater and more timely flow of information from the Council in order for it to carry out its responsibilities as a budgetary authority. A step forward was achieved in the framework of the new Inter-Institutional Agreement whereby the Council agreed to "...holding joint consultation meetings at least five times a year..." and where the Council is represented by the Ambassador holding the Chair of the Political and Security Committee.⁵⁰ These budgetary decisions also have important consequences of a political nature but also for the lives of Europe's citizens who are, for instance, sent on an ESDP Civilian Crisis Management operation to support police or military reform in the DRC. The EP therefore demands that it is fully informed before taking budgetary decisions that have profound political and material consequences. Not to do so risks making uninformed choices that may affect the lives of European citizens and the credibility of the European Parliament itself.

⁵⁰ para 43, entered into force 1 January 2007.

Such considerations may have been behind the request of the Member States at the Helsinki European Council for a legal opinion on whether a Treaty amendment was necessary in the light of recent developments in ESDP.⁵¹ At the Feira European Council an annex makes reference to the opinion of the Council Legal Service, which offered some reassurance that the existing Treaties provide a framework for implementing the Cologne and Helsinki commitments, it stated that

"The Council's Legal Service is of the opinion that the conclusions of the Cologne and Helsinki European Councils regarding European security and defence policy can be implemented without it being legally necessary to amend the Treaty on European Union. However, such amendments would be necessary if the intention is to transfer the Council's decision-making powers to a body made up of officials, or to amend the Treaty's provisions regarding the WEU. Furthermore, it is for Member States to determine whether amendments to the Treaty would be politically desirable or operationally appropriate."⁵²

Whether addressing the question of parliamentary scrutiny as a "politically desirable or operationally appropriate" aspect of ESDP, the European Parliament continues to express its concerns on the need to adequately respond to its Treaty based rights and responsibilities to provide budgetary and political scrutiny over the development of ESDP.

In demanding greater and timely access to information, the EP has recently secured an agreement on CFSP from the Finnish Presidency of the Council, whereby:

"Timely information on planned individual CFSP/ESDP actions and decisions will continue to be provided also in future, in regular contacts with the European Parliament."⁵³

This is an important and hard-fought breakthrough for the EP. Such developments are important in improving transparency and openness in ESDP decision making which is an important step in opening up the "ESDP Black Box" and helping citizens understand how decisions are made and

⁵¹ See above footnote 15.

⁵² Presidency Conclusions, Santa Maria da Feira European Council, 19 and 20 June 2000, Presidency Report, Annex I on "Strengthening the Common European Security and Defence Policy". As a consequence of this Articles 17 and 25 TEU were modified by the Nice Treaty.

⁵³ Letter on behalf of the Council of the European Union from Ulla-Maj Wideroos, Finnish Presidency, Coordinate Minister for Finance of Finland, addressed to Mr Brok and Mr Lewandowski, respectively Chairs of the Committee on Foreign Affairs and Budgets, 29 November 2006.

where they come from. They might even help to improve our understanding of complex interventions where the EU is one of a number of actors such as in Bosnia-Herzegovina, Afghanistan, the DRC and perhaps soon Kosovo. It may even help improve our understanding of occasions such as the meeting in Brussels on the premises of the Council of the EU where EU member states discussed their individual troop contributions to the UN Operation in Lebanon (UNIFIL II), only to announce to the world in the presence of Kofi Annan, Solana and the Council Presidency that they would contribute but not as the EU!

Further improvements could follow if the Parliament made a recommendation which could then be referenced in Joint Actions establishing an ESDP mission. Under current practices Joint actions normally cite a UNSC Resolution, an invitation letter from the host-country, and a status of forces agreement/status of mission agreement setting out the legal parameters for the role and conduct of the mission. To reference the recommendation of the EP would be a substantial step forward in demonstrating ESDP is not above being subjected to prior parliamentary scrutiny at the EU level. It would also demonstrate that the Council is seeking additional democratic legitimacy for its external actions. No doubt some will object on the grounds that this goes beyond the right of the EP under the existing Treaties and even as foreseen in the Constitutional Treaty or that it would slow down already cumbersome decision-making procedures. Whether such a proposal would work requires a detailed discussion amongst sincere parties willing to explore how to improve transparency, openness and parliamentary scrutiny over CFSP. At this stage one can only state that:

- the EP's recommendation would be non-binding and therefore fully consistent with its current responsibilities in the Treaties and CT,
- and secondly that this non-binding recommendation would be complimentary to national parliamentary practices that must also be respected,
- thirdly, based on examples from national parliaments there is no reason why the EP could not achieve the efficiencies of national parliaments and be able to provide its opinion within for example 5 days of the launch of a Battlegroup.

The European Parliament could exercise its right to make a recommendation (Article 21 TUE) on an ESDP mission (including the launch of a Battlegroup) which would also provide legitimacy for the operation. This could take place after having heard from the representative of the Council (Chair of the Political and Security Committee) and in close consultation with its network of national parliaments (in particular with those countries directly participating in an operation). In order to be flexible and when the European Parliament is not in session, its Rules would authorise its responsible committee to adopt in its name the recommendation on the launch of an ESDP mission (including Battlegroups).

Should the European Parliament make a recommendation that is not in favour of an operation, the Council would not be bound by its findings and the European Union would in any case benefit from a transparent and public debate. The risk of the European Parliament coming up with a negative recommendation on a Council Decision to launch an ESDP operation (including the Battlegroups) is marginal. In particular, when compared with the potential gains of a more visible, transparent, and democratically accountable ESDP emerging from *the shadow of the constitution*.

The European Parliament is faced with the scenario of having no budgetary authority over the Battlegroups, which are financed directly by the member states, it does have to deal with the question of political scrutiny over a "European force(s)" which is carrying out a mission in the name and under the flag of the European Union. Indeed, Battlegroups provide a specific challenge whereby the composition of a particular Battlegroup will determine if and how a national parliament or parliaments are involved in the decision making process. For instance, German participation in a Battlegroup would need both a German government decision in the Council and the approval of the Bundestag, whereas a Battlegroup made up of other participating countries may not trigger such parliamentary approval. In the latter case, the member states could approve a mission on an inter-governmental (i.e. unanimous) basis without any prior parliamentary approval. This would be an extreme case and in the majority of instances parliaments would be involved in the decision making process.

Even if it has not been noticed by the general public, CFSP is one of the most important and fastest growing policy areas of the EU institutions in recent years. The Constitutional Treaty would have updated the legal basis for CFSP/ESDP. However, the Constitutional Treaty has not entered into force and yet CFSP/ESDP continues to grow largely on the basis of Council decisions (including Joint Actions, declarations and annexes to European Council Presidency ESDP conclusions). This situation creates challenges in particular for the European Parliament which has made real progress in recent years, based upon its roles and responsibilities in the existing treaties, in strengthening the democratic foundations of CFSP as well as in casting light on the ESDP "black box".