

CHAPTER FOUR

The Convention, the IGC and the great powers: the ESDP and new security threats

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INTRODUCTION

One challenge for the Convention on the future of Europe and the Intergovernmental Conference (IGC) that followed it was to overhaul the European Security and Defence Policy (ESDP) and 'modernize' it to adequately reflect the changing nature of international security in the wake of September 11th. The purpose of this chapter is to present the answers that were given to the challenge and to offer some explanations as to why these were the answers. The chapter will show that the EU is increasingly becoming a joined-up security actor linking civil and military resources as well as internal and external aspects of security.

The chapter falls into three parts. The first two discuss the question in relation to the Union's external security and its internal security. The first part, on external security, discusses the proposals to strengthen the EU's ability to conduct crisis management and project stability. These proposals are based on the expectation that the Union as a whole will be unwilling and unable to carry out high-intensity operations. This will be left to an avant-garde of countries moving at a greater speed in their development of capabilities. In the second part, on internal security, a discussion follows of the proposal for a solidarity clause, which deals mainly with the Union's internal security, but which is nevertheless linked to the ESDP and the

Union's external security. The aim of the solidarity clause is to protect civilian populations against terrorist attacks, which will require a robust arrangement to ensure immediate assistance in response to a major emergency. Otherwise, the Union risks raising expectations it cannot meet.

In the third part, I shall outline some conclusions on why the debate in the Convention and the IGC led to the above responses. I argue that the process that led to the result was fundamentally intergovernmental and presented a new compromise between the Atlanticist and Europeanist visions of European defense. One exception is the solidarity clause, which relates to internal security and can be seen as an area in which European policy-makers were mainly reacting to their increasing interdependence rather than advocating national positions. The further development of the ESDP has consequences for the relationship between the EU and the leading defense organization, NATO. I shall end by outlining the possible implications for the EU-NATO partnership.

EXTERNAL SECURITY: PROJECTING STABILITY

The aim of the Convention relating to security and defence was an overall update of the ESDP to address the new security threats relating to both external and internal security. The first objective was to reconsider the projection of military force in the light of new security threats. In the words of the Convention's Working Group on Defence:

‘The ESDP was defined and developed on the basis of the challenges and threats as evaluated in the 1990s. There can be no doubt that this definition of threat has been overtaken by international events. After September 11th, the threat is no longer defined solely by the risk of conflict between States and ethnic groups. The situation is more one of a global insecurity characterised by less clear-cut risks, including those linked to international terrorist organisations or the use of

weapons of mass destruction, which elude the provision made for conflict management in the traditional sense.¹

Hence, the aim of the Convention was – belatedly – to define the role of the ESDP in view of the new security threats, specifically terrorism. September 11th spurred a wide range of EU initiatives, but mainly in the area of police and justice. The EU demonstrated a high level of diplomatic activity to bolster the international coalition behind the fight against the Taleban regime, but there were no specific proposals on the role of ESDP in the face of the new security threats, which differ from the threats that the ESDP had originally been developed to address. Was the EU to have a military role in combating terrorism, or was it to retain its focus on projecting stability in the neighbourhood? Was the EU to adopt a security guarantee to protect its citizens from terrorist attacks, or was any notion of collective defence to remain outside the Treaty?

Thus, the events of September 11th reopened the question of the purpose of ESDP, but it took a year before the debate really took off, with the joint Franco-German proposal to the Convention on security and defence, presented by the two foreign ministers in November 2002, shortly after they had joined in the work of the Convention.² The proposal ended the exclusive Franco-British cooperation over the ESDP, which had been its pivot since the Saint-Malo Declaration in

1. The European Convention, 'Final report of Working Group VIII – Defence', CONV 461/02, p. 14. It is stated in the document that 'some members of the Group do not share this view'. The basis for this disagreement is unclear, but some member states were opposed to the description of the terrorist threat as the new main security threat, while others disagreed with the claim further down in the text that public opinion was calling for a European defense. *Eurobarometer 59*, Spring 2003, confirms that international terrorism is EU citizens' main fear. *Eurobarometer 60*, Autumn 2003, shows support among EU citizens for the EU as decision-making body on European defense (45 percent) compared to national governments (24 percent) and NATO (15 percent), but there are great national differences concerning who should take decisions on European defense policy.

2. Dominique de Villepin and Joschka Fischer, 'Contributions from Mr Dominique de Villepin and Joschka Fischer, members of the Convention, presenting joint Franco-German proposals for the European Convention in the field of European security and defence policy', 21.11.2002.

December 1998. It brought forward the underlying tension between the Atlanticist position, with the United Kingdom as its leading exponent, and the Europeanist vision represented by France. Saint-Malo was a compromise between developing European security in close cooperation with the United States and NATO and strengthening Europe's capacity to act independently. The Franco-German proposal signalled that the Saint-Malo deal was off and indicated a general shift, as Germany left its previous position as balancer of the two poles and moved closer to the Europeanist vision.

Eventually, the Franco-German proposal proved not to be so different from the British proposal put forward in the Convention.³ Both proposals stressed the need for flexibility in an enlarged Europe, where there are significant differences in the strategic outlook and military capabilities of the member states. But France and Germany were mainly occupied with allowing a core Europe to move ahead within an EU framework with as few constraints as possible. The United Kingdom, on the other hand, wanted flexibility to allow an avant-garde to move ahead in the development of military capabilities, but was hesitant towards the idea of a core Europe, which it felt could decouple the avant-garde from the EU as a whole and eventually from NATO as well. The summit between Germany, France, Belgium and Luxembourg in April 2003 which led to the proposal of a European headquarters only confirmed those fears, but it also made it clear to the United Kingdom that she should be prepared to make a new compromise with France and now Germany if she was to retain her pivotal role in European defence. At a tripartite summit held in Berlin on 20th September 2003, Germany, the United Kingdom and France reached agreement on the basis for a new compromise on the ESDP, thus turning the bilateral pivot into a *directoire*.

It is remarkable that, after the presentation of the draft treaty by the Convention in June 2003, the proposals concerning security and defense were hardly discussed at the Intergovernmental Conference. Instead, the debate was contained within the

3. Gisela Stuart, 'UK Contribution to the Defence Working Group', 21.11.2002.

trilateral negotiations between Germany, the United Kingdom and France. The full result was not presented to the other EU members until the summit in Brussels on December 12th 2003, and only after Washington D.C. had given its consent. The proposal was generally well received by the heads of state and government, but as the summit was unable to agree on a new treaty as a whole, the new treaty text on ESDP was not formally approved. Nevertheless, it can be assumed that the proposal presented to the summit in Brussels will form the basis for the further development of the ESDP. Besides the fact that there was political agreement on the final proposal, most elements in the proposal can be implemented without treaty changes.⁴ Hence, further development of the ESDP is possible without agreement on the Constitution, and already there are now proposals for a Defence Agency and for developing capabilities for rapid response, which may only involve a smaller group of member states.

How did the Convention, the following IGC and the three big powers envisage an update of the ESDP in relation to the new security threats? In the following, the question will be answered by looking at three areas that were discussed: 1) the scope of military tasks to be undertaken by the Union; 2) the development of the necessary means and capabilities to assume these military tasks; and 3) the protection of the EU member states and their populations against security threats.

THE SCOPE OF THE MILITARY TASKS

The draft constitution does not extend the scope of the Petersberg tasks which range from humanitarian relief to ending regional conflicts. The proposal to add disarmament operations, military assistance tasks, conflict-prevention and post-conflict stabilisation are merely a refinement of the Petersberg tasks and do not go

4. The final proposal was presented by the Italian Presidency in doc IGC 60/03 Add 1, 09.12.2003. The agreement on a planning cell is reflected in the Conclusions from the Brussels Summit December 2003.

beyond the current scope.⁵ In fact, all the tasks can be seen as belonging to the lower rather than higher end of the Petersberg tasks. Plans during the Spanish presidency to reconfigure the ESDP to include counter-terrorism were strongly contested by the United Kingdom and others, who were in favour of leaving the military fight against terrorism to NATO. Counter-terrorism did not become a new Petersberg Task, and a passage was merely added to the draft that all the Petersberg tasks ‘may contribute to the fight against terrorism’ (Article III-210). Therefore, the redefinition of the Petersberg tasks does not specifically address new security threats, such as terrorism and proliferation, which were to be identified as key threats in the security strategy, and the reason is probably two-fold.⁶ As indicated in the debate over the EU’s security strategy, the EU does not agree over the use of force against terrorism in the sense of pre-emptive action. Furthermore, the larger countries were more concerned about introducing the flexibility that would allow a smaller group to carry out high-intensity military operations than with updating the *whole* Union so that it could deal with the new security threats.

The development of means and capabilities

The question of flexibility led to the Convention’s proposal of structured cooperation, according to which member states ‘whose military capabilities fulfil higher criteria’ and who are prepared for ‘the most demanding missions’ were to establish structured cooperation.⁷ The proposal raised a number of questions concerning the purpose of flexibility and the relationship between the group involved in structured cooperation and the Union as a whole. The Convention’s proposal was not very clear, and it could be interpreted as allowing a small group of countries – for

5. Steven Everts and Daniel Keohane, ‘The European Convention and EU Foreign Policy: Leaning from Failure’, *Survival*, 45:3, 2003, p. 175.

6. *European Security Strategy, A Secure Europe in a Better World*, Brussels, December 2003. High Representative Solana was tasked by the EU foreign ministers in May 2003 to draft a security strategy. A first draft was presented in June 2003, and the final version adopted at the summit in Brussels December 2003.

7. European Convention, ‘Draft Treaty establishing a Constitution for Europe’, CONV 850/03, 18.07.2003.

instance, Germany, France, Belgium and Luxembourg that were involved in the summit of April 2003 – to establish a ‘closed club’ with its own structures and the ability to decide its own operations. These concerns were put to rest through the negotiations between the three big member states, which resulted in changes to the Convention’s proposal. Structured cooperation was made more transparent vis-à-vis the member states outside it, and it was made easier for other member states to join at a later stage. Furthermore, a protocol was presented laying out the criteria for joining the structured cooperation. The wording of the protocol made it clear that the main purpose of structured cooperation was to develop military capabilities, as the participating member states would commit themselves to providing, by 2007, targeted combat units with support elements, including transport and logistics, capable of deployment within a period of 5-30 days, and sustainable for an initial period of 30 days (extendable up to 120 days), for high-intensity tasks.

The criteria, which resemble those for NATO’s Response Force, are likely to be similar to the new headline goal for the EU’s military capabilities, which will be decided on in June 2004.⁸ The deadline for the new headline goal will be 2010, but an avant-garde is to meet the criteria three years earlier. Hence, the British ideas on structured cooperation carried the day, and emphasis was placed on the creation of an avant-garde, which could act as a stimulus to the other member states in developing capabilities.

Further development of military capabilities is not going to await treaty changes, as was demonstrated by the proposal made by Germany, the United Kingdom and France in February 2004 for an EU Rapid Response.⁹ Following up a Franco-British proposal of November 2003, and as a forerunner to structured cooperation, the countries propose the development of capabilities to be able to respond to requests by the United Nations and supply an interim emergency force within

8. The original headline goal was that the member states should be able, by 2003, to deploy within 60 days 50-60,000 troops.

9. Stephen Castles, ‘Rapid reaction units proposed to give clout to European Union foreign policy’, *Independent*, 11.02.2004.

fifteen days. The operations are likely to be in Africa, and should be capable of operating under a Chapter VII mandate. The EU Rapid Response will consist of battle groups formed by one nation alone or by a multinational solution. The three countries have already confirmed that they will provide one battle group each and have invited other EU members to contribute, provided they meet the criteria in terms of 'military effectiveness', i.e. that they can provide a battle group, including strategic lift capabilities, which is able to meet the fifteen-day target and trained for combat operations. The target date for the EU Rapid Response is the same as for structured cooperation, that is, 2007.

Closely related to structured cooperation and the development of capabilities is the Defence Agency, which is open to all member states and has the following tasks: 1) to assist in identifying contributions to the EU's military headline goal and evaluating the observance of those commitments; 2) harmonising operational needs and cooperation on procurement; 3) further multinational projects; 4) to support defence technology research. The tasks are a mixture of an organised review of the headline goal process and of cooperation on armaments, which is currently moving at a slow pace within the EU, as well as outside it. The Council has already set up a team to prepare for the setting up of the Agency before the end of 2004. The Agency is likely to encompass all EU members, since all member states contribute to the military headline goal.¹⁰ Concerning cooperation on armaments, specific groups may be set up. The six current member states that make up Ninety percent of European defence production are likely to insist that only countries with sufficient resources and technology can join specific cooperation on armaments.

Finally, there was the question of operational planning, which, from the outset, was where the three big countries disagreed the most. The United Kingdom wanted to stick to the formula set out at the NATO Summit in Washington in April 1999, according to which NATO's strategic headquarters (SHAPE) would supply opera-

10. Except Denmark, which has an opt-out on EU defence cooperation.

tional planning for EU-led operations.¹¹ In case of an autonomous EU-led operation, a national headquarters, which in practice meant the German, British or French headquarters, would be in charge of operational planning. The proposal at the summit between Germany, France, Belgium and Luxembourg held in April 2003 to set up a European military headquarters in Tervuren that would have the ability to plan autonomous EU-led operations was met with the strong disapproval of the United States and the Atlanticist members of the EU, mainly because of bad timing. Eventually, the United Kingdom was persuaded to accept the need for common planning facilities, partly so as to reach an acceptable compromise on structured cooperation and mutual defence in the trilateral negotiations, but partly because of experience with the planning for Operation Artemis in Bunia (Congo). The latter was an example of the kind of operation that the United Kingdom and France both want the EU to do, as demonstrated by their joint proposal for an EU rapid response capability. Such interventions are likely to be needed in Africa, where NATO does not have any special interest or expertise. The alternative, then, is to task one of the national headquarters, as was the case with Bunia, where a French headquarters was in charge. The problem with using national headquarters is that they are not multinational from the outset and have to be modified to reflect the nationalities of those taking part in the operation.

The compromise was to set up a planning cell responsible for generating the capacity to plan and run an EU-led operation, if neither NATO nor any national headquarters is able to provide the planning needed.¹² The most interesting aspect of this is that the planning cell is to do both civil and military planning, and in particular to develop expertise in managing the civil/military interface. Developing expertise in civil/military planning will allow the planning cell to develop in a way that can be considered 'constructive' duplication, rather than 'unnecessary' duplica-

11. According to the Washington Summit Communiqué, there is assured EU access to NATO planning capabilities, as well as to NATO capabilities and common assets. The modalities were agreed on with the adoption of the EU-NATO Declaration in December 2002, and are referred to as 'Berlin-plus'.

12. The Presidency, 'European Defence: NATO/EU Consultation, Planning and Operations', Brussels, 11.12.2003, doc. SN 307/03.

tion of NATO.¹³ If a division of labour develops between EU and NATO and/or if the EU is to specialize in operations where close coordination between the civil and military components is vital, it may be that NATO's SHAPE is not well suited to planning and running the kind of operations that the EU wants to lead. Joined-up operations with a strong interlinkage between the civilian and military components may become the Union's hallmark, in which case neither SHAPE nor national headquarters may have the expertise needed. Therefore, the planning cell is to be demand-driven, though, according to the document approved at the Brussels summit in December 2003, further development of the scope or nature of the planning cell will be decided upon by the Council. The Americans were right in pointing out that, with the decision to develop common European planning capabilities outside of NATO, a seed had been planted. But the EU has made sure that the seed cannot grow automatically: it will require unanimous agreement in the Council for the planning cell to grow into something that will duplicate SHAPE's expertise in planning military operations.

In conclusion here, the Union as a whole is to continue focusing on humanitarian relief and peace-supporting operations, and an avant-garde within the EU will eventually be able to perform high-intensity operations. In relation to the key threats identified in the security strategy, the EU as a whole is to retain its focus on dealing with conflicts between states and ethnic groups, while the fight against terrorism will center on stabilizing failing states in order to prevent terrorist networks from taking root. In the final version of the security strategy, the phrase 'preemptive engagement' was changed into 'preventive engagement' in order to avoid confusion with the term 'preemptive action'. Hence, the ESDP was not updated to include preemptive actions against terrorist networks and WMD-proliferating states. Instead, the formation of an avant-garde capable of performing high-intensity operations and the gradual development of a 'strategic culture that fosters early, rapid and when necessary, robust intervention'¹⁴ would allow the EU

13. Kori Schake, *Constructive Duplication: Reducing EU Reliance on US Military Assets*, Centre for European Reform, London, January 2002.

14. *European Security Strategy*, p.17.

to intervene at an early stage in a failing state in order to prevent threats to European security, such as terrorist networks and organized crime.

A common aspect of the proposals was reinforcing the link between civil and military resources. The refinement of the Petersberg tasks through the inclusion of conflict-prevention and post-conflict stabilization only underlines the need for a strong civil component that is closely coordinated with the military effort. The most innovative suggestion was the proposal for a planning cell which is to do both civil and military planning and develop expertise at the civil/military interface. In practice this implies that the planners should also be able to carry out police missions and especially prepare for cooperation between military forces and the police on the ground. Such expertise is already called for with respect to the planned take-over of SFOR. Eventually, it has already been decided that an EU-led operation in Bosnia will be carried out using NATO assets, including NATO planning, and therefore it is unclear when the civil/military expertise will be called for. Given the emergence of present hot spots and failing states, it is fair to conclude that it will be needed.

EU members did not just discuss projecting military force for crisis management. The question of mutual defense again turned out to be a contentious issue.

The defence of EU member states

With the threat of invasion being close to non-existent, it was not evident that the introduction of a security guarantee in the EU should be considered of great importance. In the security strategy, EU members agreed that 'with the new threats, the first line of defence will often be abroad'.¹⁵ The terrorist attack on September 11th did nevertheless lead to the proposal by Europeanist member states to introduce collective defence into the Treaty.¹⁶ The aim was to demonstrate solidar-

15. The sentence was included in Solana's draft security strategy and later adopted by the member states in the final version.

16. Letter from H.E. Mr Guy Verhofstad, Brussels, 18.07.2002, in Jean-Yves Haine, From Laeken to Copenhagen, ISS, *Chaillot Papers* No. 57. The Franco-German proposal is included in Villepin's and Fischer's contribution to the Convention.

ity among the member states, which was also the main reason why NATO's Article 5 was invoked after the terrorist attacks on the World Trade Center and the Pentagon. But the proposals in the Convention and NATO's decision to invoke Article 5 only underlined the confusion over the notion of collective defence at a time when a terrorist attack, not armed aggression, is considered the main threat.

The Convention's proposal was to allow a smaller group of member states to cooperate on mutual defence, thus taking account of the position of the four non-aligned countries, Sweden, Finland, Austria and Ireland. Eventually, the proposal became one of the main issues to be negotiated between the three largest member states. A security guarantee that is merely written on a piece of paper may not be of much value. In the case of NATO, the validity of its mutual defence clause (Article 5) is backed by its integrated military cooperation, including its command structure and defence planning. Therefore, if member states cooperating on collective defence wanted more than a 'paper guarantee', they would need to build military structures to back the security guarantee. Alternatively, they could ask NATO to implement the security guarantee, as was the case with Article V of the Western European Union.¹⁷ From the outset, the United Kingdom was opposed to collective defence in the EU, but in order to reach an overall agreement with Germany and France, a compromise was needed. The first option, which was to duplicate NATO's military structures in the EU, was unacceptable to the United Kingdom, as it was likely to weaken NATO. The second option (i.e. delegation to NATO) had the advantage of stating once and for all NATO's primacy in Europe's collective defence, and this was the compromise reached by the three countries.¹⁸ The Italian Presidency put the proposal forward in the IGC, but now the security guarantee was to cover *all* member states. This was unacceptable to the four non-aligned states, and the text was then modified to lessen the obligation to assist a member state that had been the victim of armed

17. *NATO Handbook*, p. 6.

18. NATO's then General-Secretary, George Robertson, pointed out in an interview that the proposal meant that NATO's role as the foundation of Europe's security was, for the first time ever, to be written into an EU treaty. Thomas Lauritzen, 'NATO-chef: Militær enegang umulig for EU', *Politiken*, 13.12.2003.

aggression.¹⁹ Nonetheless, the non-aligned states still considered that the language entailed an obligation. Wording was therefore added to the clause to the effect that it did not 'prejudice the specific character of the security and defence policy of certain member states', that is, the non-aligned would not be legally committed to provide assistance.

It is difficult to assess the advantages of introducing a 'soft' security guarantee into the EU. First of all, it created problems for the non-aligned members, which were forced to oppose a legal text on an issue that they agreed with in principle. The Swedish Prime Minister afterwards said that the mutual defence clause did *not* entail an obligation to assist, though at the same time he could not imagine that Sweden would not assist with military troops if a fellow member state became the victim of armed aggression.²⁰ Secondly, the whole process is highly revealing in showing that the EU will not address the issue of deterrence, as it is left to NATO to implement the security guarantee. Regarding external security, the military role of the Union is still limited to the Petersberg tasks. To the extent that the EU will pursue the fight against terrorism through the use of force, this is likely to be by stabilizing failing states in the neighbourhood rather than through pre-emptive action against terrorist networks.²¹

The introduction of collective defence was intended to demonstrate solidarity among EU member states, but in reality the expression of solidarity will only result in concrete EU assistance in the case of a terrorist attack, and only after the attack has taken place – as envisaged in the solidarity clause.

19. The wording in the Convention's proposal was that other states 'shall give it [the victim state] aid and assistance', while the final text reads that they 'shall have towards it an obligation of aid and assistance', CIG 60/03 ADD 1.

20. Göran Persson, debate in the Swedish Parliament, January 30th 2004, <http://rixlex.riksdagen.se/htbin/thw>

21. Sven Biscop and Rik Coolsaet, *The World is the Stage: A Global Security Strategy for the European Union*.

INTERNAL SECURITY AND THE SOLIDARITY CLAUSE

The Convention proposed that the ESDP should also address the issue of internal security, which was described in the following way:

‘The events of 11th September prompt consideration not only of the need to project stability outside the Union but also the need to ensure security within the European Union, particularly for the protection of the civilian population and democratic institutions. A purely national framework is no longer enough. At the same time, public opinion is calling more than ever for security and protection and appears to be very much in favour of European defence. It is therefore for the Convention to consider how the gap between expectations and reality could be overcome.’²²

September 11th made it clear to many Europeans that there is a direct threat to European security. The war in the Balkans called for European engagement through the conduct of Petersberg tasks, but in spite of official rhetoric, these conflicts were not seen as a direct threat to the security of member states. September 11th changed this, as it became obvious that anyone could be the victim of a terrorist attack.²³ The first response of the Union was to strengthen cooperation on police and intelligence, but at the European Council in Seville in June 2002, the heads of state and government addressed the need to explore the use of military or civilian capabilities to protect their populations against the effects of terrorist attacks. In other words, it was suggested that the ESDP should play a role in internal security. Eventually, the legal response was that the military capabilities developed within the Common Foreign and Security Policy (CFSP), in the second pillar of the Union, could only be used in third countries, not within the Union.²⁴ The ESDP is an integral part of the CFSP in the second pillar, which is exclusively

22. Final report of Defence Working Group, p. 14.

23. It must be emphasised that this article was written prior to the bombings in Madrid March 11th 2004.

24. Council's CBRN-program adopted December 20th 2002.

aimed at external action. Civil protection is one of the four priority areas in the EU's system of civil crisis management. It therefore follows that the ESDP can be used for civil protection outside the EU, but not within it. Therefore, military resources can be centrally coordinated to assist a civilian population outside the EU, but not citizens of a member state that has been hit by terrorism.

The Convention was determined to allow military capabilities to be used within the Union to protect its populations against terrorism. It therefore proposed a solidarity clause, which guarantees mutual assistance in case of a terrorist attack or a natural disaster on EU territory. The proposal is innovative in two ways. First, it introduces the possibility of using the ESDP's military assets in relation to the EU's internal security, thus underlining the close links between external and internal security. Secondly, it calls for the use of all the EU's instruments, including military resources, thus making effective action dependent on the close coordination of military and civil capabilities.

The Convention stressed that the solidarity clause should not be confused with a clause on collective defence, but arguably it is difficult to make this distinction in practice. The only time that NATO's security guarantee (Article 5) has been invoked was following the terrorist attacks on the World Trade Centre and the Pentagon, and NATO's security guarantee is today *de facto* directed against the same threat as the solidarity clause, namely terrorism. But the solidarity clause only provides for assistance *in* the territory of the member states, thus excluding retaliation and deterrence. Another contentious issue was the call for mutual assistance to 'prevent the terrorist threat', as this was seen as suggesting pre-emptive action as envisaged in the United States Security Strategy of 2002. It is clear from the introduction to the solidarity clause that the obligation to assist presupposes that a terrorist attack *has* taken place.²⁵ But to avoid confusion, a provision was added to a final draft of the Convention's proposal that prevention would only

25. 'Should a Member State fall victim to a terrorist attack or a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities'; Article III-231.

take place inside the Union, thus ruling out pre-emptive action against a terrorist network outside it. Taken together, the solidarity clause and the collective defence clause stress that the Union will not use military force outside the EU to prevent a terrorist attack, whether such action is pre-emptive or deterrent in nature. Obviously, the wording does not rule out the use of military assets inside a member state to prevent a terrorist attack. In theory, a member state that has received a warning of major terrorist attacks might consider the need to call on the troops of another state to protect its key infrastructure. In practice, however, any such warning will most often not be timely or precise enough to permit a call for foreign military assistance, and European cooperation over preventive actions is likely to focus on police and intelligence, not the military.

The solidarity clause is closely related to the existing Community Mechanism, through which member states can request assistance in the case of natural disasters like floods, forest fires or oil spills. The Commission is responsible for passing on the request to the other member states, as well as for maintaining databases on experts, teams, medical resources, etc. The solidarity clause can be seen as a deepening of the Community Mechanism through the integration of military resources, as well as a strengthening of the Mechanism by making assistance mandatory.²⁶

To fulfil such a commitment, the EU must be able to coordinate across both sectors and borders. This involves actors representing different sectors with diverse cultures and traditions, such as soldiers, medical doctors, experts on chemical, biological, radiological and nuclear agents (CBRN), policemen and emergency response services. Prior planning and training is a precondition for effective response in the case of a major terrorist attack. The Working Group on Defence proposed setting up a pool of specialised civilian or military civil protection units to undertake joint training and intervention coordination programmes. Joint civil-military teams might also be envisaged, for instance, a bio-terror team consisting of military experts,

26. It follows from the wording of the introduction to the solidarity clause that it is mandatory, i.e. 'shall assist'. In an earlier draft it is stated in the comments that 'assistance should be triggered automatically at the request of the Member State in question', CONV 685/03, p. 73.

medical doctors, laboratory technicians and the relevant equipment, such as transport, laboratories, decontamination, cleaning facilities and possibly a field hospital.

Rapid response is fundamental in most civil emergencies, and unity of command is a precondition for it. The question is, who will ensure unity of command? According to the Convention's draft Treaty, the Political Security Committee (PSC), with support of ESDP structures (the Military Committee and the Military Staff) and the Committee on Internal Security (in charge of Justice and Home Affairs), will be instrumental in dealing with requests for assistance. It could be envisaged that the EU will deal with such requests in accordance with the procedures laid down for crisis management. That would give a key role to the PSC and to the Military Committee tasked with the adoption of an operational plan, the designation of a command structure, including headquarters, and ensuring the formal acceptance of the member states for the use of their experts and capabilities. The problem is that, in civil protection, the standard response time is twelve hours, and that even a shortened version of crisis management procedures is unlikely to produce a coordinated EU response in such a short time. The alternative is that the member state that has been struck by disaster has the overall responsibility for planning and coordination. Member states will contribute to a database in Brussels, and the PSC will be responsible for matching the needs of the member state affected with the capabilities listed in the database, leaving it to that member state to coordinate the EU's contributions. In that case, EU bodies, including the Military Committee and the Military Staff, would only assist to the extent required.²⁷

Therefore, it is unclear what the solidarity clause will mean in practice. Does it imply extended use of military resources and even the use of a military chain of command in civil protection, or is it simply an extension of the Community Mechanism to include military resources? There is no clear answer as yet, since the specific arrangements for the solidarity clause are to be defined subsequently. As argued above, the solidarity clause is most likely to be an extension of the com-

27. Interview with EU diplomat.

munity mechanism, and the ESDP structures may only have a supporting role. It will also be a huge task to accommodate the many different national practices in the area of civil protection. For instance, in Denmark responsibility for civil protection was recently transferred from the Ministry of the Interior to the Ministry of Defence, while in the Czech Republic the opposite happened. Nevertheless, the solidarity clause is potentially important for the future development of European security cooperation. It may take a major terrorist attack in Europe, exposing the arrangements behind the solidarity clause as insufficient, before it develops into something more substantive. The important aspect is that a new treaty will allow such extended coordination of civil and military resources in civil protection. Further development will then depend on public and political demand, and maybe a major incident. But it seems that the clause should be exactly what ‘the doctor ordered’. Given that terrorism is considered a key security threat to European security, what is called for is a comprehensive approach, with close coordination of civil and military resources, as well as the ability to cross the boundary between internal and external security to deal with a threat that is fundamentally transnational. Developing a European version of homeland security is an area with great potential for further integration. The solidarity clause is one example hereof, and it may turn out to be an area that enjoys public support and even stimulates a demand for further European integration. The public is unlikely to accept a reference to legal problems as an excuse for the Union not to mobilise all its resources, including military ones, in the event of a terrorist attack. Especially in areas with limited national expertise, for instance CBRN terrorism, it makes sense to coordinate the available resources centrally.

Implications for the ESDP?

The potential impact of the solidarity clause on security cooperation evolves from its very coordination of civil and military resources, as well as the interlinkage between internal and external security.

As terrorism shows, and as stated in the Security Strategy, ‘internal and external aspects are indissolubly linked’.²⁸ The solidarity clause was limited to internal security in order to avoid confusion with collective defence, but the involvement of ESDP structures and instruments is likely to dilute further the barriers between internal and external security.

The close cooperation between the Union’s internal and external instruments may be mutually reinforcing. The solidarity clause calls for the European Council to assess the terrorist threat to the Union regularly, and it might be necessary to create a central intelligence body to draw up information from diplomatic, police and military resources.²⁹ So far there has only been limited cooperation between the intelligence cooperation within Justice and Home Affairs and the intelligence cooperation within CFSP and ESDP. There has been great reluctance to share information, especially on the part of police cooperation insisting it only deals with activities inside member states. If there is a demand for the Union to do more to prevent terrorist attacks or limit their consequences, it is necessary to make intelligence cooperation more operational. Another issue is the coordination of different professional communities, such as soldiers, police officers and first responders. They may be used to working together in national civil protection, but decisions concerning lines of command are going to be difficult. This is illustrated by the ongoing debate within the ESDP on the possibility of placing police forces under military command in crisis management operations. This creates problems especially for northern member states that lack paramilitary forces like the French Gendarmerie. Such discussions are likely to resurface when dealing with internal security.

Furthermore, there may be feedback to the ESDP itself through its involvement in internal security, depending on its final role in implementing the solidarity clause. There may be calls for the development of military capabilities to deal with home-

28. *European Security Strategy*, p. 2.

29. Daniel Keohane and Adam Townsend, ‘A joined-up EU security policy’, *CER Bulletin* December/January 2004, London.

land security if member states with scarce assets and budget constraints decided to pool resources for homeland security as is done for international crisis management, for instance, by investing in Theatre-based Missile Defence (TMD) and other air defence assets to protect the major European airports.³⁰ Another, more likely scenario is the pooling of CBRN protection equipment. Such dual-use capabilities would also be included in the EU's force planning in the form of the Headline Goal Catalogue listing the military capabilities needed, as they would be an integral part of the EU's crisis-management capacity as well. This is, of course, a future scenario, but the trend in European countries, as in the United States, is to reconsider the use of military forces for homeland security. As part of the ongoing reform of defence in Denmark, for instance, there is now a proposal that the Danish armed forces should concentrate on homeland security and international engagements, abolishing their traditional territorial defence structures.³¹ It is still early days in European cooperation on homeland security, but the opt-out member Denmark could become a model for a form of European security and defence cooperation that focuses on projecting stability and homeland security while bypassing territorial defence.

Finally, the solidarity clause has the advantage of superseding the Atlanticist/Europeanist division over the role of NATO. ESDP involvement in homeland security is an area where the EU has a comparative advantage over NATO and its concept of total defence. During the Cold War, total defence was aimed mainly at defending a country against armed aggression rather than protecting the population as such. Thus, civil protection contributed to the military effort and was subordinated to military planning. Today, the threat is directed against society itself and its infrastructure, protecting the population being the central requirement. The military role in total defence has moved into the background and protection of the civil society into the foreground, implying a careful mix of civil and military capa-

30. Rob de Wijk, DIIS Conference on Homeland Security. It should be noted that TMD is of limited use against MANPADS (Man-Portable Air Defence Systems).

31. Royal Danish Ministry of Foreign Affairs, *The Security Policy Conditions for Danish Defence*, August 2003.

bilities to confront the terrorist threat and minimize the consequences of a terrorist attack. This involves a wide range of policy sectors, from energy, communications and information technology to intelligence and military cooperation. All these areas are covered by EU cooperation, but they are not an integral part of NATO. Therefore, to the extent that military resources are involved in homeland security, the Union framework seems the more relevant.

WHY THIS OUTCOME?

The debate in the Convention took place during a period of great turbulence, and the proposals made by the Convention were at the time only one of many suggestions concerning the EU's role in the world post-September 11th. The great European powers met in different formations and presented proposals, which had a significant impact on the debate over security and defense. First, the three great powers were split, with the United Kingdom not participating in the summit between Germany, France, Belgium and Luxembourg held in April 2003. When finally the three great powers decided to work towards a common agreement, this was done with little or no involvement of their EU partners, but the close involvement of the United States.

Therefore, in concluding my reflections on the very *process* leading to an agreement on the Union's role in external security, three lessons are to be drawn. First, EU security and defence is more a matter of traditional intergovernmental negotiations than formal negotiations and treaty provisions. The big countries did not choose merely to channel their views on ESDP into the Convention and the IGC, which at the time was the formal platform for debate on the future of the Union. Secondly, European security and defense is very much driven by the great powers in the EU, namely the United Kingdom and France, and increasingly Germany. Thirdly, the United States still has a key role in the development of the ESDP.

None of these lessons are really new. Treaty provisions have never been the driving force behind the development of security and defense cooperation.³² The Saint-Malo initiative of December 1998, which led to the development of the ESDP, was based on the experience of European military impotence when faced with the war in the Balkans, not misgivings about the Amsterdam Treaty, which had not even been put into effect. Secondly, the initiative was driven forward by the great powers with the joint Franco-British Saint Malo declaration and the subsequent involvement of Germany, which took over the EU Presidency in January 1999. Finally, the project was only allowed to move forward with the decision at the NATO Summit in April 1999 and thereby the United States agreeing to give EU access to NATO capabilities and planning assets.

All this suggests that the development of the CFSP and ESDP remains a fundamentally intergovernmental process, with the member states as the main actors. The main driving force behind such changes is still provided by external factors in the international system and the response of member states to those factors, rather than some internal logic of integration from which a need is created for common policies and institutions in the area of foreign, security and defense policy.

Nevertheless, the debate on the EU as a security actor suggests exceptions to the general rule of intergovernmentalism. On some issues, EU actors were instrumental in proposing new areas of cooperation in security and defense. This is not to suggest that supranational institutions in the areas of security and defense are developing, but rather that the increasing degree of interdependence is leading member states to take steps towards common policy-making. One example of this is the proposal for a solidarity clause, which immediately gathered broad support in the Convention and among member states, despite its potential for stimulating further integration in the area of security and defense cooperation.

32. Wolfgang Wessels, *The institutional development of the Common Foreign, Security and Defence Policy. Theoretical perspectives: Beyond the supranational and intergovernmental dichotomy*. Forthcoming.

The proposal for a solidarity clause can be seen as a reaction by member states to their increasing interdependence, with calls for increased cooperation in the area of internal security, including civil protection. The intergovernmental explanation would be that the solidarity clause was a substitute for collective defense, on which member states found it difficult to agree. As argued above, the solidarity clause provides the sort of homeland security that is needed to counter terrorism, and it has the potential to stimulate further European security cooperation. Therefore, it would not be plausible to argue that member states agreed on a solidarity clause in order to maintain national control over security, since the clause might itself stimulate further European integration.

The result of the push and pull between, on the one hand, nation states striving to maintain their sovereignty and, on the other, interdependence leading the same nation states to seek common solutions, is a Union that is developing into a joined-up security actor distinct from NATO. But NATO is a cornerstone of European security, and the Union's role in European security will to a large degree depend on its relationship with NATO.

WHAT ABOUT NATO?

The prospect of the EU becoming a security actor distinct from NATO remains important for the future development of the relationship between the ESDP and NATO and thus the EU and the United States. American support for the further development of the ESDP will depend on whether or not the ESDP is viewed as complementary to NATO. The debate following the Iraqi war clearly demonstrated that European consensus on ESDP remains contingent on American consent.

The debate in and around the Convention did not clearly define the relationship between the EU and NATO. The scope of the Petersberg tasks still indicates a division of labour, with the Union as a whole maintaining its focus on the lower end, while NATO wants to strengthen its ability to do high-intensity fighting

through the creation of the NATO Response Force. But structured cooperation and the proposal to create EU battle groups are aimed at creating the same kinds of capabilities in order to carry out the most demanding operations. It follows that there may be competition between the EU and NATO, as they both draw on the same limited pool of deployable forces.³³ If NATO decides that the units assigned to the NATO Response Force are to be locked throughout the six months of standby, then the EU would be prevented from using their most capable forces for any EU-led operation at the same time. The argument that there will be no competition, as the EU will focus on peacekeeping while NATO concentrates on high-intensity operations, no longer seems valid, as the EU has finally expressed its willingness to develop capabilities for combat operations.

Alternatively, a geographical division of labour may emerge, with the EU taking over crisis management in Europe and developing capabilities for operations in Africa, while NATO is involved in Afghanistan and might have a future role in Iraq.

In the area of collective defence, the argument can be made that the division of labour has become less clear. Armed aggression against an allied EU member will invoke a security guarantee in NATO as well as the EU, but NATO will take the lead. It would be more confusing if a terrorist attack were to lead to NATO's Article 5 being invoked while the EU invokes its solidarity clause. But basically the EU has made it clear that collective defence is NATO's sole responsibility. The EU member states will demonstrate their solidarity by assisting a member state struck by a terrorist attack, but prevention through deterrence or pre-emptive action is not envisaged. This is to be left to NATO or individual nation states.

The main difference between the EU and NATO is thus likely to be in their roles as security actors. If the EU continues its development towards becoming a joined-

33. Rob de Wijk, 'European Military Reform for a Global Partnership', *The Washington Quarterly*, Winter 2003-04, p. 207.

up security actor with close coordination of civil and military policy responses, both internally and externally, then the differences between the EU and a military alliance such as NATO are likely to become still more apparent. But the tensions between the Atlanticist and Europeanist visions are likely to resurface from time to time, as France pushes for a clear military identity in the EU to allow the Union its own place in a multi-polar world, while the United Kingdom stands firm on the need to work closely with the United States.

CONCLUSION

The aim of the Convention was to update the ESDP to confront the new security threats, notably terrorism. The answer was not to engage in pre-emptive action against terrorist networks or WMD-proliferating states. Instead, the Union should strengthen its capabilities to stabilize failing states in order to prevent terrorist networks from taking root. On the question of protecting the civilian population against terrorist threats, a solidarity clause received broad support, and it was argued that such a guarantee of civil protection was more relevant than mutual defense.

The response to the challenge of updating the ESDP has failed to provide clear answers concerning whether the EU is moving closer to or further away from a common security and defense policy, and whether it is becoming a hard power or merely a soft power plus. In this chapter, I have shown that the only common factors behind the different developments within the ESDP are related to linking the Union's civil and military resources, as well as, increasingly, internal and external security. The EU has available a wide range of civil foreign-policy instruments, ranging from diplomacy to economic aid and assistance, from trade to police and judicial cooperation. Furthermore, the Union deals extensively with internal security in the area of police and judicial cooperation, as well as the protection of key infrastructure. Therefore, proposals within the ESDP that could lead to *close coordination between civil and military resources* and to some extent to the *linking of internal and external security* were generally well received by the member states. In the

process of redefining the ESDP, the member states seemed to be agreed that the *hallmark* of the EU as a security actor should be the comprehensive and coherent use of civil and military resources, both externally and internally. There are two explanations for the development of the EU as a civil/military security actor. First, politically it allows member states to overcome the Atlanticist/Europeanist division, as the Union brings *added value* to crisis management and can present itself as complementary to NATO rather than its competitor. Secondly, the comprehensive use of civil and military resources for both external and internal security seems to be the logical response to the terrorist threat, which makes the traditional division between soft and hard power obsolete and transcends the distinction between internal and external security.

The negotiations on the ESDP were basically an intergovernmental process leading to a compromise between the Atlanticist and Europeanist visions of European defense. Nevertheless, in the area of internal security, the argument was made that the proposal for a solidarity clause was a reaction by the member states to their increasing interdependence, rather than a compromise based on fundamental national positions. Increasing European integration has led to interdependence in areas relating to the security of Europe's citizens from the terrorist threat, and the proposal for a solidarity clause can be seen as a reaction to this. It was argued that the solidarity clause, like homeland security as such is one of the areas that are most likely to stimulate further European integration.

The EU's evolution into a joined-up security actor underlines in what way the Union is different from a military alliance such as NATO.

The Brussels summit ended in failure, and the only thing to be adopted was the idea of a planning cell. But the failed negotiations had only a limited impact on the development of the ESDP, demonstrating that, in this area, treaty changes are of less importance. The scope of the Petersberg tasks remains the same, and the security guarantee confirms the current situation, with NATO being responsible for collective defence. A forerunner of structured cooperation is already in the pipeline, with the proposal by Germany, the United Kingdom and France to

establish an EU Rapid Response. The Defence Agency is already in the process of being formed, and a director has been named. Finally, the solidarity clause, which was de facto implemented at the Brussels Summit March 25th 2004. The solidarity clause cannot be formally implemented within the current treaty, but the terrorist attack in Madrid March 11th led to a political commitment by the member states to act 'in the spirit of the solidarity clause'.³⁴

Therefore, the EU does not have to await treaty changes in order to strengthen its military capabilities and develop as a joined-up security actor.

34. 'Declaration on Combating Terrorism', Brussels March 25th 2004.

